



# City Attorney Relationships: City Manager, City Clerk, Councilmembers

Wednesday, October 5, 2016 General Session; 1:00 – 2:45 p.m.

Paul Arevalo, City Manager, West Hollywood  
Michael Jenkins, City Attorney, West Hollywood  
Lisa Pope, Assistant City Clerk, Santa Monica  
Richard W. Kite, Councilmember, Rancho Mirage  
Steven B. Quintanilla, City Attorney, Rancho Mirage

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**LEAGUE OF CALIFORNIA CITIES  
CITY ATTORNEYS' DEPARTMENT**

**OCTOBER 2016 ANNUAL CONFERENCE  
LONG BEACH, CA**

**THE CITY ATTORNEY IN CONTEXT  
A CALL-IN CONVERSATION IN THREE INTERVIEWS**

**City Attorney - City Manager Relationship**

*Speakers:* Paul Arevalo, City Manager, West Hollywood  
Michael Jenkins, City Attorney, Hermosa Beach,  
Rolling Hills & West Hollywood

**City Attorney - City Clerk Relationship**

*Speaker:* Lisa Pope, Assistant City Clerk, Santa Monica  
*Interviewed by* Christi Hogin, City Attorney, Lomita, Malibu  
& Palos Verdes Estates

**City Attorney Relationships: Councilmembers**

*Speakers:* Richard W. Kite, Councilmember, Rancho Mirage  
Steven B. Quintanilla, City Attorney, Rancho Mirage  
& Desert Hot Springs

# THE CITY ATTORNEY/CITY MANAGER SURVIVAL GUIDE

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The majority of cities in California utilize the city manager form of government allowed by Government Code section 34851 *et seq.* or by home rule charters. Most city councils appoint a city attorney;<sup>2</sup> approximately 2% are elected. In a general law city, the city manager and city attorney are typically the only city officials directly appointed by the city council and are the highest ranking city employees. The subject of how and why the city attorney and city manager should get along has previously been addressed in papers delivered to the Department<sup>3</sup> and will not be repeated here. This paper will focus on how to manage this critically important relationship during ten specific difficult circumstances raised in the live conference program.

## 1. When team play interferes with independent judgment

A successful relationship between the city attorney and the city manager and successful governance of the city both require team play. As team players, the city attorney and the city manager should endeavor to work out their disagreements in a professional and cooperative manner. When there is professional harmony, councilmembers may regard this with suspicion, wondering if the two are sufficiently independent minded. Councilmembers need to understand that city governance is improved when the organization's leaders find common ground and do not routinely undermine or disagree with each other. City hall should not be a civil war zone.

That said, when disagreement cannot be resolved, team play must give way to independent judgment. If the city manager's policy initiative collides with the city attorney's legal judgment, that disagreement must be played out either in a confidential attorney-client privileged legal opinion or in a council meeting. The city attorney has a duty to provide his or her best legal advice to the council regardless whether it impedes a city manager initiative. A good city manager knows this and that is why this should seldom happen. By the same token, a good city attorney knows that the ultimate decision to take legal risks is made by the client, not the lawyer.

If the city attorney thinks the city manager is pursuing a wrongheaded policy objective, the relationship should tolerate the attorney communicating his or her frank opinion. If the manager's policy objective is questionable but not unlawful, that should be the end of it, as far as the city attorney is concerned.

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<sup>1</sup>Mike Jenkins is a partner at Jenkins & Hogin, LLP and serves as City Attorney for the cities of Hermosa Beach, Rolling Hills and West Hollywood. He has worked with a lot of city managers; he has worked with Paul Arevalo in West Hollywood for 17 years.

<sup>2</sup> California Government Code section 36505 allows, but does not require, a city council of a general law city to appoint a city attorney. The duties of the city attorney are enumerated in Government Code section 41801 *et seq.*

<sup>3</sup> "The Role of the City Attorney and Development of the City Attorney/City Manager Relationship," Jeff Kolin and Jonathan P. Lowell, City Attorneys' Department, 2013 Annual Conference; "Role of the City Attorney: Relationships with Other Municipal Actors," Michael Colantuono, May 5, 2004, City Attorneys Department.

