

CITY OF MORRO BAY

CITY ATTORNEY EMPLOYMENT AGREEMENT

This CITY ATTORNEY EMPLOYMENT AGREEMENT (hereinafter referred to as the “AGREEMENT”) is entered into the 12th day of August, 2025, by and between the CITY OF MORRO BAY, a general law city and municipal corporation (hereinafter referred to as the “CITY”) and Brian Stack, an individual (hereinafter referred to as “EMPLOYEE”). For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, California Government Code section 41801 provides that the City Attorney shall advise the city officials in all legal matters pertaining to city business. ; and

WHEREAS, the duties of the City Attorney of the CITY are set forth in full in Morro Bay Municipal Code (“MBMC”) section 2.16.080 and in Exhibit “A” to this AGREEMENT; and

WHEREAS, pursuant to MBMC section 2.16.070, “To be eligible for appointment as city attorney, the appointee shall have been admitted to practice as an attorney at law in all of the state courts of California and the United States District Court for the Central District of California, and shall have been engaged in the practice of law for at least five years immediately prior to his or her appointment;” and

WHEREAS, the City Council of the City of Morro Bay (hereinafter the "City Council") has determined that EMPLOYEE has the required executive and administrative qualifications and ability along with the level of education, experience, skills, and expertise to serve as the City Attorney of the CITY.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the CITY and EMPLOYEE hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. The City Council hereby appoints EMPLOYEE as the City Attorney for the CITY to perform the functions and duties of that position, as described in Exhibit “A” to this AGREEMENT, Morro Bay Municipal Code §§ 2.16.080, the California Government Code, and such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign to EMPLOYEE. CITY reserves the right to amend Morro Bay Municipal Code Chapter 2.16, including §§ 2.16.080, which define City Attorney functions and duties, as it deems necessary and appropriate, without requiring EMPLOYEE’s acquiescence or an amendment of this AGREEMENT. EMPLOYEE agrees to perform all such functions and duties to the best of EMPLOYEE’s ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. It is recognized that the City Attorney is expected to engage in the hours of work that are necessary to fulfill the obligations of the position and must devote a great deal of time outside the normal office hours to the business of the CITY. EMPLOYEE acknowledges that proper performance of the duties of City Attorney will require EMPLOYEE to generally observe normal business hours (currently 8:00 a.m. to 5:00 p.m., Monday through Friday, including a standard one hour lunch period), as set by the CITY and as may be duly revised from time-to-time by the CITY, and will also often require the performance of necessary services outside of normal business hours. EMPLOYEE's compensation (whether salary or benefits) is not based on hours worked.

1.3 FLSA Exempt Status. EMPLOYEE acknowledges and agrees that the City Attorney position is that of an "exempt" classification under the overtime provisions of the federal Fair Labor Standards Act ("FLSA") and EMPLOYEE shall not be entitled to any compensation for overtime nor subject to such overtime provisions of the FLSA.

1.4 Other Activities. EMPLOYEE shall focus EMPLOYEE's professional time, ability, and attention to the CITY's business during the term of this AGREEMENT. EMPLOYEE shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the CITY, or that otherwise might interfere with the business or operation of the CITY or the satisfactory performance of the functions and duties of the City Attorney.

1.5 Employment Status. EMPLOYEE shall serve at the will and pleasure of the City Council and understands that EMPLOYEE shall be an "at-will" employee and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary "Skelly" hearing. The CITY may terminate EMPLOYEE at any time in accordance with Section 3.4 below.

1.6 Exemption from Personnel System. MBMC §2.32.040(G) expressly exempts the "City Attorney" position, from the CITY's Personnel System established in MBMC Chapter 2.32. EMPLOYEE understands, acknowledges and agrees that EMPLOYEE is exempt from the CITY's Personnel System.

1.7 CITY Documents. All data, studies, reports and other documents prepared by EMPLOYEE while performing EMPLOYEE's duties during the term of this AGREEMENT shall be furnished to and become the property of the CITY, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to EMPLOYEE in connection with the performance of this AGREEMENT shall be held confidential by EMPLOYEE to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by EMPLOYEE, without the prior written consent of the City Council, for any purposes other than the performance of EMPLOYEE's duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this

AGREEMENT, except as required by law, any governmental agency, subpoena, or an order issued by a court of competent jurisdiction.

