

Municipal Attorney Essentials

Roger Horner
Practical Law USA, Government Practice

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The municipal attorney journey









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Let’s assume…



- You’ve just been appointed to the job of city attorney
- You don’t have prior local government experience
- You want to make a checklist of things you need to do to become competent at your job

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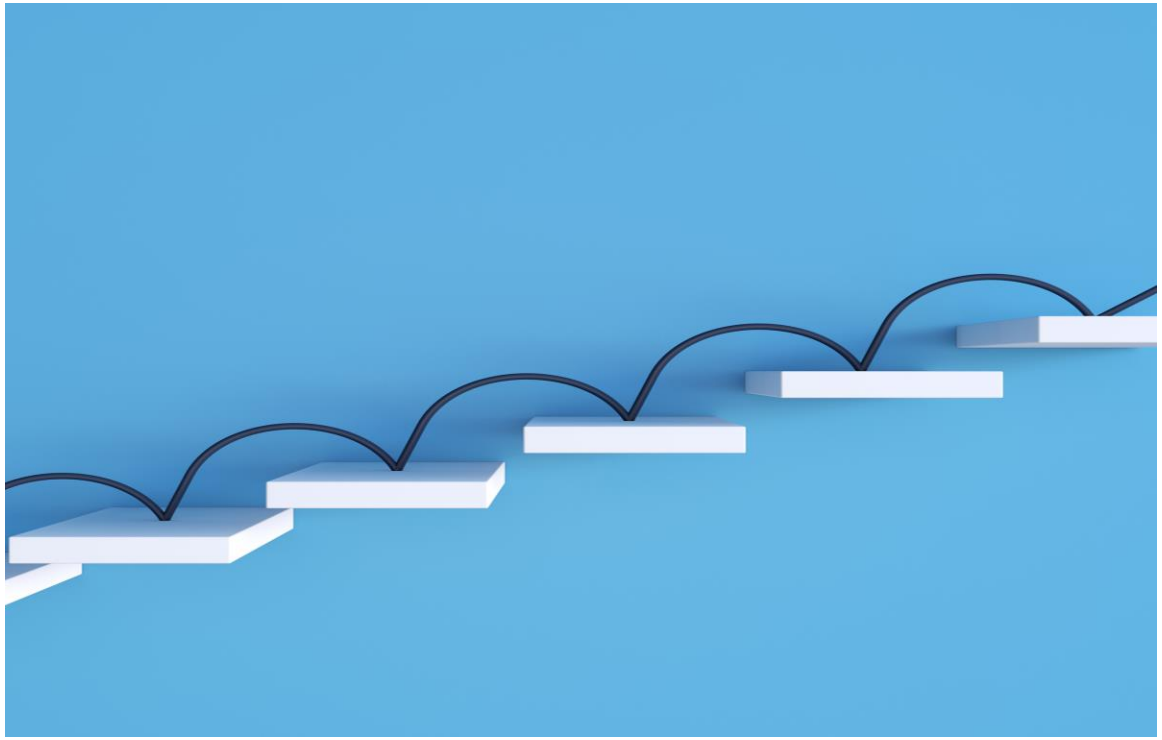
The thing about checklists



How we want things to work



How things work

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Learning municipal law

You want it to be like this



It's more like this



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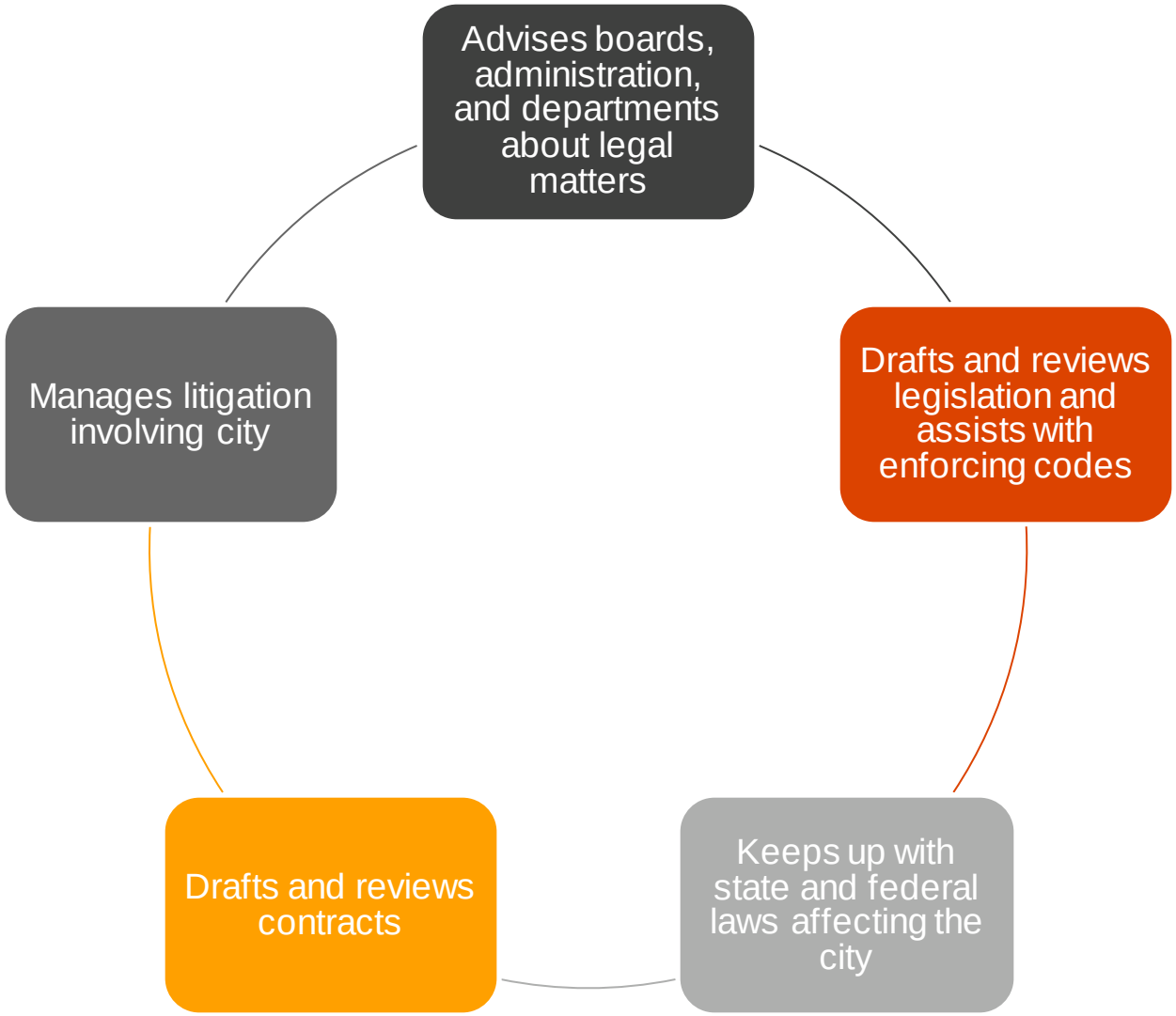
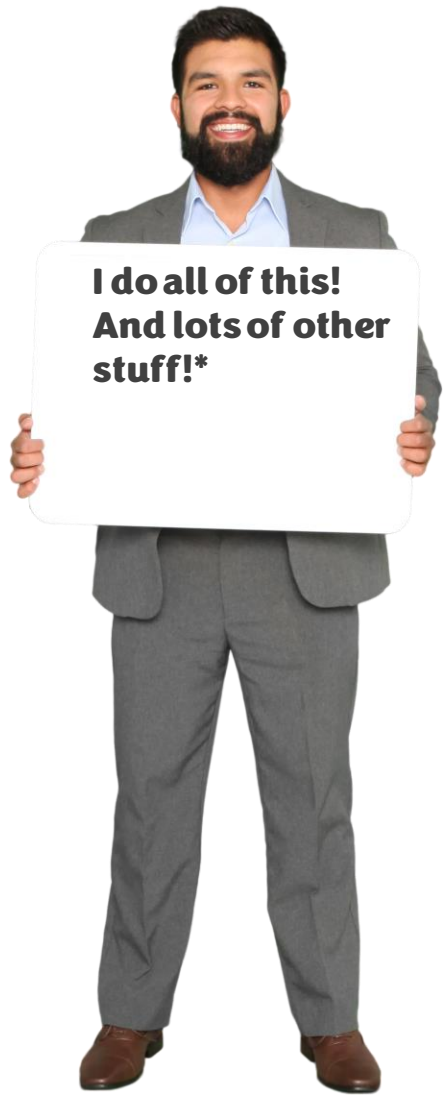
What does a city attorney do, anyway?





