

Councilmanic Interference: When a Councilmember Crosses the Line

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Of all the things I thought I would encounter in my career, testifying in front of a grand jury and then a superior court jury on the history and purpose of the council-manager form of government and on how a councilmember had violated it, was not one of them. This is the story of a city manager dealing with one of the most challenging professional experiences imaginable—reporting a councilmember for misconduct.

Those of us who have chosen the profession of local government management recognize that establishing and maintaining effective working relationships with councilmembers can be among our most important and challenging responsibilities. However, I never anticipated that the issue of a councilmember's attempts to thwart the principles of the council-manager form would become one of the toughest episodes in my own professional life.

Any of us who have been in this business for any length of time have encountered a few councilmembers who choose to “push the envelope” in influencing the administrative/management side of local government. Always, I have tried to avoid the politicization of basic local government services while understanding that councilmembers must be informed about and relate to some of the nonpolicy aspects of governing.

In most cases, we can find a reasonable balance. Even when a councilmember clearly crosses over into the area of an inappropriate attempt to influence staff's administrative responsibilities, the issue can generally be resolved through the manager's diplomatic yet clear explanation of the problems being caused. Often, councilmembers do not fully understand the impact that they are having on staff and will commit themselves to taking a different approach once they do. I also believe that most of us in our profession pride ourselves on helping councilmembers succeed in their roles and “keeping them out of trouble” when necessary.

This story is about what happened when the above-noted techniques did not work and a manager was faced with a tough choice between undesirable options. In this particular case, the impasse resulted in a decision by the city attorney and myself to report a councilmember's (the then-mayor's) misconduct to the district attorney. And this move eventually resulted in the councilmember's removal from office.

A byproduct of the decision was an attempt by this councilmember and his attorney to put the management of the organization on trial, together with, effectively, the council-manager form of government.

The Problem

While issues concerning the councilmember's conduct came to a head early in his second four-year term, problems with his conduct manifested themselves earlier in his tenure.

Understanding that Mountain View is in the middle of Silicon Valley but that the community's heritage is farming, it's helpful to know that the difficult councilmember came from a longtime local farming family, had longstanding ties to the community, and ran on the platform that he would be a "neighborhood councilmember."

Though he had a rather direct interpersonal style, the first year or two of his first term were without major stumbling blocks. Then, a series of increasingly problematic behaviors brought the councilmanic interference issue to a peak during the latter part of his first term and the early part of his second term.

Among the behavior patterns and actions that were problematic were:

- Directly contacting staff at various levels of the organization suggesting, and sometimes demanding, that certain things be done or not done.
- Displays of anger and temper directed at staff members at various levels of the organization.
- Attempting to influence code enforcement activities on properties near his home, including some properties he wanted to buy for personal or family financial gain.
- Communicating the clear expectation that he was entitled to rights and privileges above and apart from other residents because he was "a member of the city family."

Among the incidents that got the most exposure in the press, once the grand jury had issued "accusations" in this case, were these:

- A demand that the police chief be fired for not giving him advance warning of a search warrant to be served on his home as part of a criminal investigation of a family member.
- An order to code enforcement staff to pursue action against a neighboring property owner whose property he wished to acquire.
- Refusal to pay for the replacement of a fire hydrant destroyed by a family member, and outrage displayed when he was billed for the damage.
- Numerous questionable city-charged expenses, including the purchase of a \$700 tuxedo.

- A confrontation with the building official, in which the councilmember demanded that a multimillion-dollar, private construction project be shut down immediately because he thought the construction crane being used was unsafe and that the developer was too influential in the community.

As if the actions described above were not enough, the incidents that brought the interference issue to a crisis were his demands that staff block the development of a property he wished to acquire, immediately adjacent to property already owned by his family. He made it clear that he would see to it that both the planning director and I would be fired if the project were not blocked.

The conclusion that the situation was hopeless came when he asked me into his office one afternoon (while serving his one-year term as mayor) and told me that conditions needed to be placed on the development of the property in question. His aims were to discourage the current owner from proceeding, to lower the value of the property, and to increase the likelihood that the property owner would be willing to sell to him! Interestingly enough, this meeting took place just four hours before my annual council performance evaluation. The implication was clear: how I responded to his demands would influence his approach to my performance evaluation.

Investigation and Trial

Throughout the period of this conduct, both the city attorney and I met individually with this councilmember many times in attempts to correct and modify his behavior. At first, we hoped that our efforts to inform him of the problems and likely consequences of his conduct were succeeding. In one case, when his belligerence had been directed at another council employee—the city clerk—the council was informed of his conduct and intervened to prevent a recurrence.

I even used my closed-session performance evaluation meetings as opportunities to express to the council the increasing need I felt to take action over the improper conduct of a councilmember because of the impact his behavior was having on my ability to carry out my responsibilities.