1.8 **League of California Cities Ethical Principles for City Attorneys.** The Parties mutually desire for EMPLOYEE to be subject to and comply with the League of California Cities Ethical Principles for City Attorneys as described in Exhibit “B” to this AGREEMENT. EMPLOYEE commits to comply with the League of California Cities Ethical Principles for City Attorney. The CITY and the City Council agree that the City Council will not require that EMPLOYEE violate the Ethical Principles for City Attorney as part of EMPLOYEE’s employment with the CITY.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Base Salary Steps. For the services rendered pursuant to this AGREEMENT, the CITY has adopted the following five step salary range for the position of City Attorney effective July 1, 2025 pursuant to the City’s fiscal year 2025-2026 salary schedule:

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
\$222,643	\$228,238	\$233,917	\$239,762	\$245,773

2.2 Current Base Salary. EMPLOYEE shall receive Step 1 of the salary range for the position of City Attorney, which is currently Two Hundred Twenty-Two Thousand Six Hundred Forty-Three Dollars (\$222,643.00), as EMPLOYEE’s annual base salary for the City Attorney position (“Salary”) which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid. Such Salary shall be subject to normal and proper withholdings as determined by state and federal law and as determined appropriate by the City Council and shall be subject to payroll taxes, workers’ compensation, and other payroll-related liability costs.

2.3 Cost of Living Adjustments. CITY shall grant annual cost of living increases to EMPLOYEE similar, if any, to those provided to all CITY Department Heads.

2.4 Salary Review. Following the performance evaluation(s) set forth in Section 5.2 hereof and based on the results of those performance evaluations, the City Council may, in its sole discretion, increase EMPLOYEE’s base salary to the next step. Any adjustments in the base salary following the performance evaluation(s) under Section 5.2 are not automatic and instead shall be based on satisfactory performance at the sole discretion of the City Council.

2.5 Business Expense Reimbursements. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence, and other CITY related business expenses incurred by EMPLOYEE in the performance of EMPLOYEE’s duties. All reimbursements shall be subject to and in accordance with California law, the CITY’s adopted policies, and IRS rules for reporting compensation through payroll or reimbursement through accounts payable.

3.0 TERM

3.1 Commencement and Effective Date. EMPLOYEE shall commence service as the City Attorney for the CITY effective August 18, 2025, which date shall also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. CITY hereby employs EMPLOYEE indefinitely on an at-will basis until EMPLOYEE's services are terminated as provided for herein.

3.3 Termination by EMPLOYEE. EMPLOYEE may terminate this AGREEMENT at any time, provided EMPLOYEE provides the City Council with at least thirty (30) days' advance written notice. In the event EMPLOYEE terminates this AGREEMENT, EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay.

3.4 Termination by CITY. The City Council may terminate this AGREEMENT at any time with or without cause. The City Council's right to terminate EMPLOYEE pursuant to this Section 3.4 shall not be subject to or in any way limited by the CITY's Personnel Rules and Regulations, or any subsequent related resolutions, or past CITY practices related to the employment, discipline or termination of the CITY's employees. Nothing herein shall be construed to create a property interest, where one does not exist by rule of law in the position of City Attorney.

(a) Termination by CITY for Cause. The CITY may terminate this AGREEMENT at any time by written notice of the termination for cause and the facts and grounds constituting such cause. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: (1) willful or persistent material breach of duties or inattention to duties, (2) résumé fraud or other acts of material dishonesty, (3) unauthorized or excessive absence or leave, (4) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or abuse of position as City Attorney, (5) conviction of a felony under California law, (6) willful and substantiated violation of federal, state or CITY discrimination and harassment laws/policies concerning race, religious creed, color, national origin, ancestry, physical handicap, marital status, sexual orientation, sex or age against a City official or employee, (7) violation of state law or the CITY's Municipal Code or ordinances, rules, and regulations, (8) use or possession of illegal drugs in violation of state law and/or CITY policy, (9) continued abuse of non-prescription drugs or alcohol that materially affects the performance of required duties as City Attorney, (10) engaging in conduct unbecoming for a public official or which brings disrepute to the CITY, (11) any illegal or unethical act involving personal gain, including conviction of theft or attempted theft, (12) EMPLOYEE's significant mismanagement of CITY finances, (13) any pattern of repeated, willful and intentional insubordination of the City Council, (14) gross misfeasance or gross malfeasance. For any of the foregoing, the CITY may, in its discretion, place EMPLOYEE on paid or unpaid administrative leave until resolution. If the CITY terminates for cause this AGREEMENT and the services of EMPLOYEE hereunder, the CITY shall have no obligation to pay EMPLOYEE any severance. The term "cause" shall not be defined to include: (1) trivial misconduct; (2) immaterial misconduct; or (3) the mere loss of support or confidence by a majority of the City Council.