* Your mileage may vary.

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Mastering the essential components

- Geographical and cultural landscape
- Governmental structure and authority
- How public meetings work
- The municipal code
- Land use and zoning
- Liability and litigation
- Inner workings of the city
- Being the city's transactional lawyer
- Ethics and professionalism
- The rest of the job

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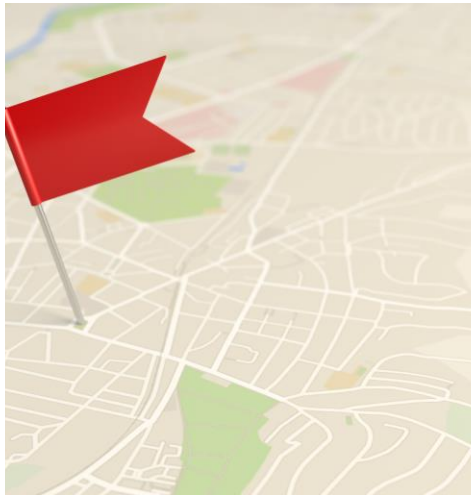
GEOGRAPHY AND CULTURAL LANDSCAPE



City Hall – San Francisco, CA

Geographical and cultural landscape

Getting to know your city



Geographic boundaries and what they border



Municipal facility locations



History, demographics, political dynamics

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GOVERNMENTAL STRUCTURE AND AUTHORITY



Town Hall – Falmouth, MA

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Governmental structure and authority

Scope of authority

HOME RULE

- Cities can act in any way not inconsistent with the state constitution, state law, or the city's charter
- Charter itself can show that city is a home rule city

DILLON'S RULE

- Sometimes called general law
- Restricts city's actions to those:
  - expressly authorized by state law,
  - reasonably necessary or implied by law, or
  - essential and indispensable to accomplishing the municipality's purpose

On Practical Law: Practice Note, Preemption Basics for Local Government: Box, Types of Cities

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Governmental structure and authority

The charter

HOME RULE CHARTER

City has more authority to amend its own charter without state approval

PRIVATE ACT CHARTER

Typically applies only to one city

MODEL CHARTER

Created by state law and adopted by cities

Changes require state approval

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Governmental structure and authority

The governing body and the mayor

Know about:

- Governing body makeup and whether members:
  - represent designated districts or serve at large
  - serve staggered terms or concurrently with the other members
- Mayor/chief executive
  - How selected
  - “Strong mayor” or more limited powers
  - Voting privileges
- Vice mayor/mayor *pro tem*
  - How selected
  - Authority and duties



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Governmental structure and authority

Governing body actions



Know how to distinguish between actions that:

- require governing body approval
- can be carried out by the mayor alone
- can be carried out administratively

Know which actions require:

- an ordinance
- a resolution
- voice vote only

Know the process for official actions, including:

- public notice and hearing requirements
- required voting procedure

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Governmental structure and authority

Governing body actions

Confirm that proposed ordinances, resolutions, and other actions are:

- within city's authority
- consistent in formatting and terminology with other actions
- compatible with existing municipal code provisions

Review amendments to make sure:

- they are properly worded and fit with existing text
- the board follows proper procedure for adopting

(and discourage hastily considered amendments)

Understand whether actions are:

- legislative
- administrative
- quasi-judicial

(Type of action may dictate the method of appeal in a legal challenge and the standard of review a court applies)



On Practical Law: Local Government Ordinances Toolkit

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Governmental structure and authority

Other municipal bodies and elected officials

Learn about other boards, commissions, and committees, including:

- how members are appointed and removed
- scope and extent of authority
- when they are final decision-makers and when they act in advisory capacity
- city attorney's interactions





Know about any other elected officials:

- powers and duties
- city attorney's interactions

On Practical Law: Practice Note, Advising Planning and Zoning Commissions

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HOW PUBLIC MEETINGS WORK



Town Hall – Fairfax, VA

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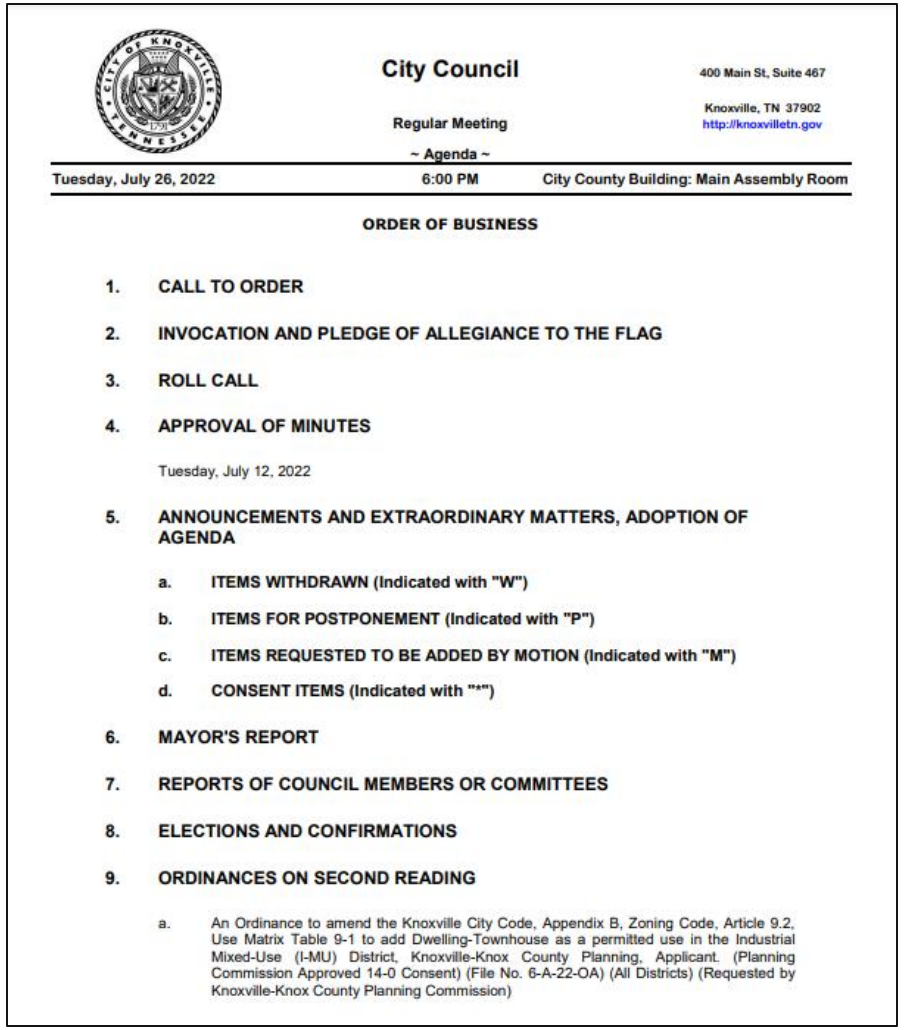
How public meetings work

