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LEAGUE OF CALIFORNIA CITIES

Strengthening California Cities through Advocacy and Education

City Attorneys Department Spring Conference: Updating the “Counsel and Council” Publication

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Counsel and Council:

A GUIDE TO BUILDING A PRODUCTIVE CITY ATTORNEY-CITY COUNCIL RELATIONSHIP

COUNSEL AND COUNCIL:



A Guide for Building a Productive Employment Relationship



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Counsel and Council Guide

The Guide addresses:

- The role and function of a city attorney and the ethical responsibilities of a city attorney.
- The recruitment, selection, and terms of engagement of a city attorney.
- Understanding the nature and parameters of the city attorney-city council relationship.
- Best practices for maintaining constructive city attorney-city council relations.
- Effectuating an amicable and enforceable conclusion to the relationship.

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Counsel and Council Guide

The Role of the City Attorney: Legal Foundation

- Rules of Professional Conduct
- CA Gov't Code sections 41801-41805:
- City Charter (if you have one)
- Municipal Code

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Counsel and Council Guide

Key ethical obligations:

- Perform legal services competently and with diligence (Rule 1.1 and 1.3)
- Maintain confidential information (Rule 1.6)
- Client is the city; NOT individual council members (Rule 1.13)
- Duty to uphold the integrity of the legal system
 - Cannot mislead the courts (Rule 3.3) or
 - Cannot advise or condone conduct that clearly violates the law (Rule 1.2.1)
- Duty of defense to individual employees under the California Government Tort Claims Act
- Specific ethical obligations of city prosecutor (Rule 3.8)
- Duties to public – cannot provide direct legal advice to member of public but
 - Assure city complies with the law (Rule 1.16)
 - Protect the public interest (e.g. compliance with the Brown Act)

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Counsel and Council Guide

The practical reality:

- City's chief legal advisor
 - akin to general counsel for a corporation
- Key member of the City's senior management team
 - help shape policy and solve problems
- Risk Manager
 - identify and mitigate risk
- Resource Manager
 - office and outside counsel oversight

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Counsel and Council Guide

The challenge:

- Extraordinary Range of Practice Areas
- Lack of appreciation of complexity and risks
- Advice often asked for and must be given in public
- Incredible Volume of Work
- Real and False Urgencies

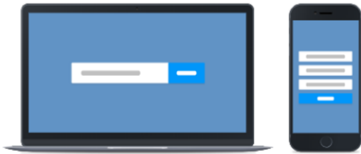
Practice tip: Refer to and share the Council and Counsel Guide with your Councilmembers!

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Polling Question

How to join

Web



- 1 Go to [Pollev.com/calcities](https://pollev.com/calcities)
- 2 Respond to activity

Do you mostly give legal opinions by:

- a. Formal written opinion
- b. Email
- c. Phone/Zoom
- d. At meetings
- e. In the hallway of city hall

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Counsel and Council Guide

Types of Prosecutorial responsibilities for city attorneys:

- Criminal violations of local laws (i.e., violations of the municipal code)
- Criminal violations of state laws that are infractions, misdemeanors, and wobblers (e.g. Grand Theft, Sexual Battery, Assault with a Deadly Weapon)
- Certain state law violations where civil prosecutions are authorized (e.g., Business and Professions Code Section 17200)
- Certain civil enforcement actions (e.g. abatement of nuisances or violations of the Unruh Civil Rights Act)

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Counsel and Council Guide

Appointment of City Attorneys:

- City councils directly appoint city attorney in 469 of California's 481 incorporated cities.
 - Approximately 2/3 are contract city attorneys from law firms
 - Approximately 1/3 are hired as in-house city attorneys
- Voters directly elect city attorney in 10 charter cities (Compton, Chula Vista, Huntington Beach, Long Beach, Los Angeles, Oakland, Redondo Beach, San Diego, San Francisco, and San Rafael)
- City managers appoint city attorney in two charter cities (Folsom and Shafter)

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Counsel and Council Guide

Steps in recruitment of City Attorney (whether in-house or contract):

- Prepare job description
- Determine qualifications
- Publicize vacancy and solicit applications
- Vet applications and narrow candidates recommended for interviews
- Interviews: can include professional panel, executive management panel or just city council but confidentiality is critical
- Select city attorney
- Negotiate agreement
- Approve agreement in open session

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Counsel and Council Guide

City Attorney Selection—What Can a Council do in Closed Session?

YES

- Develop interview questions
- Decide which candidates to interview
- Conduct interviews of candidates
- Discuss candidates
- Decide which candidate to appoint

NO

- Discuss recruitment process
- Consider proposals from recruiters or approve a contract with a recruiter
- Designate an ad hoc committee
- Discuss or negotiate compensation directly with candidates
- Appoint/hire a City Attorney

Gov't Code §§ 54957(b)(1); 54957.1

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Counsel and Council Guide

You're Hired! Beginning the Counsel/Council Relationship:

- Familiarize yourself with city's charter (if applicable), municipal code, Council goals, policies and procedures, budget, and city attorney job description
- Discuss with Councilmembers
 - Priorities, expectations and outstanding issues
 - Mode and frequency of communication
 - Unique conflict of interest issues
 - Basics like Brown Act, Public Records Act, land use, etc.
- New Councilmembers: Orientation materials and meetings

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Counsel and Council Guide

Maintaining a strong Counsel and Council relationship:

- Effective communication
 - Timely information
 - Confidentiality of communications
 - Communication of difficult news
- Preventative legal advice
- Problem solving and providing options
- Distinguishing legal and policy advice
- Assist with risk assessment
- Be respectful of individuals and their roles
- The client is the city

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Counsel and Council Guide

Performance Evaluations:

- Informal Evaluation
 - Feedback from council members typically based on specific situation
 - Informal discussions about performance in closed session
- Formal Evaluation
 - Can be professionally facilitated
 - City attorney may prepare a self-evaluation or list of accomplishments
 - Council members complete written evaluations
 - May involve a 360-degree evaluation of subordinates and/or executive staff

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Counsel and Council Guide

How to evaluate a city attorney:

- Qualitative factors
 - Quality of legal advice
 - Responsiveness and communication
 - Effectiveness

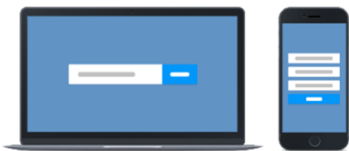
- Quantitative factors
 - Cost
 - Performance-based management" tools or "Key Performance Indicators" (KPIs)

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Polling Question

How to join

Web



Does your performance evaluation as a city attorney, assistant city attorney or deputy city attorney include quantitative "performance-based management" tools or "Key Performance Indicators" (KPIs)?

- 1 Go to [Pollev.com/calcities](https://pollev.com/calcities)
 - a. Yes
 - b. No
- 2 Respond to activity

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Counsel and Council Guide

Challenges to the Counsel and Council relationship:

- Questionable legal behavior of city or city official
- Role of counselor to the city versus advocate in dealing with third-parties
- Political neutrality or appearance of favoritism among council members
- Wanting a “second opinion”
- Legal challenges to the city attorney’s advice or job performance

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Counsel and Council Guide

Termination of relationship with city attorney:

- City attorney retires or leaves for other career opportunities (Rule 1.16)
- City council wants, for whatever reason, “to go in another direction”
 - Sometimes the council just wants another approach or individual
 - Sometimes because of the city attorney’s performance
 - Sometimes because the city attorney has engaged in misconduct (hopefully rarely)

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Questions?



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