

New Municipal Attorney Checklist

by Practical Law Government Practice

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A Checklist on steps a new municipal attorney should take to acclimate to the attorney's role in local government. This Checklist addresses the unique combination of responsibilities and expectations that a typical city attorney faces. It includes guidance on topics such as local government structure, public meetings, municipal codes, municipal liability issues, municipal finance, and ethics for government attorneys.

Learn About the City's Geographical and Cultural Landscape

- Explore the city by driving around or using public transit if available and getting to know its neighborhoods.
- Consider asking long-time employees from various departments to serve as guides and provide context.
- Visit the locations of municipal facilities, such as:
 - police and fire stations;
 - public works and utility facilities; and
 - parks.
- Develop an understanding of:
 - the city's history;
 - the demographics that shape the population, including how they are changing; and
 - tensions within the community and political dynamics that influence decisions.

Understand the City's Governmental Structure and the Scope of Its Authority

- Know the powers the city has under state law and the restrictions on those powers, including whether the city is:

- a **home rule** city with authority to act in any way not inconsistent with the state constitution, state law, or the city's charter; or
- a **Dillon's Rule** (sometimes called general law) city, limited to actions that are expressly authorized by state law, reasonably necessary or implied by law, or essential and indispensable to accomplishing the municipality's purpose.

For more on these categories of cities, see [Practice Note, Preemption Basics for Local Government: Box, Types of Cities](#).

- Read the city's charter. Understand the structure it sets up for the city government and whether the charter is:
 - a home rule charter, with the city having more authority to amend its own charter;
 - a private act or special act charter that typically applies only to one city; or
 - a model charter, created under state law, with amendments also requiring state legislative approval.

For further discussion of city charters, see [Practice Note, New Municipal Attorney Essentials: Municipal Charter and Form of Government](#).

The Governing Body and the Mayor

- Learn about the makeup of the governing body and how it functions, including whether members:
 - represent designated districts or serve the city at large; and
 - serve staggered terms or concurrently with the other members.
- Know about the office and authority of the mayor (or other chief executive), including how the mayor is selected and whether the mayor has:
 - "strong mayor" powers, such as acting as the city's chief executive officer and appointing persons to serve in key administrative positions; or
 - more limited powers, such as presiding over governing body meetings and signing official documents.
- Understand the mayor's voting privileges regarding actions taken by the governing body and whether the mayor:
 - has the same voting privileges as other governing body members;
 - votes only when there is a tie; or

- can veto certain actions taken by the governing body.
- Know about the office of the vice mayor (sometimes called mayor *pro tem*), including:
 - how the vice mayor is selected; and
 - whether the vice mayor has any authority or duties other than acting as mayor if the mayor is absent or vacates the office.
- Learn about other miscellaneous powers and duties that state law grants to mayors and governing body members (such as the authority to solemnize marriages that some state laws grant to local elected officials).

Official Actions of the Governing Body

- Know how to distinguish between decisions and actions that:
 - require governing body approval;
 - the mayor can carry out independently; or
 - staff can carry out administratively.
- Know which proposed actions by the governing body require:
 - an **ordinance**;
 - a resolution; or
 - voice vote only.
- When drafting or reviewing proposed ordinances and resolutions for governing body consideration, confirm that they are:
 - within the city's authority;
 - consistent in formatting and terminology with other actions; and
 - compatible with existing provisions in the city's municipal code (see [Understand the Municipal Code and How the City Enforces It](#)). If an ordinance is replacing or amending existing code provisions, ensure that it clearly states the city's intentions.

For further guidance on drafting municipal ordinances, see the resources in the [Local Government Ordinances Toolkit](#).

- Know the required process for official governing body actions, including:
 - any requirements for public notices and hearings; and
 - the required voting procedure (see [Procedural Rules](#)).
- Review any amendments considered while an action is pending to make sure:
 - they are properly worded and fit with the existing text; and
 - the board follows the proper procedure for adopting amendments.
- Understand whether individual governing body actions are legislative, administrative, or quasi-judicial, which can dictate the method of appeal and the standard of review if an action is challenged in court.