Agendas



City Council

Regular Meeting

~ Agenda ~

400 Main St, Suite 467

Knoxville, TN 37902

http://knoxvilletn.gov

Tuesday, July 26, 2022 | 6:00 PM | City County Building: Main Assembly Room

ORDER OF BUSINESS

1. **CALL TO ORDER**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **ROLL CALL**
4. **APPROVAL OF MINUTES**

   Tuesday, July 12, 2022
5. **ANNOUNCEMENTS AND EXTRAORDINARY MATTERS, ADOPTION OF AGENDA**

   a. **ITEMS WITHDRAWN (Indicated with "W")**

   b. **ITEMS FOR POSTPONEMENT (Indicated with "P")**

   c. **ITEMS REQUESTED TO BE ADDED BY MOTION (Indicated with "M")**

   d. **CONSENT ITEMS (Indicated with "*")**
6. **MAYOR'S REPORT**
7. **REPORTS OF COUNCIL MEMBERS OR COMMITTEES**
8. **ELECTIONS AND CONFIRMATIONS**
9. **ORDINANCES ON SECOND READING**

   a. An Ordinance to amend the Knoxville City Code, Appendix B, Zoning Code, Article 9.2, Use Matrix Table 9-1 to add Dwelling-Townhouse as a permitted use in the Industrial Mixed-Use (I-MU) District, Knoxville-Knox County Planning, Applicant. (Planning Commission Approved 14-0 Consent) (File No. 6-A-22-OA) (All Districts) (Requested by Knoxville-Knox County Planning Commission)

- Review past agendas to understand the order of business
- Learn about the process for developing agendas and compiling agenda packages, including:
  - attorney's role in assembling and reviewing materials
  - attorney's ability to pull matters from the agenda

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How public meetings work

Procedural matters

- Know:
  - your board's procedural rules
  - quorum requirements
  - voting requirements for different types of board actions
  - standard of review if decisions are challenged
  - state law on virtual meetings/electronic participation
- Be ready to:
  - give advice on procedures
  - suggest new rules where current rules don't work well



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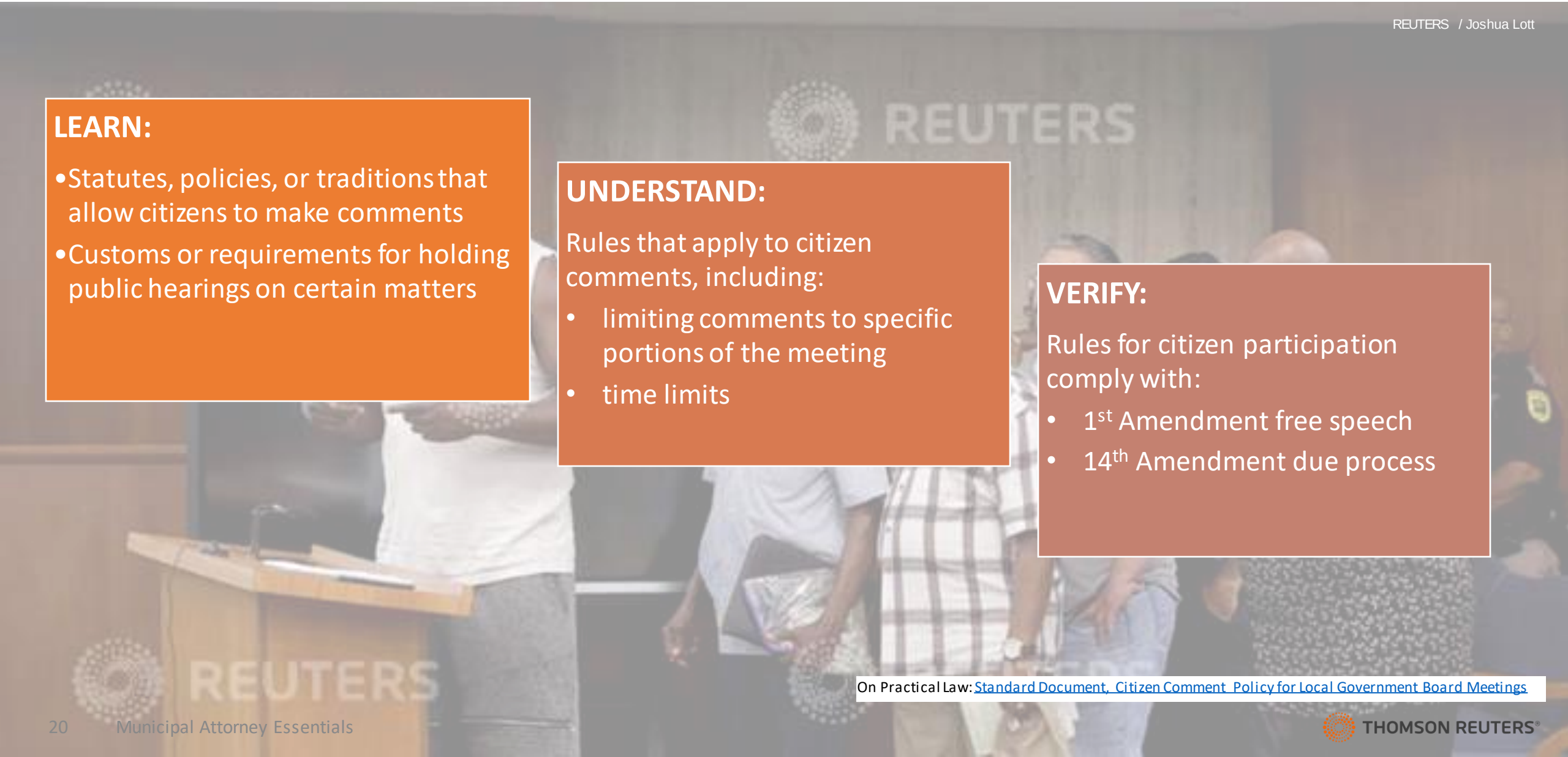
How public meetings work

Public hearings and comment periods



LEARN:

- Statutes, policies, or traditions that allow citizens to make comments
- Customs or requirements for holding public hearings on certain matters

UNDERSTAND:

Rules that apply to citizen comments, including:

- limiting comments to specific portions of the meeting
- time limits

VERIFY:

Rules for citizen participation comply with:

- 1st Amendment free speech
- 14th Amendment due process

On Practical Law: Standard Document, Citizen Comment Policy for Local Government Board Meetings

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How public meetings work

The attorney's role



Know the expectations for your participation, such as:

- Reports on pending legal matters
- Presentations on legal aspects of agenda items

