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# Ethics Complaints against a Council Member

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## **Difficult Conversations: Complaints Against a Councilmember**

**By Steven Miller**

Few issues can be as sensitive and disruptive as a complaint lodged against a councilmember. Complaints against councilmembers often differ from more common employment-related complaints against a staff member in that they usually raise issues of ethics, such as conflict of interest violations, violation of California open meeting laws, election law violations, misuse of public resources, and/or interfering with staff functions and related bad behavior towards staff or members of the public.

These complaints, and their resolutions, are often shrouded in secrecy, without the transparency that may be necessary to learn any meaningful lessons that could help a city chart a course in the aftermath of a complaint. A complaint, of course, presents legal challenges for a City. But even if a complaint does not allege significant fraud or other criminal behavior, a complaint alleging councilmember ethical misconduct, or even just plain poor behavior, presents political and practical challenges that, at a minimum, may cause an enormous distraction from the administration of the city and its important mission. In the worst case scenario, the fallout from a complaint can underscore failures of a city's ethical culture and can fray the public trust that is essential to any city government—once lost, the public trust is very difficult to regain.

This paper suggests a framework for how a city attorney might help a city respond to a complaint lodged against a councilmember. Because the substance of each complaint is unique, this paper focuses on procedural hurdles and challenges, both legal and practical, that are common and applicable to most situations. Even though I am a lawyer, I suggest an approach that is guided not only by a traditional legal risk assessment, but that focuses on maintaining and rebuilding public trust.

I suggest that the crucial question to ask yourself at the outset of the process—and then to check in again and again—is how to define success. What is the best or desired outcome from this complaint? This is often not an easy question to answer. But in addition to the immediate need to protect the city from legal risk, how a city attorney advises a city to respond to a complaint could reflect, and impact, the city's culture, perhaps for years to come.

### **A. Legal Framework**

First, of course, you must protect the city legally and comply with all legal requirements. Putting aside for the moment the substance of the complaint, any complaint raises a number of legal procedural issues that a city attorney must always keep in mind in order to comply with foundational statutory municipal laws. While city attorneys are fluent in these municipal laws, a complaint presents sophisticated and challenging applications that can test even the most expert practitioner. It is almost certain that a complaint will raise issues requiring careful consideration and application of three foundational

municipal laws: the Brown Act, the Public Records Act, and conflict of interest laws (for example, the Political Reform Act).

1. Brown Act. After a complaint has been lodged, a City Attorney will inevitably be faced with pressures to allow the city council to consider the complaint privately in closed session. The Brown Act, codified at Government Code section 54950 et seq., requires that a city council deliberate and conduct its business in meetings that are open to the public, unless an exception exists that allows for consideration in closed session. (Gov. Code §§ 54953(a), 54954.5.) If a particular topic is not listed in the Brown Act as a reason for a closed session, then the legislative body must discuss the matter in public, even if the topic is controversial, sensitive, or embarrassing. (Id.) Two closed session exceptions are frequently raised as possible avenues to a private discussion of a complaint.

The Brown Act provides a closed session exception “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.” (Id. § 54957(b).) The purpose of this personnel exception is to allow the legislative body to engage in a full and candid discussion about an employee or potential employee. (63 Ops.Cal.Atty.Gen. 153 (1980).) In order to hold a closed session to discuss an employee, the legislative body must have the power “to appoint, employ, evaluate the performance of, discipline, or dismiss” that employee. (*Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002).) City councilmembers are not included as “employees” for purposes of the personnel exception, so this exception does not allow the city council to discuss a complaint in closed session solely regarding a member of the legislative body. (Gov. Code § 54957(b)(4).)

Another closed session exception is to discuss matters related to litigation. A complaint by itself will not ordinarily meet the Brown Act definition of “litigation,” namely “any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.” (Id. § 54956.9.) But the Brown Act includes an exception to confer with legal counsel regarding “pending litigation” even if “litigation” has not been initiated formally. (Id. § 54956.9(e).) The pending litigation exception is narrowly construed and authorizes legal counsel to meet in closed session with the legislative body to inform them of the “existing facts and circumstances,” as defined in Government Code section 54956.9(e), that lead to a significant exposure to litigation against the local agency. (Id.) Generally, the “existing facts and circumstances” must be publicly disclosed, unless they are privileged written communications or not yet known to a potential plaintiff. (Id.) If a complaint includes a threat of litigation that rises to a level eligible for a closed session, a city attorney should be aware of reporting requirements under the Brown Act, as well as the complex issue of whether to allow the accused councilmember to participate in any closed session discussion. The details of the pending litigation exception is beyond the scope of this paper. But in my experience, it is unusual for a complaint to include the kind of threat of litigation that meets the requirements of the Government Code.

