



YOU AND YOUR CITY ATTORNEY

11 TIPS TO GET THE MOST OUT OF THE PARTNERSHIP

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If the term "city attorney" makes your eyes glaze over, we get it. You may think that the less you have to work with an attorney, the better. But the reality is that if you are an elected official or a city staff member, a city attorney has specific knowledge and expertise that can help you and your city or town in ways you probably do not even realize.

It is up to you how your attorney can best serve the city – how and when you involve him or her on projects, how often you ask for advice, how you use that advice, and how often you just ask questions. Your attorney is there to answer your questions, either directly or through research or consultation with other city colleagues, or a combination of both. Ultimately, your attorney is a member of your city team and a valuable resource.

Here are 11 tips for working effectively with your city attorney, and getting the most out of the relationship.

1. Remember: The City Is the Client

First things first: A city attorney does not represent any individual councilmember or staff member. Instead, he or she represents the actual city through its governing body. This means that even though your attorney may interact with councilmembers and staff members on a regular basis, the advice he or she gives to those individuals is always intended to protect the client – in this case, the city as a whole.

What does that mean for you? Understanding this distinction is important – your city attorney is not your personal

attorney. Still, since your city attorney is tasked with protecting the city, by extension his or her advice to you with respect to your role can help you make decisions in a lawful way. Your city attorney can be a resource to help you better perform your duties.

2. Use Your Attorney as an Advisor

So, what does a city attorney actually do? Services might include imparting legal advice, attending council meetings, and participating in litigation.

A staff member or elected official may ask the attorney to weigh in on a specific issue. The breadth of issues affecting cities is immense, so the attorney may provide this advice immediately or may need to perform research and analysis before giving an informed opinion. Often, your attorney will provide the advice in the form of a confidential memorandum protected by the attorney – client privilege that can be saved for later use and reference.

For example, let's say your council or board has a question about the process for conducting an election. Your attorney likely would perform research and provide advice on this process to the council, but he or she also may choose to reduce that opinion to writing. At a subsequent election, referring to this memorandum can be a boon to the city. It conserves resources by reducing duplicate work, helps to ensure that processes are applied consistently over time, provides guidance to new attorneys, and even gives historical context on the facts and analysis applied at one point in time.

At times, your attorney also may give unsolicited advice. If he or she notices or hears about a specific issue that raises concern, he or she will likely address the issue with the appropriate person. Solicited or unsolicited, the goal in imparting any type of advice is always to protect the city from legal missteps.

3. Know That It Is Advice, Not an Obligation

It is also important to understand that the advice is just that – advice. Both officials and staff may use their discretion and choose not to follow that advice. In some instances, despite legal risk, council or staff members may decide to make policy decisions that do not align with the path that legally protects the city best. Ultimately, decisions are up to the elected officials or staff, depending on the nature of the issue.

While your city attorney may influence your decision based upon the legal advice received, he or she is not a decision maker, only a resource to you in making the decisions that, by law, only you can make.

Perhaps your attorney provides strategic advice to council on a litigation matter. Despite potential exposure for the city, the council may decide to take a path

that results in a better political outcome for various reasons. Or maybe your city is considering an ordinance regulating payday lenders within its boundaries. In this case, your attorney would advise you as to the relationship between state law and possible federal regulations, and your city may or may not choose to move forward with the ordinance based on that information.

4. Work with Different Attorneys for Different Needs...

On that note, it is your attorney's role to participate as much or as little as the city staff and elected officials need. This involvement can vary widely depending on your city's resources and staffing levels.

For example, if you serve a large city with multiple staff attorneys, you may expect to hear from one regarding lit-

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igation matters, another for land use matters, and yet another for contract matters. Each attorney may focus on a single area with the ultimate goal of protecting the city in that area.

5. Depending on Your City's Resources

On the other hand, if you work with a small city, you may have only one attorney on staff. In this case, the manager of the city will dictate how to prioritize your attorney's time.

Many smaller cities exclusively use outside counsel or a combination of staff and outside counsel. That may be because the city does not have enough legal work to employ a full-time attorney, or because the city prefers to use a firm so that it has access to multiple attorneys with various levels of experience and billing rates.

Either way, the city attorney's role and responsibilities are the same: advising staff and elected officials on legal issues; keeping elected officials apprised of the latest developments in city law and legislation; attending council meetings and other boards and commission meetings; and participating in litigation, if necessary.

You can expect to use your outside counsel just as you would a staff attorney — the only difference is how the attorney is paid.

6. Give Your Attorney Plenty of Lead Time

Like most people, your city attorney is juggling many projects, meetings, and other obligations, which means he or she may not always be able to respond as quickly as you would like.