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How public meetings work

Open meetings requirements



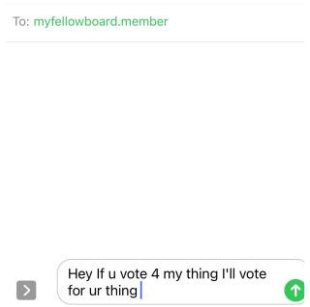
REUTERS / Matt Mills McKnight

Make all meetings open to the public, unless an exception applies

Give advance notice of upcoming meetings to the public



REUTERS / Francois Lenoir



Avoid the use of electronic communications to sidestep the law

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THE MUNICIPAL CODE



City Hall – Baltimore, MD

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The municipal code

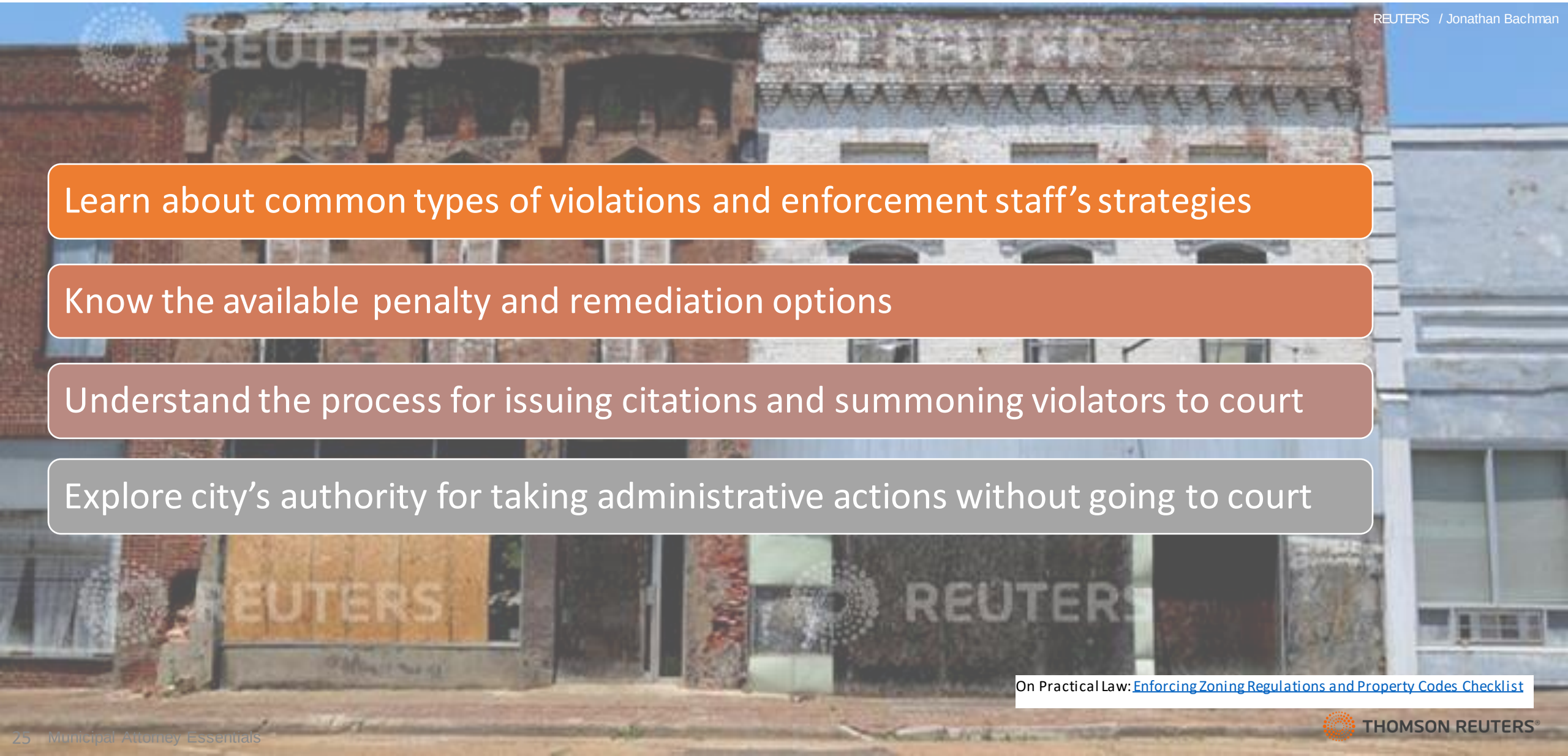
Knowing your code

- Know the code and be ready to respond to questions and complaints about possible violations
- Remember there may be recently passed ordinances that amend the code
- Know the process for updating and ensure that amendments:
  - go in the right place
  - don’t conflict with existing language
  - are consistent in style, formatting, and spelling



The municipal code

Enforcing the code



REUTERS / Jonathan Bachman

- Learn about common types of violations and enforcement staff's strategies
- Know the available penalty and remediation options
- Understand the process for issuing citations and summoning violators to court
- Explore city's authority for taking administrative actions without going to court

On Practical Law: Enforcing Zoning Regulations and Property Codes Checklist

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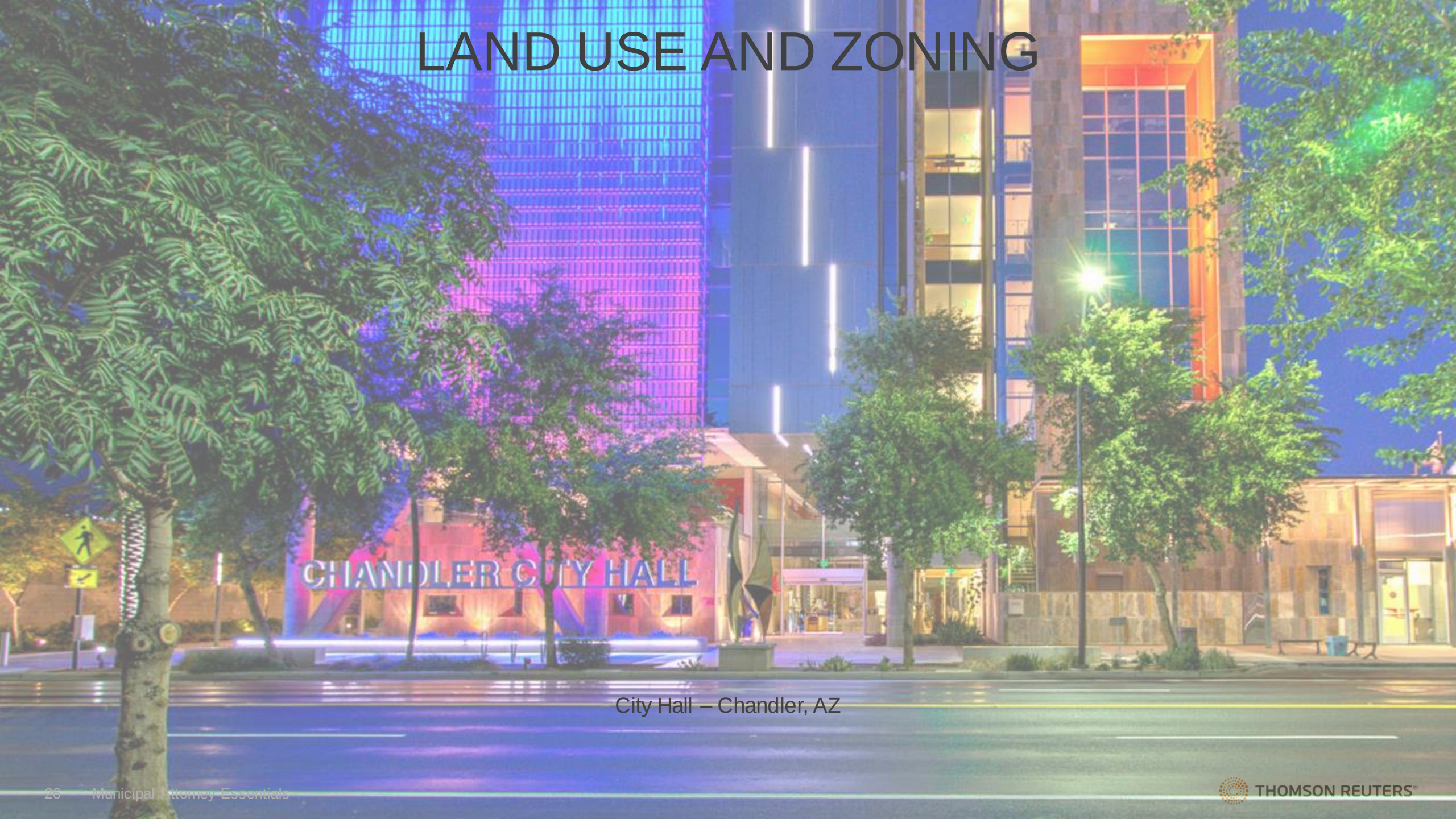
LAND USE AND ZONING