2. When the manager questions the attorney's legal judgment

The city manager is entitled to take a hard look at the city attorney's legal opinions. It is not out-of-bounds for a city manager to ask the city attorney for the authority on which the lawyer is relying and to question the opinion. The city attorney doesn't always get it right and should be willing to talk through a conclusion. Alternatively, sometimes the law is ambiguous and the manager may perceive the attorney as being unnecessarily conservative. This is a conversation the two should be able to have without being offensive (manager) or defensive (attorney).

In this circumstance, the city attorney should take a second look at his or her opinion, ask a colleague for peer review or turn to the city attorney list serve. If after further consideration the city attorney is satisfied with his or her position, and the issue is important enough to the manager, the manager and the city attorney should consider whether a second legal opinion is warranted. Experienced city attorneys know the value of an occasional second opinion from a lawyer experienced in a particular area or with a different vantage point in a situation. City attorneys, more than many practice areas, thrive on congeniality – that is reflected in the regularly updated Municipal Law Handbook and the ever-popular listserv, now known as the Forum. Hopefully the need for second opinions doesn't happen very often; if it does, there is a bigger problem.

3. When the attorney uses legal justifications to masquerade as policy advice

The papers referred to in footnote 3 discuss the importance of the city attorney and city manager understanding and adhering to their respective roles and areas of responsibility. Generally, it is preferable for the two to stick to what they do best. That said, it is not uncommon in a healthy manager/attorney relationship for both to confide with each other when they have concerns or doubts that affect the city's interests, even when doing so transgresses their respective usual boundaries.

It is not productive for city managers to avoid seeking legal advice because they think they know the answer and either don't want to hear a contrary opinion or don't want to incur the expense for legal advice. On the other hand, it is not ethical for the city attorney to push for a desired policy outcome by claiming legal imperatives. The city attorney is a legal advisor, plain and simple; as tempting as it may be on occasion to influence policy, that's not the attorney's job. The reality is that the vast majority of city attorneys are well trained to distinguish between legal constraints and policy preferences. One way to build trust in the relationship with policy makers is to be conscientious about when comments are outside the strict role. Here is an example of that: "the law allows you to notice a special meeting on 24-hour notice. Although not a legal consideration, I suggest you consider that the neighborhood is expecting that this item will be discussed at a regular meeting and I suspect calling a special meeting might be viewed as trying to dampen public participation."

4. When both the attorney and the manager routinely complain about each other to the council like bickering siblings to their parents

Sibling rivalry, which this type of behavior resembles, is as dysfunctional in a city as it is in a family. In such situations, intervention may be required. One approach would be for the mayor or a temporary council subcommittee to sit them both down together and mediate a solution.

Sometimes the root of the problem is legitimate – for example, if one has a documented concern that brings the competence, trustworthiness, ethics or character of the other into serious question. That type of concern should be brought to the attention of the city council and addressed through the performance evaluation process in compliance with the Brown Act.

5. When the attorney is consistently late in providing legal advice.

Sometimes, a project will take longer than initially expected because of unforeseen complications, competing deadlines or the press of other business; that is understandable and forgivable. And, city managers need to have realistic expectations; sometimes legal work cannot be turned around overnight or in accordance with the manager's schedule. Conversely, city attorneys have a responsibility to inform the city manager when a particular assignment can realistically be completed and meet deadlines.

Of course, city managers are right to gripe when the city attorney is consistently late producing legal opinions, contracts, ordinances, agenda reports and other legal work product. In those circumstances, the city manager should endeavor to work out the problem directly with the city attorney. Agree to mutually establish realistic and fair deadlines for work product and stick to them; if the deadline won't or can't be met, the city attorney should communicate that as early as possible. If that effort fails and the city attorney continues to routinely delay city business, an intervention by the mayor or the city council via a performance evaluation may be appropriate.

