CITY OF CHARLOTTE

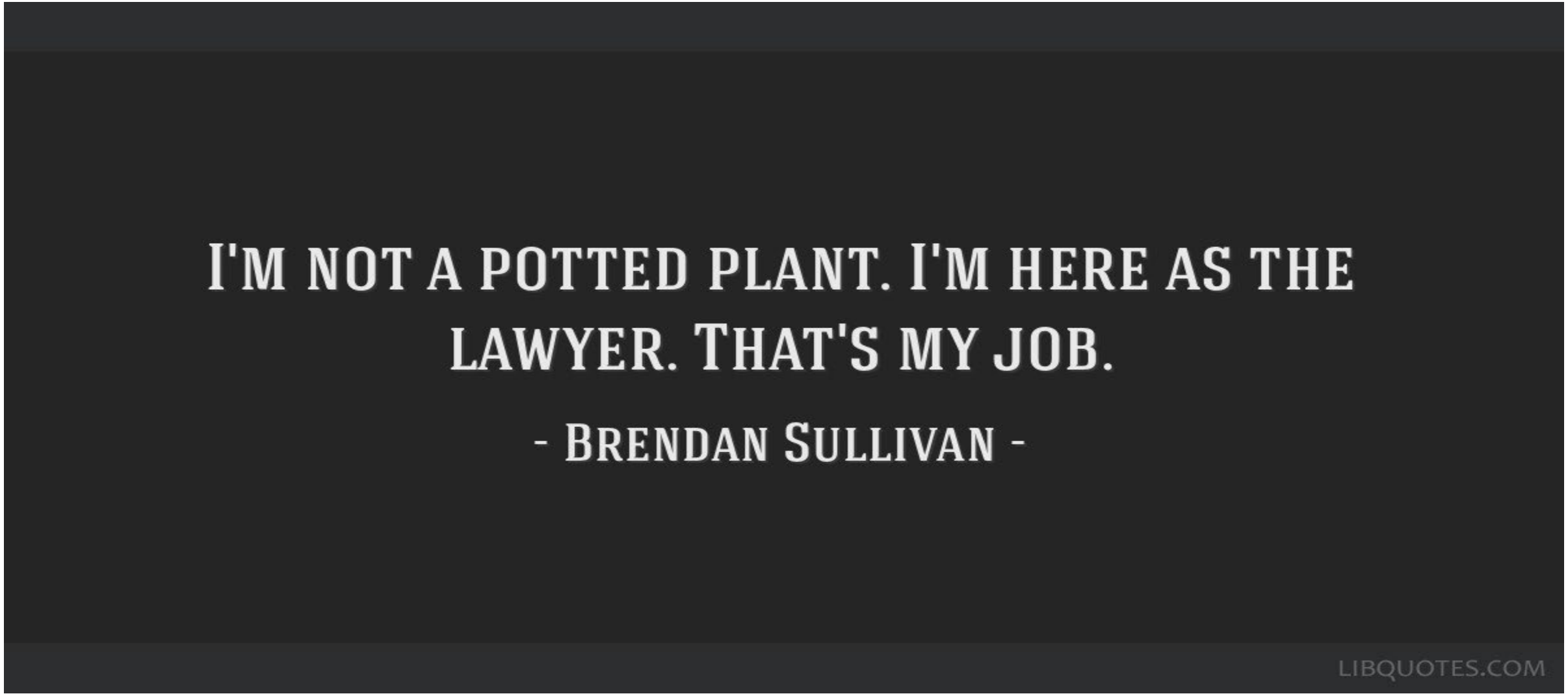
Legal Issues in Council Self-Regulation within Municipal Governance and the role of the City Attorney Part 1

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CITY OF CHARLOTTE

Strategies for Creating an Effective City Council-City Attorney Relationship!