(b) Termination by CITY Without Cause. The CITY may terminate EMPLOYEE without cause for reasons other than those set forth in subsection (a) above including without limitation, for no reason stated. EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay as the result of the termination of this AGREEMENT **except as provided in Section 4.1 below.**

3.5 Waiver of Certain Discipline and Termination Rights. Except for the right under Government Code §54957(b) to have complaints or charges against an employee heard in a public session upon the employee's request, EMPLOYEE expressly waives any rights afforded under CITY's Personnel Rules and Regulations, and any rights afforded to EMPLOYEE under the Morro Bay Municipal Code (including Section 2.16.70) or under State or Federal law, to any form of pre- or post- discipline or termination hearing, appeal, or other administrative process pertaining to discipline or termination, except those rights EMPLOYEE may have under the California or United States constitutions to a name-clearing hearing.

3.6 Limitation on Termination Following Election. Notwithstanding the provisions of Section 3.4 of this Agreement, EMPLOYEE shall not be terminated, except for cause as provided in Section 3.4(a) of this AGREEMENT, during or within a period of 90 days next succeeding any general municipal election held in the city at which election a member of the City Council is elected.

4.0 SEVERANCE

4.1 Severance Pay. In the event that EMPLOYEE is terminated without cause and does not challenge such termination, including but not limited to, by means of appeal or civil or administrative claim or liberty hearing, then CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary then in effect multiplied by six (6). However, in the event that EMPLOYEE is terminated without cause either ninety (90) days before or after an election for one or more seats on the City Council, and provided EMPLOYEE does not challenge such termination, including but not limited to, by means of appeal or civil or administrative claim or liberty hearing, then CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary then in effect multiplied by nine (9). Any severance payment shall not include the monetary value of benefits during said time, but salary only. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit "C."

4.2 This AGREEMENT does not have a defined term, but in the event this AGREEMENT is construed by a court of law to have a fixed term, notwithstanding any other provision of this Section 4.1, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to EMPLOYEE shall be reduced in the amount necessary to comply with such statute. (Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months.)

4.3 No Severance Pay if Termination for Cause or Initiated by EMPLOYEE. As provided in Section 3.4(a), should EMPLOYEE be terminated for cause, the CITY shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should EMPLOYEE initiate termination of this AGREEMENT, the CITY shall have no obligation to pay the severance provided for in Section 4.1 above.

4.4 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of EMPLOYEE with respect to severance pay in the event of the termination, other than for cause. EMPLOYEE expressly waives any and all other rights with respect to severance pay except as provided herein.

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to EMPLOYEE to facilitate a more effective legal department for the CITY. Nothing herein shall be deemed to alter or change the employment status of EMPLOYEE as City Attorney (as set forth in Section 1.5 above), nor shall this Section 5.0 be construed as requiring “cause” to terminate this AGREEMENT, or the services of EMPLOYEE hereunder.

5.2 Initial and Annual Evaluation. The City Council shall initially review the performance of EMPLOYEE after six (6) full calendar months following the Effective Date. Thereafter, the City Council shall endeavor to conduct a formal or informal review and evaluate the performance of EMPLOYEE on an annual basis each calendar year pursuant to a date mutually agreed to by the City Council and EMPLOYEE, but with the first such annual evaluation being no later than the first anniversary of the Effective Date. Such performance review and evaluation shall be conducted concurrently with the base salary review provided for in Section 2.4 above, and in accordance with the purpose noted in Section 5.1 above. The City Council and EMPLOYEE shall also meet no later than ninety (90) days following the Effective Date, to establish mutually agreed upon performance goals.

6.0 BENEFITS AND OTHER COMPENSATION

6.1 Professional Development. The CITY recognizes its obligation to the professional development of its City Attorney and agrees that EMPLOYEE shall be given adequate opportunities to develop and maintain skills and abilities as a public administrator. EMPLOYEE is expected and encouraged to and agrees to participate in professional organizations and to attend area and regional meetings and conferences related to matters of interest to the CITY consistent with the time required for such attendance in relationship to EMPLOYEE’s other responsibilities as determined by the City Council. The City Council hereby agrees to budget an amount to be determined in the exercise of its sole discretion to pay the cost, travel and subsistence expense of EMPLOYEE for professional and/or official travel, meetings, and occasions adequate to continue professional development of EMPLOYEE and to adequately pursue necessary official functions for the CITY. EMPLOYEE shall be responsible for maintaining the credentials required for any professional certifications recognized as necessary or desirable in the performance of the duties hereunder. CITY shall be responsible for paying all professional dues necessary or desirable for EMPLOYEE’s performance of required duties as City Attorney.