If a council may not meet in closed session, councilmembers will nevertheless often want to discuss a complaint amongst themselves privately. This raises the common Brown Act issue of avoiding a serial meeting. Again, this paper is not a guide to the Brown Act, and it is enough to caution practitioners that serial meeting issues will inevitably arise while managing a complaint against a councilmember. Outside of a proper Brown Act meeting, “[a] majority of the members of a legislative body shall not . . . use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” (Id. § 54952.2(b)(1).) These types of meetings are known as “serial meetings.” Serial meetings may occur by either a “daisy chain” or a “hub-and-spoke.”

Notwithstanding the difficulty of justifying a closed session and the prohibition against serial meetings, a city attorney will need to communicate with the council in some fashion. A city attorney may communicate with the council through confidential and privileged written memoranda. But it is important to keep in mind the narrowly drawn permission, authorized by Government Code section 54952.2, to conduct separate briefings of individual councilmembers, so long as the city attorney does not communicate to one councilmember the comments or position of any other councilmember. (Id. § 54952.2.)

In sum, depending on the specifics of a complaint, it may be difficult to justify a closed meeting discussion of a complaint. Part of the city attorney’s job will be to explain to councilmembers seeking private disposition of a complaint that such confidentiality may not be possible. A city attorney will also have to manage the complaint process so as to avoid serial meetings between councilmembers.

2. Public Records Act. Responding to a complaint will inevitably result in the creation of a number of documents and a city attorney should, at the outset of the complaint process, keep in mind the requirements of the California Public Records Act (PRA). The PRA, codified at Government Code section 7920.000 et seq., is a key part of California’s commitment to open government. The PRA requires that public records be disclosed to the public upon request unless there are statutory exemptions that would prevent doing so. (Gov. Code § 7922.530.)

Public records means “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any . . . local agency regardless of physical form or characteristics.” (Id. § 7920.530(a).) Communications that consist primarily of personal information generally are not considered to be public records. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 618-619.) However, records on an employee or public official’s personal device or account, such as emails and text messages related to public business, will be considered to be public records, and thus subject to disclosure under the PRA. (Id.) A related difficulty arises with the limitations on a public agency’s ability to search or compel the production of materials

from private devices where the owner official is unwilling to voluntarily comply with requests.

A majority of the PRA's exemptions to disclosure protect individual privacy interests (see e.g., Gov. Code §§ 7927.700, 7925.000, 7928.300, etc.). Some exemptions relevant to an ethics investigation, such as the deliberative process privilege, are based on the public interest exemption, which is a balancing test in which the public agency must demonstrate that "on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Id. § 7922.000.)

As part of any response to a complaint against a councilmember, it is close to certainty that a city will receive a request for records under the PRA for documents concerning the complaint. In advising on how best to respond to such a records request, the city attorney will want to evaluate the following exceptions to disclosure—depending of course on the specific record(s) requested:

- Attorney-client communications. The attorney-client privilege preserves the confidential relationship between attorney and client and protects all confidential communications between attorney and client, including attorneys within a firm or in-house legal department, from being disclosed. (Id. § 7927.705; *Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725, 733; *Fireman's Fund Insurance Company v. Superior Court* (2011) 196 Cal.App.4th 1263, 1272-1275; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 49-52.) In the context of a complaint, there are sometimes blurred lines as to who is the "client"—in particular with regard to communications between the city attorney and an accused councilmember.
- Deliberative process privilege. The deliberative process privilege protects concerns that communications and other documents may be withheld if the public agency can demonstrate that the public interest served by withholding the record clearly outweighs the public interest served by disclosing the record. (Gov. Code § 7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338.) The purpose of the deliberative process privilege is to protect decisionmakers' candid communications. While always fact specific, the deliberative process privilege is an important one to consider in responding to a records request under the PRA.
- Drafts. Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure. (Gov. Code § 7927.500.) This exemption provides privacy for certain documents pending local agency action, but the materials must be discarded; preliminary materials that are not regularly discarded must be disclosed. (*Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 714.) Unless a city routinely destroys records under its

records retention policy, it may be difficult to consider a document a draft under the PRA.

