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Best Practices for and Effective City Council-City Attorney Relationship

Tip #1: Lawyers often disagree but there can be only one City Attorney. In my experience, it is not unusual for lawyers not on the City payroll to provide their legal input on public policy issues directly to councilmembers. I have had a long-standing policy of welcoming legal input from any attorney who is willing to share his or her opinion with me. I have always encouraged councilmembers to forward such communications directly to me for follow-up. Being willing to listen to other opinions does not mean that I am willing to accept another attorney's legal opinion as my own for political expediency. I have been in practice now for almost 30 years and have a very established public track record of providing sound legal advice to my elected officials and public administrators. Ultimately, I rely on a broad range of legal resources and experience in arriving at my legal conclusions. As the duly appointed City Attorney, I understand and welcome the fact that I will be held publicly accountable for my legal advice and counsel.

Tip #2: The City Attorney may have 12 bosses but has only one client: The City.

- The City Attorney's legal and ethical obligations are owed to the City rather than an individual councilmember.
- Confidential information shared with the CA cannot be kept from other councilmembers.
- When the Council is divided on a matter of policy, CA's duty is to provide fair and balanced legal advice to all sides.
- Council direction to the City Attorney ultimately comes from will of the majority on Council.

Tip #3: Inserting the City Attorney into Council policy debates is not good for anybody. While it may be tempting to lean on the City Attorney to fashion legal advice or agree to a creative interpretation that more favorably supports your particular policy objective, any legitimate criticism on the objectivity and integrity of the advice of the City Attorney will unnecessarily undermine the ultimate decision and authority of the City Council … and the City Attorney. This also applies to the City Attorney who voluntarily inserts himself into a policy debate through biased or slanted legal advice. The role of the City Attorney at times is analogous to the role of the home plate umpire calling balls and strikes. Over the course of a game, there will be some very close calls that directly affect the outcome of an at bat or a game. Some people will be disappointed with those calls, but most reasonable fans and players will more readily accept the outcome if the umpire has a reputation for having a fair and impartial strike zone. But the integrity of the game and the umpire is called into question when the umpire appears to be under pressure (from a team or self-imposed) to make calls in favor of one team over another.

Tip #4: Consult the City Attorney at the earliest opportunity. The sooner the CAO is consulted on a matter, the sooner we can understand the goals and objectives of the client and begin to research and map out a legal strategy to accomplish those goals. On the reverse side, that legal research may lead to the conclusion that the goal or objective cannot be legally accomplished. In either case, it is far better to know your legal options sooner rather than later.

Tip #5: The Council meeting is NOT the time for your 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" either before the meeting or if the question comes to the CA during the meeting, allow the CA to provide the response "offline".

Tip #6: Give the City Attorney adequate time to research issues and answer questions. Some questions may seem simple enough, especially to an individual who is unfamiliar with all the tenants of municipal law. The reality however is that some of these simple questions are in fact somewhat complicated or multi-faceted. I have often needed to question the questioner to elicit important background facts to provide a more accurate and complete answer. It is never our intent to unnecessarily delay matters but there are times when a request for time to research the matter and get back to you is the most appropriate answer.

Tip #7: Always disclose all pertinent facts and objectives. The more information I have from you about a particular matter, the more timely, accurate and complete response I can provide for you.

Tip #8: Recognize that a concrete answer is not always possible when the law is not clear cut. While it would be preferable for all legal inquiries to result in simple and clear answers, the reality is that laws are interpreted and reinterpreted by trial and appellate courts on a daily basis. When the law is clear, I will not attempt to make it more complicated for you. When the law is not clear, I will endeavor to identify the best legal options and the potential risks associated with those options to allow you to make the most informed decision possible.

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

- When the legal authority to support a particular policy directive is unclear, the City Attorney will conduct a legal risk analysis to provide the Council with the City Attorney's best educated guess as to whether the policy could withstand a legal challenge.
- City Attorney should have a relationship with councilmembers in which the City Attorney is free to share with them the relevant information they need to know rather than just what they want to hear.
- Legal risk tolerance is a subjective balancing act between a desired policy objective and the potential negative impact of a successful legal challenge against the policy.
- City AAttorney's duty is to provide the necessary and relevant legal advice. The Council majority ultimately determines whether to proceed in light of the identified risk.
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Tip#10: Disliking the City Attorney's advice doesn't make it *bad* advice.

- We can't always be the bearers of good news.
- Our ethical obligation as attorneys sometimes necessitates that we provide counsel or advice that the client does not want to hear.
- Can't always tell you what you want to hear. I have a legal duty to tell you what you need to hear.

Bonus Tip: Understand that the City Attorney is an independent and objective legal advisor for the entire City Council. An early mentor once told me, "Patrick, don't tell me what I want to hear, tell me what I need to hear." While it is always preferable for the attorney to bring good news to the client, there are times when that is not possible and/or not in the client's best interest. While I would not expect a client to enjoy receiving bad news, it is important to respect that the ethical obligation owed to the client may require the attorney to provide counsel or advice that the client does not want to hear. This also arises in situations in which the outcome of competing policy decisions or objectives may hinge on the attorney's legal advice. In all such situations, I will always follow the law and provide my best reasoned legal advice based on an objective reading of the law. I do recognize that there may be times when my legal opinion may effectively determine the outcome of a policy debate. It is my hope that all will understand that I do not use the delivery of my legal opinions to pick and choose winners and losers among councilmembers.