6.2 Paid Leave.

(a) Sick Leave. EMPLOYEE shall be entitled to ninety six (96) hours of paid sick leave annually to be accrued pro rata per pay period over the course of the fiscal year. EMPLOYEE may convert up to ninety-six (96) hours of unused, accumulated sick leave into paid vacation once during the following fiscal year at a ratio of two sick leave hours for one vacation hour. At least twenty-four (24) hours shall remain in EMPLOYEE's sick leave bank after any conversion is authorized. In addition, the right to convert does not carry over or rollover from calendar year to calendar year; failure to request conversion, in any calendar year, eliminates the right to do so for that calendar year. Sick leave that is compensated or converted to vacation cannot be used towards the California Public Employees' Retirement System ("CalPERS") sick leave credit option at retirement. EMPLOYEE shall be entitled to receive cash payment for up to 50% of unused sick leave upon resignation, up to a maximum amount of \$4,500, provided that EMPLOYEE provides thirty (30) days written notice of intent to resign to the CITY. The CITY provides various leave banks for EMPLOYEE's use, with accrual and use record-keeping being required to properly maintain the leave banks. Time off of less than two (2) continuous hours in a day does not need to be recorded by EMPLOYEE as an exempt employee of the CITY. Abuse of this exception, such as daily use or random periods within a day, will not be allowed; however, this exception is also not allowed to be combined with other leaves.

(b) Vacation Leave. EMPLOYEE shall be entitled to one hundred sixty (160) hours of vacation leave annually to be accrued pro rata per pay period over the course of the fiscal year. Upon separation, for any reason, EMPLOYEE shall be entitled to one hundred percent (100%) of the unused vacation leave on the books then existing, at the EMPLOYEE's then current hourly rate of pay. Unused vacation leave may be carried over into the following year to a maximum accrual of three hundred (300) hours. Any hours exceeding the maximum accumulation of 300 hours as of November 1st of each year will be paid out in the pay period including December 1st. EMPLOYEE shall be eligible for vacation leave cash out up to a maximum amount of 40 hours per calendar year, subject to the rules and limitations provided in the then-current Resolution Adopting Maximum Compensation and Benefits for Certain City Department Head Positions, as it may be amended from time to time. The CITY provides various leave banks for EMPLOYEE's use, with accrual and use recordkeeping being required to properly maintain the leave banks. Time off of less than two (2) continuous hours in a day does not need to be recorded by EMPLOYEE as an exempt employee of the CITY. Abuse of this exception, such as daily use or random periods within a day, will not be allowed. Unrecorded time off shall not be allowed to be combined with other paid leave during any given workday.

(c) Holiday Leave. EMPLOYEE shall be granted the following paid holidays (as defined in the Department Head Benefits Resolution): New Year's Day, Martin Luther King Day, Spring Break Holiday, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Day, and Two (2) Floating holidays. Upon commencement of employment, EMPLOYEE shall be advanced two (2) floating holidays. Thereafter, two (2) floating holidays will be credited to EMPLOYEE's Holiday Leave bank July 1st each year. EMPLOYEE may accumulate up to a maximum of forty-eight (48) hours holiday time. Hours of holiday accumulated over forty-eight (48) hours will be paid off. Holiday time is a compensable leave, and any hours remaining in the employee's holiday

bank will be paid out upon separation from CITY service, at EMPLOYEE's then current hourly rate of pay.

(d) Administrative Leave. EMPLOYEE shall be credited with eighty (80) hours of administrative leave annually on July 1. EMPLOYEE shall be provided eighty (80) hours of administrative leave beginning the first full pay period following the Effective Date of this AGREEMENT. Accrued administrative leave shall not exceed one hundred twenty (120) total banked hours at any time. Administrative leave is a compensable leave, and any hours remaining in EMPLOYEE's administrative leave bank will be paid out upon separation from CITY service, at EMPLOYEE's then current hourly rate of pay. Administrative leave time must be taken off on an hour by hour basis equaling employee actual time off, regardless of accumulation rates. Up to eighty (80) hours of administrative leave per fiscal year may be taken by EMPLOYEE.

6.3 Health & Welfare Benefits. EMPLOYEE shall receive the same Health, Life, Dental, and Vision benefits as outlined in Resolution No. 63-24, Amending and Restating the Previously Adopted Maximum Compensation and Benefits for Certain City Department Head Positions subject to the rules and limitations provided in the then-current Resolution Adopting Maximum Compensation and Benefits for Certain City Department Head Positions, as it may be amended from time to time.

6.4 Retirement.

(a) Retirement Plan. EMPLOYEE is believed to be a PEPRRA new member, as defined by CalPERS and as mandated by the Public Employees' Pension Reform Act of 2013. Accordingly, EMPLOYEE shall be entitled to participate in the CITY's CalPERS Retirement Program with the 2% at 62 formula and 3 Year Average formula for calculating final retirement compensation.