6. When the attorney suspects the manager is using individual councilmember briefings as serial meetings/when the manager thinks the attorney allows the council to go too far in closed session

Individual briefings of elected officials, though allowed by Government Code section 54952.2 (b)(2), can create opportunities for Brown Act violations and city managers need to consciously avoid facilitating a serial meeting even if pressured to do so by one or more councilmembers. If the city attorney is aware that the city manager and councilmembers are engaging in illegal serial meetings despite being explicitly advised not to do so, the attorney has the option to resign his or her post under the rules of professional conduct. The manager has an ethical, legal and fiduciary obligation to avoid assisting or encouraging councilmembers to violate the Brown Act by knowingly participating in illegal serial meetings. Illegal serial meetings will inevitably have unfortunate consequences because, really, there are no secrets in most city halls. Serious legal consequences can flow from such violations.

If the city manager believes the city attorney is allowing violations of the Brown Act in closed session or otherwise, the manager should take this up with the attorney. If the manager is unable to modify the attorney's conduct, the manager should consider obtaining a second opinion addressing the propriety of the city attorney's practices.

7. When the city attorney creates a wall around the legal department

Some managers complain that the city attorney's office is a fortress, made impenetrable by considerations of confidentiality. In some instances these complaints have merit; on the other hand, in an organization defined by transparency and public access, it takes a special effort to maintain client confidences, which the city attorney must do. These issues are usually resolved by establishing protocols that make lawyers confident that confidential information is identified and handled appropriately.

City staff should feel comfortable approaching the city attorney's staff for legal advice. They should feel that their problem is going to be given careful and timely attention. Staff should feel confident that the city attorney will be practical and resourceful in fashioning a solution that, if legally possible, accomplishes staff's objectives. The city attorney should not cultivate an environment that city staff finds intimidating, secretive, superior, insensitive or nonresponsive.

Where the city manager cannot work collaboratively with the city attorney to achieve that kind of legal department, city council intervention may prove the only remedy.

8. When the city attorney interferes with the city manager's chain of command

What some city managers perceive to be interference may in the eyes of the city attorney be a normal incident of an attorney client relationship. It can be unrealistic, inefficient and paralyzing for the city manager to bar the city attorney from dealing directly with line staff and vice versa. On the other hand, the city manager is responsible for the management of resources and the city budget; excessive or unwarranted involvement of the city attorney can strain a budget. Ultimately, the city manager will have to decide on the correct balance. The city attorney is not in the chain of command and has no authority over staff. The line between providing legal advice and directing staff can be elusive; after all, when the attorney gives legal advice to a staff member who does not follow the advice, the attorney may need to provide the advice up the chain of command.

City managers should not be alarmed by direct relationships between key staff and the city attorney, so long as the city attorney does not exceed the bounds of his or her role as a legal advisor. Staff should get accustomed to regarding the city attorney as an ally who can be counted on to provide practical legal advice that keeps staff out of trouble and makes their lives at city hall more productive. Establishing a personal connection with the staff is essential to achieve the kind of trust and respect essential to an attorney/client relationship. Establishing rigid barriers solely to protect the chain of command can defeat the above worthwhile objectives.

9. When the city council wants to fire the city manager

When the city council loses confidence in and is considering firing the city manager, it is likely that the first person consulted is the city attorney. Where the city manager and the city attorney have a successful and collaborative relationship, that situation is a test of the city attorney's professionalism. The attorney's duty of loyalty is to the city and the attorney is bound to keep the council's confidences and yet, as a teammate of the city manager, the attorney may feel as if he or she is betraying the city manager by facilitating a termination. The anxiety of this moment is reduced where the relationship between the two professionals is founded and maintained on their understanding of their different roles in the organization and mutual obligations to the city. The city attorney should help the city council devise a game plan that places the interests of the city above all else. Every city manager knows that such a day may come; what he or she wants and deserves is a city attorney (when tasked with the unpleasant duty) who treats the manager with respect during such a difficult (and often publicly embarrassing) process.

10. When the city council wants to fire the city attorney.

See #9 above and switch places.

