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New Municipal Attorney Essentials

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A Practice Note providing guidance for new local government attorneys. This Note discusses the roles municipal lawyers play and the tasks they should undertake in learning how best to represent local government organizations. It addresses the unique combination of responsibilities and expectations that a typical city attorney faces.

Taking a position as a municipal attorney can lead to a fulfilling opportunity to provide a valuable public service and work toward bettering a community. Municipal lawyers play a unique role for their organizations that differs in many ways from the roles that private sector lawyers play. They must deal with the local government's structure, the laws that apply to the organization, and the politics inherent in municipalities. The learning curve can be overwhelming to an attorney new to municipal law.

This Note focuses on helping new local government lawyers become comfortable with their responsibilities. It includes guidance for learning about:

- How the local government functions and how the governing body operates.
- Using and interpreting the municipal code.
- Land use and zoning.
- The attorney's responsibilities for handling liability issues and litigation.
- The behind-the-scenes functions that take place in the municipality.
- Legal transactions that municipal lawyers often handle.
- Ethical issues unique to municipal law.

This Note addresses the most common issues and responsibilities a city attorney is likely to encounter. It does not address municipally operated school systems, jails, or other specialized operations. This Note uses the term "city" generically to encompass all types of municipalities, whether designated as "cities," "towns," "villages," or otherwise. Much of the guidance in this Note also applies to attorneys for counties.

The City's Geographical and Cultural Landscape

Exploring the City

The new city attorney should spend time actively exploring the city, especially if the attorney is new to the area. Driving around the city or using public transit if available and getting to know the neighborhoods can help give the attorney a "big picture" perspective. Long-time employees from the police, planning, public works, and other departments can serve as guides and provide context. In the process, the attorney should also:

- Get to know the city's geographic boundaries and what they border.
- Learn the locations of municipal facilities, such as:
  - police and fire stations;
  - public works and utility facilities; and
  - parks.

Cultural Factors

The attorney should try to understand the many elements that make up the city's character and guide its politics. Figuring this out may involve learning about:

- The city's history.
- Demographics, including the ways they have evolved and are evolving.
- Tensions between groups within the city and between groups and the city government.
- Political dynamics that influence decisions.

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Information about the city's history and demographics is often part of the city's comprehensive plan.

The City's Governmental Structure and Authority

The Scope of Municipal Authority

Cities possess the powers that their states allow them to have. Most US cities fall into one of two categories:

- Home rule, which authorizes a city to act in any way not inconsistent with the state constitution, state law, or the city's charter. The charter itself can reflect a city's home rule status (see Municipal Charter and Form of Government).
- Dillon's Rule (sometimes called general law), which restricts a city's actions to those that are:
  - expressly authorized by state law;
  - reasonably necessary or implied to exercise the authority granted by the state; or
  - essential and indispensable to accomplishing the purpose of the municipal corporation.

The city attorney should understand which system of governance applies to the city. For more on this topic, see Practice Note, Preemption Basics for Local Government: Box, Types of Cities.

Municipal Charter and Form of Government

The city's charter describes the form of government under which the city functions. The city attorney should understand whether the city operates under:

- A home rule charter. Home rule cities generally have more authority to amend their charters independently without state approval. Adoption and amendments both typically require a vote of the citizens.
- A private act or special act charter. State legislatures enact these charters, which typically apply only to one local government.
- A model charter. Many cities adopt model charters created by state law. Changes to these charters require state legislative approval. Some changes may also require local ratification or approval by voter referendum. The most common examples of model charter options include:
  - the council-manager charter, under which elected council members typically select the mayor from the council, make major policy decisions for the city, and appoint a professional city administrator to supervise operations; and
  - the mayor-council charter, under which citizens elect the mayor separately from council members. In cities with this charter, the mayor may have more administrative responsibilities, although some also appoint a city manager to handle some administrative functions.

The names of these model charters vary from state to state and may substitute terms, such as "city manager-commission charter" or "mayor-aldermanic charter." There are also several other charter types and variations. For example, the commission charter calls for citizens to elect individual commissioners to lead specific governmental areas, such as law enforcement, public works, or finance. Some municipalities, particularly in New England, have town meeting governments, under which voters meet to decide on legislation and the town budget.

The Governing Body and the Mayor

The new city attorney should learn:

- The makeup of the governing body and how it functions (see Composition of the Governing Body).
- The authority of the mayor (or other head of government) and vice mayor (or similar position) (see Selection and Authority of the Mayor and The Vice Mayor).
- How to distinguish between decisions and actions that:
  - require governing body approval (see Official Actions of the Governing Body);
  - the mayor can carry out independently; or
  - staff can carry out administratively.

Composition of the Governing Body

Names and sizes of governing bodies for local governments vary by region, form of government, and individual charter provisions. Members may be referred to as councilmembers, commissioners, aldermen, selectmen, or other titles. Governing body members may:

- Represent designated districts of the city or serve at large. There may also be a combination of district representatives and at large members. (For guidance on redistricting issues for single-member districts, see Practice Note, Local Government Redistricting.)
- Serve either staggered terms or concurrent terms with other members.

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- Serve on committees within the governing body and as representatives of the governing body to other bodies within or outside the city.

