

USER AGREEMENT FOR CALIFORNIA CITY ATTORNEYS COMMUNITY

This user agreement (“Agreement”) applies to the California City Attorneys Community (“Community”), a web-based community for the use of eligible attorneys who represent cities that are members of the League of California Cities (“Cal Cities”) and for the use of Cal Cities attorney staff. The Community is moderated by Cal Cities staff and the Cal Cities City Attorneys Department Officers (“Officers”).

To become an authorized user of the Community (“Community user” or “user”) you must accept the terms and conditions of this Agreement. By accepting the terms and conditions of this Agreement, you are certifying that you meet the user eligibility requirements for the Community as outlined below and that you are in compliance and will remain in compliance with the terms and conditions of this Agreement. Please read this Agreement carefully and consult it frequently.

Purpose

The purpose of the Community is to allow authorized users to post information, provide feedback and interact with others on legal issues of interest to attorneys representing California cities. The Community provides a forum for open discussion and exchange of information and knowledge on legal issues facing municipal attorneys practicing in the State of California, including all attorneys eligible for membership as outlined below. The Community is intended to be a confidential forum pursuant to the common interest/joint defense doctrine, the attorney work product doctrine and, as applicable, the attorney-client privilege. As such, the Community is a forum in which attorneys can share their impressions, conclusions, opinions, research and theories and obtain input, comments, support and constructive criticism from other qualified attorneys whose clients have common interests in the subject matter, without waiving any protections that apply to the information users share with the Community.

Professional Responsibility

All Community users should exercise sound judgment and discretion in the information they post. Participation in the Community does not authorize users to act in conflict with the Rules of Professional Conduct with regard to the disclosure of client confidences. (See Rule 1.6 and Bus. & Prof. Code § 6068(e)(1).)

User Eligibility

Use of the Community is a privilege afforded to attorneys who meet the following eligibility requirements:

- All California city attorneys and their attorney staff who represent a Cal Cities member city as an assistant, deputy or similar official designation. The position of an attorney designated as an assistant, deputy or similar official designation by a contract city attorney must be verifiable, and the designated attorney’s assignment must be more than a nominal part of that attorney’s practice.

USER AGREEMENT FOR CALIFORNIA CITY ATTORNEYS COMMUNITY

- Attorneys devoting a substantial portion of their practice to the representation of cities in general or in a specialized area of municipal law such as personnel, finance, land use, etc.
- Retired or former city attorneys who represent special districts or other public entities (e.g., joint powers authorities) with approval of the Officers.
- Retired or former city attorneys who remain actively engaged in the practice of municipal law, representing cities.

All of the above eligibility requirements are qualified by the limitation that each attorney seeking to be a user does not regularly initiate litigation against cities or represent clients whose interests are adverse to cities, as outlined below. This limitation does not apply to city-versus-city litigation.

To “regularly initiate litigation against cities” means either of the following:

- The attorney has filed lawsuits against more than one city within a rolling 12-month period from the date of the first lawsuit filed, or has filed more than one lawsuit against the same city within a rolling 12-month period from the date of the first lawsuit filed; or
- Twenty-five percent (25%) or more of the practice of the attorney’s firm, measured in time worked, is devoted to litigation against cities.

To “represent clients whose interests are adverse to cities” means either of the following:

- Twenty-five percent (25%) or more of the practice of the attorney’s firm, measured in time worked, is devoted to representing private clients in advancing legal principles that are adverse to cities’ clearly recognized and commonly held interests; or
- Representing a private client in a proceeding necessitating the advancement of legal principles adverse to cities’ clearly recognized and commonly held interests in an appellate, legislative or rule making proceeding that would establish a rule of law affecting all cities.

Notwithstanding the foregoing, an attorney who is otherwise eligible to be a Community user, except for his or her law firm having a history of regularly initiating litigation against cities or representing clients whose interests are adverse to cities, is eligible to be a user of the Community if:

USER AGREEMENT FOR CALIFORNIA CITY ATTORNEYS COMMUNITY

- there is appropriate screening prohibiting access to the Community or Community information between the attorney's municipal practice group and the rest of the firm; and
- the attorney acknowledges and promises that by joining the Community, he or she will not share Community posts with other members of the firm, unless expressly authorized to do so by the Officers and by a post's author, and further agrees that his or her obligation to the Community and his or her city (or other public entity) client(s) supersedes any alleged competing obligations to partners, other firm clients or any other person.

County Counsel and attorneys in their offices are not eligible to be Community members except for attorneys who work for the San Francisco City Attorney's Office.

Eligibility Determinations

The above eligibility criteria are intended to provide guidance for users and potential users of the Community and are not intended to be the exclusive means of determining initial or continued eligibility. All proposed users must apply to become users of the Community and, by applying, self-certify their eligibility under the criteria set forth above. Further, by maintaining his or her account, each user certifies his or her continuing eligibility.

The Officers retain the discretion to refuse or revoke eligibility or to continue eligibility based on their determination whether the individual attorney or his or her firm is complying with the intent of the User Agreement and with the goal of ensuring the ongoing confidentiality of communications within the Community. Any dispute regarding eligibility as a member will be resolved by the Officers. The determination of the Officers is final and not subject to appeal.