# **MIKE AND STEVE'S TEN TIPS FOR MANAGING THE CITY ATTORNEY/**

## **CITY COUNCILMEMBER RELATIONSHIP**

1. When a councilmember wants to confide something confidential with regard to a city issue, remind the councilmember that your client is the city and not each individual councilmember. You can tell the councilmember you are prepared to be discreet, but you cannot guarantee confidentiality from other councilmembers.
2. When a councilmember calls or emails, you should try to respond right away. Even if you can't respond substantively because of the press of other business, let the councilmember know when he or she can expect a substantive response.
3. When a councilmember gossips about his or her colleagues, refrain from joining in. These relationships are fluid.
4. Treat every councilmember equally; especially when you have a divided council. Each councilmember is entitled to the same degree of assistance from you.
5. Be consistent; give each councilmember the same answer, even if it is not the answer the councilmember expects or wants to hear.
6. Remain unaffiliated; you are a professional whose sole interest is to act in the best interests of the city, not a particular council majority or faction in the community.
7. Develop a thick skin; you may not be credited with your contributions to successes and you will be criticized for decisions that you didn't make. Learn to live with that.
8. Give legal advice in a way that is to the point and understandable to a non-lawyer. Councilmembers want a straight answer and don't tolerate waffling well. Granted, the law isn't always clear; make it as clear as you can.
9. Remember your role as a legal advisor. When councilmembers seek your direction on policy issues, provide them with an analytical structure that will facilitate their deliberative process. Provide the pros and cons; weigh the risks; balance the benefits and the harms. But, do not advise them how to vote.
10. Your job is to make sure the city and the council know the law and do your best to keep the city out of trouble. Never lose sight of that objective.



# CITY ATTORNEY – CITY CLERK: PROTECTORS OF THE RULE OF LAW

In a certain respect the City Clerk and the City Attorney have a similar role in city hall. While the city council sets policy and the city manager implements the policy, the city clerk and the city attorney concern themselves with the process by which the decisions are made and make certain that the decisionmakers are aware of the boundaries in which they exercise their discretion.

The California City Clerks Association's *City Clerk's Handbook*'s table of contents will look familiar to city attorneys and highlight the overlapping concerns of the city clerk and the city attorney:

*Chapter One City Clerk – One of the Oldest Professions*  
*Chapter Two Organization and Administration*  
*Chapter Three Community Relations & Communications*  
*Chapter Four Legislative Procedures*  
*Chapter Five Meetings, Agendas, Minutes, Follow Up*  
*Chapter Six Elections*  
*Chapter Seven Change of Organization and Vacation*  
*Chapter Eight Assessments, Licenses and Other Financial Duties*  
*Chapter Nine Projects, Grants, Capital Improvements*  
*Chapter Ten Deeds and Deed Processing*  
*Chapter Eleven Bids and Bid Openings*  
*Chapter Twelve Agreements and Contracts*  
*Chapter Thirteen Claims, Summons, Insurance*  
*Chapter Fourteen Records Management*

**The City Clerk and the City Attorney can teach each other to fish.<sup>4</sup>** With all this overlap, there are still questions that require a legal opinion and plenty of judgment calls that fall within the city clerk's area of authority. One of the best ways for this particular city hall relationship to thrive is to spend time building bureaucratic infrastructure that anticipates potential issues. Forms and templates can help sort out well travelled ground from uncharted waters. There are numerous repetitive tasks that the city clerk's office and the city attorney's office can work together to both routinize and troubleshoot. Agenda preparation and posting (meeting adjournments, special meetings, item continuances, amended agendas); Public works bid openings; Processing subpoenas and Public Records Act requests; Election procedures (ballot designations, managing ballot arguments, training poll workers, recount procedures...); Processing claims and service of lawsuits; and staff trainings. City hall is best served when the city clerk and the city attorney work as a team.

*Practice Tip:* Provide explanations and citation to municipal code and state law; talk through the judgment calls. The result of that type of relationship will be more consistent decisionmaking and better served residents.

The California City Clerk's Association has prepared this excellent summary and explanation of the role of the city clerk:

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<sup>4</sup>As in the Chinese proverb corrected for gender bias: "Give a person a fish and you feed him or her for a day. Teach a person to fish and you feed him or her for a lifetime."

