

MEMORANDUM

To: Kevin J. Beal, City Attorney
From: James D Chaousis II, City Manager
Date: December 23, 2015
Re: Administrative Order- Conforming Legal Department Resources to Charter and Code

Administration of the City has been tumultuous over the last ten months since my appointment as the City Manager. Often, there is a disconnect between communications coming from the City Council, City Manager, and the City Attorney. This also appears to be a repeated pattern of behavior from the Legal Department in which the City Council has offered guidance. It does not appear that this guidance has had an effect. It is clear that the City has deviated from the path written in the Rockland Charter and Code and I intend to bring that direction back through this order, new protocols, and reporting systems. I want to reference the various elements of the charter and code in this order for clarity.

Article III and Article IV of the Rockland Code illustrates the authority and responsibility of the manager for the Legal Department:

Sec. 304 Powers and Duties of the City Manager

The City Manager shall be the chief administrative officer of the City. *The manager shall be responsible to the council for the administration of all city affairs placed in the manager's charge by or under this charter.* The manager shall have the following powers and duties:

- 1) *The manager shall appoint, and, when the manager deems it in the best interest of the City, the manager may suspend, or remove the City employees and appointive officers subject to the provisions of Article IV of this charter.* The manager may authorize any officer who is subject to the manager's direction and supervision to exercise these powers with respect to the subordinates in that officer's department, office, or agency.
- 2) *The manager shall direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this charter or by law.*

Sec. 401 City Departments; Offices and Agencies

(a) Creation of Departments. The council may establish City departments, offices or agencies in addition to those created by this charter and may prescribe the functions of all departments, offices and agencies except that no function assigned by this charter to a particular department, office or agency may be discontinued or, unless this charter specifically so provides, assigned to any other.

(b) Direction by Manager. All departments, offices and agencies, except the office of the City Clerk, shall be under the direction and supervision of the manager, unless otherwise designated in this charter. The City Clerk shall serve under the direct supervision of the council. With the consent of the Council, the manager may serve as head of one or more departments, offices or agencies or may appoint one person as the head of two or more of them.

(c) Annual Review. During January of each year, the council shall meet with the City Manager, and the heads of each department for the sole purpose of evaluating the operation of City government

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during the previous year. The council may seek the participation of an expert in the field of municipal government at this meeting.

Sec. 406 Legal Officer

There shall be a legal officer of the City to be called the City Attorney, elected by the council who shall serve as chief legal advisor to the council, the manager, and through the manager to all City departments, boards, agencies, and commissions. The legal officer shall represent the City in all legal proceedings and shall perform any other duties prescribed by ordinance and law.

This authority to direct and supervise the City Attorney is also further supported and explained in Chapter 2 of the Rockland City Code in Articles III, IV, and IX:

Sec. 2-303 Duties

He (City Manager) shall perform such duties as are specified in Article III of the City Charter, including complete executive direction of the administrative service of the City.

Sec. 2-304 Division of Administrative Service

The administrative service of the City shall be divided, under the City Manager, into the following thirteen (13) departments:

| Department | Head | |
|---------------------------------------|----------------------------------|---------------|
| Code Enforcement Office | Code Enforcement Officer | Eff: 11/28/85 |
| Finance Department | Finance Director | |
| Economic & Community Development Dept | Community Development Director | |
| Fire Department | Fire Chief | |
| Fish Pier Department | Fish Pier Director | |
| Harbor and Waterfront Department | Harbor Master | |
| Health Department | Health Officer | |
| <u>Legal Department</u> | <u>City Attorney</u> | |
| Library Department | Library Director | |
| Personnel Department | Personnel Director | |
| Police Department | Police Chief | |
| Public Services Department | Public Services Director | Eff: 4/8/15 |
| Records Department | City Clerk | |
| Recreation Department | Recreation Director | |
| Water Pollution Control Department | Water Pollution Control Director | |
| Welfare Department | Director of Public Welfare | |

Sec. 2-901 Establishment (Legal Department)

There shall be a Legal Department, the head of which shall be the City Attorney, who shall have been admitted an attorney of the courts of Maine, and who shall be appointed by the City Council. **The daily activities of the City Attorney shall be under the direction and supervision of the City Manager.** The City Council shall retain the same supervisory role contained in the Charter and Ordinances. Eff: 10/9/96

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The City Council's ability to access the city's administrative services is clear in the Rockland City Charter. In Section 205 the charter states that council shall deal with City officers who are subject to direction and supervision of the manager solely through the manager. Please notice the reference to direction and supervision also referenced in Section 401. Section 210 goes further to state that the Council can only act through ordinance, order, and resolve.

