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April 17, 2008

Municipal Board of Ethics
c/o Office of the Clerk
P.O. Box 196650
Anchorage, Alaska 99501-6650

M.O.A.
2008 APR 17 PM 2:43
CLERK'S OFFICE

Re: Request for Advisory Opinion 2008- ___

Members of the Board:

I seek an advisory opinion from the Board regarding the interpretation of AMC 1.15.050(B), and its application to my particular situation.¹

AMC 1.15.050 establishes the Board of Ethics and, among other things, defines the qualifications of its members. Subsection .050(B)(2)(a) precludes members of the board from "holding other elected . . . office with any local . . . governmental unit":

2. [M]embers of the board shall not:
 - a. Hold other elected or appointed public office with any local, state or federal governmental unit;
or
 - b. Hold political party office; or
 - c. Publicly endorse, contribute to, or engage in any political or campaign activity on behalf of any candidate for elected municipal office; or
 - d. Hold current employment with the municipality, the Anchorage School District, or an enterprise or authority owned by the municipality.²

The facts of my situation are as follows:

¹ See AMC 1.15.080 *Advisory opinions*.

² AMC 1.15.050(B) *Membership* (emphasis added).

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1. I am a currently serving member of the Board of Ethics.
2. At a recent Rogers Park Community Council meeting I was asked by the now immediate past president of the Council whether I would be interested in running for a vacant officer's position.
3. Officers of the Rogers Park Community Council are elected by the Community Council's general membership.
4. After first declining the invitation, I ultimately informed the Council's Nominating Committee that I would be willing to serve as vice president, and was willing to be nominated for election to the position.
5. The Committee nominated me to serve as the Council's vice president.
6. At the Council's April 14 meeting (which I was unable to attend), the general membership approved the Nominating Committee's slate of candidates and elected me to serve as vice president.
7. I have not yet officially accepted the position and have not yet begun serving at the Council's vice president. On April 15, I informed the Council's newly elected president and immediate past president that I will not begin serving in the position before I receive the Board's advice.

I am unsure whether community councils are "local governmental units" for purposes of AMC 1.15.050.

As far as I have been able to determine, the phrase "governmental unit" is nowhere defined in Code and the status of community councils is, to me, ambiguous.

On the one hand, councils must be recognized by the assembly; are required by ordinance to have elected officers; and are referred to in the Code as, at least, "self-governing."³

But, on the other, councils appear to me to be limited by ordinance to engage only in "advisory functions,"⁴ and they are expressly referred to in both the Charter and the Code, not as organs of the municipality or "unit[s]" of local government, but as entities that interact *with* local government: the Charter permits councils to "negotiat[e] . . . with local

³ See AMC 2.40.030 A and B *Definition and recognition of community councils* (enclosed).

⁴ See AMC 2.40.050 *Functions*.

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government,”⁵ and the Code authorizes Councils “work with local government and other governmental entities.”⁶

Consequently, I ask the Board to advise me whether serving concurrently as a member of the Board of Ethics and as vice president of the Rogers Park Community Council would violate AMC 1.15.050.

(I have enclosed copies of certain Charter and Code provisions that may be assistance to the Board.)

I appreciate the Board’s attention to this matter and will, of course, recuse myself from any deliberations related to it.

Sincerely,



William D. Falsey

WDF

Enclosures: (1) Provisions of the Anchorage Charter
(2) Provisions of AMC 2.40 (Community Councils)

⁵ See ANCHORAGE CHARTER, Art. VII § 8.01.

⁶ See AMC 2.40.050.

PREAMBLE

We, the people of Anchorage, in order to eliminate waste and duplication in government, to achieve common goals, to support individual rights, to form a more responsive government, and to secure maximum local control of local affairs, hereby establish this Charter.

ARTICLE I. NAME AND BOUNDARIES***Section 1.01. Name.**

The municipality shall be known as Anchorage.

Section 1.02. Boundaries.

The boundaries of Anchorage shall include all areas within the Greater Anchorage Area Borough on the date of ratification of this Charter. The boundaries may be altered in the manner provided by law.

State law reference—Boundary, AS 44.47.565.

ARTICLE II. BILL OF RIGHTS

This Charter guarantees rights to the people of Anchorage that are in addition to rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska. Among rights guaranteed by this Charter are:

- (1) The right of initiative; the right of referendum; and the right to recall public officers, as herein provided.
- (2) The right of immunity from the creation or alteration of a service area, except upon a vote within the area affected.
- (3) The right to establish local community councils to assure maximum community self-determination, exercised in conjunction with others and without infringement upon the rights of other persons.