# WORKING WITH YOUR CITY CLERK

*The City Clerk is the local official who administers democratic processes such as elections, access to city records, and all legislative actions ensuring transparency to the public. The City Clerk acts as a compliance officer for federal, state, and local statutes including the Political Reform Act, the Brown Act, and the Public Records Act. The City Clerk manages public inquiries and relationships and arranges for ceremonial and official functions*

[www.californiacityclerks.org](http://www.californiacityclerks.org)



## Public Service—A Balanced Triangle

Success in public service requires an even-sided, balanced triangle. The City Council, City Clerk, and City Manager must understand and respect each other's roles and share an obligation in maintaining this balance.

### City Council = Policy

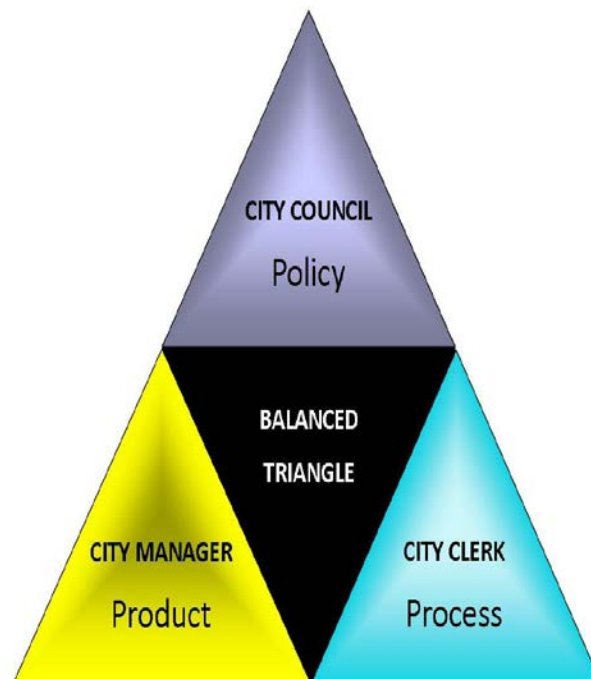
They establish vision and direction  
for the community's future

### City Manager = Product

Provides services to the  
taxpayer that the taxpayer  
cannot (or will not) provide for  
themselves

### City Clerk = Process

Ensures that the  
decision-making process is  
transparent to the public;  
complies with federal, state,  
and local regulations; and is  
properly recorded



## Advocates for Democracy

Elected Officials, City Managers and City Clerks shoulder equal responsibility in preserving and promoting democracy, the very backbone of our society. The more we invite public participation, the more democracy will thrive, and citizens will take pride in shaping the community's future. The balance of power in local government is crucial to a democracy. Power ultimately resides with the governed, but only when the laws and actions are clearly set forth and records are accessible can people exercise their right of oversight. When people exercise their rights, democracy thrives and communities take shape and prosper.

## The Role of the City Clerk

Thousands of statutes and regulations exist which protect democracy and provide a system of "checks and balances." It is the city clerk's responsibility to ensure compliance with these laws, which are complex and constantly changing and evolving. The city clerk, as the local official, must have the professional education, training, and knowledge necessary to understand and administer these laws. The city clerk is your partner in democracy.



### Office of the City Clerk

- Elections Official
- Local Legislation Auditor
- Municipal Officer
- Political Reform Filing Officer
- Records & Archives
- Public Inquiries & Relationships
- City Council Support Services

## Elections Official

Per Elections Code 320, the City Clerk is the Elections Official for the City, unless the City Council has by resolution requested that the board of supervisors permit the county clerk to render specified elections services to the city

- Voter Registration
- Conduct Stand-Alone or Consolidated Elections for Council/Mayor/Treasurer/City Clerk
- Ballot Measures/Charter Amendments
- Initiative (Elections Code 9214)
- Referendum (Elections Code 9236)
- Recall (Elections Code 11360)

California Law: [www.leginfo.ca.gov](http://www.leginfo.ca.gov)

## **Local Legislation Auditor**

Per Gov. Code, the City Clerk is responsible to ensure that the Brown Act (Gov. Code 54950 et. seq.) is followed. The Brown Act was enacted to ensure all actions are taken openly and that all deliberations are conducted openly. It is a misdemeanor if an elected official deliberately deprives public of information.