(b) Employee Contribution. EMPLOYEE shall be responsible for the full member contribution for EMPLOYEE's CalPERS retirement plan.

6.5 Automobile. EMPLOYEE shall receive a Five Hundred Dollar (\$500.00) per month car reimbursement for use of a personal vehicle in pursuit of recognized official duties. EMPLOYEE shall be responsible for any personal income tax that may result from that reimbursement.

6.6 Deferred Compensation. EMPLOYEE shall have the option to participate in the deferred compensation program offered by the CITY, subject to the terms and conditions of the 1978 Revenue Act and Section 457 of the Internal Revenue Code. The CITY will contribute up to \$3,500.00 per calendar year to the deferred compensation program which shall be paid out on a pro-rated basis over the calendar year in twenty-four (24) equal bi-monthly payments of \$145.84 each.

6.7 Bonding. CITY shall bear the full cost of any fidelity or other bonds required for EMPLOYEE under any law or CITY ordinance.

6.8 Life Insurance. EMPLOYEE shall be entitled to a \$50,000.00 life insurance policy.

6.9 Long-Term Disability (“LTD”) Insurance Program. The CITY shall provide LTD to EMPLOYEE in the same manner and benefit level as provided Department Heads, and pay the cost for the plan.

6.10 Business Equipment. The CITY will provide to EMPLOYEE any job-related personal tools or equipment, such as a computer, desk, land-line phone, file cabinets, table and chairs etc., that serve the professional development of EMPLOYEE and/or is needed to perform EMPLOYEE’S functions and duties. Upon termination, for any reason, EMPLOYEE shall return all business equipment to CITY no later than EMPLOYEE’s last day of employment. CITY shall provide One Hundred Dollars (\$100) per month cell phone and data reimbursement for EMPLOYEE’s use of a cell phone for City business. EMPLOYEE shall be responsible for any personal income tax that may result from that reimbursement.

6.11 Bereavement Leave. EMPLOYEE shall be entitled to up to three (3) days paid bereavement leave in the event of the death of a spouse or a child, parent, sibling, grandparent, grandchild, registered domestic partner, or parent-in-law as defined in Government Code Section 12945.2. For purposes of complying with Government Code Section 12945.7, EMPLOYEE will be provided at least five days of bereavement leave total, and for any unpaid bereavement leave days may use accrued and available vacation leave, sick leave, or administrative leave.

7.0 INDEMNIFICATION

7.1 To the extent mandated by the California Government Code, the CITY shall defend, hold harmless, and indemnify EMPLOYEE against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of EMPLOYEE’s services under this AGREEMENT. This section shall not apply to any intentional tort or crime committed by EMPLOYEE, to any action outside the course and scope of EMPLOYEE’s employment, or any other intentional or malicious conduct or gross negligence of EMPLOYEE. EMPLOYEE shall be entitled to the protection of the California Tort Claims Act, including the CITY’s duty to defend litigation against EMPLOYEE arising from performance of the duties of City Attorney, in accordance with Government Code Sections 995 and 995.2.

8.0 OTHER TERMS AND CONDITIONS OF EMPLOYMENT

8.1 The City Council, in consultation with EMPLOYEE, may establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions do not exceed the maximum salary and benefits approved by the City Council and are reduced to writing and signed by EMPLOYEE and the Mayor.

9.0 GENERAL PROVISIONS

9.1 Entire AGREEMENT. This AGREEMENT represents the entire AGREEMENT and understanding between the Parties and supersedes any and all other agreements and understandings, either oral or in writing, between the Parties with respect to EMPLOYEE’s employment by the CITY and contains all of the covenants and agreements between the Parties with respect to such employment. No ordinances or resolutions of CITY governing employment, including the Personnel System, shall apply unless specified herein. Each

Party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either Party, or anyone acting on behalf of either Party, which are not embodied herein, and that no other agreement, statement or promises not contained in this AGREEMENT shall be valid or binding upon either Party.

9.2 Amendment. This AGREEMENT may be amended at any time by the mutual consent of the Parties by an instrument in writing, which amendment shall require City Council approval by the affirmative vote of three (3) members of the Council.