- Public interest exemption. The “public interest” or “catchall” exemption is a balancing test that allows local agencies to withhold a record if the agency can demonstrate that on the facts of the particular case, the public interest served by withholding the record outweighs the public interest served by disclosing the record. (Gov. Code § 7922.000.) Like any balancing test, this one is heavily fact specific. But responding to a records request relating to a complaint may implicate this exception in very narrow circumstances.

3. Conflicts of Interest. A question that routinely arises in response to a complaint is whether the accused councilmember is allowed to participate in any council discussions and deliberations on the matter (whether in closed or open session). Put another way, does an accused councilmember have a disqualifying conflict of interest that prohibits the councilmember’s participation in council discussions and deliberations? This issue is particularly sensitive if a city council meets in closed session to discuss a complaint. But it also arises if a city attorney is communicating with the council by way of confidential memoranda. Like any issue involving conflicts of interest, certain aspects to this question have easy answers, but there are complexities that a city attorney should expect to arise.

The Political Reform Act, codified at Government Code section 81000 et seq., prohibits public officials from making, participating in making, or influencing any governmental decision in which the public official has a financial interest. (Gov. Code § 87100.) The regulations implementing the Political Reform Act define “participating in a decision” broadly to mean “provid[ing] information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.” (Cal. Code Regs., tit. 2 § 18704(c).) Assuming that there is no formal litigation associated with the complaint to which the accused councilmember is a party, and assuming that there are no facts involving a councilmember’s compensation, it is extremely unlikely that an accused councilmember will have the kind of financial interest that raises issues under the Political Reform Act. But that is not the end of the conflict of interest analysis.

The common law conflict of interest doctrine “prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.” (92 Ops.Cal.Atty.Gen. 19, 7 (2009).) “A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.” (Id. at 8.) These common law principles require a public official to exercise the powers and authority of her position free from personal bias. There are no implementing regulations or clear guidelines regarding this common law doctrine. But a city attorney will want to advise an accused councilmember about this doctrine. As discussed later in this paper, an accused councilmember has certain due process rights that require an opportunity to be heard in any enforcement proceeding that a council may undertake. Therefore, a city attorney

will have to carefully balance the accused councilmember's rights with potential conflicts of interest that may require exclusion from a particular proceeding. In my experience, limiting a councilmember's ability to participate in discussions about a complaint presents more legal and practical risks than allowing the councilmember to participate.

Finally, as with any conflict of interest issue, it is important for a city attorney to remember that the city is the client, not any individual councilmember. This is especially the case if it appears from a particular complaint that a councilmember may genuinely have interests that are not aligned with the city's. A city attorney should consider advising the accused councilmember that they may want to consult their own lawyer.

4. Local Rules and Code of Conduct. In addition to the state-wide foundational municipal laws discussed above, a city may have adopted a local substantive ordinance applicable to the specifics of a particular complaint. A city may also have adopted procedures to follow when a complaint is filed, which procedures may specifically define who is responsible for investigating a complaint and/or include specific enforcement mechanisms. In some cases, city personnel rules may have been drafted to include councilmembers and a City Attorney may have to navigate HR rules that were not designed for a complaint against a councilmember.

Many cities have adopted codes of conduct that govern council behavior at meetings, which set forth useful boundaries regarding communications between council and city staff. In the absence of a statute or ordinance that is on point to the facts of a particular complaint, the city's code of conduct will often be the basis for any findings and/or enforcement actions taken in response to a complaint.

## **B. Managing the Response to a Complaint**

Keeping in mind the legal requirements set forth in Part A of this paper, there are a number of ways a city may want to manage the process of responding to a complaint against a councilmember. The best path depends on a variety of specific facts: who the parties are, what is the nature of the complaint, how severe is the alleged conduct, and what is the political background/context of a complaint. In my experience, two key decisions should be made early in the process.