- Public Notices/Public Hearings
- Contracts and Agreements
- Bonds and Insurance
- Authority to Execute Instruments
- Ordinances & Resolutions
- Municipal Code

League Publication: Open & Public IV (To order call: (916) 658-8247)

## **Municipal Officer**

The City Clerk is one of five positions that Government is vested in: Per Gov. Code 36501, general law cities are required to be governed by a City Council, City Clerk, City Treasurer, Chief of Police, Fire Chief, and such subordinate officers or employees as required by law.

- Clerk of the Council (Gov. Code 36814)
- Perform Attestations (Gov. Code 40806)
- Administer Affirmations/Oaths of Office (Gov. Code 40814) (Gov. Code 36507)
- Maintain Custody of City Seal (Gov. Code 40811)
- Accept Subpoenas and Lawsuits (Gov. Code 37105)
- Countersign General Obligation Bonds (Gov. Code 4362343625)
- File Official Bonds (Gov. Code 36520)

## **Political Reform Filing Officer**

The Political Reform Act of 1974 (Gov. Code 83111) addresses the financial conflicts of interests of public officials through disclosure of the official's economic interests and prohibitions on participation in making decisions that the official knows or has reason to know will result in a material financial effect on one of the official's economic interests. The City Clerk serves as the compliance officer in matters pertaining to the Act.

- Filing Official for Form 700 – Statement of Economic Interests - Disclose personal assets and income—disqualify yourself if decision affects personal financial interests.
- Filing Officer for Campaign Finance Forms – 460, 470, 495, 510 etc. - Campaign Statements and Reporting - Elected officials shall respond to wishes of all citizens equally, contributors shall not gain disproportionate influence over others.

[www.fppc.ca.gov](http://www.fppc.ca.gov)

FPPC Manual 2 for Local Elected Officials

FPPC Help Line: 1-866-275-3772 – Elected officials should contact FPPC directly and avoid asking City Clerk to ask questions for them.

California Law: [www.leginfo.ca.gov](http://www.leginfo.ca.gov)

California Code of Regulations: [www.calregs.com](http://www.calregs.com)

## **Records & Archives**

The Public Records Act (Gov. Code 6250) was enacted to provide access to information that enables the public to monitor the functioning of their government. This right of access to information concerning the conduct of the people's business is a fundamental and necessary right of every person. As the Custodian of Records for the City, the City Clerk is responsible for ensuring compliance with the Public Records Act.

- **Receives and Answers Public Records Request** – With few exceptions, only records available to the public are disclosable to elected officials. Records exempt from disclosure include personal information, medical information, crime/intelligence records, voter records, utility usage records.
- **Indexing, Research & Retrieval**
- **Records Retention** – All correspondence received/sent by Council Member shall be directed to the City Clerk for proper disclosure/indexing/retention. Includes e-mails.

**League Publication: The People's Business (To order call: (916) 658-8247)**

- **Maintains and Produces Minutes of the Meetings of the City Council, Commissions and Committees**
  - History and legal record.
  - Record of actions and proceedings
  - Refresh recollection.
  - Gives reader sufficient understanding of proceedings
  - Are not transcriptions.
  - Are not an exact record of discussions and conversations
  - Are not "to do" lists.

## **Public Inquiries & Relationships**

The City Clerk serves as a liaison between the public and the City Council. The City Clerk provides easy access to information and serves as a guide to open participation in the decision- and policy- making process. The City Clerk is often the first person a member of the public contacts when seeking assistance from the City Hall.

## **City Council Support Services**

The City Clerk provides support services to the City Council in many ways.

- Ceremonial Functions
- Resolutions, Commendations, Awards
- Administrative
- Commissions
- Resources
- Research
- History, Institutional Knowledge