Confidentiality

The exchange of information within the Community is intended to be confidential and Community postings are considered to be privileged and protected attorney work product, whether related to litigation or non-litigation matters. Community users are "collaborating parties" for purposes of the attorney work product doctrine. All Community users, as attorneys advising cities and other public entities, have a common interest in securing legal advice related to the same subject matter. And as such, they have a reasonable expectation that all information disclosed within the Community will remain confidential, and they agree that disclosures within the Community are reasonably necessary for the accomplishment of the purpose for which the Community user either sought advice from colleagues or was consulted. Furthermore, the limited disclosure of attorney work product via the Community is consistent with the users' collective intent to safeguard the privacy

USER AGREEMENT FOR CALIFORNIA CITY ATTORNEYS COMMUNITY

of their work product because this limited disclosure is reasonably necessary to advise and represent their clients competently and zealously.

Each attorney, by applying to be a Community user and, once approved, by being a user, expressly acknowledges, promises and agrees to the following:

- To maintain the confidentiality of the information posted on and obtained through the Community. If a Community user is a member of a law firm, the user further promises and agrees to maintain the confidentiality of the information as against the user's law firm and the firm's partners/shareholders and associates.
- Not to forward or share Community posts or information with others unless expressly authorized to do so by the Officers and a post's author. Notwithstanding the foregoing, a user may update his or her city (or other public entity) clients, who the user represents on the Community, on new laws, best practices, new cases and other pertinent information the user learned from the Community without attributing the same to the Community or a particular user.
- Community users have a strong and mutual interest in maintaining the confidentiality of their work product and their communications within the Community.
- All users are "collaborating parties" as to Community posts for purposes of the attorney work product doctrine.
- The limited disclosure of attorney work product via the Community is consistent with the users' collective intent to safeguard the privacy of their work product because the limited disclosure is reasonably necessary to advise and represent their clients competently and zealously.
- The common interest/joint defense doctrine applies to each user's participation in the Community. As such, all users have a common interest in securing legal advice related to the same subject matter, all users have a reasonable expectation that all information disclosed within the Community will remain confidential, and disclosures within the Community are reasonably necessary for the accomplishment of the purpose for which the Community user was seeking advice or was consulted.

If a Community user is a member of a law firm that has a history of regularly initiating litigation against cities or representing clients whose interests are adverse to cities (see above guidelines), such Community user further acknowledges and promises and agrees to the following:

USER AGREEMENT FOR CALIFORNIA CITY ATTORNEYS COMMUNITY

- To establish appropriate screening between the user's municipal practice and the members or practice groups of the firm that represent interests adverse to cities prohibiting access to the Community or Community information by the latter; and
- Not to share Community posts with other members of his or her firm unless expressly authorized to do so by the Officers and a post's author, which obligation to the Community and the city or cities or other public entities the user represents supersedes any alleged competing obligations to the user's partners/shareholders and associates, other firm clients or any other person.

Current Community Users:

The names of Community users will be posted on the Community and will be updated continually.

Representation Adverse to Another City:

All users agree as follows:

- a. If a Community user commences representation of a party seeking a permit or some other administrative or legislative approval from another city, the user must, to the extent consistent with the user's ethical duty to his or her client, immediately notify the city attorney of that representation.
- b. If a Community user is or becomes engaged in a dispute or lawsuit representing a party (private or other public entity, including another city) adverse to a city's interest, the user must, to the extent consistent with the user's ethical duty to his or her client, immediately notify the city attorney of the adverse representation. In addition, the user must agree in writing: (1) not to discuss the subject matter of the adverse representation within the Community during the pendency of the dispute or lawsuit; and (2) not to read posts regarding the subject matter of the adverse representation. If there is an inadvertent disclosure of confidential information about the matter, the user shall not read the post and shall not use it for any purpose. A copy of this signed written agreement shall be provided to the Officers. The Officers shall have complete authority and discretion to resolve any dispute between Community members regarding Community access during the pendency of the relevant dispute or lawsuit. Whatever agreement or decision is reached, the users agree that the confidentiality of all posts and the applicability of the attorney work product and the common interest/joint defense doctrines remain in full force and effect as set forth in this User Agreement.

USER AGREEMENT FOR CALIFORNIA CITY ATTORNEYS COMMUNITY

Postings:

All Community users make a commitment not just to obtain information, but also to contribute to the discussion within the Community.

Each user, by seeking to become a user and participating in the Community, acknowledges that Cal Cities and any and all moderators of the Community do not control the information available within the Community and that opinions, statements, services or other information or content presented or disseminated within the Community are those of the respective authors, who are solely responsible for their content. All Community users are responsible for their own communications and are responsible for any consequence of posting their communications. No attorney-client relationship is intended or established through posting within the Community.

The Community moderators may edit all posts for space, and any post may be deleted if the moderators deem it inappropriate. Community users should take care to ensure that only posts intended for distribution to the Community are transmitted to the Community.

Because posts are transmitted electronically, it is impossible to guarantee the confidentiality of posts, and members should be cognizant of that fact in posting to the Community.

Termination of Users:

Any user's participation in the Community may be terminated at any time at the sole discretion of the Officers or upon recommendation of a Community moderator to the Officers, without right of appeal. Causes for termination include, but are not limited to, sharing information received on the Community in contravention of this Agreement or to the detriment of another public agency, disseminating irrelevant postings (including spam advertising), and no longer meeting the user eligibility requirements. Notwithstanding the enumeration of causes for termination from membership in the Community, users have no vested right to continue as members of the Community, and their membership may be terminated at any time, with or without cause. It is each user's responsibility to notify a Community moderator if his or her eligibility changes such that he or she is no longer entitled to be a user.

Distribution of any Community posting, in whole or in part, to persons not Community users, unless expressly authorized to do so by the Officers and a post's author, is strictly prohibited and is a basis for termination of the use of the Community.