First, we attorneys like to be in control. But a complaint against a councilmember may ultimately be better managed by the council itself. A complaint will inevitably raise governance questions beyond the city attorney's control. It is best to accept and understand that limitation and help the council make decisions rather than influence every step of the process. Unless the complaint alleges facts that place the city in legal peril—and many complaints are focused on individual conduct that may not implicate the city, the best thing a city attorney can sometimes do is empower the council to take responsibility for managing a complaint against one of its members. In the long run, how a council manages its response to a complaint may actually improve its ability to govern and promote its standing in the community. Taking responsibility for

councilmember conduct in a transparent manner will reflect a commitment to a culture of high ethical behavior.

Second, a city attorney should help the council decide how to investigate the allegations of a complaint. There are essentially three options:

- A council may want to conduct an investigation itself. I often hear from mayors or councilmembers who say “let me talk to my fellow councilmember and find out what happened and we can work this out quickly and informally.” My response to such a desire is not primarily to explain the legal risks of such an approach. Rather, I emphasize that how a complaint is managed will send an important message to the public that could have lingering ripple effects for years. The city should try hard to avoid the perception (and, of course, the reality) that councilmembers are protecting each other and minimizing the importance of a complaint. To the contrary, a complaint presents an opportunity to promote and emphasize a culture of ethical transparency that could pay dividends for years. While it might save time, a quiet resolution among councilmembers may lack credibility with the public.
- A council may want the city attorney, or other staff, to conduct an investigation—and to do it quickly and cheaply. This option presents many of the same perils as a council-led investigation. In addition, it is challenging for anyone to investigate a complaint against one’s supervisor. Unless a city attorney or city manager is an elected official, it will be difficult for either of them to investigate a councilmember. And, as noted above, a local code or adopted rule may require certain staff (e.g., the City Clerk and/or City Attorney for local campaign regulations violations) to investigate and act upon certain complaints, which can further complicate efforts ensure the appearance of impartiality, as noted above.
- Generally, the best option is to hire an independent investigator to evaluate a complaint. An independent investigation will be more expensive and take more time than the two other options. But the time and money may be worth it. If a city defines success not only as resolving the specific complaint, but also promoting a culture of ethical transparency, then an independent investigation presents the most likely path to success.

Hiring an investigator may be a familiar process for a city that engages investigators in the employment context. There may be similarities between an employment investigation and an investigation into councilmember misconduct, such as interviewing witnesses and evaluating credibility for example. But an investigator of a complaint against a councilmember should have different sensitivities and a legal background beyond employment law that appreciates the ethical standards to which councilmembers are held. The role of the city attorney in hiring an investigator should be to define the scope of the investigation, be the administrative point of contact to the investigator, and then transmit the investigation report to the council.



The investigator's report may be subject to disclosure under the PRA. The analysis as to whether an investigation report is subject to disclosure is dependent on whether the disclosure would constitute an unwarranted invasion of personal privacy, which is unlikely to be the case if a complaint alleges ethical misconduct by a public official. Even if an investigation is conducted by a lawyer, the lawyer's report may not be protected under the attorney-client privilege. California's attorney-client privilege is set forth in Evidence Code section 954, which states that a client "has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer." (Evid. Code § 954.) The purpose of this privilege is to "safeguard confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding legal matters." (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.) "Confidential communication" means "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence," by confidential means. (Evid. Code § 952.) Whether an investigation report meets this definition may depend on certain facts and circumstances and is beyond the scope of this paper. However, absent clear legal exposure to the City related to the alleged councilmember misconduct, it is safer to assume an investigatory report is likely to become public and direct the investigation accordingly.

At the end of an investigation into a councilmember's alleged misconduct, a city attorney will need to advise the council as to how best to take any action resulting from any investigatory findings.

### **C. Taking Action**

At the end of an investigation, a city attorney will want to present options to the council for actions it might consider. Those options may include: referring the complaint to another entity, adopting a statement of disapproval, limiting or eliminating certain rights and responsibilities, adopting a formal censure resolution, or removing from office.

1. Referral. If an investigation discovers councilmember behavior that implicates state law, a city attorney may want to advise that the city refer the matter to another appropriate entity. For example, if a complaint implicates Government Code section 8314, which makes it unlawful for a councilmember to "use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law," then it may be appropriate and applicable for the city to refer the matter to the district attorney or the Attorney General. However, the substantive law governing specific councilmember behavior is beyond the scope of this paper.