Selection and Authority of the Mayor

Most US cities have a mayor, although in lieu of a mayor, the head of the government in a minority of cities has another title, such as council president. Depending on the city's charter and form of government, the governing body may select the mayor from its membership or citizens may vote for their mayor in a separate election (see Municipal Charter and Form of Government).

The role of the mayor also varies among cities. Depending again on the charter and form of government, the mayor may:

- Preside over governing body meetings and sign official documents, but otherwise have no more authority than the other governing body members. A mayor in this position generally has the same voting privileges as other governing body members. The mayor may also perform ceremonial duties, such as attending ribbon cuttings and issuing proclamations. Mayors serving in this type of role are sometimes referred to as "weak mayors."
- Have "strong mayor" powers that can include:
  - acting as the city's chief executive officer;
  - appointing persons to serve in key administrative positions; or
  - veto power over matters decided by the governing body.
- Vote on matters decided by the governing body only if there is a tie.

(For more on mayoral powers, see National League of Cities (NLC): Cities 101 - Mayoral Powers.)

The Vice Mayor

Most cities also have a vice mayor (sometimes called a mayor pro tem), either elected by the citizenry or selected by the governing body from its membership. The vice mayor typically steps in to act as mayor if the mayor is absent or vacates the office before their term is up. By charter provisions or tradition, the vice mayor may have other powers and responsibilities.

Official Actions of the Governing Body

Most municipal governing bodies take official action at their meetings by one of the following:

- Enacting an ordinance. Ordinances generally carry the force of law and are the most common method of adopting local regulations. Codified versions of regulatory ordinances are found in the city's municipal code (see Understanding and Enforcing the Municipal Code.) Some cities may also use ordinances for matters such as:
  - adopting the annual operating budget; or
  - rezoning property from one district to another.
- Adopting a resolution. Resolutions are generally less permanent in nature than ordinances and may be useful for actions such as:
  - expressing the board's intentions or position on a matter; or
  - authorizing the city to enter into a contract.
- Simple voice vote. A local governing body may act by simple vote for matters not requiring an ordinance or resolution.

The city attorney should know which type of action is appropriate for the matters the governing body considers. For some matters, state law, charter provisions, or the municipal code may dictate which type of action the board should take.

The city attorney often drafts the ordinances and resolutions the governing body considers and should carefully review any ordinances and resolutions drafted by others. Ordinances and resolutions typically have a signature line for the attorney. The attorney's signature does not indicate personal approval of the governing body's decisions. However, city attorneys should understand what their signature shows. For example, state law, charter provisions, or tradition may call for the attorney to approve either:

- Just the form of the city's ordinances and resolutions, indicating the attorney has reviewed the document and found it to be in proper legal form.
- Both the form and legality, indicating that ordinance or resolution also meets all applicable legal requirements, in addition to being in the proper form.

Regardless of the purpose of the city attorney's signature, the attorney should:

- Ensure that new ordinances and resolutions are:
  - within the city's authority (see The Scope of Municipal Authority);
  - consistent in formatting and terminology with other actions; and

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  - compatible with existing provisions in the city's municipal code (see Understanding and Enforcing the Municipal Code). If an ordinance is replacing or amending existing code provisions, it should clearly state the city's intentions.
- Know the required process for adoption, including any requirements for public notices and hearings (see Public Hearings and Comment Periods).
- Review any amendments considered while the action is pending to ensure:
  - they are properly worded and fit with the existing text; and
  - the board follows the proper procedure for adopting amendments.

The attorney should also understand the capacity in which the governing body acts, which can differ depending on the type of action. Courts in some states differentiate municipal governing body actions as legislative, administrative, or quasi-judicial. In a legal challenge to a governing body action, the type of action dictates the method of appeal and the standard of review a court applies.

For further guidance on drafting municipal ordinances, see the resources in the Local Government Ordinances Toolkit.

Other Powers

The city attorney should be familiar with other miscellaneous powers and duties that state law grants to mayors and governing body members. For example, state laws often allow some local elected officials to solemnize marriages.

Beyond the Governing Body

Other Boards, Commissions, and Committees

In addition to the governing body, most cities have other boards, commissions, or committees made up of citizen volunteers. The city attorney should understand how these bodies function and the extent of their authority.

Most commonly, cities have boards that act on planning and zoning issues (see Land Use and Zoning). Some divide planning and zoning authority between two separate boards. These bodies are often referred to as planning commissions and zoning boards of adjustment or zoning appeals boards, but their names vary from state to state. Their duties may include a combination of final decision-making authority and acting in an advisory capacity to the governing body. It is often part of the city attorney's job to attend their meetings and advise on the scope of their authority. In cities with multiple attorneys, a deputy or associate attorney may have this duty. For more on these boards, see Practice Notes, Local Government Zoning and Land Use Regulation: Overview: Municipal Body Enforcement and Implementation and Advising Planning and Zoning Commissions.

Most cities also have other public bodies that are composed of citizen appointees acting or advising on various matters. The types of city boards and their names and responsibilities vary greatly across the country, but can include bodies such as:

- Historic commissions.
- Library boards.
- Police oversight boards.
- Traffic and parking commissions.

City charters or municipal codes provide for most local government bodies, although some may come about by separate action of the governing body or the mayor. For example, the city may organize informal groups or create a temporary special purpose board or task force to focus on a pressing or short-term matter.