**Editor's note—The charter commission's commentary article is printed following the Charter as article II of such commentary.*

- (4) The right of immunity from sales taxes, except upon approval by three-fifths ($\frac{3}{5}$) of the qualified voters voting on the question.
- (5) The right of immunity from official actions of the assembly taken after 12:00 midnight and before 7:00 a.m., actual time.
- (6) The right to the assistance of a municipal ombudsman in dealing with grievances and abuses.
- (7) The right to opportunities in housing, public accommodations, employment, and education without regard to race, religion, sex, color, national origin, marital status, or physical disability; and the right to an equal rights commission at the municipal level in aid thereof.
- (8) The right to a locally directed, ongoing planning process that is based upon the community's goals, objectives and policies for the future.
- (9) The right—whether as a taxpayer, as a municipal employee, or both—to a comprehensive personnel classification and procedures system created by ordinance and based upon merit.
- (10) The right to be heard at public hearings prior to adoption of proposed six-year plans of the school system and the municipality, or approval of the annual budget or any ordinance (except an emergency ordinance as defined herein).
- (11) The right—whether as a contractor, as a taxpayer, or both—to competitive bidding for goods and services furnished to the municipality, subject only to exceptions established by ordinance.
- (12) The right of immunity from emergency ordinances, unless adopted by affirmative votes of all assemblymen present and voting, or three-fourths of the total membership.
- (13) The right to have a public record of the actions of the assembly.

(AO No. 93-51, prop. 2, 4-20-93; Prop. 1 of 5-30-97)

Editor's note—The charter commission's commentary on subsection (9) of this article is printed following the Charter as article II(9) of such commentary.

tion, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term when a vacancy occurs, the vacancy shall not be filled. However, if at any time, the membership is reduced to fewer than a quorum, the remaining members, within seven days, shall appoint a number of qualified persons sufficient to constitute a quorum.

(b) If a vacancy occurs on the assembly, the remaining members may appoint a qualified person to fill the vacancy within 30 days. The person appointed shall serve until the next regular or special election, at which time a successor shall be elected to serve the balance of the term. If the vacancy occurs more than six months before the next regular election, the assembly shall provide for a special election to fill the vacancy not more than 60 days after the occurrence of the vacancy. If less than 30 days remain in a term when a vacancy occurs, the vacancy shall not be filled. However, if at any time, the membership is reduced to fewer than a quorum, the remaining members, within seven days, shall appoint a number of qualified persons sufficient to constitute a quorum.

(c) A vacancy in the office of mayor shall be filled at a regular or special election held not less than 90 days from the time the vacancy occurs. If less than 90 days remain in the term when the vacancy occurs, the vacancy shall not be filled. When a vacancy occurs in the office of mayor, the chairman of the assembly shall serve as acting mayor until a successor is elected and takes office. The acting mayor has the veto power, but may not vote on assembly action. The assembly by ordinance shall provide for further succession to the office of acting mayor.

(AO No. 84-171, prop. 3, 10-2-84)

Editor's note—The charter commission's commentary on subsection (b) of this section is printed following the Charter as section 7.02(b) of such commentary.

ARTICLE VIII. COMMUNITY COUNCILS

Section 8.01. Establishment and procedures.

The assembly by ordinance shall provide for establishment of community councils to afford citizens an opportunity for maximum community

involvement and self-determination. The ordinance shall include procedures for negotiation between the local government and each community council with respect to the duties and responsibilities of the community council.

ARTICLE IX. SERVICE AREAS AND ASSESSMENT DISTRICTS

Section 9.01. Service areas.

(a) A service area may be created, altered, or abolished only with the approval of a majority of those voting on the question within the area affected, or, if no qualified voter resides within the area, with the written consent of the owners of all real property within the area affected. However, the assembly, by ordinance may consolidate service areas in which services are provided by the municipality at the same level in each of the areas to be consolidated.

(b) The assembly by ordinance shall adopt procedures for creating, altering, abolishing and operating service areas. Services provided in a service area shall be financed by a uniform tax levy within the area.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

Editor's note—The charter commission's commentary on this section is printed following the Charter as section 9.01 of such commentary.

Section 9.02. Assessment districts.

(a) The assembly by ordinance may establish districts to provide and finance capital improvements by means of an assessment, or services by means of a tax levy. The assessment or levy shall be proportionate to the benefit received from and the burden imposed upon the improvement or service. The assembly by ordinance shall prescribe uniform criteria for allocating the cost of the improvement or service within an assessment district.

(b) An assessment district may be created or extended only with the approval of the property owners who would bear more than 50 percent of the estimated cost of the improvement or service.

ANCHORAGE MUNICIPAL CHARTER, CODE AND REGULATIONS
Municipality of ANCHORAGE, ALASKA Supplement No. MA 40
(All ordinances and resolutions passed and approved through December 31, 2007.)