My goals were to modify the behavior and specifically to protect staff from his attempts to influence their work through confidential, one-on-one meetings. (I recognized the damage that would accrue to the city, the council, and the staff if the matters discussed in the private meetings had to be dealt with publicly.)

When it became apparent that his inappropriate behavior was escalating, that it had crossed legal lines, and that staff could not be shielded from his conduct, the city attorney and I concurred in a decision to report the conduct to an appropriate authority, regardless of the consequences. While we

understood that it was not our role to determine what should be the outcome of any investigation, we felt we were obligated to disclose that the conduct was occurring.

The city attorney and I anticipated that the day might come when we could not adequately mitigate this conduct. We believed our recourse would likely be to report the conduct to the rest of the council. Because the conduct had become so severe and the legal implications so serious, however, we decided that referring the matter to the district attorney was an option that needed to be considered.

One of the drawbacks of referring the matter to the council was that this move would require that accusations be made public prior to an independent investigation. Because of the “sunshine” laws in California, the council would have to consider the allegations in open session.

Additionally, any such investigation begun by the council would likely have been seen as politically motivated by this councilmember and his supporters. After consulting with two other councilmembers and the vice mayor (because the councilmember in question was mayor), we decided that the city attorney would consult with the district attorney of Santa Clara County. Each councilmember, including the mayor, was notified of this referral.

Based on his independent review of the facts, the district attorney chose to investigate the matter. Surprisingly, during the five-month investigation, this activity did not leak to the press. Needless to say, we found it extremely awkward working with the mayor during this period; also, many city employees had to be interviewed by a district-attorney investigator as part of the probe.

While the district attorney considered filing criminal charges on a number of counts, he finally determined to charge the mayor under a little-known and rarely used provision of California state law that provides for the removal from office of an elected official for misconduct. This procedure requires that a grand jury find sufficient basis for “accusations” to be filed against the elected official, then for a superior court jury to find the elected official guilty on the same standard of proof as required for a criminal conviction (unanimous agreement “beyond a reasonable doubt”).

What followed were the closed grand jury proceedings, which involved the testimony of several city employees. In my case, testimony included an extensive explanation of the council-manager form of government and its adoption in the city charter.

One month later, the grand jury issued its “accusations” against the mayor for corruption and willful misconduct. The grand jury transcript also was released, detailing all the instances of misconduct. Next came a media frenzy that

covered the entire San Francisco Bay area. Living through this media blitz and being personally featured in the coverage were unpleasant experiences for me and for other staff members.

Anticipating the action of the grand jury, the mayor already had hired one of the most high-powered defense attorneys in Santa Clara County, who immediately began his media campaign to question the motivation of the mayor's chief accusers, namely, the city attorney and myself. The mayor also had used the period of the investigation to prepare his key supporters to take the offensive. The "spin" was that the city manager and city attorney were out to "get" the mayor for a variety of reasons, ranging from our desire to control city government to our fear for our jobs, as he claimed that he had been critical of our performance. However, no such criticism was ever evident to us, either within or outside the context of our annual performance evaluations.

Of particular note was the premise of the defense attorney that, since council-manager government did not allow this councilmember to directly intervene in the organization on behalf of his constituents, he could simply ignore the city charter and its council-manager provisions in order to address citizen concerns.

This attorney also suggested that, since some communication and contact with city staff are permitted, primarily to respond to routine inquiries, there had been no clear demarcation line to determine "councilmanic interference."

Meanwhile, the mayor was able to pack one council meeting with supporters who made it clear that they felt he was being unjustly prosecuted. For the first time in my career, I had members of the public saying the city attorney and I should resign for overreacting to the mayor's behavior. Not only was it evident that the mayor was not going to resign, but also that he was going to fight the charges vigorously and accuse his accusers in the process.

For a manager who prefers a low-profile approach to city management, this was quite a turn of events. What ensued was four months of media coverage leading up to the public trial. Having my own integrity and job security challenged in the media by the mayor's attorney and supporters was to me particularly frustrating. The councillor's (through the normal rotation process, he was again a councilmember at the time of the trial) legal defense strategy was to put his accusers on trial.

During the lead-up to the trial, it was important to me that the matter not become too great a distraction from the organization, or a significant impediment to the work of the city. I needed to avoid appearing distracted and preoccupied if city staff were to continue to function effectively. Also, the city attorney and I had to deal with the anxiety of staff members who were subpoenaed to testify at the trial.

The trial started off on a less-than-positive note, with the district attorney needing to drop three of the four accusations (counts) brought against the councilmember relating to the property conflict of interest. Bizarrely, it was determined that the defendant did not “technically” have a conflict of interest relating to his family’s property (even though he and his family lived there) because it was held in trust by his father.