The authority to appoint members of local government boards may rest with the governing body or the mayor, or a combination of both. In some cases, city managers may appoint or nominate members to some boards. These boards may also include representatives from the governing body and from other city boards. For example, a historic commission may include a member of the planning commission. The ability and process to remove a board appointee may come from state law, the charter, or ordinance.

Other Elected Officials

Some cities have elected officials other than the mayor and governing body. For example, the city judge, the city clerk, and even the city attorney may be elected positions. City attorneys should understand the roles these officials play and how they should interact with each other. Some elected officials may have separate counsel.

Public Meetings

New city attorneys should develop an understanding of:

- How the agendas for the city's public meetings are organized (see The Agenda).
- The rules that govern the way the city's public bodies conduct their meetings and make decisions (see Procedural Rules).

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- The opportunities for public participation in meetings (see Public Hearings and Comment Periods).
- The expectations for the attorney's role in the meetings (see The Attorney's Participation).
- Open meetings laws (see Open Meetings Laws).

If a new city attorney has not previously attended the city's meetings, watching video recordings of previous meetings can offer a sense for how they flow.

The Agenda

The attorney should:

- Review past agendas to understand how the order of business before a board usually proceeds.
- Learn about the process for developing the agenda.

In many cities, board members receive an agenda package in advance of the meeting. For governing bodies, agenda packages typically include drafts of proposed legislation and other actions to be considered at the meeting, along with supporting materials. Agenda materials may also include memoranda documenting recommendations from staff or other city boards. For transparency, many cities make their agenda packages available to the public online. In some states, however, the agenda package may include documents that are not made public due to attorney-client privilege or other exemptions.

Developing meeting agendas is an ongoing process that often drives a substantial portion of the workflow for city administrators and attorneys. The attorney may:

- Play an active role in assembling and reviewing agenda package materials.
- Be in a position to keep matters off the agenda if they are not yet ready for consideration by the board. For example, the attorney may determine that:
  - staff did not follow required bid procedures for a purchase that requires governing body approval; or
  - the governing body cannot vote on a pending matter until it receives a recommendation from another city board or a required public notice has been given.

Procedural Rules

The city attorney should be ready to provide advice on the procedural rules that apply to meetings of the governing body and other city boards. Some cities rely on Robert's Rules of Order to govern parliamentary procedures that state laws or local rules do not otherwise address (see Practice Note, Advising Planning and Zoning Commissions: Parliamentary Procedure). Other cities use alternative model procedural rules or develop their own rules. Although most attorneys are not trained parliamentarians, municipal board members often look to the city attorney to help settle procedural questions.

If the mayor is not normally a voting member of the governing body, the attorney should know whether the mayor can break a tie or has veto power (see The Governing Body and the Mayor). The attorney may also need to refer to the city's charter, state law, or local rules to determine:

- The number of members it takes to form a quorum.
- The number of votes necessary for acting on various matters. Depending on the nature of the action, passage may require:
  - a majority vote of the members present;
  - a majority of the members present and voting (that is, not abstaining from the vote);
  - a majority of the total membership; or
  - some designated percentage of the membership, such as three-fifths.

Some states allow some level of electronic participation in local government meetings. Many cities that had not previously conducted virtual meetings began doing so during the shutdowns resulting from the 2019 novel coronavirus disease (COVID-19) pandemic. (For guidance on conducting virtual public meetings during a pandemic, see Holding Virtual Municipal Public Meetings During the COVID-19 Emergency Checklist, which may also have general applicability for some situations.) City attorneys should monitor legislative developments that allow local government more flexibility for electronic participation options.

Some local governing bodies begin their meetings with a public prayer. For a discussion of the issues involved with this practice, see Practice Note, Legislative Prayer During Local Government Meetings.

Public Hearings and Comment Periods

The city attorney should know the rules that apply when citizens wish to speak at the city's public meetings. Most cities allow citizens an opportunity to speak at some point during governing body meetings and may also allow citizen comments during meetings of other public bodies. In some states, statutes require local governing bodies to

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provide time for public comments. To maintain decorum and efficient meeting proceedings, municipal boards often establish policies that:

- Limit citizen comments to specific times during meetings.
- Set time limits for each person's comments to the board.

In addition to general comment periods, cities may conduct public hearings on specific matters, such as:

- A proposal to rezone property to a different zoning district.
- Adoption of a city's budget.

Restrictions on citizen comments should comply with First Amendment free speech guarantees. When a board is acting in a quasi-judicial role, it must also observe due process requirements under the Fourteenth Amendment and applicable state law. These requirements include allowing persons affected by a board decision the opportunity to address the board.

For further guidance on citizen comments at local government meetings, see Practice Note, Regulating Speech and Conduct in a Public Meeting. For a sample policy, see Standard Document, Citizen Comment Policy for Local Government Board Meetings.

The Attorney's Participation

City attorneys should know the expectations for their participation at city board meetings. Before attending the first meeting of a board, an attorney may be able to find out about these expectations by:

- Reviewing recordings of past meetings.
- Talking with the mayor, city manager, other staff members, or the previous city attorney.