Other Municipal Bodies and Elected Officials

- Learn about the city's other boards, commissions, and committees, including:
 - how they are set up and how members are appointed and removed;
 - the scope and extent of their authority; and
 - when they have final decision-making powers and when they act in an advisory capacity to the governing body or other boards.

For specific guidance on boards that handle planning and zoning issues, see [Practice Notes, Local Government Zoning and Land Use Regulation: Overview: Municipal Body Enforcement and Implementation and Advising Planning and Zoning Commissions](#); also see [Learn How the City Approaches Land Use and Zoning Issues](#).

- Know about any elected officials other than the mayor and governing body members and understand their powers and duties.

Understand How the City's Public Meetings Work

Meeting Agendas

- Review past agendas to understand how the order of business before a board typically proceeds.

- Learn about the process for developing agendas and compiling agenda packages, including:
 - the attorney's role in assembling and reviewing agenda package materials; and
 - the attorney's ability to pull matters from the agenda when they do not meet legal requirements for consideration by the board.

For more on this topic, see [Practice Note, New Municipal Attorney Essentials: The Agenda](#).

Procedural Rules

- For its board meeting procedures, determine whether the city relies on:
 - Robert's Rules of Order;
 - an adaptation of Robert's Rules of Order, supplemented by state laws or local rules that address some procedural issues; or
 - alternative procedural rules, possibly supplemented by state laws or rules specific to a board.
- Be ready to:
 - give advice on procedural matters; and
 - suggest new procedural rules for matters where current rules are insufficient or do not serve the city well.
- If a city board has no formal procedural rules for its meetings, consider drafting and proposing rules for the board's adoption.
- Know the quorum requirements for holding city board meetings and how many members must be present.
- Understand the voting requirements for various types of board actions (including the mayor's voting privileges; see [The Governing Body and the Mayor](#)) and distinguish between actions that require:
 - a majority vote of the members who are present, or 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.

- Know whether state law allows city boards to conduct meetings electronically or to allow electronic participation. If the city chooses to hold virtual meetings or allow virtual participation, confirm that the city follows applicable statutory requirements. For guidance on conducting virtual public meetings during a pandemic, which may also have general applicability for other situations, see [Holding Virtual Municipal Public Meetings During the COVID-19 Emergency Checklist](#).

Public Hearings and Comment Periods

- Learn about:
 - any statutes, local policies, or traditions that allow citizens to make comments during city board meetings; and
 - any matters for which the city specifically invites citizens to comment at a designated public hearing by law, policy, or tradition.
- Understand the rules that apply to citizen comments at board meetings, including rules that:
 - limit comments to specific times during a meeting; and
 - set time limits for each person's comments.
- Verify that meeting procedures and restrictions on citizen participation at public meetings comply with First Amendment free speech and Fourteenth Amendment due process guarantees.

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

- Learn about the expectations city boards have for the city attorney's participation at their meetings. Beyond answering questions about procedural matters or legal issues about proposed board actions, it may be a board's practice for the attorney to:
 - give a report on pending legal matters affecting the board or facing the city in general; and
 - provide presentations on the legal aspects of specific business items.

Open Meetings Requirements

- Verify that the city's governing body and other boards follow applicable state open meetings laws, including:
 - making all meetings open to the public, except when the law allows exceptions for closed sessions (sometimes referred to as "executive sessions");
 - providing advance notice of upcoming meetings to the public as required by law; and
 - avoiding the use of electronic communications to sidestep the law.

For more on this topic, see [Practice Note, New Municipal Attorney Essentials: Open Meetings Laws](#).

Understand the Municipal Code and How the City Enforces It

- Become familiar with the city's municipal code and be ready to respond when there are complaints and questions about possible code violations.
- Know the process for updating the municipal code and ensure that code amendments:
 - go in the right place within the code;
 - do not conflict with existing language; and
 - are consistent in style, formatting, and spelling of terms.
- When interpreting and applying the municipal code, remember that there may be recently passed ordinances that amend the code but are not yet codified.

