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League of California Cities Legal Advocacy Program Guidelines January 2019

The League of California Cities (“League”) and the City Attorneys’ Department of the League (“Department”) have established the Legal Advocacy Program. The program is administered by the Legal Advocacy Committee (“LAC”). The LAC adopts these Guidelines pursuant to the Legal Advocacy Committee Policy adopted by the Board of Directors of the League (“Board”) in July 2003, and these Guidelines supercede and replace any prior guidelines.

I. LEGAL ADVOCACY COMMITTEE

A. Composition

The LAC shall be composed of city attorneys of cities within California. One LAC member shall be selected from each of the Regional Divisions of the League, exclusive of the cities of Los Angeles, San Diego, San Francisco and San Jose, for each of which a member shall be appointed by the President of the Department, in consultation with the other department officers.

The following division representatives shall be appointed in even numbered years: Central Valley, East Bay, Imperial County, Los Angeles County, North Bay, Orange County, South San Joaquin Valley, Riverside and Desert-Mountain Divisions. The following division representatives shall be appointed in odd-numbered years: Channel Counties, Inland Empire, Monterey Bay, Peninsula, Redwood Empire, Sacramento Valley and San Diego County. If any additional divisions are created a representative shall be appointed from that division. The first such appointment shall be made in odd-numbered years with any additional divisions alternating between even-and odd-numbered years so one half of the LAC can be appointed each year. All division LAC members shall serve for a period of two years.

The division representatives should be sitting city attorneys. In certain circumstances, the President may appoint an assistant or deputy city attorney in place of a city attorney. The President may only consider an assistant or deputy who has substantial experience in the practice of municipal law; who has been recommended by one or more city attorneys within their division; and who has the support of his or her City Attorney or of his or her law firm’s managing attorney. Examples of “certain circumstances” are where the sitting city attorneys for all cities within a division have previously served on the LAC, or if no sitting city attorneys within a division who have not previously served on the LAC have expressed an interest to serve on the LAC.

The City Attorney, or an assistant or deputy who may be designated by the City Attorney from time to time, of the cities of Los Angeles, San Diego, San Francisco and San Jose, shall serve as permanent members of the LAC.

The officers of the Department shall serve as ex-officio members of the LAC without the right to vote. However, ex-officio members may be counted for purposes of determining the presence of a quorum.

The LAC shall select from among its members a chairperson who shall serve for a period of one year. The chairperson shall be selected each year at the last meeting of the LAC prior to the expiration of half of the LAC members' terms.

B. Meetings

The LAC shall meet quarterly on a mutually convenient day as determined by League staff and the LAC chairperson.

Special meetings may be called by the LAC chairperson or President of the Department.

At any regular or special meeting, a majority of the LAC members shall constitute a quorum. No proxy votes shall be permissible at any LAC meeting. Although strongly discouraged, a member, with the chairperson's prior permission, may participate in a meeting by teleconference, and may be counted toward the quorum. Except under extraordinary circumstances, permission to attend by teleconference is limited to those situations where the member is needed to make a quorum of members, or where the member is responsible for presenting an application on behalf of his or her division. It is the member's sole responsibility to inform the chairperson and League staff of the member's need to participate by teleconference sufficiently far in advance to allow staff to arrange for teleconferencing equipment to be available.

II. DUTIES OF LAC MEMBERS AND CITY ATTORNEYS

A. Information Collection

1. Division LAC members are responsible for keeping informed of all litigable issues arising within their Division and for identifying those cases and opinions of the Attorney General that are of such significance on a statewide basis as to merit the collective investment of city and League resources.

2. City attorneys are responsible for providing on a regular basis to their LAC member, information concerning such cases pending by or against their city or other public agencies within their knowledge.

B. Transmittal to Committee¹

1. Division LAC members are responsible for having the city or other attorney litigant convey to the League, in such manner as may be directed by League staff from time to time, all pertinent information concerning such issue or case so coming to the member's attention.