The attorney should be prepared to answer board member questions about procedural matters or legal issues regarding proposed actions. It may also be the board's practice for the attorney to:

- Give a report on legal issues affecting the board or facing the city in general.
- Provide a presentation on the legal aspects of specific business items.

Open Meetings Laws

The city attorney must understand applicable state laws that require meetings of the city's governing bodies and other municipal boards to be open to the public. Every state has open meetings laws. Many states also have a substantial body of case law decisions related to open meetings challenges and some publish open government guides that explain and interpret the law. Open meetings laws often:

- Define what a "meeting" is and prohibit board members from discussing public business with each other outside a public meeting.
- Prohibit board members from using electronic communications to get around open meetings requirements.
- Set requirements for providing advance notice of upcoming meetings to the public.

Even so, open meetings laws may allow some exceptions under which municipal boards may hold closed sessions, sometimes referred to as "executive sessions." Exceptions vary by state but may include:

- Attorney-client meetings (limited in some states to discussions on pending litigation).
- Union negotiations.
- Negotiations for the purchase or sale of real property.
- Discussions about the security of municipal property.
- Prospective industry locations or expansions within the city.
- Certain discussions about municipal employees.

Understanding and Enforcing the Municipal Code

A new city attorney should study the city's municipal code, understand how it is organized, and learn about the process for updating the code. The municipal code contains codified versions of the ordinances of a permanent nature passed by the governing body. Although the city may have hard copies available, most municipal codes are accessible online. Ordinances that amend the code but are not yet codified may also be online.

Familiarity with the code helps the attorney:

- Ensure that amendments to the code:
  - go in the right place within the code;
  - do not conflict with existing language; and
  - are consistent in style, formatting, and spelling of terms.

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- Assist in interpreting code provisions and know how to respond to complaints and questions about possible code violations.

Code Enforcement

The city attorney assists with code interpretations and advises on enforcement strategies when there are violations. It is helpful to meet with code enforcement staff early on to learn about the types of violations they handle and their approach to enforcement, including the process for issuing citations.

The attorney should also know the penalty and remediation options available to the city. Most municipal codes include a general penalty clause that sets out the potential monetary penalties for violating the code. These penalties:

- Generally apply unless a specific code provision includes separate penalty language.
- May be limited by state law.

For ongoing violations, the code may allow a separate penalty for each day a violation continues.

Municipal courts most commonly handle municipal code violations and can impose the penalties authorized in the code (see Municipal Court). In some cases, the code may provide for administrative fines or nonmonetary options. The city attorney should confirm that the city has proper authority for these alternatives.

For more on the attorney's role in code enforcement issues, see Enforcing Zoning Regulations and Property Codes Checklist.

Land Use and Zoning

A city attorney should know how zoning and land use law work both in general and specifically within the municipality. While state law typically sets the basic parameters and federal law imposes limitations on some aspects, local regulations provide the details for how property may be developed and used. The attorney can become a valuable part of the land use and zoning team by:

- Studying the city's comprehensive plan for guidance on the city's vision for future growth and development (see Practice Note, Comprehensive Plans: Overview).
- Reviewing the city's zoning ordinance and understanding the purposes and allowed uses for each zoning district.
- Understanding the scope of authority over land use and zoning for:
  - the governing body;
  - the planning commission, zoning board, or other city boards that deal with land use, zoning matters, and plat approval (see Practice Note, Understanding a Residential Subdivision Plat: Basics); and
  - staff with administrative authority to deal with some land use matters.
- Knowing about federal and state laws and constitutional guarantees that may affect zoning and land use practices, such as:
  - state statutes that authorize municipalities to impose zoning and land use restrictions;
  - the federal Fair Housing Act and its state housing law counterparts (see Practice Note, Affordable Housing Issues for Local Government: Legal Obligations to Provide Affordable Housing);
  - the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), along with state religious freedom laws (see Practice Note, Local Government Regulation of Religious Land Uses Under RLUIPA); and
  - US Constitutional protections under the free speech clause of the First Amendment, the takings clause of the Fifth Amendment, and the Fourteenth Amendment's due process and equal protection guarantees, along with their counterparts in many state constitutions.

For additional resources with an in-depth focus on municipal land use and zoning, see:

- Practice Note, Local Government Zoning and Land Use Regulation: Overview.
- Practice Note, Advising Planning and Zoning Commissions.
- Local Government Counsel's Role in Zoning Matters Checklist.
- Residential Zoning for Local Government Toolkit.

Liability and Litigation

Municipal Liability and Risk Management

The wide range of services, infrastructure, and public facilities that municipalities provide results in a wide range of legal claims and lawsuits. The city attorney should understand the types of potential claims the city faces and:

- Know how tort liability claims work under state law. State laws typically:

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  - impose some measure of responsibility on municipalities for causing injuries or property damage, while keeping them out of financial jeopardy from multi-million-dollar judgments;
  - preserve sovereign immunity from some types of claims but waive immunity for others; and
  - cap the amount of damages plaintiffs can receive for personal injuries and property damage in tort lawsuits.

  For additional information, see Practice Note, Sovereign Immunity of State and Local Governments in State Courts and Public Tort Immunity and Limitations of Damages Statutes Chart.

