

Special Report

# Legal Departments in Peer Cities

September 2018



Municipal legal departments perform a variety of functions for the cities that they serve. Attorneys within the legal department serve the cities' interests by providing litigation services and advising client departments and management on legal matters impacting the city. Most cities also have a prosecution division or function. Amongst the group of peer cities reviewed for this project, a majority of city attorneys are appointed by and administratively report to their mayor and council.

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Cover: Aerial view of downtown Austin, iStock.com/RoschetzkyStockPhoto

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# Objective

For Austin and the peer cities reviewed in this project, the objective of this special request was to determine:

1. The charge of the attorneys according to the city codes;
2. The structure of legal departments;
3. The use of a separate advising attorney or outside counsel for policy makers;
4. The resolution of disagreements amongst policy makers and city management or staff; and
5. The role of legal departments versus policy makers.

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# Background

All of the cities we reviewed for this report have a council-manager form of government. The peer cities identified for the purposes of this report are listed in Table 1 below.

**Table 1: Peer cities with council-manager forms of government**

<b>Council-Manager Cities</b>	<b>Population (2016)</b>
Austin, TX	907,779
Charlotte, NC	808,834
Dallas, TX	1,278,433
El Paso, TX	678,058
Fort Worth, TX	815,930
Oklahoma City, OK	620,015
Phoenix, AZ	1,555,324
San Antonio, TX	1,439,358
San Jose, CA	1,009,363

SOURCE: 2016 American Community Survey 5-Year Estimates and OCA analysis of legal departments in peer cities, August 2018

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# What We Learned

## Summary

Municipal legal departments perform a variety of functions for the cities that they serve. Attorneys within the legal department serve the cities' interests by providing litigation services and advising client departments and management on legal matters impacting the city. Most cities also have a prosecution division or function. Amongst the group of peer cities reviewed for this project, a majority of city attorneys are appointed by and administratively report to their mayor and council.

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## What is the charge of the attorneys in the city codes of peer cities?

In our analysis, the charge of attorneys in cities' charter or codes is not standard or repeated across the identified peer cities. Each peer city code is different, but taken together they include passages stating that the city attorney shall: be the legal advisor to the city; represent the city in lawsuits; administer oaths and affidavits; prosecute individuals in municipal court; draft and approve proposed ordinances or alternatively provide a written objection to the proposed ordinance; and advise or represent employees on issues that arise from acting as a city employee. Neither the city code or charter outline the city attorney's duties for two<sup>1</sup> out of the eight peer cities reviewed.

The charge of Austin's City Attorney in the charter is that "[the] city attorney shall be the legal advisor of, and attorney for, all of the officers and departments of the city, and he or she shall represent the city in all litigation and legal proceedings. He or she shall draft, approve, or file his or her written legal objections to, every ordinance before it is acted upon by the council, and he or she shall pass upon all documents, contracts and legal instruments in which the city may have an interest."

## How do peer cities structure their legal departments?

### Appointment and administrative reporting

Generally, the city attorneys in the peer cities we reviewed are appointed in one of three ways: (1) appointed by city council, (2) recommended by the city manager and appointed by council, or (3) appointed by the city manager. In five out of the eight cities we reviewed, the city council directly appoints the city attorney. In Fort Worth and San Antonio, the city manager recommends the city attorney to city council and then the appointment is made by council. The only city in which the city manager appoints the city attorney is Phoenix. In every city except San Antonio and Phoenix, the city attorney reports to the city council. In San Antonio, the City Attorney administratively reports to the City Manager and in Phoenix, the City Attorney reports to the Assistant City Manager over Public Safety.

The City Attorney for Austin is appointed by and administratively reports to the City Manager (see a summary of these appointments and reporting structures in the table below).