Code Enforcement

- Learn about the most common types of violations that code enforcement staff handles, along with their enforcement strategies.
- Know the penalty and remediation options available to the city for code violations, including:
 - the code's general penalty clause that applies unless a specific code provision includes separate penalty language;
 - the types of violations for which the code sets higher or lower penalties than the penalty that would otherwise apply under the general penalty clause;
 - whether the city can impose a separate penalty for each day an ongoing violation continues; and

- any limitations on penalties under state law.
- Know the process for issuing citations for code violations and summoning alleged violators to court (see [Municipal Court](#)).
- Understand any authority the city may have to impose administrative fines or remediation options for code violations without going to court.

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

Learn How the City Approaches Land Use and Zoning Issues

- Study the city's comprehensive plan for guidance on the city's vision for future growth and development (see [Practice Note, Comprehensive Plans: Overview](#)).
- Review the city's zoning ordinance and understand the purposes and allowed uses for each zoning district.
- Understand the scope of authority over land use and zoning under state law, local rules, and custom for:
 - the governing body;
 - the planning commission, zoning board, or other city boards that deal with land use, zoning matters, and subdivision plat approval; and
 - staff members with administrative authority to deal with some land use matters.
- Know about federal and state laws and constitutional guarantees that may affect zoning and land use practices.

For further detail and links to additional resources on this topic, see [Practice Note, New Municipal Attorney Essentials: Land Use and Zoning](#).

Learn About Municipal Liability Issues and How the City Handles Litigation

Municipal Liability and Risk Management

- Review the history of recent claims against the city and the status of pending claims to comprehend the types of legal claims the city faces.
- Know how state tort liability laws work, including:

- when sovereign immunity applies and the types of claims for which immunity is waived; and
- caps on the amount of damages plaintiffs can receive 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 claims other than tort claims, including violations of federal constitutional or statutory rights under Section 1983 ([42 U.S.C. § 1983](#)) (see [Section 1983 Toolkit](#)).
- Learn about the risk management protocols and responsibilities that are in place and determine where the city needs to improve.
- 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](#).
- Know the measures the city takes to address cyber risks and the plans in place to deal with cyber incidents if they occur. For further guidance, see [Cybersecurity for Local Government Checklist](#) and [Cyber Incident Response for Local Government Checklist](#).

The City Attorney's Role in Litigation

- Know the extent of involvement of the previous city attorneys in the city's litigation and the city's current expectations for the city attorney's involvement in its litigation.
- Even when the city handles some or most litigation in house, know when the city should hire outside counsel for matters outside the scope of in-house staff's experience or expertise.
- When the city uses outside counsel for litigation:
 - determine whether and to what extent the city's insurance covers legal defense costs (see [Practice Note, New Municipal Attorney Essentials: When Insurance Covers Defense Costs](#));
 - be comfortable with the abilities of counsel representing the city;
 - keep up to date on the status of the litigation and assist with developing the city's legal strategy; and
 - establish the city attorney's role in matters such as assembling responses to discovery requests, attending mediations or court proceedings, and weighing in on settlement proposals.
- Provide periodic updates on the status of pending litigation to the city's administration, governing body, and other city boards affected by the litigation.

Administrative Proceedings

- If the city is a party to a hearing before a federal or state agency, understand how the proceedings work and:
 - be prepared to provide effective representation; or
 - if the city uses other counsel, keep up with the status of the matter and assist as necessary.

Municipal Court

- Know how the city's municipal court works and whether it handles any matters other than violations of municipal code regulations (see [Practice Note, New Municipal Attorney Essentials: Municipal Court](#)).
- If the city attorney represents the city in its municipal court:
 - be ready to prosecute municipal code violations, including preparing staff members to be witnesses; and
 - know the procedural and evidentiary rules that apply.
- Understand how the process for appealing municipal court decisions works.