City Hall – Chandler, AZ

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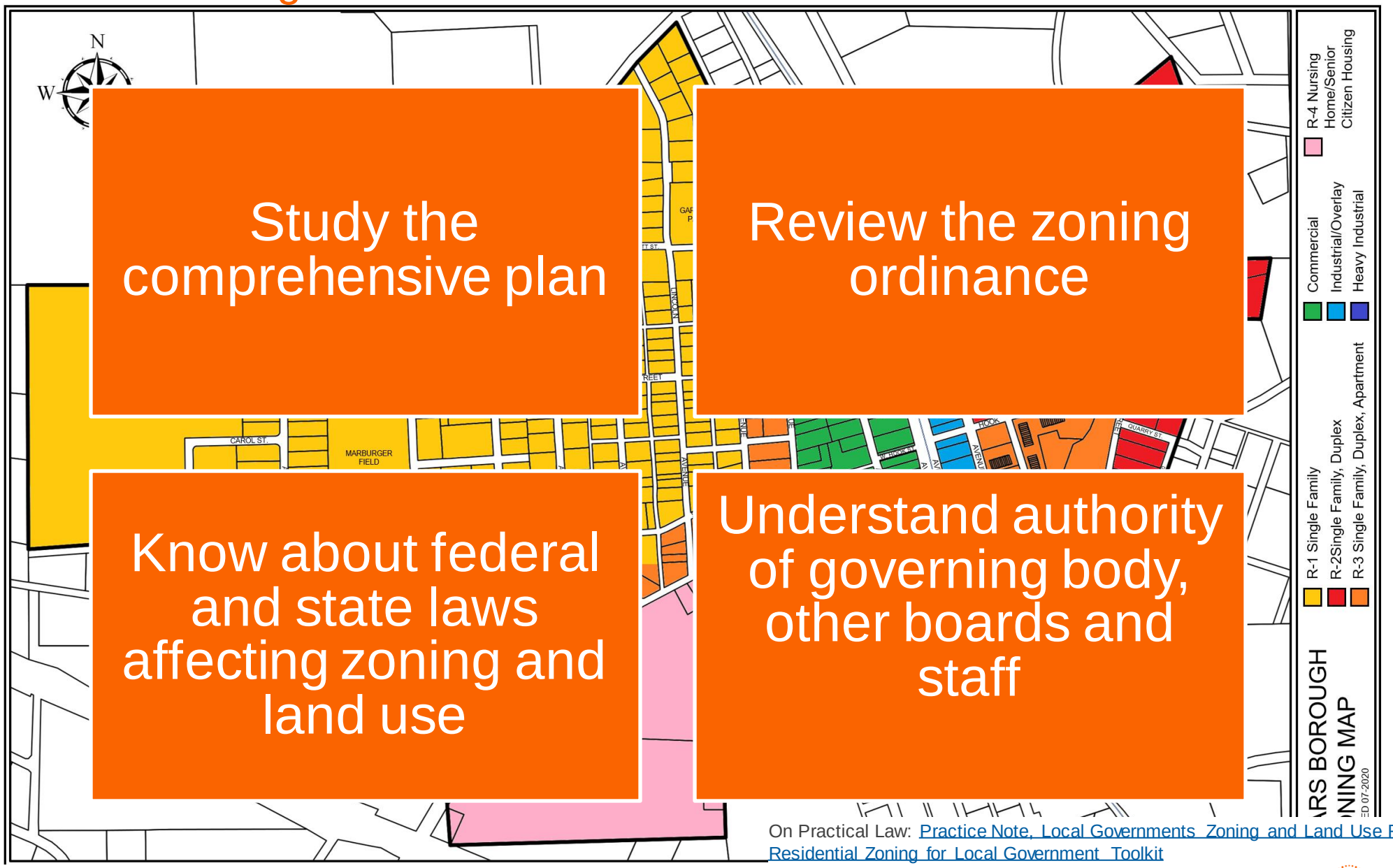
Land use and zoning



Study the comprehensive plan

Review the zoning ordinance

Know about federal and state laws affecting zoning and land use

Understand authority of governing body, other boards and staff

On Practical Law: Practice Note, Local Governments: Zoning and Land Use Regulation: Overview; Residential Zoning for Local Government: Toolkit

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LIABILITY AND LITIGATION



City Hall – San Jose, CA

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Liability and litigation

Municipal liability



Be familiar with the types of claims the city faces

- history of recent claims
- status of pending claims

Understand how state tort liability laws work

- when sovereign immunity applies and when immunity is waived
- caps on damages

Be aware of exposure to claims other than torts

- constitutional violations
- statutory rights

On Practical Law: Practice Note, Sovereign Immunity of State and Local Governments in State Courts; Public Tort Immunity and Limitations of Damages Statutes Chart; Section 1983 Toolkit

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Liability and litigation

Risk management

Learn about existing risk management protocols and responsibilities

- What improvements are needed?

Review insurance coverage

- What are the exclusions and limits?

Know the measures used to address cyber risks

- What plans are in place to deal with cyber incidents?

On Practical Law: Practice Note, Insurance Policies and Coverage: Overview; Cybersecurity for Local Government Checklist

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Liability and litigation

The city attorney's role in litigation



Know:

- Extent of involvement of previous city attorneys in litigation (including eminent domain)
- City's current expectations

Give periodic status updates to:

- Administration
- Governing body
- Other boards affected by litigation

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Liability and litigation

Using outside counsel



Determine	• whether and to what extent insurance covers legal costs
Be comfortable	• with abilities of counsel
Keep up to date	• on status of litigation
Assist	• with developing legal strategy
Establish your role	• assembling discovery responses • attending mediations and proceedings • weighing in on settlement proposals

On Practical Law: Engaging and Managing Outside Counsel Toolkit

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Liability and litigation

Administrative proceedings

If the city is a party in a federal or state agency hearing:

- Understand how proceedings work
- Be prepared to provide effective representation
- If using outside counsel, keep up with status and assist as necessary



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Liability and litigation

Municipal court

Know how municipal court works, including:

- whether it handles matters other than code violations
- how the process for appeals works

If representing the city in municipal court:

- be ready to prosecute code violations, including preparing witnesses
- know procedural and evidentiary rules