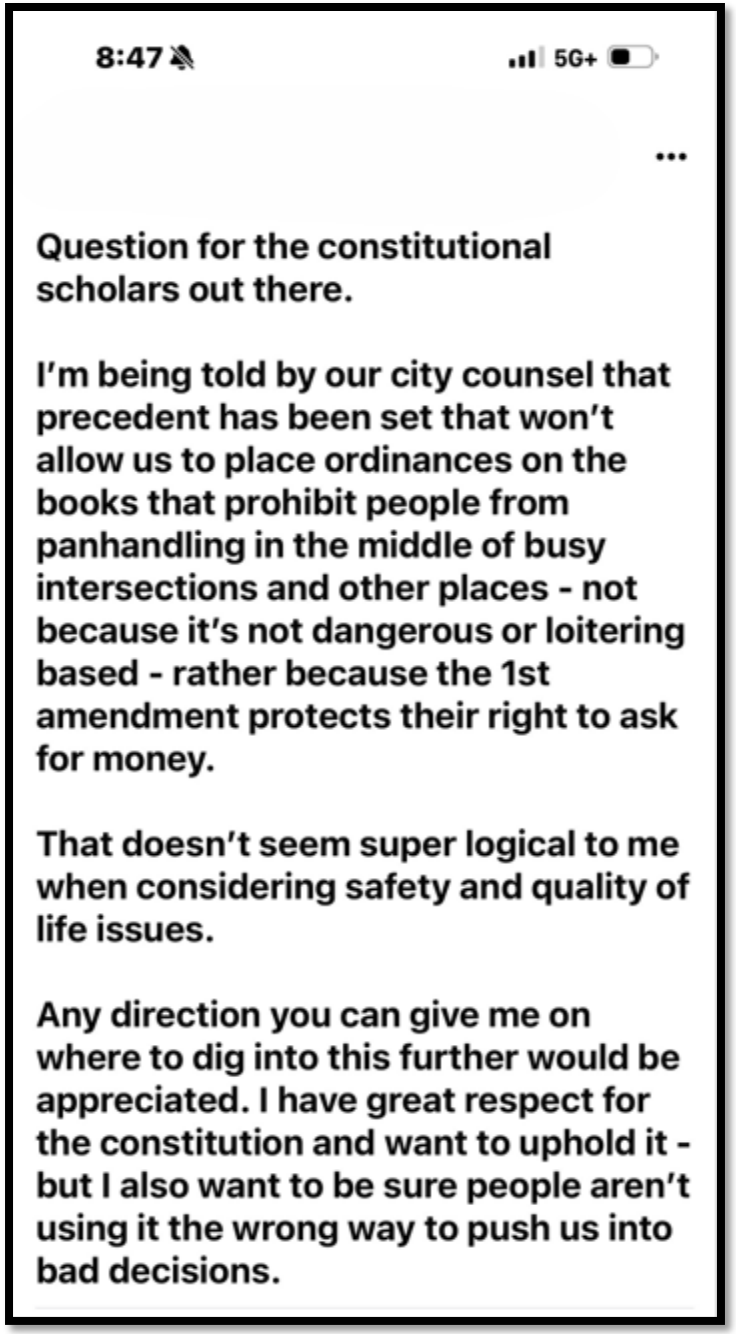
Tip #1 | There can be only one City Attorney.



Tip #1 ctd. | There can be only one City Attorney.

Dealing with lawyers not on the City payroll

- Ultimately, the City Attorney is responsible and publicly accountable for legal advice.
- Welcome legal input from any attorney - elected or otherwise - who is willing to share their opinion.
- Encourage councilmembers to forward outside legal opinions to the City Attorney for analysis and follow-up.
- We will not simply accept or concur with an outside legal opinion for political expediency.
- The City Attorney will follow up (highlighting experience and resources that have been relied upon to produce the legal opinion at issue).


8:47
5G+
Question for the constitutional scholars out there.
I'm being told by our city counsel that precedent has been set that won't allow us to place ordinances on the books that prohibit people from panhandling in the middle of busy intersections and other places - not because it's not dangerous or loitering based - rather because the 1st amendment protects their right to ask for money.
That doesn't seem super logical to me when considering safety and quality of life issues.
Any direction you can give me on where to dig into this further would be appreciated. I have great respect for the constitution and want to uphold it - but I also want to be sure people aren't using it the wrong way to push us into bad decisions.

Tip #2 | Many Bosses but only one Client: the City (Council).

- CA's legal and ethical obligations are owed to the City rather than individual councilmembers.
- Confidential information shared with the CA cannot be kept from other councilmembers.
- Council direction ultimately comes from the will of the majority on Council.
- When the Council is divided on a matter of policy, the CA's duty is to provide fair and balanced legal advice to all sides.
- Councilmembers should respect the legal advice of the CA and not expect the CA to advocate for a particular policy position.

POLITICS & GOVERNMENT

Every Charlotte City Council member has an ethics complaint. Here's what's going on.

BY **ALISON KUZNITZ**

SEPTEMBER 12, 2020 7:15 AM

Tip #3 | Inserting the City Attorney into policy debates is not good for anybody.



Tip #3 ctd. | Inserting the City Attorney into policy debates is not good for anybody.