Learn About the Inner Workings of the City

Getting to Know the Organization

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

Municipal Finance

- Study the city's:
 - operating and capital budgets and learn about the process for preparing and adopting them; and

- annual comprehensive financial report for information on where the city gets its money, how it spends its money, and its overall financial condition.
- Understand:
 - the various types of taxes and fees the city imposes;
 - the limitations on how the city can spend revenues collected from taxes and fees; and
 - the collection process for delinquent taxes and fees, including any applicable interest charges and late payment penalties.

For further information on what the city attorney should know about the city's finances, see [Practice Note, Legal Issues in Municipal Finance](#).

Municipal Debt

- Learn about debt obligations the city uses to finance construction projects and other major expenditures.
- Get to know outside counsel the city uses when it issues municipal bonds. Seek bond counsel's guidance in understanding:
 - the city's legal responsibilities surrounding issuing, paying, and reporting on bonds or other debt instruments; and
 - the city's attorney's role in the issuance of municipal debt, which typically includes providing a formal opinion on the city's compliance with various legal requirements.

For more on the issuance of government bonds, see [Practice Note, Government Bonds: An Introduction to Issuing Government Bonds for State and Local Government Attorneys](#).

Purchasing Regulations

- Become familiar with purchasing requirements that apply to the city, including those from:
 - state law;
 - the city's charter, code, and policies;
 - bond covenants and terms of other debt obligations; and

- terms of state and federal grants used to finance municipal programs and expenditures.
- Be ready to help interpret applicable purchasing rules when necessary and to question proposed purchases that appear to be noncompliant.
- Know who has authority to approve different levels of purchases. For example, be able to distinguish between expenditures requiring the approval of:
 - the governing body;
 - the city manager, mayor, or other chief executive; or
 - a department head or other manager.
- Understand the city's bidding process, including:
 - the thresholds that require the city to solicit bids for purchases over certain amounts; and
 - the exceptions that allow the city to make some purchases that exceed the bid threshold without receiving bids.
- Review bid specifications, requests for proposals, and award recommendations as necessary to verify that the city is following required procedures.

Public Utilities

- Know the utility services the city provides and where its utility service boundaries are.
- Develop an understanding of the infrastructure supporting the city's utilities and how the city delivers services to its utility customers.
- Learn how the rate-setting process works and ensure the city follows required procedures for setting and changing utility rates.
- Understand any regulatory role the city performs over utilities provided by other entities.

For further detail and links to related resources, see [Practice Note, New Municipal Attorney Essentials: Public Utilities](#).

Employment Law in the Municipal Setting

- Study the city's personnel rules and regulations, look for any potential legal problems, and make appropriate recommendations for changes.
- Learn about federal and state laws and regulations that apply to local government employers.
- 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.
- Develop an understanding of the city attorney's role in disciplinary proceedings, grievance hearings, and employee appeals.

For further detail on this topic, see [Practice Note, New Municipal Attorney Essentials: Employment Law in Local Government](#).

Complying with Open Records Laws

- Learn about the process citizens can use to request access to public records and the city's process for responding to requests.
- Review the city's policy describing how the city deals with records requests to verify that it complies with state statutory requirements. If there is no written policy, or if the current policy needs revisions, help develop a policy that complies with the law and includes appropriate timeframes for:
 - responding to records requests; and
 - producing copies of records.
- Be ready to help decide:
 - whether the city can charge a fee for providing records to a citizen and, if so, how to calculate the fee; and
 - which records are confidential by law and when records custodians should redact confidential information from a record rather than denying access to the record.
- 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](#). For a collection of other resources on state public records laws, see [State Public Records Basics Toolkit](#).

Represent the City as Its Transactional Lawyer

Municipal Contracts

- 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. If necessary, draft amendments to a vendor's contract form or substitute another contract altogether.
- Avoid or eliminate any contract clauses requiring the city to indemnify other parties.
- Look at contracts other cities use for similar purposes to gather ideas for best practices.
- Know the statutory requirements pertaining to interlocal agreements with other government entities.
- Know the approval process for entering into contracts and be able to distinguish between contracts that require:
 - governing body approval; or
 - administrative approval only.
- Know who should sign contracts on the city's behalf, as prescribed by the city's charter, code, or local policies.