9.3 Notices. Any notice required or permitted by this AGREEMENT shall be in writing and shall be personally served or shall be sufficiently given when served upon the other Party as sent by United States Postal Service, postage prepaid and addressed as follows:

To CITY:

Mayor
City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

To EMPLOYEE:

Brian Stack

[Address on file with Human Resources]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

9.4 Conflicts Prohibited. During the term of this AGREEMENT, EMPLOYEE shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of EMPLOYEE's duties under this AGREEMENT. EMPLOYEE shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1126 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

9.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this AGREEMENT by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

9.6 Partial Invalidity. If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

9.7 Governing Law. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each Party hereto.

9.8 Government Code §§ 53243 - 53243.4. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of EMPLOYEE's office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this AGREEMENT and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this AGREEMENT:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

EMPLOYEE represents that EMPLOYEE has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to EMPLOYEE, including that EMPLOYEE agrees any cash settlement or severance related to a termination EMPLOYEE may receive from the CITY shall be fully reimbursed to the local agency if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE's office or position. The Government Code provisions referenced in this section are attached hereto in Exhibit "D".

9.9 Independent Legal Advice. The CITY and EMPLOYEE represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this AGREEMENT, or had the opportunity to do so, and the CITY and EMPLOYEE further represent and warrant that each has carefully reviewed this entire AGREEMENT and that each and every term thereof is understood and that the terms of this AGREEMENT are contractual and not a mere recital. This AGREEMENT shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

IN WITNESS WHEREOF, the City of Morro Bay has caused this AGREEMENT to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and EMPLOYEE has signed and executed this AGREEMENT.

CITY OF MORRO BAY

Carla Wixom, Mayor

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

Robert Schultz, Interim City Attorney

CITY ATTORNEY

Brian Stack
Brian Stack (Aut 30, 2025 13:52:33 PDT)

Brian Stack

EXHIBIT A

JOB DESCRIPTION
CITY ATTORNEY



CITY ATTORNEY

DEFINITION

Under the broad policy direction of the City Council, the City Attorney serves as the chief legal officer of the City of Morro Bay. This position provides legal advice and representation to the City Council, City Manager, and City departments, and oversees all the City's legal affairs. The City Attorney is appointed by and reports directly to the City Council and is a City Executive Team member. The City Attorney performs high-level professional legal work, advises on policy and operational matters, and ensures the City's activities comply with applicable laws and minimizes liability.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Serves as legal advisor to the City Council, City Manager, City departments, boards, commissions, and committees.
- Drafts, reviews, and interprets ordinances, resolutions, policies, contracts, development agreements, and other legal instruments.
- Represents the City in civil litigation, administrative hearings, and other legal proceedings; manages and oversees outside legal counsel.
- Provides legal support and risk management advice to reduce liability exposure and ensure compliance with state, federal, and local laws.
- Attends all City Council and designated board/commission meetings and provides legal guidance on matters under discussion.
- Reviews staff reports, agenda items, and public communications for legal sufficiency and clarity.
- Advises on public records, open meetings (Brown Act), conflicts of interest, and ethics laws.
- Supports and advises on land use and planning matters, including California Environmental Quality Act (CEQA), zoning, Coastal Act compliance, and entitlement processes.
- Provides legal guidance on lease negotiations and management of City-owned real property, including tidelands and harbor leases.
- Advises on harbor operations and legal obligations under the Tidelands Trust and related State agency regulations.
- Provides legal review and counsel on public works, construction projects, and professional services contracts.

- Coordinates with the City Engineer and Public Works staff on contract law, bid protests, and infrastructure legal issues.
- Reviews and recommends updates to the Municipal Code and City policies to ensure legal consistency and clarity.
- Develops and delivers training for elected officials and City staff on applicable laws, legal updates, and City policy compliance.
- Coordinates legal strategy and oversees the work of outside legal counsel; reviews and approves related invoices.
- Maintains professional knowledge of evolving municipal law, including pending legislation and case law.
- Performs other duties as assigned or as necessary to meet the legal needs of the City.

QUALIFICATIONS:

Knowledge of:

- Principles and practices of municipal law, public agency risk management, and litigation.
- Land use planning, CEQA, zoning, and coastal land use laws and permitting processes.
- Real property, lease negotiation, and management related to harbor and tidelands.
- California laws, including the Brown Act, Public Records Act, Political Reform Act, and Government Code provisions affecting public agencies.
- Public works construction law, procurement procedures, and contract administration.
- Principles of legal research, writing, and case law analysis.

Ability to:

- Provide sound legal advice and represent the City's interests effectively in all forums.
- Interpret laws, rulings, and regulations affecting municipal government.
- Communicate clearly and concisely in writing and verbally with elected officials, staff, and the public.
- Work collaboratively with department heads, community partners, and legal counterparts.
- Maintain professional confidentiality and exercise sound ethical judgment.
- Manage complex legal projects and meet deadlines under pressure.
- Supervise and coordinate outside legal counsel services effectively.

Education & Experience:

- Juris Doctor (JD) degree from an accredited law school.
- Active membership in good standing with the State Bar of California.
- Minimum five (5) years of increasingly responsible legal experience in municipal law or equivalent.
- Experience with land use, coastal law, lease management, and harbor operations preferred.
- Coastal city legal experience is highly desirable.