TITLE 2 LEGISLATIVE BRANCH

Chapter 2.40 COMMUNITY COUNCILS*

- 2.40.010 Establishment and procedures.
- 2.40.020 Purpose of chapter.
- 2.40.030 Definition and recognition of community councils.
- 2.40.040 Establishment.
- 2.40.050 Functions.
- 2.40.060 Municipal responsibilities to community councils.
- 2.40.070 Additional citizen participation in municipal government.
- 2.40.080 Capacity to sue or be sued.
- 2.40.090 Community council maps.

[Selected Provisions]

AMC 2.40.020 Purpose of chapter.

The purpose of this chapter is to provide a direct and continuing means of citizen participation in government and local affairs. Community councils are intended to give:

- A. The people a method by which they can work together for expression and discussion of their opinions, needs and desires in a manner that will have an impact on their community's development and services.
- B. Governmental agencies a method for receiving opinions, needs, desires and recommendations of residents and groups.
- C. Local governing bodies an improved basis for decision-making assignment of priorities for all programs affecting community development and individual well-being.

(GAAB 5.75.010)

AMC 2.40.030 Definition and recognition of community councils.

- A. *Community councils defined.* Community councils are nonprofit, voluntary, self-governing associations composed of residents, property owners, business owners and representatives from nonprofit associations and other entities located within geographical areas designated as districts by the Assembly. Residents, for the purpose of this chapter, are defined as homeowners, tenants, or others dwelling within the council boundaries, property owners and representatives from nonprofit associations and other entities located within geographical areas designated as districts by the assembly.
- B. *Recognition of community councils.* Upon request of one or more voluntary associations and after public notice and hearing, the Assembly may recognize by ordinance any one voluntary association as the community council for a given district. To qualify for and maintain recognition, an association must establish that it:
 - 1. meets the definition of a community council as set forth in subsection A. of this section;

2. has a policy and practice of open membership and meetings which encourages participation of persons from all segments of the community;
 3. does not charge dues, or require other financial contribution as a condition of membership or participation, in excess of \$15.00 per member per year; however, the council may waive the required dues in individual instances if the council determines that a hardship exists; a community council may receive gifts, grants, contributions, or in-kind donations from members or others to meet the costs of its operations;
 4. is, in the opinion of the Assembly, representative of the residents in the district;
 5. has held at least two meetings in the district which resulted in a determination to seek recognition as a community council. Such meetings must have been subsequent to public notice through newspaper publication, school distribution and other means adequate to inform most, if not all, district residents of the meeting; and
 6. has adopted by-laws governing the organization, operation, and proceedings of the community council. These by-laws shall be presented to the Assembly prior to recognition and shall provide for:
 - a) Definition of the boundaries of the community council as set forth in AMC 2.40.040 D and AMC 2.40.090.
 - b) Definition of membership consistent with A of this section.
 - c) Regular meetings of the council at periodic intervals, at least two times in a calendar year, but preferably once each calendar quarter.
 - d) The election of officers and, if desired, an executive committee or like body to conduct the business of the council between meetings.
 - e) The duties and responsibilities of officers, their removal or replacement when a vacancy occurs, and criteria for eligibility to hold an office with the council.
 - f) Minutes shall be taken at all meetings.
 - g) The management of the council's finances including regular status reports and an annual report to the council members on the council's finances or a compilation of treasurer's reports.
 - h) The dissolution of the council, and for the disposition of the council's property upon dissolution.
 - i) That the latest edition of Robert's Rules of Order, Revised, shall apply in all instances, matters, and proceedings not covered by the by-laws.
 - j) Procedures for amending the by-laws.
 - k) Membership lists are used only for council business.
- C. Girdwood is not considered a community council for purposes of this section.
- D. *[Reserved.]*
- E. *Districts recognized; special provision.* The municipality recognizes the Girdwood Board of Supervisors as the community council, ex-officio, which serves the Girdwood Community Association/Land Use Committee boundary area depicted on Map 10 located in Section 2.40.090
- (GAAB 5.75.020; AO No. 88-85, § 1, 7-19-88; AO No. 2003-75, § 1, 7-22-03; AO No. 2003-113, § 1, 8-12-03; AO No. 2005-1(S-1), § 1, 4-12-05)

AMC 2.40.050 Functions.