Sec. 205 Prohibitions

(a) Holding Other Office. Except where clearly authorized by law, or pursuant to an agreement under the Interlocal Corporation Act, no councilor shall hold any other city office or city employment, or provide any goods or services, (except by bid), to the City during the term for which the councilor was elected. No former councilor shall hold any compensated city office or employment until one year after the expiration of the term for which the former councilor was elected to the council except as otherwise provided in this charter.

(b) Appointments and Removals. Neither the council nor any of its members shall in any manner dictate the appointment or removal of any City Administrative officers or employees whom the manager or any of the manager's subordinates are empowered to appoint. The Council may express its views and fully and freely discuss with the manager anything pertaining to appointment or removal of such officers or employees.

(c) **Interference with Administration.** Except for the purpose of inquiries and investigation under section 209, **the council or its members shall deal with City officers who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.**

Sec. 210 Procedure

(c) **Actions of the Council.** **The council shall act only by ordinance, order, and resolution.** All ordinances, orders, and resolutions, except those pertaining to appropriations, shall be confined to one subject which shall be clearly stated in the title. Appropriations ordinances shall be confined to the subject of appropriations.

This restriction on the City Council's access to administrative services is also further supported and explained in Chapter 2 of the Rockland City Code in Article II:

Sec. 2-201 Administration; No Council Interference

Except for the purposes of inquiry, **the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.**

Charter Reference: Article III.

State Law Reference: 30-A M.R.S. § 2635.

Cross Reference: Chapter 2, Article III.

The final control of communication must be to the boards, commissions, and committees where the City Manager has sufficient authority in Chapter 2 of the Rockland City Code. Although this instruction will go to all of the employees of the administrative services it is important to note that the City Attorney is pulled into the boards, commissions, and committees without clear guidance from the City Manager.

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Sec. 2-211 Appointive Boards, Commission and Committees

The City Manager, or his designee, shall be responsible for the coordination of communications between the City Council, the various departments and the various city boards and commissions.

The City Manager or his designee, shall see that all communications, inquiries, applications and requests are forwarded to the appropriate boards, commissions or departments. And to further see that all communications, notices, statements of policy and decisions are maintained on file in the office of the City Clerk. Eff: 6/12/85

Based on the referenced charter and code provisions my immediate administrative orders are as follows:

1. The City Attorney shall prepare an itemized accounting for all projects, requests, inquiries, or other actions that are currently being conducted in the Legal Department. This shall be completed by December 31, 2015. It should include a short description, hours invested, hours needed to complete, and the City Attorney's recommendation on the priority.
2. No further actions, requests, projects, or inquiries will be processed by the Legal Department without authorization from the City Manager, or his designee.
3. The City Attorney will direct Department Heads and City Councilors to obtain authority from the City Manager, or his designee, while incorporating new protocols and procedures for direction and supervision, as they are developed by the City Manager.
4. The City Attorney shall make all digital, written, or any other correspondence, notes, or records available for inspection by the City Manager to assist in direction, supervision, and development of protocols.
5. Assignments to committees, commissions, and boards for legal resources will need to be authorized by the City Manager, or his designee.
6. I am formally requesting, as an assignment, for the City Attorney to review and prepare a report indicating other areas of charter and code that the city is not enforcing, or policy guidance is necessary. I will incorporate strategies and recommendations to the City Council during the budget period to reconcile these issues. This report is due by February 1, 2016.
7. Adhere to increased management oversight protocols, set by the City Manager, by logging all activities, interactions, and decision-making opportunities. Provide this information to the City Manager on a weekly basis. Monday and Friday regular meetings will be established for these update sessions.
8. Failure to follow through with this administrative order, without formal intervention by the City Council, may lead to disciplinary action.

Further instruction will be developed through policy discussions with the City Council and as policies and protocols are developed for appropriate direction and supervision of the Legal Department.

JDC