- Be aware of the city's exposure to other types of claims, including claims of violations of federal constitutional or statutory rights under Section 1983 (42 U.S.C. § 1983). For a collection of in-depth resources on this topic, see Section 1983 Toolkit.
- Learn about the risk management protocols and responsibilities that are in place and determine where the city needs to improve. There should be a mutual understanding that providing local government services comes with a certain amount of risk. City attorneys should adopt a mindset of mitigating risk rather than eliminating it.
- Review the city's insurance coverage, including exclusions and limits. (For guidance on types of insurance coverage and components of insurance policies, see Practice Note, Insurance Policies and Coverage: Overview; also see When Insurance Covers Defense Costs.)

Cyber Risks

Government agencies are sometimes the target of data breaches, cyberattacks, and ransomware demands. These incidents can create serious operational disruptions, result in significant monetary losses, and have major legal implications. The city attorney should know the measures the city takes to prevent these risks and the plans that are in place to deal with cyber incidents if they occur.

For guidance on managing cyber risks and responding to cyber incidents, see Cybersecurity for Local Government Checklist and Cyber Incident Response for Local Government Checklist. For additional resources on privacy and data security, see Privacy and Data Security for Government Agencies Toolkit.

The City Attorney's Role in Litigation

From the beginning, city attorneys should know the expectations for the extent of their involvement in litigation. Some municipal law departments handle most litigation in house, while others primarily use outside counsel. City attorneys handling litigation must be admitted in the courts that hear their cases, including federal courts. Even in cities with in-house litigators, city attorneys should know when they lack enough experience and should bring in outside counsel.

Whether handling litigation in-house or using outside counsel, the city attorney should determine and define the city's overall goal when it is in litigation. For example, the goal may be to uphold the constitutionality of a regulation or to end a lawsuit and its related publicity as soon as possible. Litigation strategies and goals in the public sector may differ from what attorneys coming from the private sector have experienced.

When the city uses outside counsel, the city attorney should:

- Be comfortable with the counsel the city uses and their ability to effectively represent the city. The city attorney may be in a position to choose the outside counsel or recommend counsel for approval by the city manager or governing body. For general guidance on hiring and working with outside counsel, see Engaging and Managing Outside Counsel Toolkit.
- Establish their own role in the litigation. City attorneys typically:
  - keep up to date on the status of pending litigation and generally play a part in developing the city's legal strategy; and
  - contribute as appropriate to some aspects of the litigation, such as assembling responses to discovery requests, attending mediations or court proceedings, and weighing in on settlement proposals.

The city attorney may also need to provide periodic updates on the status of pending litigation to the city's administration, governing body, and other city boards affected by the litigation.

When Insurance Covers Defense Costs

Insurance coverage may cover the cost of outside counsel for some legal claims against the city. If so, the city attorney should:

- Know the policy limits for legal defense costs.
- Work with the insurance carrier to ensure that any outside counsel proposed by the carrier is acceptable to the city attorney, or that any outside counsel preferred by the city attorney is approved by the insurance carrier.

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- Know the city's duty to the insurance carrier under its policy. For example, the policy may require the city to litigate or appeal a matter if the insurance carrier wants to avoid a large settlement or damage award payment.

Administrative Proceedings

In addition to court proceedings, cities are sometimes parties to hearings before federal or state agencies, such as:

- The federal government's Equal Employment Opportunity Commission (EEOC).
- State environmental boards.

City attorneys representing their cities in matters before these agencies must understand how the proceedings work and be prepared to provide effective representation. If a city uses other counsel for these proceedings, the city attorney should keep up with the status and assist as necessary.

Municipal Court

A new city attorney should know how the city's municipal court works. Although some municipal courts have concurrent jurisdiction to hear cases involving state law violations, municipal courts generally hear cases involving violations of municipal code regulations. The biggest part of the caseload in many municipal courts involves traffic violations. However, their dockets may include cases on anything from barking dogs to illegal short-term rentals.

Some cities may use a separate attorney to represent the city in municipal court. Depending on state law and local custom, it also may not be necessary for the city to have an attorney in municipal court for some matters, such as traffic violations. However, when the city attorney's responsibilities include representing the city in its court, the attorney should:

- Be ready to prosecute municipal code violations, including preparing staff members to be witnesses.
- Know the procedural and evidentiary rules that apply.

The city attorney should also understand how the process for appealing municipal court decisions works.

Inner Workings of the City

In addition to serving in a public-facing role at some times, most city attorneys effectively serve as the municipality's in-house counsel. City attorneys normally provide advice and legal assistance to all city departments. To do so, they must become well-versed in a mix of general and government-specific areas of the law.

Getting to Know the Organization

To understand the city's internal operations and integrate into the organization, a new city attorney can:

- Study the organization chart to learn about the leaders within the city staff and who reports to them.
- Learn about the primary functions of each department.
- Spend time with department heads and other key employees.

Municipal Finance

Although city attorneys may not have a background in accounting and finance, they must develop a basic understanding of the city's finances. A good start is studying the city's operating and capital budgets and learning about the process for preparing and adopting them. The comprehensive annual financial report (CAFR) is another good source of information about where the city gets its money, how it spends its money, and its overall financial condition.