2. League staff will accept a request from a city or other attorney litigant for League participation in litigation as *amicus curiae*, and will convey the request to the LAC for consideration according to these Guidelines, if the request is submitted to the League in a timely manner. League staff will determine whether a request is timely based on the following factors:

- a) whether there is adequate time to process and prepare the request for timely submittal to the LAC and the Executive Director under these Guidelines;
- b) whether there is an applicable rule of court or any order, briefing schedule or request from the court indicating that the court will accept an amicus letter or brief from the League; and
- c) whether there is adequate time to prepare and file any approved amicus letter or brief in the matter while meeting the applicable filing deadline imposed under the rule of court or any order, briefing schedule or request from the court. The League will not file a late letter or brief unless the court indicates that it will be accepted.

However, League staff may determine after consulting with the Chair that an amicus request concerns an issue or case of such critical importance to cities that the LAC should consider the matter regardless of the timeliness of the request. Upon making that determination, staff will process the request and transmit it to the LAC if reasonably possible under the circumstances.

¹ From the League Board's perspective, knowing whether the public agency governing body supports the appeal and seeking League assistance are important threshold considerations. (Source: April, 2000 Board Discussion).

III. REGULAR LAC ACTIONS

A. Authorized Actions

Upon receipt of information concerning a legal issue of major significance to cities, the LAC, or the Executive Committee to the extent authorized in these Guidelines, may take or recommend such actions as they deem advisable (“Authorized Action”) including without limitation any of the following:

1. Send a case out for information to all City Attorneys indicating that while it is the LAC's opinion that the case is not of statewide significance to all or a substantial amount of cities (e.g., charter cities) warranting League involvement, the case may be of interest to individual cities;
2. Approve *amicus curiae* appearance by brief or other argument by a city or public attorney on behalf of all cities consenting, select or recommend an attorney to prepare the case, select an attorney to supervise the preparation of the brief, and urge participation in such case by all cities;
3. Approve direct participation by the League in accordance with section IV of these Guidelines;
4. Authorize a letter to be sent to either (a) seek or oppose court review of a certain decision, or (b) seek or oppose publication or decertification from publication of a certain court's opinion;
5. Approve the instigation or defense of litigation by the League or by participating cities;
6. Authorize a letter or brief to seek or oppose court rehearing of a certain decision; or
7. Authorize a letter to be sent in response to a request for input on a proposed opinion of the Attorney General.

B. Votes Required for Action

Except as otherwise required in section IV.C. of these guidelines, all actions of the LAC shall require a majority of a quorum of the current members of the LAC. LAC meetings shall be governed by these Guidelines and, where not in conflict with these Guidelines, by Rosenberg’s Rules of Order. Physical attendance at an LAC meeting shall be required for purposes of voting, except as may be permitted under Guidelines section I.B.

IV. DIRECT LEAGUE PARTICIPATION VS. URGING INDIVIDUAL CITY PARTICIPATION

A. Factors to Consider

The LAC may urge that any of the Authorized Actions be taken in the name of the cities choosing to participate in such action (“Individual City Participation”), subject to approval by the Executive Director. Alternatively, the LAC may recommend that any Authorized Actions be taken in the name of the League (“Direct League Participation”), subject to approval by the Executive Director, unless the recommendation falls under IV. C, in which case the League Board’s approval is required. In deciding whether to urge Individual City Participation, or to recommend Direct League Participation, the LAC may consider the following non-exclusive list of factors:

1. The degree to which the issues involved in the matter affect the funding sources of cities, local control, judicial deference to local government determinations, or other identifiable interests of California cities. To the extent such issues are involved, Direct League Participation may be warranted;
2. Whether there are any California cities that have an interest adverse to the interests that would be advocated as part of the Authorized Action. To the extent that there are cities with adverse interests, Direct League Participation may not be warranted. However, notwithstanding anything to the contrary in these guidelines, in all such cases where the LAC determines that one or more California cities have an interest adverse to the recommended Authorized Action, then the matter shall be referred to the League’s Executive Director with the LAC’s recommendation. The Executive Director may refer the case to the League’s Board of Directors as he or she deems appropriate. Where the League is being asked to support a party that is adverse to a city plaintiff or defendant, League staff, upon consultation with the chairperson, may decline to agendaize the request;
3. Whether the issue that is the subject of the Authorized Action would have a statewide significance. To the extent the issue is of statewide significance, Direct League Participation may be warranted;
4. Whether the issue that is the subject of the Authorized Action is one in which all cities have a common interest in the same outcome. To the extent all cities have such common interest, direct League Participation may be warranted;