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INNER WORKINGS OF THE CITY



Town Hall – Edgartown, MA

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Inner workings of the city

Knowing the organization



Study the organization chart



Learn about each department's primary functions



Spend time with department heads and key employees

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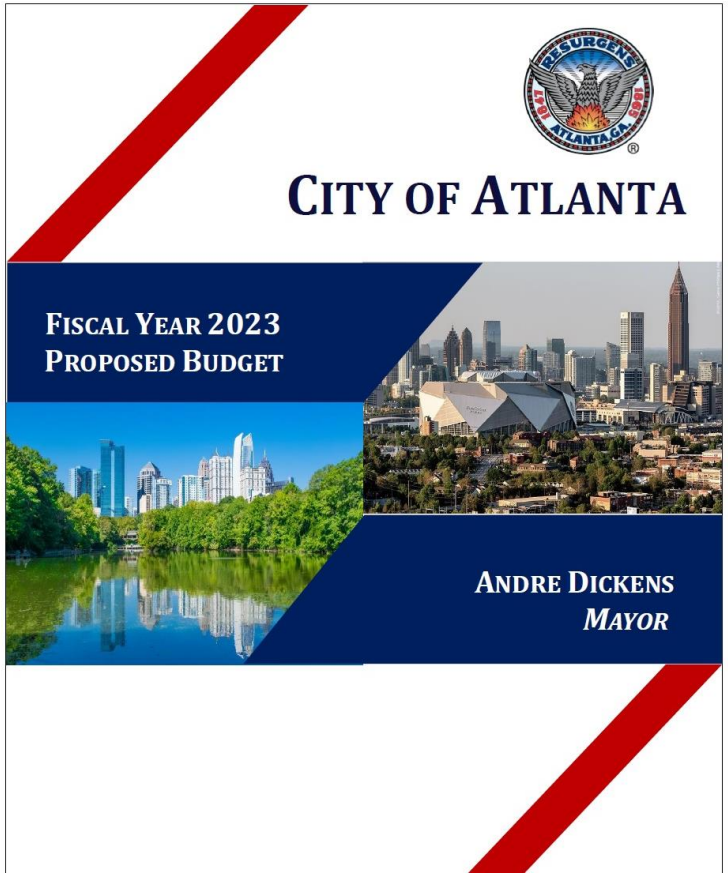
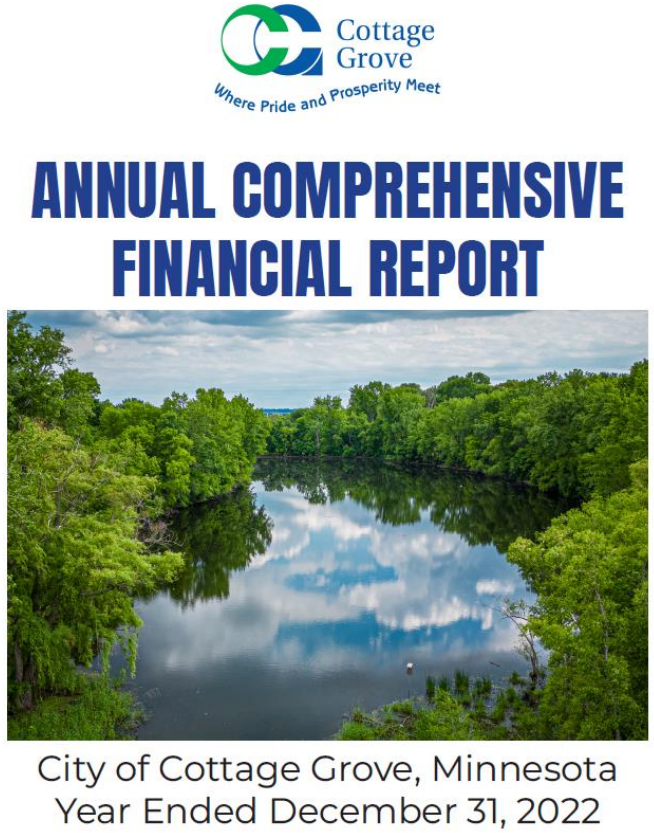
Inner workings of the city

Municipal finance

- Study the operating and capital budgets
- Learn about the process for preparing and adopting them
- Review the comprehensive annual financial report (CAFR) for:
  - where the city gets its money
  - how it spends its money
  - overall financial condition





On Practical Law: Practice Note, Legal Issues in Municipal Finance

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Inner workings of the city

Taxes and fees



Understand:

- Types of taxes and fees the city imposes
- Limitations on how city can spend tax and fee revenue
- Collection process for delinquent taxes/fees

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Inner workings of the city

Municipal debt



REUTERS / Amir Cohen

Learn about debt used to finance construction projects and other major expenditures

Get to know outside bond counsel

- Understand responsibilities for issuing, paying, and reporting on bonds and other debt
- Know city attorney's role in issuance of municipal debt

On Practical Law: Government Bonds: An Introduction to Issuing Government Bonds for State and Local Government Attorneys

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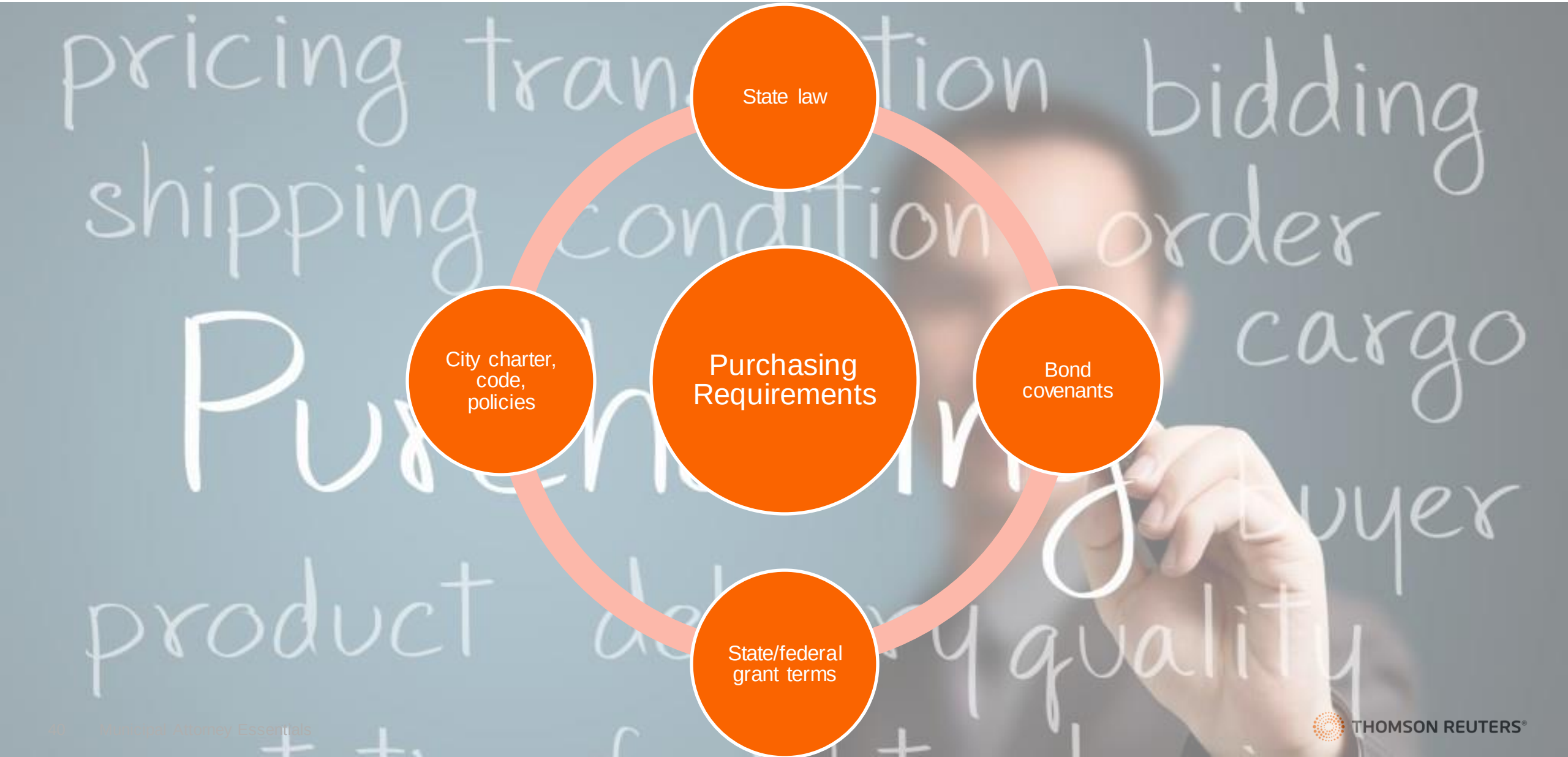
Inner workings of the city