The attorney should understand:

- The various types of taxes and fees the municipality imposes.
- The limitations on how the city can spend revenues from different types of taxes and fees.
- The collection process for delinquent taxes and fees. In some cases, state law may prescribe the applicable interest and late payment penalties.

For guidance on collecting from taxpayers in bankruptcy, see Practice Note, Municipal Tax Claims in Bankruptcy. For further information on what the city attorney should know about the city's finances, see Practice Note, Legal Issues in Municipal Finance.

Annual Audit

Cities must hire outside accountants to audit the city's financial records each year and issue an opinion on whether the CAFR fairly presents the city's financial position. To assist in forming their opinion, auditors typically ask the city attorney to issue a letter detailing any pending legal claims that may significantly affect the city's finances.

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Municipal Debt

The city attorney should know about debt obligations the city uses to finance construction projects and other major expenditures. The most common types of long-term municipal debt are general obligation bonds and revenue bonds (for a listing of the major types of municipal debt, see Practice Note, Legal Issues in Municipal Finance: Major Types of Municipal Debt). Because issuance of municipal bonds involves a highly specialized and complex area of the law, cities use outside counsel to help them through the process. City attorneys can benefit from getting to know the city's bond counsel and relying on their expertise. However, a city attorney should still understand:

- The city's legal responsibilities surrounding issuing, paying, and reporting on bonds or other debt instruments.
- Their own role in the issuance of municipal debt. For example, when cities issue bonds, the city attorney typically provides a formal opinion regarding the city's compliance with certain legal requirements.

For more on issuing government bonds, see Practice Note, Government Bonds: An Introduction to Issuing Government Bonds for State and Local Government Attorneys.

Knowing the Purchasing Regulations

City governments usually follow strict rules that govern how the city makes purchases. These rules are typically a combination of requirements from state law and the city's own purchasing policies. The city's policies may be part of the municipal code or in a separate document. Special rules also often apply when expenditures rely on state or federal funding or financing using municipal bonds or other debt. Expenditures must also be in line with the city's approved budget.

The city attorney should be familiar with all purchasing regulations that apply and:

- Help interpret the applicable rules when necessary and question proposed purchases that appear to be noncompliant.
- Know where the authority to approve different levels of purchases lies. For example, governing body or city manager approval may be necessary for certain expenditure levels, while smaller purchases may only need departmental level approval.
- Understand when and how the city must use the bidding process, including:
  - the thresholds that require the city to solicit bids for purchases exceeding certain amounts; and
  - the exceptions that allow the city to make some purchases without receiving bids, even when the amount of the purchase exceeds the applicable bid threshold.

The attorney may also need to review bid specifications, requests for proposals, and award recommendations to verify that the city is following required procedures.

Public Utilities

City attorneys must also sometimes be public utility lawyers. Municipalities may provide public utilities, such as water, sewer, gas, or electric services, or may perform some regulatory role over outside utilities. When the city is a utility provider, the utility boundaries do not always follow municipal boundaries. For example, even if the city operates a water utility, some city residents may get water service from a nonprofit utility district or a privately owned for-profit utility. This may occur when a city incorporated after utility service from other providers was already in place or the city annexes areas serviced by other providers. In some cases, a city's utility service boundaries may go beyond the city limits by agreement with other providers.

Early on, the city attorney must know which utility services the city provides and the utilities' service boundaries. The attorney should also:

- Develop an understanding of the infrastructure supporting the city's utilities and how the city delivers services to its utility customers. It may be helpful to schedule a tour of major utility facilities the city operates.
- Learn how the rate-setting process works and ensure the city follows required procedures for setting and changing utility rates.

For further guidance on municipal utilities and rate-setting, see:

- Practice Note, Municipal Water and Wastewater Service: Overview.
- Reviewing and Updating Utility Fees: Local Government Checklist.
- Practice Note, Local Government's Role in Rate Regulation.

Employment Law in Local Government

City attorneys often need to work closely with human resources directors, administrators, and department

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heads to ensure that the city's personnel practices conform to federal and state law. They should understand their role in disciplinary proceedings, grievance hearings, and employee appeals.

To prepare for providing good legal advice on employment issues, the attorney should:

- Study the city's personnel rules and regulations. The attorney should also:
  - find out how long it has been since the last update of the rules and regulations and how often updates occur; and
  - point out any potential legal problems with the rules and regulations and make recommendations for changes. (For a collection of resources on employee policies in the public sector, see Employee Policies Handbook for State and Local Government Toolkit.)
- Learn about federal laws and regulations that apply to local government employees, such as:
  - The Family and Medical Leave Act (FMLA) (see Practice Note, Family and Medical Leave Act (FMLA) Basics);
  - The Fair Labor Standards Act (FLSA);
  - The Americans with Disabilities Act of 1990 (ADA) and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA);
  - Regulations of the Equal Employment Opportunity Commission (EEOC); and
  - Title VII of the Civil Rights Act of 1964 (Title VII) and other anti-discrimination laws. (For a collection of resources on federal anti-discrimination laws applicable to government employers, see Federal Anti-Discrimination Laws for State and Local Government Employers Toolkit.)
- Know about state laws and regulations that govern municipal workplaces. For example, although federal Occupational Safety and Health Administration (OSHA) standards do not apply to municipalities, many states have their own occupational health and safety regulations. The city attorney should know about:
  - workers compensation laws and state standards that regulate local government workplaces; and
  - the workplace safety measures that are in effect in the city and the person (or persons) responsible for overseeing compliance with safety standards.
- Inquire about measures that are in place and, if necessary, recommend new measures to:
  - prevent employee harassment and discrimination at all levels of the city government, including periodic required employee training; and
  - respond to employee claims of harassment and discrimination.