The more lead time you can give your attorney for work that you need, the more likely it is that he or she will be able to complete it within your deadline. Practice a little triage with your legal projects or issues by assessing their priority in terms of time and matter sensitivity.

It is to your benefit to communicate your needs and your deadline clearly. You should ask your attorney whether this deadline is realistic and, if not, work with your attorney to come up with a plan.

Your attorney is dedicated to protecting the interests of the city. If after-hours or weekend time is required to do that, you should be able to count on him or her to be there.

The focus here should be on teamwork. Include your attorney as part of the project's team to ensure that you have what you need when you need it. Additionally, involving your attorney at each step means he or she can address any unforeseen legal issues early in the process.

7. Invite Your Attorney to Relevant Meetings

Your attorney may attend all council meetings to provide input in case an unforeseen legal question arises. If your agenda includes an executive session for the purpose of receiving legal advice, your attorney will also attend that meeting to offer input on the relevant issues. In a more general sense, it is important, if feasible, that your attorney attend council meetings so that he or she stays apprised of issues affecting the city. Given the opportunity to witness discussion among elected officials and staff, as well as public comments, your attorney can respond to those issues more competently and efficiently.

When necessary, the city attorney also may be invited to attend staff meetings and other boards and commissions meetings where he or she can discuss ongoing issues and projects, iron out contract terms, or brainstorm options related to a particular issue. You can save time by including your city attorney in these meetings because he or she will bring a legal perspective to the initial discussions that may help ward off potential issues in the long run.

If you are unsure whether a meeting is one that your attorney needs to attend, just ask. Involving your attorney early on will help to establish a plan for your attorney's participation, which can also help set expectations and conserve resources. You may be able to work out an arrangement where an attorney attends certain regular meetings, attends all meetings concerning a specific project, or only participates in an as-needed basis.

8. Work Together Closely on Litigation Matters

When it comes to litigation, cities vary in their staffing choices. As mentioned, a large city may have staff attorneys devoted to litigation matters, both enforcing the city code and any other litigation in which the city becomes involved. On the other hand, a city may choose to have a staff attorney handle city code enforcement but outsource larger litigation matters to outside special litigation counsel.

In either case, the attorney will need to consult with staff and elected officials to gather information, participate in the discovery process, draft pleadings, and advise staff and council on strategy and potential outcomes. Particularly during the fact-finding and discovery process, your attorney will need to work closely with staff to gather the relevant information and analyze the issues at hand. Your attorney will also involve the elected officials when discussing different litigation strategies, seeking direction on how to proceed.

All communications with your city attorney that are related

to the city's representation, whether verbal or written, are considered privileged and confidential. To protect that privilege, you should never discuss the contents of those communications with anyone other than staff and elected officials unless instructed otherwise by your attorney.

9. Look to Previous Records for Precedent

Your attorney may be on staff or retained as outside counsel while elected officials and staff experience turnover, whether due to term limits or normal staffing changes. In this way, the city attorney can be a resource of historical information to bridge information gaps between changes in personnel. Your attorney's institutional knowledge is invaluable. If he or she has provided advice in the form of a confidential memorandum, as mentioned earlier, this written record can save time and resources as new officials cycle into office.

Similarly, if your city changes legal counsel, the new attorney will still have access to these interpretations and analyses of previous counsel. This written record can save significant time and resources.

10. Use Your Attorney as a Go-Between

Your city attorney can serve as a liaison between staff, elected officials, and other government entities. In this role, he or she may be able to bridge communications between various parties and entities, facilitating more efficient negotiations or gaining a perspective that would otherwise be difficult to obtain. In negotiations between a city and other governmental entities, the respective elected officials of each entity may give direction to their legal counsel as to the desired outcome and leave it to the attorneys to accomplish the result.

Because your attorney has a duty to maintain attorney-client confidentiality, often you may be able to speak to your attorney in confidence without risk of the conversation becoming pub-

lic. As a result, you have access to advice without the potential for adverse public repercussions.

For example, say you are an elected official and note an item on your upcoming agenda involving an issue that you do not quite understand, need clarification on, or generally have questions about. You may call your city attorney ahead of time to address some of these issues so that you do not have to ask them in a public setting or convene an executive session for the purpose of receiving legal advice.

Or perhaps you notice an item on the agenda and believe you may have a conflict of interest if you participate in a vote on it. You might discuss this possibility with your city attorney in advance of the meeting so that you are not put in an awkward position if you have to make

this call during the public meeting.

11. Stay Up to Date on Changes in City Law

Your attorney can be a resource for addressing changing practices and laws affecting cities.

Your attorney is obligated to participate in continuing legal education, but he or she may also attend conferences specific to city issues, such as those hosted by the Texas Municipal League or Texas City Attorneys Association. Through these events, your attorney gains access to other city attorneys and other practices of cities, which he or she can bring back to your city to consider.

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