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<sup>1</sup> Charlotte, NC and El Paso, TX

**Table 2: Summary of city attorney appointments and reporting structures**

<b>Council-Manager Cities</b>	<b>City Attorney appointed by:</b>	<b>City Attorney reports to:</b>
Austin, TX	City Manager	City Manager
Charlotte, NC	City Council	City Council
Dallas, TX	City Council	City Council
El Paso, TX	City Council	City Council
Fort Worth, TX	City Council (recommended by City Manager)	City Council
Oklahoma City, OK	City Council	City Council
Phoenix, AZ	City Manager	Assistant City Manager
San Antonio, TX	City Council (recommended by City Manager)	City Manager
San Jose, CA	City Council	City Council

SOURCE: OCA analysis of legal departments in peer cities, August 2018

**Organization**

Every city structures their department differently and some have different names for the same function, but generally all cities have their legal departments divided into two main functions: the litigation division that assists with ongoing or pending litigation in which the city is involved, and the transactional division that provides advice to employees and departments on the legal matters impacting their work. In addition, all cities except, Charlotte<sup>2</sup>, have a prosecution division or function. Cities reported that their prosecution function generally handles cases involving class C offenses, code violations, and school attendance infractions.

The City of Austin’s Law Department is structured into the following divisions: Litigation, Land Use and Real Estate, Municipal Operations, General Counsel, Criminal Prosecution via Municipal Court, Open Government – Ethics and Compliance, Utilities and Regulatory, and Financial and Administrative Services.

**Client**

Almost all legal departments said their client was the “municipal corporation,” meaning the municipality. Many departments explained that this meant their clients are the mayor, members of council, board and commission members, the city manager, department directors, and

<sup>2</sup> The prosecution function for Charlotte, NC is located in the Mecklenburg County District Attorney’s Office.

the departments themselves. The client was defined in the city charter or city code in five out of eight peer cities. The most notable section of code we observed in our research was from Oklahoma City which reads “[the] Municipal Counselor, his assistants and his staff shall not be answerable to the City Manager but shall represent the Mayor and Council in the areas of responsibility referred to in this division and deal directly with all department heads and courts as required in the performance of the duties of the Municipal Counselor and his office.”

The City of Austin’s charter states that “[the] city attorney shall be the legal advisor of, and attorney for, all of the officers and departments of the city.”

Which peer cities have an advising attorney or outside counsel separate from the legal department that reports to policy makers?

From our review of peer cities, no city that responded maintains a separate advising attorney specifically for policy makers. Many cities indicated that they periodically hire outside counsel, but only for specific tasks or specialties like patent lawsuits or other resource-heavy litigation.

The City of Austin does not maintain a separate advising attorney for policy makers.

How do the departments proceed when there is a disagreement amongst policy makers and city management or staff?

Representatives from cities reviewed in this special request provided similar responses regarding disagreements between parties considered to be “clients.” The representative from Charlotte said that if there is a disagreement between attorneys, it would be up to the City Attorney to make a decision. They added if the disagreement is between departments, the City Attorney’s role would be to notify the client of relevant legal issues and give advice. The representative from Phoenix noted that most disagreements are policy disagreements and that the mayor and council members are the ultimate policy makers. Representatives from San Antonio and San Jose noted that the city attorney and attorneys in the department play a role in helping the client departments reach consensus in order to proceed.

The City Attorney for Austin stated that the legal department proceeds in these situations by helping the parties choose what is best for the city as a whole.

What is the role of legal department versus the role of the policy makers and do legal departments in peer cities make final decisions on policy matters?

Representatives we spoke to stated they only make policy decisions on legal department policies, and that their role in policy making for the city as a whole is limited to drafting ordinances and providing legal advice to council members. The representative from San Jose stated their role in the policy making process is only to memorialize the wishes of council when drafting proposed ordinance language. No representative we contacted during the course of this project said their legal department makes final decisions on policy matters.

The City Attorney for Austin said the legal department does not make policy decisions, except for legal department policy, and the Law Department only gives advice.

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## Why We Did This Report

This report responds to a request from Council Members Alter and Kitchen regarding questions about the structure and function of legal departments in peer cities.

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## Scope

The project scope included a review of legal departments in Austin and peer cities as of August 2018.

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## Methodology

To complete this special request, we performed the following steps:

- identified a list of comparable cities based on size and council-manager government;
- obtained documents from peer cities including: organizational charts, relevant sections of each peer city's charter/code, and applicable state laws; and
- interviewed members of city legal departments. All peer cities responded to our requests for information except for Dallas and El Paso. In this report, discussion of the law departments in Dallas and El Paso is based on publicly available information gathered from those city webpages as well as their city codes and charters.

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## Project Type

Special request projects conducted by the Office of the City Auditor are considered non-audit projects under Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3).

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The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve City services. Special requests are designed to answer specific questions to assist Council in decision-making. We do not draw conclusions or make recommendations in these reports.

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