  For more on this topic, see Practice Notes, Harassment and Discrimination: Overview

Complying with Open Records Laws

The city attorney should be well-versed on the process citizens can use to request access to public records and the city's process for responding to requests. All states have open records laws that require municipalities to make most of their records open to the public. Cities often designate staff members outside the city attorney's office to coordinate the city's responses to records requests. However, the city attorney may need to help educate employees and weigh in when there are questions about how to respond to a request. The attorney should be able to help decide:

- Whether the city can charge a fee for providing records to a citizen and, if so, how to calculate the fee.
- Which records are confidential by law. In some cases, records custodians should redact confidential information from a record rather than denying access to the record.

If there is not an up-to-date written policy in place to describe how the city deals with records requests, the city attorney can help develop a policy that complies with the law. The policy should include timeframes for responding to records requests and producing copies of records. The attorney should monitor developments in the state's open records laws and incorporate any necessary changes into the city's policies and practices.

For links to each state's public records laws, along with online manuals, handbooks, or other helpful resources, see State Public Records Laws Chart.

The Municipal Attorney as Transactional Lawyer

Municipal Contracts

City attorneys may draft or review hundreds of contracts in a single year. They also must know:

- The approval process for entering into contracts. Depending on the expenditures involved or other

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factors, the city's charter or code may require governing body approval for some contracts, while others may need only administrative approval.

- The parties with authority or responsibility to sign contracts. The municipal charter, code, or local policies may prescribe that contracts should include signature lines for:
  - the mayor, if the contract requires governing body approval;
  - the city manager, if the contract requires only administrative approval. In some cases, department heads or other employees may have signature authority for contracts involving relatively small expenditures; or
  - the city attorney, indicating the attorney's approval of the contract's form or both its form and legality.

An attorney drafting, reviewing, and editing contracts for a municipality should:

- Review any existing contract forms the city uses for various purposes and propose changes as needed.
- Be cautious about using standard contracts provided by vendors. Vendors often supply one-sided contracts written to the vendor's advantage and including terms that the city cannot legally agree to. The attorney may need to draft amendments to the vendor's contract form or substitute another contract altogether.
- Avoid or eliminate any clauses requiring the city to indemnify other parties.
- Look at contracts other cities use for similar purposes to gather ideas for best practices.

Cities may enter into contracts with other cities, counties, the state or federal government, or other governmental bodies. These contracts, which may be referred to as interlocal agreements, intergovernmental contracts, or mutual aid agreements, may be subject to specific requirements under state law (see Practice Note, Interlocal Agreements).

For detailed guidance on drafting and reviewing municipal contracts, see Practice Note, Contract Drafting or Review for Local Governments. For a comprehensive collection of practice notes, standard documents and clauses, and checklists, see Commercial Contracts for State and Local Government Toolkit.

Property Acquisition and Eminent Domain

City attorneys are often involved in acquiring property for public projects. Some projects, such as road expansions or major water lines, can involve acquiring easements or small parcels from numerous owners. Other projects, such as a new fire station or a park, may involve acquiring a relatively large parcel from just one owner. While acquiring property at a negotiated cost without court action is much simpler, cities sometimes must resort to using their eminent domain powers.

Some cities use outside counsel to assist with property acquisitions, especially when the city uses its eminent domain powers. Even so, the city attorney should:

- Learn about any pending property acquisitions and upcoming projects that involve new acquisitions.
- Feel comfortable with the deed and easement forms the city uses and ensure they adequately convey the interests the city needs for its project.
- Verify that the city:
  - uses due diligence in searching property titles, describing the property interest to be acquired, and recording the property interests acquired by the city; and
  - follows applicable requirements under statutes and any state or federal grants that provide funding for the acquisitions.
- Understand the scope of the municipality's power to condemn property and the process for exercising eminent domain.

For a collection of helpful resources on municipal construction projects, real estate transactions, and eminent domain, see the following Toolkits:

- Capital Improvement Project Construction: State and Local Government Toolkit.
- Purchasing and Selling Real Estate: State and Local Government Toolkit.
- Asserting Eminent Domain Toolkit.

Ethics and the Municipal Lawyer

Applying Ethics Codes to Local Government Representation

Municipal attorneys must follow the same rules of ethics that apply to other lawyers, but they must learn how to apply the rules to the practice of municipal law. A city attorney should know where to go for interpretations of ethics rules as applied to local government representation. Most states offer resources such as:

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- Published ethics opinions that may address interpretation questions a city attorney has.
- Ethics hotlines or inquiry programs that offer opportunities for attorneys to seek direct advice.

For a list of state resources, see American Bar Association (ABA): Additional Legal Ethics and Professional Responsibility Resources.