2. Council Action Short of Censure. It is often the case that an investigation confirms unethical behavior that may not rise to the level that the city wants to refer out. Or for other reasons, a city council may want to take action on its own. The first level of action a council might take involves adopting a statement, short of formal disapproval,

that distances the council from the behavior of an individual councilmember. The council might also seek to limit the powers of a councilmember, for instance, removing a councilmember from committees, restricting the councilmember's ability to communicate with staff, or refusing reimbursement for attendance at conferences. Such council actions may implicate some of the due process requirements discussed below associated with a formal censure, though the law on this point is not absolutely clear. (See *Blair v. Bethel School Dist.* (9th Cir. 2010) 608 F.3d 540, 542 [removal of board member from titular position of vice president of board did not violate the board member's rights, since he retained his full range of rights and prerogatives that came with his elected position]; see also *Westfall v. City of Crescent City*, 2011 WL 2110306 (N.D. Cal. 2011) [the city council's action removing a councilmember from committee appointments, and prohibiting her from placing items on the agenda without authorization of the full council did not violate her constitutional rights and did not prevent her from performing her official duties].)

3. Censure. Censure is the formal public disapproval of a councilmember. (See *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 339.) Censure is a legislative act and not an adjudicatory act. (*Page v. Tri-City Healthcare Dist.* (S.D. Cal. 2012) 860 F.Supp.2d 1154, 1170; see also *Whitener v. McWatters* (4th Cir. 1997) 112 F.3d 740, 744 [holding that county board of supervisors acted in its legislative capacity when it voted to discipline a member, and thus his action against the board was barred by absolute legislative immunity, citing the "well-established principle that legislatures may discipline members for speech" without executive or judicial reprisal for doing so].) A city council, under its common law power to make rules for itself, may invoke the censure of one or more councilmembers. A censure may take many different forms, including public distancing of the council from a specific councilmember's statement or action. Censure is often accompanied by the disciplinary measures discussed above, such as removing a councilmember from a standing committee, leadership position, or restricting the councilmember from making public statements in their official capacity.

A formal censure implicates an elected councilmember's due process rights. (See *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 526–30.) A city attorney must therefore ensure that the accused councilmember be provided notice and an opportunity to be heard before the council takes action. There must be notice of a prohibition against specific behavior. Of course, behavior that violates the law will meet this standard. But I recommend that a city must have already adopted a code of conduct or ethics policy that will provide the basis for any censure resolution. The code of conduct should specify the types of behavior that are prohibited and should explicitly allow for a censure resolution as a means of enforcing non-compliant behavior. In many cases, the code of conduct will also allow for other steps a council may take, such as those outlined in this paper. In addition to a pre-existing code of conduct to provide councilmembers with notice of the consequences for bad behavior, the city should also provide prompt notice to the accused councilmember of the specific complaint. The city should similarly provide notice to the accused councilmember of every meeting at which the council is scheduled to consider the matter.

To satisfy due process, the city must also afford the accused councilmember an opportunity to appear. The councilmember should be afforded the right to participate in an investigation. I recommend providing a copy of the entire investigation report to the accused councilmember, but at a minimum, the city should provide to the councilmember whatever portion or summary of the investigatory report is made public. (This paper recommends making the entire investigatory report public.) Finally, the councilmember should be heard during the presentation of the agenda item at which the council might adopt a censure resolution.

4. Removal. In the most serious of situations, a council may want to explore removal of a councilmember. The California Constitution authorizes the recall of councilmembers (Cal. Const. art 2, § 19). Consistent with that constitutional authorization, Government Code section 3001 calls for forfeiture of office if a councilmember is convicted of “intoxication while in discharge of the duties of office.” The Penal Code and the Government Code also allow for removal of office upon conviction of specified crimes. (See, e.g., Pen. Code § 98 calls for the forfeiture of office upon conviction of bribery, obstruction of justice, threats to a juror, and other crimes.) The procedure for such removal is a judicial process, which is beyond the scope of this paper. (See *People v. Hawes* (1982) 129 Cal.App.3d 930.)