5. Whether the issue would have a significant impact on a significant number of cities that have a common interest in the same outcome and would not have a foreseeable adverse impact on other cities. To the extent that an issue only affects a limited number of cities, Direct League Participation may not be warranted. However, some issues, such as for example those affecting all charter cities, may warrant Direct League Participation even though it is not foreseeable that other cities would be affected by the issue;

6. The timeliness of the request. If an issue is not submitted to the LAC in adequate time to secure Board approval of Direct League Participation, then Direct League Participation may not be warranted; and

7. The desire of the party or attorney requesting the assistance.

B. Effect of Determination

When Direct League Participation is recommended by the LAC, the matter shall be communicated by League staff to the Executive Director. If the Executive Director approves such Direct League Participation, and the LAC recommendation does not fall under section IV. C, the *amicus curiae* or other assistance shall bear the name of the League. The Executive Director in his or her discretion may consult with the League's executive committee or full League Board if there is a question whether *amicus* involvement with a case is consistent with League policies and/or presents strategic or other political issues.

When the Legal Advocacy Committee votes to authorize Direct League Participation in a case, the vote will serve to authorize participation throughout the remainder of the litigation unless the Legal Advocacy Committee states otherwise or circumstances have changed such that League Staff, in consultation with the Chair, determines that further review by the LAC is advisable. An example of changed circumstances is a subsequent appellate opinion that addresses the legal question at issue in an unanticipated manner.

If the LAC recommendation falls under section IV. C, full Board approval is required before the *amicus curiae* or other assistance shall bear the name of the League.

In all other cases where the LAC urges Individual City Participation, the matter shall be referred to the Executive Director, who may either (1) override the LAC's decision and direct that any other Authorized Action be taken, including without limitation placement on the agenda for the next executive committee or Board meeting with a recommendation for Direct League Participation, or (2) approve the recommendation of the LAC, in which case the *amicus curiae* or other assistance shall bear the names of the cities choosing to participate.

C. Actions Requiring League Board Approval

League Board approval is required for all recommendations that the League initiate litigation or coordinate litigation among interested cities.

V. EXECUTIVE COMMITTEE

A. Composition

The LAC shall select from among its members an executive committee of nine, plus two alternate executive committee members, which may act between meetings of the full LAC (“LAC Executive Committee”). The election of all LAC Executive Committee members, and LAC Executive Committee member alternates, shall occur at the first meeting of the LAC at which new members are seated. Existing LAC Executive Committee members may continue to participate on the LAC Executive Committee until such time as new LAC Executive Committee members are selected. The LAC, in making its choices for the LAC Executive Committee, should keep in mind the diversity of the Department and seek representation of its membership, including small city versus large city, charter versus general law, elected city attorneys versus appointed city attorneys, new LAC members versus second year LAC members, and full time city attorneys versus part time city attorneys.

Four of the eleven LAC Executive Committee members shall be the four permanent LAC members from Los Angeles, San Diego, San Francisco and San Jose. The other five LAC Executive Committee members, and two LAC Executive Committee alternates, shall be selected from the division representatives and shall include the LAC chairperson.

B. Authorized Actions

The LAC Executive Committee shall act for the full LAC only when necessary because time constraints that, for a given matter, do not allow consideration at the next regular LAC meeting. Meetings of the LAC Executive Committee may be conducted by conference call or such other means as the LAC Executive Committee may approve, including by electronic mail, provided proxy votes shall

not be permitted in any case. Meetings of the LAC Executive Committee by electronic mail are disfavored and should only be conducted when time constraints and scheduling do not permit a meeting by conference call. The LAC Executive Committee is authorized to take any of the Authorized Actions of the LAC in appropriate cases. A majority of a quorum shall be required for all LAC Executive Committee actions.

VI. RECONSIDERATION

Provided there has been a significant change in either the circumstances or the applicable law that occurs after an LAC or LAC Executive Committee action, or when the action may conflict with League policy, a request for reconsideration may be made by an LAC member and such request shall include a suggested alternative Authorized Action. The request, if possible, shall be made at the next meeting of the LAC or be sent in writing by electronic mail, fax or mail to League staff together with the reasons why reconsideration is warranted.

VII. BOARD REPORTS

League staff will provide the Board with regular reports on all LAC and legal advocacy activities.