Purchasing regulations – knowing where to look



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Inner workings of the city

Purchasing regulations

Knowing who has authority to approve purchases at different levels

For example:



Governing body



City manager



Department head

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Inner workings of the city

Purchasing regulations – bid process



Understand applicable bidding processes, including:

- Thresholds requiring bids for purchases over certain amounts
- Exceptions allowing purchases to exceed thresholds without bids

Review as necessary:

- Bid specs
- Requests for proposals/requests for qualifications
- Award recommendations

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Inner workings of the city

Public utilities



Know where utility service boundaries are

Understand utility infrastructure and how services are delivered





Learn about rate-setting process and follow required procedures

On Practical Law: Municipal Water and Wastewater Service: Overview; Reviewing and Updating Utility Fees: Local Government Checklist

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Inner workings of the city

Employment law in the municipal setting



Study the personnel rules and:

- Look for potential problems and make recommendations for appropriate changes



Learn about federal/state laws and regulations that apply to local government, such as:

- Fair Labor Standards Act
- Americans with Disabilities Act
- Family and Medical Leave Act
- Anti-discrimination laws



Inquire about measures in place/recommend measures to:

- Prevent employee harassment and discrimination
- Respond to claims of harassment and discrimination



Understand city attorney's role in:

- Disciplinary proceedings
- Grievance hearings
- Employee appeals

On Practical Law: Employee Policies Handbook for State and Local Government Toolkit; Federal Anti-Discrimination Laws for State and Local Government Employers Toolkit

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Inner workings of the city

Complying with open records laws



Learn about process citizens can use to request public records

Verify that policy for dealing with records requests complies with state law, with appropriate timeframes for:

- responding to requests
- producing copies of records

Be ready to help decide:

- if city can charge for providing records and how to calculate fees
- which records are confidential and when information should be redacted

Monitor changes in open records laws and implement new procedures if necessary

On Practical Law: State Public Records Basics Toolkit

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BEING THE CITY'S TRANSACTIONAL LAWYER



City Hall – Austin, TX

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Being the city's transactional lawyer

Municipal contracts

- Review existing contract forms
  - Propose changes as needed
- USE CAUTION with standard contracts from vendors
  - Draft amendments or substitute another form
  - Avoid clauses requiring city to indemnify
- Gather best practice ideas by looking at contracts from other cities
- Know who should approve contracts and who should sign them

On Practical Law: Commercial Contracts for State and Local Government Toolkit; Capital Improvement Project Construction: State and Local Government Toolkit

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Being the city's transactional lawyer

Property acquisition and eminent domain

Learn:
- about pending property acquisitions and upcoming projects involving acquisitions

Understand:
- scope of power to condemn property and the process

Confirm:
- that the city meets all requirements for acquiring property from statutes and any applicable grant terms

Review:
- deed and easement forms to ensure they adequately convey interests the city needs

Verify:
- use of due diligence in searching titles and describing interest conveyed

On Practical Law: Purchasing and Selling Real Estate: State and Local Government Toolkit; Asserting Eminent Domain Toolkit

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ETHICS AND PROFESSIONALISM



Town Hall – Midway, UT

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Ethics and professionalism

The ethics of local government representation

Know state rules of professional conduct and:

- How they apply to municipal law
- Where to go for interpretation and guidance



Seek out CLE focused on ethics in representing local governments



Understand the challenges of representing the city as an entity and:



- When necessary, clarify your role to individuals who seek your advice
- Avoid letting personal loyalties interfere with acting in the city's best interests

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REUTERS / Kim Kyung-Hoon

Ethics and professionalism

Attorney's role as advisor

ABA Model Rules of Professional Conduct, 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.

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Ethics and professionalism

Ethical issues and conflicts involving officials and employees



- Know about ethical obligations on officials and employees, including:
  - State laws on conflicts of interest and financial disclosures for board members
  - Ethics codes adopted by the city
- Ensure there is a reliable procedure for responding to ethics complaints and questions
- Understand your role in investigating and interpreting

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THE REST OF THE JOB



City Hall – Brentwood, TN

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The rest of the job

The less obvious parts of being city attorney

Review your job description or employment agreement and ask about any items that are unclear

Review previous city attorney's files and memoranda

Clarify your role with the city manager, mayor, or others you work closely with

The rest of the job

Communicating effectively

Be:	• polite and tactful, but firm when necessary
Avoid:	• automatically defaulting to “no”
Know:	• your audience and tailor your communications
Use:	• plain English and avoid jargon and legalese
Provide:	• timely responses to emails and phone messages
Be prepared:	• to handle media inquiries about legal matters



On Practical Law: Effective Legal Writing Checklist

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The rest of the job

The power of networking

2024 Mid-Year Seminar
April 18-21, 2024 | Washington, D.C.
(Please note the new date pattern: Thurs-Sun)

89th Annual Conference
September 25-29, 2024 | Orlando, FL

2024 Kitchen Sink
40+ distance learning events spread throughout 2024

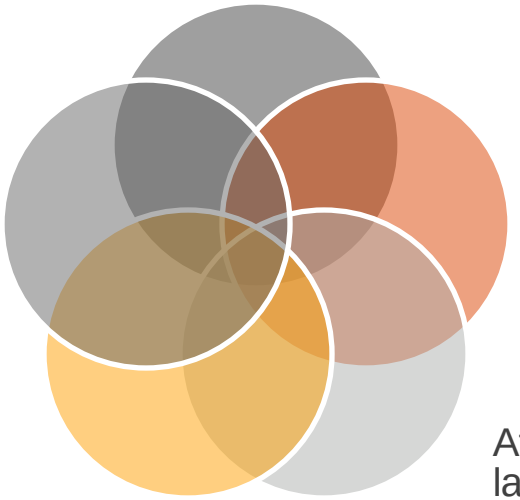


Click me!

Get to know nearby municipal lawyers

Know about the resources and events your state's municipal league offers

Join IMLA and state association for city attorneys



Participate in email listservs for municipal lawyers

Attend municipal law conferences and seminars

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A day in the life of the city attorney*

The plan



- Agenda preparation
- Small cell system proposal
- Personnel rules update

* Not an actual day but a hypothetical example that may seem familiar to many city attorneys.

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A day in the life of the city attorney

8:00 a.m.

- Arrive at office ready for the day!
- Look over calendar, review appointments
- Check emails; respond as needed
- Start on agenda prep



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A day in the life of the city attorney

8:20 a.m.



- Call from a council member
- Concerned about the city's policy on invocations at meetings
- Religious leaders are invited to sign up
- Next week's volunteer has been critical of city
- Can we skip over them or tell them what not to say?
- Call lasts 20 minutes, then back to agenda prep

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A day in the life of the city attorney

9:00 a.m.