Absent criminal conviction, there is one additional path to remove a sitting councilmember. Government Code section 3060 et seq. (“Section 3060”) authorizes removal of a councilmember for “willful or corrupt misconduct in office.” (Gov. Code § 3074.) The removal process under Section 3060 is as follows:

- A complaint/accusation against a public official for willful or corrupt misconduct occurring in office is submitted to the county grand jury.
- The grand jury, upon concurrence of at least 12 grand jurors, submits the complaint to the county district attorney.
- The district attorney then serves notice of the accusation on the public official and demands the public official’s appearance at a hearing, which commences the prosecution of the public official.
- A proceeding is held and the accused public official is entitled to a jury in the same manner as a criminal indictment.
- Upon a conviction under Section 3060, the court will enter a judgment against the public official that removes him or her from office.

California courts interpreting Section 3060 have consistently held that “willful misconduct” only requires a “volitional act or failure to act,” and misconduct in office is broad enough to include any willful malfeasance, misfeasance, or nonfeasance in office even if it is not accompanied by any “criminal intention.” (*Steiner v. Superior Court* (1996) 50 Cal.App.4th 1771, 1778, quoting *Coffey v. Superior Court* (1905) 147 Cal. 525.) Although it is not stated in Section 3060, several courts have held that there must be a violation of some criminal statute, thus requiring some criminal intent by the public official. (*Steiner*, supra, 50 Cal.App.4th at 1789 [internal citations omitted].)

Notably, under the California Constitution, charter cities have plenary authority to provide for their own removal procedures for their public officials. (Cal. Const. art. XI, § 5(b).) Therefore, unless a city's charter incorporates state law provisions or is otherwise silent, a charter city's charter will dictate the removal of charter city councilmembers.

#### **D. Conclusion**

This paper has outlined many of the legal principles about which a city attorney must be aware in the event a complaint is filed against a councilmember. A city attorney must of course comply with, and manage risk arising from legal principles. But from my almost 20 years of ethics practice, the most common risks I see from situations like this are not strictly legal. Rather, an often ignored risk is the impacts to a city's culture. A mishandled complaint could foster a culture of secrecy and mistrust, not only among staff, but critically among the public. If not handled properly, a complaint will lead to increased Public Records Act requests and increased hostility at public meetings. This can create a vicious cycle, which only leads to more tension between the city and the public and between the council and staff, more dissension among the council, and less staff cohesion. What once might have been a model of a well-run city now demonstrates, with increasing frequency, examples of dysfunctional governance. Once the public's trust is lost, it is very difficult to regain.

Avoiding this pitfall is not always easy. City leaders should be guided by transparency and a well-tuned ethical compass. Some practice pointers from my experience:

- Closed session discussions should not be the default response. Even when allowed by the Brown Act (and this paper argues that a closed session may not be a legal option for council discussions of many complaints), holding difficult conversations in public will promote a culture of transparency and may prevent public charges of cover-ups and conspiracy that risk embroiling the whole Council in the misdeeds of one, or at least creating that public perception.
- Err on the side of independence. When a councilmember is the subject of a complaint, it may be very difficult to conduct an internal investigation that will have credibility with the public. Engaging an outside investigator is usually a prudent course of action. Consider affirmatively making the investigator's written report public—you may be forced to do so even if you seek to protect it.
- Support city staff. Pay attention to the impacts of a complaint on staff. They may need protection from angry members of the public and even from intrusive councilmembers. Take precautions that a complaint against a councilmember does not result in a follow-on harassment complaint by an aggrieved staff member.
- Use a complaint as an opportunity to refresh city policies. Does your city have a code of conduct for councilmembers? When was it last updated? Does it include a section on process that will help navigate the response to a complaint?

In particular, does it describe options for a council that wants to enforce a finding that a councilmember has violated the code of conduct? Does your city have censure procedures that ensure legal due process?

- Use this as an opportunity to improve your city's ethical hygiene. Think of the general AB 1234 training as the minimum requirement. Training programs specific to your city and your councilmembers may also be helpful. Consider including a standing 5 minute "Good Governance Hot Topics" item on all council meeting agendas to help impart useful information and promote (and, if necessary, restore) the city's ethical reputation. Develop a curriculum of bespoke training that works for your council and your city.

A successful outcome to a complaint against a councilmember does not necessarily depend on whether the city avoids litigation. Rather, this paper suggests that success depends on whether a city handles a complaint in a manner that avoids the decay of public trust and confidence in city government. In a perfect world, a successful outcome to a complaint can actually engender public confidence and support a city culture of accountability and the highest ethical standards.

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