The Fine Print

The job description does not constitute an employment agreement between the employer and employee and is subject to change as the employer's needs and job requirements change.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

TOOLS & EQUIPMENT USED

Frequent use of personal computers, word processing and legal research software, email, telephone, and standard office equipment.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to sit, talk, and hear, and occasionally required to walk, use hands, and reach with arms. The role may involve occasionally lifting or moving objects up to 10 pounds. Close vision and the ability to adjust focus are required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

WORK ENVIRONMENT

Work is typically performed in a standard office setting or in public meeting environments and community venues. The noise level is generally quiet in the office and may vary from quiet to moderate in public settings.

Approved by the Morro Bay City Council on April 22, 2025.

EXHIBIT B

LEAGUE OF CALIFORNIA CITIES

ETHICAL PRINCIPLES FOR CITY ATTORNEYS (2019)



Ethical Principles for City Attorneys

(MCLE Specialty Credit for Legal Ethics)

Friday, May 10, 2019 General Session; 10:30 a.m. – 12:30 p.m.

Joseph M. Montes, City Attorney, Alhambra,
Santa Clarita and Assistant City Attorney, Rosemead

DISCLAIMER: *These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.*

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Ethical Principles for City Attorneys (Even More Chockful of Ethics)

League of California Cities
2019 City Attorneys' Spring Conference

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On October 6, 2005, the City Attorneys Department of the League of California Cities adopted “Ethical Principles for City Attorneys.” The document was re-presented at the Spring League Conference in 2011 by Pasadena City Attorney Michele Bagneris. I was asked to re-present the document, as there might be some individuals in the Department who are not familiar with it. I was also asked if I could cross-reference any applicable California State Bar Rules of Professional Conduct, as new State Bar Rules were just promulgated in November of 2018. So here we go—Ethical Principles for City Attorneys; Even More Chockful of Ethics!

A Note on How to Use This Paper.

The Ethical Principles for City Attorneys document (“Principles”) has been broken up into its various sections and inserted below, with commentary discussing the interaction with the State Bar Rules. You are invited to re-familiarize yourself with the document by just reading the shaded text (i.e. the shaded text is the actual Principles).¹ Alternatively, if you want the “Chockful of Ethics” part, you can also read the commentary following each section, to watch me try to conflate the State Bar Rules of Professional Conduct (“Rules”) and the Principles. Note that the “conflation” (“conflagration?”) is intended to be selective, rather than comprehensive. Further, I have tried to avoid redundancy in the commentary—some of the State Bar Rules intersect with several of the Principles in the Principles, but I have avoided re-hashing the discussion of any particular rule in those multiple instances.

Some footnotes include citations to the State Bar Rules and the reports generated by the California State Bar Commission for the Revision of the Rules of Professional Conduct (“Rules Commission”). Rather than include the link every time in the footnote, you can find the referenced materials at <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Proposed-Rules-of-Professional-Conduct>.²

A further note—the Principles uses the term “city attorney” to refer to “all persons engaged in the practice of municipal law.” Given that definition, this paper will use the same vernacular.

First a Word About Ethics in General.

Before talking about the Principles, it is important to focus on what we are talking about when we say “ethical principles.” Being ethical is not the same as following the law.³ Apartheid, Jim Crow laws, pre-19th Amendment voting laws are all laws that today most, if not all, people would say are not “ethical.” Ethics are well-founded standards of right and wrong that prescribe what people ought to do. But they are not just “whatever society accepts,” as many issues do not have a societal consensus.

¹ Or just using the following link for an unadulterated copy: <http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/City-Attorney-Ethics-Resources/Ethical-Principles-for-City-Attorneys> (Accessed March 13, 2019)

² Accessed March 27, 2019.

³ The following discussion is paraphrased from the Markkula Center for Applied Ethics, “What is Ethics?” <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics> (Accessed March 6, 2019)

In daily life, ethics involves decision making. In any given situation, we all decide whether to act or not to act. And if we decide to act, we then have to decide which action to take. And a force that can guide those decisions is “ethics.”

The Markulla Center for Applied Ethics at Santa Clara University⁴ focuses on ethics education, bringing the traditions of ethical thinking to bear on real world problems. They have prepared an app, and an article on their website about how to make ethical decisions.⁵ I have included a copy of that article at the end of this paper for your reference. You may also wish to utilize it as a resource in future AB 1234 training.

So Why Talk About Rules at All?