Community councils shall have the following advisory functions:

- A. In regard to the Anchorage comprehensive plan:
 - 1. Evaluate compliance with the plan, alerting municipal officials to, or proposing appropriate action regarding any inconsistencies with the plan; and
 - 2. Conduct a continuing review and study of the plan to determine its workability in each district and to advise municipal officials of, or propose any appropriate action regarding proposed modifications or additions to the plan.
- B. Assume leadership and propose action in regard to enforcement of existing laws or ordinances, pursuit of rights under existing laws or ordinances, desired or opposed changes in or additions to laws or ordinances, or any matter of policy regulation.
- C. Respond to local government proposals submitted to community councils pursuant to Section 2.40.060.
- D. Work with local government and other governmental entities, as well as with persons and groups outside the government, to accomplish district goals, including goals which may have an areawide impact.

(GAAB 5.75.040)

AMC 2.40.060 Municipal responsibilities to community councils.

- A. *Submission of proposals for review by community council.* Except where action must be taken on an emergency basis, the mayor shall be responsible for giving to community councils an opportunity to participate in the formulation of, and to review and comment upon, all land use, social and economic proposals which in the opinion of the mayor, the assembly, or the agency head involved, will have a significant impact on all or a substantial portion of district residents, provided that such procedures do not delay or preempt existing procedures with regard to the processing and hearing of applications for rezoning, special exceptions, variances and building permits. Such opportunity for participation shall be afforded community councils in the initial stages of planning as well as in subsequent stages of proposal development. Where municipal ordinance or resolution requires the giving of mailed notice to adjacent or nearby residents or property owners with respect to a proposed rezoning or land use change, the planning department shall send a copy of the same notice to the chairman of any community council whose boundaries contain land described in Tables 1 and 2 of this subsection, or to such other officer designated by the council for receiving such notice.

Table 2.40.060A.-1: Community Council Notice Requirements For Land Use Changes Proposed on Public Lands and Facilities

TABLE INSET:

Land Use Proposals on Public Lands and Facilities (proposals for which 21.15.005A. requires notice)	Minimum Notice Radius
A1. Regional (Areawide) Public Lands and Facilities. The	Community councils that have boundaries within 1,000 feet of the subject public land or facility

<p>following regional (areawide) public facilities are geographically expansive, adjoin multiple council districts, and impact a wide area:</p> <ol style="list-style-type: none"> 1. Merrill Field Airport; 2. Ted Stevens Anchorage International Airport; 3. Far North/Bicentennial Park, with BLM and Tudor Road public facilities; 4. Chugach State Park; and, 5. Anchorage Coastal Wildlife Refuge. 	<p>shall receive notice which includes the proposal application. Community councils more than 1,000 feet from the subject public land or facility shall receive notice. Such community councils may request the proposal application.</p>
<p>A2. The following kinds of public lands and facilities are geographically within a council district and have regional (areawide) impacts:</p> <ol style="list-style-type: none"> 1. Public airports and airstrips; 2. Regional and Urban parks as designated in the Parks, Greenbelts and Recreational Facilities Plan; 3. Public schools and universities with areawide attendance. 	
<p>B. Other Municipal and State Lands and Facilities.</p>	<p>The Planning Department shall provide notice to community councils within 1,000 feet of the subject public lands or facility.</p>
<p>C. Branch Municipal Facilities that Serve Specific Delineated Areas. These are branch municipal facilities that serve an established delineated sub-area of the Municipality. Examples:</p> <ul style="list-style-type: none"> • Public Schools; school attendance areas • Fire Stations; emergency response areas 	<p>The Planning Department shall provide notice to community councils within 1,000 feet of the subject facility, AND to community councils within the facility's delineated district of service.</p>

Table 2.40.060A.-2: Community Council Notice Requirements for Land Use Proposals on Private Property
TABLE INSET:

Land Use Proposal on Private Property	Minimum Notice Radius
A. Zoning map amendments, conditional uses, public hearing site plan reviews,	The planning department shall notify community councils within 1,000 feet of the

subdivisions cases that require public hearings, and other land use and development proposals that require notification and a public hearing.	subject site.
B. Variances, non-public hearing platting cases, easement vacations, or non-public hearing site plan reviews.	The planning department shall notify community councils within 1,000 feet of the subject site if notice is required by 21,15.005.
C. Land use proposals that are potentially major projects or controversial uses, and it is the opinion of the planning department director that community councils beyond the minimum notification distance are likely to be impacted.	The planning director shall notify community councils beyond the minimum notification distance regarding proposals which, in the opinion of the director, are likely to have a significant impact on residents of community councils beyond the minimum notice distance.

B. *Response to community councils.* In the event of a written communication from a community council requesting information, recommending municipal action or modification of municipal law or policy, or acting upon a municipal proposal submitted pursuant to subsection A of this section, the appropriate municipal officials shall issue an informative response within a reasonable time. If the municipal officials cannot comply with the request or do not agree with the position taken by a community council, the reasons therefor shall be stated.

(GAAB 5.75.050; AO No. 2003-75, § 3, 7-22-03)