- Scheduled call with outside counsel
- They represent city in false arrest claim
- Review discovery responses/discuss strategy
- Call takes up most of the hour, then check emails and return to agenda prep



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A day in the life of the city attorney

10:10 a.m.



- Library director calls
- Unsheltered members of the community use library during the day
- One of them is bathing in the public restroom; patrons are complaining
- Call lasts 20 minutes, then check emails and return to agenda prep

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A day in the life of the city attorney

11:00 a.m.

- Follow up on an email from code enforcement staff
- There's an illegal short-term rental
- Can you review the notice of violation letter?
- It's confusing, cites the wrong code sections, and has a lot of typos
- You rewrite it
- 30 minutes later, check emails and return to agenda prep



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A day in the life of the city attorney

11:45 a.m.



- Kevin knocks on the door
- Can he ask a “quick” question?
- Homeowner has a turkey
- City code allows backyard chickens but doesn’t mention turkeys
- Shed also violates setbacks; previous owner built it without getting approval
- New owner wants a variance for shed
- Mentioned they’re best friends with a board member

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A day in the life of the city attorney

12:30 p.m.

- Grab lunch out of fridge
- Eat at desk, catch up on news



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A day in the life of the city attorney

12:40 p.m.



- Knock, knock – it's the HR director
- Sorry to interrupt your lunch!
- There's a possible same-sex harassment case at Parks & Rec

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A day in the life of the city attorney

1:15 p.m.

- Insurance claim rep calls
- Handling liability claims about a ruptured water line
- Wants details
- Your first time to hear about it
- Follow up with water department, get facts, call insurance rep back
- 45 minutes later, check emails and return to agenda prep



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A day in the life of the city attorney

2:30 p.m.



- Scheduled meeting with public works director and outside counsel
- Review status of pending eminent domain cases
- Which ones do we want to settle?
- Meeting lasts an hour, then back to emails and agenda prep

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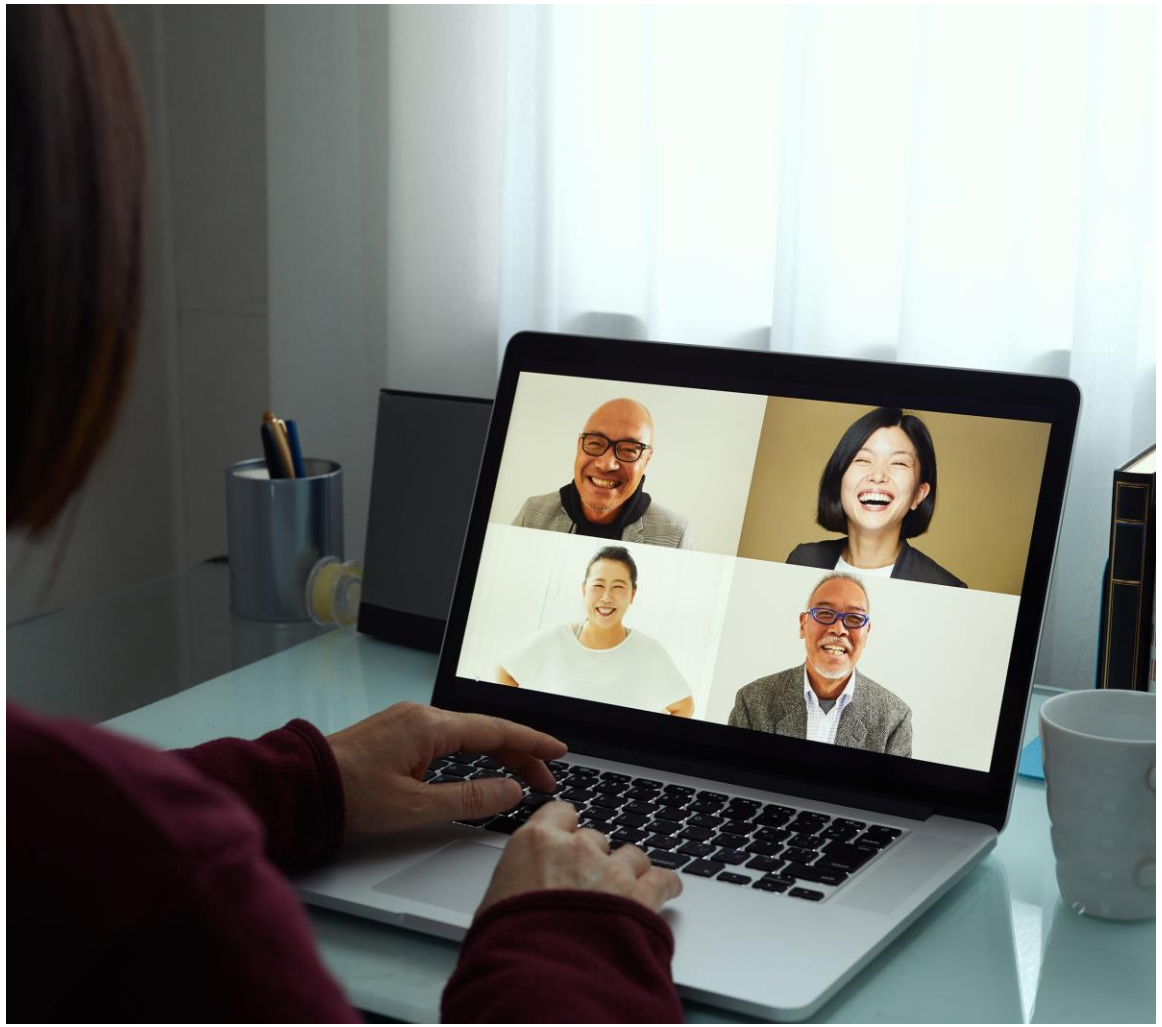
A day in the life of the city attorney

4:00 p.m.

- Conference call with city manager, finance director, outside bond counsel
- Topic: upcoming bond issuance
- Call lasts 30 minutes; then return to emails and agenda prep



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A day in the life of the city attorney

5:00 p.m.



- Go watch the end of your child's soccer practice
- Quick dinner with the family
- Back to City Hall for Planning Commission meeting

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A day in the life of the city attorney

6:55 p.m.

- On your way into the meeting room, planning director calls you aside
- Can you be ready to talk about RLUIPA and how it affects this proposal for a megachurch addition?



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A day in the life of the city attorney

9:15 p.m.



- Planning Commission ends
- Go home
- Early meeting tomorrow
- Never got to small cells or personnel rules

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Practical Law Resources

Practice notes

- New Municipal Attorney Essentials
- Comprehensive Plans: Overview
- Free Speech Limitations on Government Regulation: Overview
- Local Government Zoning and Land Use Regulation: Overview
- Municipal Water and Wastewater Service: Overview
- Advising Planning and Zoning Commissions
- Contract Drafting or Review for Local Governments
- Legal Issues in Municipal Finance
- Sovereign Immunity of State and Local Governments in State Courts

Checklists and flowcharts

- Enforcing Zoning Regulations and Property Codes Checklist
- Governmental Processes for Land Development Flowchart
- Local Government Counsel's Role in Zoning Matters Checklist

Toolkits

- New Local Government Attorney Toolkit
- Asserting Eminent Domain Toolkit
- Capital Improvement Project Construction: State and Local Government Toolkit
- Employee Policies Handbook for State and Local Government Toolkit
- First Amendment Compliance for Government Attorneys Toolkit
- Local Government Ordinances Toolkit
- Purchasing and Selling Real Estate: State and Local Government Toolkit
- Residential Zoning for Local Government Toolkit
- Section 1983 Toolkit

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