For further detail and guidance and links to related resources, see [Practice Note, New Municipal Attorney Essentials: Municipal Contracts](#).

Property Acquisition and Eminent Domain

- Learn about any pending property acquisitions and upcoming projects that involve new acquisitions.
- Know the extent of involvement of the previous city attorneys in property acquisitions and eminent domain matters and the city's current expectations for the city attorney's involvement.
- For all property acquisitions, confirm that the city meets:
 - all statutory requirements; and
 - the requirements of any state or federal grants that provide funding for the acquisitions.

- Verify that the city uses due diligence in searching property titles and describing the property interest to be acquired.
- Review the deed and easement forms the city uses and ensure they adequately convey the interests the city needs for its project.
- Even if the city uses outside counsel for eminent domain matters, understand the scope of the municipality's power to condemn property and the process for exercising eminent domain.

For further details and links to related resources, see [Practice Note, New Municipal Attorney Essentials: Property Acquisition and Eminent Domain](#).

Model and Promote Ethics and Professionalism

The Ethics of Local Government Representation

- Be familiar with your state's rules of professional conduct for lawyers and know:
 - how to apply them to the practice of municipal law; and
 - where to go for interpretations and guidance on the rules.
- Seek out continuing legal education opportunities focused on ethical issues in representing local government entities.
- Understand the challenges of representing the city as an entity, as opposed to any individual or group, and:
 - when an individual seeks advice on a matter in which their interest is adverse to the city, advise that you represent the city and cannot discuss the matter with them further; and
 - avoid letting loyalty to a city manager, mayor, board member, or other individual interfere with acting in the city's best interests.

For further details and links to related resources, see [Practice Note, New Municipal Attorney Essentials: Applying Ethics Codes to Local Government Representation](#).

Ethical Issues and Conflicts Involving Officials and Employees

- Know the laws, regulations, and internal policies that impose ethical obligations on municipal officials and employees, such as:
 - state laws requiring board members to file financial disclosure reports or disclose potential conflicts of interest;

- laws prohibiting officials and employees from having a direct financial interest in contracts with the municipality; and
 - ethics codes adopted by the city itself to set standards for officials and employees.
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- Verify there is a reliable procedure for responding to ethics complaints and questions and understand your role in investigating and providing interpretations.

For more on this topic, see [Practice Note, New Municipal Attorney Essentials: Weighing in on Ethical Issues and Conflicts Involving Officials and Employees](#).

Learn the Rest of the Job

- Prepare yourself for the less obvious parts of being the city attorney by:
 - reviewing your job description or employment agreement and asking about any parts that are unclear;
 - reviewing the previous city attorney's files and memoranda; and
 - clarifying your role with the city manager, mayor, or others with whom you work closely.

Communicating Effectively

- Practice effective and persuasive advocacy for the city in written and oral communications by:
 - being polite and tactful, but firm when necessary;
 - avoiding automatically defaulting to "no" and seeking out potential solutions instead of throwing up roadblocks;
 - knowing the audience and tailoring communications accordingly; and
 - using plain English and avoiding jargon and legalese.

For additional guidance on written legal communications, see [Effective Legal Writing Checklist](#).

- Provide timely responses to emails and phone messages, even if only to acknowledge receipt and request more time to respond.
- Be prepared to handle media inquiries about legal matters involving the city. Consider seeking training opportunities or advice from communications experts about media relations.

Using the Power of Networking

- Get to know municipal lawyers in neighboring and nearby cities.
- Maintain contact with the previous city attorney if practical.
- Join state and national associations for municipal lawyers.
- Attend conferences and seminars focused on municipal law.
- Participate in email listservs that discuss municipal law topics.
- Become familiar with the resources and events offered by your state's municipal league.