The lone remaining count was violating the city charter by interfering with the responsibilities of the city manager. Therefore, in actuality, the council-manager form of government, and how it functioned in Mountain View, were put on trial. Testimony stretched out for more than two weeks and was covered daily in the media. To say that this was a stressful period is an understatement.

Testifying on the history and purpose of C-M government was certainly one of my most interesting professional experiences. The case clearly became a testing ground for the principles and values inherent in the form. Specifically, it was a testing ground for our professional obligation to shield city staff from political interference and demands for special treatment by an elected official.

The defense attorney attempted to make the case that any councilmember contact with city staff that was condoned by the city manager “opened the gates” for his client’s conduct.

More personally, I had the unique experience of being cross-examined about confidential memos I had submitted to the council during my own annual performance evaluation. Also, to counter misinformation from the defense, I took the unusual step of giving the district attorney my most recent performance evaluation to present to the jury!

At the conclusion of the testimony, the wait for the verdict began. After almost four days of deliberations, the jury returned a verdict of “guilty of misconduct in office.”

Newspaper editorials called the verdict a “victory for honest government” and suggested that this councilmember was lucky not to have been criminally prosecuted. Ironically, the main reason he was not being prosecuted in this way was his lack of success in getting city staff to do what he wanted. So, in effect, we had saved him from being more legally liable than he would otherwise have been.

Some of his political supporters continued to defend the councilmember, claiming he had been convicted only on a “technicality.” In a further attempt to make public relations points, the councilmember resigned one day before the superior court judge was scheduled to sign the removal-from-office order. The

judge, however, refused to acknowledge the resignation as sufficient and issued the removal order anyway.

Lessons Learned

For both the city attorney and myself, opting to publicly accuse a mayor/councilmember of misconduct was one of the hardest decisions of our professional lives. In advance, we knew that this course of action would be difficult and professionally risky. On the one hand, we felt we had no other choice consistent with our professional ethics, but, on the other hand, we realized that the consequences of our action were likely to be significant for the community and for ourselves. While this move was difficult to make, we concluded that we had to act.

Although we as individuals were willing to put up with this councilmember's threats and attempts at intimidation as long as we could block his efforts, when it ultimately became evident that we could no longer fulfill our obligations to the council, staff, city charter, and community without disclosing his behavior, the appropriate course of action became inescapable (regardless of any personal consequences). We saw clearly that the staff could no longer be shielded from his conduct and that we must inform the council that one of its members was acting in a manner not consistent with their stated values, with the city charter, and, most likely, with state law.

The most difficult aspect of these types of situations is determining when the problematic conduct has gotten to the point where there is no alternative besides public disclosure.

Looking back on this experience, we would offer the following observations:

- Recognize that it can be extremely difficult to determine when your personal intervention with a councilmember has not been sufficient to fulfill your professional and ethical obligations to your organization and community.
- Don't underestimate the ability of a core group of supporters to rationalize the behavior of "their guy" and to take the offensive on his behalf.
- Clearly understand at what point you must disclose illegal/unethical conduct, even though you may not play a role in determining the appropriate remedy for the conduct.
- Appreciate that our ultimate responsibility as managers is not to individual councilmembers, but to the council as a whole and to the employees of the organization, the community, the ethics of our profession, and the laws governing the form of government in which we serve.

- Understand that attempts to establish reasonable flexibility in setting administrative/policy boundaries can later be attacked as removing all such distinctions.
- Appreciate that the value of having a strong working relationship with your city attorney cannot be minimized.
- Develop a mature understanding that doing what is right will often not be easy, may subject you to personal attack, and may have negative personal and/or professional consequences.
- Recognize that, although they probably won't be as vocal as your critics, many members of your community will have increased confidence in you and in the organization for your willingness to confront unethical behavior.
- Realize that acting ethically will result in a confirmation to your organization's employees of your willingness to "walk the talk" in regard to principled conduct.

Conclusion

Fundamental to our service to our communities and our professional values is the need to consider thoughtfully when we as managers are morally, ethically, and/or legally required to confront misconduct. While our primary goal should be to educate those we work with to prevent misconduct, this priority does not absolve us of an obligation to take more drastic action if we are unsuccessful in preventing it.

Our greatest risk is the potential to rationalize that we don't really need to take action when confronted with the negative consequences of doing so. We need to reflect seriously and carefully on this point if we are to be prepared to act.

As we have heard over and over recently in relation to corporate and organizational scandals, the leaders of organizations should be held accountable to answering three questions when illegality or corruption is exposed:

1. What did you know?
2. When did you know it?
3. What did you do about it?

If we are to strive to be leaders of ethical organizations, we must be prepared to respond to these questions. As difficult as my experience was, it meant a chance for our organization to prove its commitment to the values we espouse. And, to say the least, it furnished some unusual and unexpected forums in which to explain the structure and value of the council-manager form of government.

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