- The CAO will not render legal advice solely to support a particular policy objective or outcome.
- The CAO will not engage with individual Councilmembers seeking to draw the CAO into a policymaking exercise. If we did, it would compromise the ultimate decision and authority of the City Council.
- The CAO will not enter a policy debate by giving biased or slanted legal advice.
- The commitment of the CAO, is to the legitimacy and objectivity of the legal advice that we provide and to the work of the City Attorney's Office.

Tip #4 | Councilmembers should consult the City Attorney at the earliest opportunity.

- The sooner the CAO is consulted on a matter, the sooner attorneys can begin to understand the goals and objectives of the client AND begin to research and map out a legal strategy to accomplish the stated goals.
- Conversely, the legal research that will be conducted may lead to the conclusion that the goals or objectives cannot be legally accomplished.
- Bottom line: It is far better to know your legal options sooner rather than later.



POLITICS & GOVERNMENT

Charlotte council member announces sudden resignation after taking construction job

BY DANIELLE CHEMTOB AND ALISON KUZNITZ UPDATED JANUARY 12, 2021 10:07 AM

Tip #5 | The Council meeting is NOT the time for the Council to start asking for legal advice.



Tip #5 ctd. | The Council meeting is NOT the time for the Council to start asking for legal advice.

- Keep in mind that the attorney client privilege belongs to the entire Council rather than an individual councilmember.
- There are times when it is in the Council's interest for a legal opinion to be disclosed publicly. That should be a Council decision rather than an individual councilmember decision.
- Asking substantive legal questions during a public meeting will likely restrict the CA from either providing a full and complete answer or asking necessary questions to provide an accurate and complete answer.
- Some substantive legal questions simply cannot be answered on the fly during a public meeting and must be researched.
- Councilmembers are encouraged to ask their legal questions "offline".

Tip #6 | Allow the City Attorney adequate time to research issues and answer questions.



Tip #6 ctd. | The City Attorney needs adequate time to research issues and answer questions.

- Municipal law is vast and varied. It is often the case that seemingly "simple" and "easy" questions can turn out to be quite complex and multi-faceted.
- When working with the City Attorney, there may be a need for the lawyer to "question the questioner"—we may need to dig a little to draw out important background facts that will ensure a more accurate and complete answer is given by the CAO.
- The CAO never wants to delay. HOWEVER, research conducted in haste isn't in anyone's best interest, either. Sometimes it takes time to do sophisticated research and get the advice right.

Tip #7 | Provide the City Attorney with all the important facts, as this will yield better results.



Tip #7 ctd' Provide the City Attorney with all the important facts, as this will yield better results.

- For our part, we will do our best to always provide an accurate, timely, and thorough response.
- The more information the City Attorney's Office receives, the more likely we are to provide an accurate, timely, and thorough response.

Tip #8 | Be aware that concrete answers sometimes aren't possible when the law is not clear cut.

- Sometimes as City Attorneys we're shooting at a moving target in trying to render advice.
  - *Laws are interpreted and reinterpreted by trial and appellate courts all the time.*
  - *State legislatures can be quite active in changing the landscape for local governments.*
- Sometimes we're wading into unknown territory.
  - *COVID—remote meetings, passing through federal funds (CARES Act, ARPA)*
  - *Non-discrimination Ordinances*

Tip #9 | Legal risk tolerance is ultimately within the purview of the Council.



Tip #9 ctd. Legal risk tolerance

- Legal risk analysis is not a legal directive.
- City Attorney provides legal risk analysis in order to provide the Council with the CA's best educated guess as to whether the policy directive can successfully withstand a legal challenge.
- Allow the City Attorney to tell the council what they need to know, rather than what they want to hear.
- CA's duty is to provide the necessary and relevant legal advice. The Council majority ultimately determines whether to proceed considering the identified risk.

Tip #10 | Just because the Council doesn't like the City Attorney's advice doesn't make it bad advice.



Tip #10 | Just because the Council doesn't like the City Attorney's advice doesn't make it *bad* advice.

- We can't always be the bearers of good news.
- We can't always convey to the Council news and information that it wants to hear, but we'll always strive to clearly share with the Council all news and information that the Council NEEDS to hear to do the work of the Council.
- Our ethical obligation as attorneys is to timely provide counsel/advice even if the client doesn't want to hear it or is even adamantly opposed to it.
- When competing policy decisions or objectives hinge on legal advice . . .
  - ✓ *Always follow the law*
  - ✓ *Provide your best reasoned legal advice*
  - ✓ *Based on an objective reading of the law*



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