City attorneys sometimes deal with issues that are not strictly legal in nature and give advice that goes beyond mere legal implications. The ABA's Model Rules of Professional Conduct addresses this situation in its Rule 2:1:

> "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as **moral, economic, social and political factors**, that may be relevant to the client's situation." (ABA: Model Rules of Professional Conduct; emphasis added.)

Many states require their licensed attorneys to attend continuing legal education (CLE) focused on legal ethics each year. To meet these CLE requirements, municipal attorneys can seek out programs focused on representing government entities.

Identifying the Client

The city attorney represents the city as an entity, as opposed to any individual or group. However, a city acts through its governing body, other elected officials and boards, administrators, departments, agencies, and employees. Dilemmas can arise when a board member or other individual seeks the city attorney's advice. If the individual's interest is adverse to the city, the attorney must advise that they represent the city and decline to provide further advice to the individual. (For further guidance, see ABA: Rule 1.13: Organization as Client.)

A city manager or mayor may hire the city attorney, sometimes subject to governing body confirmation, and serve as the attorney's supervisor. While the city attorney naturally wants to please, the attorney must not let loyalty get in the way of acting in the city's best interests.

Some cities separately employ attorneys to advise the governing body, another board, a specific department, or another entity that is part of the municipal government. The focus of these attorneys is different from the focus of the attorney representing the city as a whole, although similar ethical issues may arise.

City attorneys may face many of the same ethical issues as private in-house counsel. For a discussion of ethical considerations for in-house attorneys, see Practice Note, Ethical Issues for In-House Counsel.

Weighing in on Ethical Issues and Conflicts Involving Officials and Employees

The city attorney should know about laws, regulations, and internal policies that impose ethical obligations on municipal officials and employees. For example, there may be:

- State laws that require board members to:
  - file annual reports disclosing their investments and sources of income; and
  - disclose any personal interests or conflicts they or certain family members may have regarding the outcome of a matter their board is considering.
- Laws that prohibit municipal officials and employees from having a direct personal or familial financial interest in any contract that they vote on or oversee (for example, see T.C.A. § 12-4-101).
- A code of ethics for officials and employees, adopted by the city itself, providing guidance on matters such as:
  - accepting gifts;
  - using the official's or employee's position to obtain special privileges; or
  - misusing confidential information.

Statutes or local policies may also require board members to disclose possible personal interests beyond direct financial gain or loss, such as:

- A member's ownership interest in real property or a business likely to be affected by a proposed nearby land use.
- A position as a board member or employee of a nonprofit organization that has a matter before the board.

The city attorney should verify that there is a solid procedure in place for responding to ethics complaints and questions. The attorney may play a key role in investigating complaints and in interpreting ethics rules. If the city has an ethics board, the attorney should understand how it functions and the authority it has.

Dual Positions

The attorney should be aware of state laws that prevent governing body and other city board members and officials from holding:

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- Another elective or appointed office within the city.
- Certain offices in other governmental organizations.

City board members and officials allowed to hold dual positions may still need to:

- Disclose their alternate position before voting or taking certain actions.
- Abstain from certain matters.

Getting the Rest Right

The Less Obvious Parts of Being City Attorney

Some of the responsibilities and expectations of the city attorney's position may come as a surprise. A new city attorney can be better prepared by:

- Reviewing the attorney's job description or employment agreement and asking about any items that are unclear.
- Reviewing the previous city attorney's files and memoranda.
- Clarifying the attorney's role with the city manager, mayor, or others the attorney closely works with.

Communicating Effectively

City attorneys must sometimes deliver news or opinions their listeners may not want to hear. At other times, a city attorney must be an effective and persuasive advocate for the city. The attorney may need to convey complex legal information to both lawyers and non-lawyers. In both written and oral communications, a city attorney should:

- Be polite and tactful, but firm when necessary.
- Provide timely responses to emails and phone messages, even if only to acknowledge receiving a message and request more time to substantively respond.
- Avoid automatically defaulting to "no," seeking out potential solutions and collaborating instead of throwing up roadblocks.
- Know the audience and tailor communications accordingly.
- Use plain English, avoiding jargon and legalese.

For further relevant guidance on internal communications, see Practice Note, Practical Tips for New In-House Counsel: Communicate Effectively. For additional guidance on written legal communications, see Effective Legal Writing Checklist.

Media Relations

City attorneys may receive inquiries from the media or be the city's spokesperson about some legal matters. Because many city attorneys lack prior experience dealing with the media, it may be helpful to seek training opportunities or advice from communications experts. (For a sample policy governing employee communications with the media, see Standard Document, Media Relations Policy.)

Using the Power of Networking

The best advice municipal attorneys receive often comes from other municipal attorneys. New city attorneys can accelerate their learning curves and find valuable allies by:

- Getting to know municipal lawyers in neighboring and nearby cities. For example, the new city attorney can offer to host a roundtable meeting with other city attorneys in the area.
- Becoming familiar with the resources offered by state municipal leagues. (For a list of municipal league contact information and website links, see NLC: State Municipal Leagues.)
- Maintaining contact with the predecessor city attorney if practical.
- Joining state and national associations for municipal lawyers. For example, the International Municipal Lawyers Association (IMLA) is a US-based organization dedicated exclusively to local government law (see IMLA: IMLA).
- Attending conferences and seminars focused on municipal law.
- Participating in email listservs that discuss municipal law topics.

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