So if being ethical is not the same as following the law, why talk about the Rules of Professional Conduct, which are tantamount to laws, in connection with the Principles, which are largely aspirational?⁶ In fact, the Charter to the Rules Commission that drafted the new rules specifically provides that the rules should state clear and enforceable disciplinary standards as opposed to purely aspirational objectives.⁷

There are three reasons why the rest of this paper will try to compare the Rules and the Principles:

1. In some instances the Principles and Rules may overlap—in which case being “aspirational” will keep you from being disbarred.
2. Notwithstanding the language of the State Bar Rules Committee Charter, some of the comments to the new rules do include aspirational objectives.⁸ Further, the new rules indicate that not just laws and rules, but also the “opinions of ethics committees in California, although not binding, should be consulted for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.”⁹ Given the breadth of that catchall, it’s entirely possible that the Principles could be cited by some State Bar Court in the future.
3. Because Lynn Tracy Nerland asked me to.

⁴ More information about the Center is available at <https://www.scu.edu/ethics/ethics-resources> (Accessed March 6, 2019).

⁵ <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/a-framework-for-ethical-decision-making/> (Accessed March 27, 2019).

⁶ See first bullet, Preamble.

⁷ <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Committees/Rules-Revision/Rules-Commission-2014> (Accessed March 6, 2019).

⁸ See, for example, Comment [5] to Rule 1.0 which includes goals for pro bono work.

⁹ Rule 1.0, Comment [4].

The Principles and the Rules.

Preamble

A city attorney occupies an important position of trust and responsibility within city government. Central to that trust is an expectation and commitment that city attorneys will hold themselves to the highest ethical standards. Every effort should be made to earn the trust and respect of those advised, as well as the community served.

The City Attorneys Department of the League of California Cities has therefore adopted these ethical principles to:

- Serve as an aspirational guide to city attorneys in making decisions in difficult situations,
- Provide guidance to clients and the public on the ethical standards to which city attorneys aspire, and
- Promote integrity of the city and city attorney office.

City attorneys are also subject to the State Bar's Rules of Professional Conduct. For an explanation of how the rules apply to city attorneys, please see *Practicing Ethics* published by the League of California Cities in 2004, available at www.cacities.org/attorneys¹⁰. These aspirational ethical principles are not an effort to duplicate or interpret the State Bar's requirements or create additional regulatory standards.

The role of the city attorney and the client city varies. Some city attorneys are full-time public employees appointed by a city council; some are members of a private law firm, who serve under contract at the pleasure of a city council. A few are directly elected by the voters; some are governed by a charter. When reflecting on the following principles, the city attorney should take these variations into account.

The city attorney should be mindful of his or her unique role in public service and take steps to ensure his or her words and deeds will assist in furthering the underlying intent of these principles.

The Preamble states that the Principles is being adopted for 3 reasons:

1. To serve as an aspirational guide to city attorneys in making decisions in difficult situations,
2. To provide guidance to clients and the public on the ethical standards to which the city attorneys aspire, and
3. To promote integrity of the city and the city attorney office.

With regard to the first point, I would again refer you to the discussion about ethics as a guide for decision-making and the article attached to this paper¹¹. With regard to the second and third points above, the Charter for the Commission for the Revision of the Rules of Professional

¹⁰ But note—*Practicing Ethics* has not been updated to reflect the current Rules.

¹¹ Honest, I'm not getting a commission from these people.

Conduct states in part: “The Commission’s work should promote confidence in the legal profession and the administration of justice, and ensure adequate protection to the public.”¹²

Principle 1 (Rule of Law). As an officer of the courts and local government, the city attorney should strive to defend, promote and exemplify the law’s purpose and intent, as determined from constitutional and statutory language, the case law interpreting it, and evidence of legislative intent. As an attorney representing a public agency, the city attorney should promote the rule of law and the public’s trust in city government by providing representation that helps create a culture of compliance with ethical and legal obligations.

***Explanation.** The city attorney’s advice and actions should always proceed from the goal of promoting the rule of law in a free, democratic society. Because the public’s business is involved, within the city organization the city attorney should consistently point out clear legal constraints in an unambiguous manner, help the city to observe such constraints, identify to responsible city officials known legal improprieties and remedies to cure them, and if necessary, report up the chain of command to the highest level of the organization that can act on the client city’s behalf.*

Examples

1. The city attorney should give advice consistent with the law and the policy objectives underlying those laws, but may consider and explain good faith arguments for the extension or change of a legal principle.
2. The city attorney should not attempt to justify a course of action that is clearly unlawful. Where the city attorney’s good faith legal assessment is that an act or omission would be clearly unlawful, the city attorney should resist pressure to be “creative” to come up with questionable legal conclusions that will provide cover for the elected or appointed public officials to take actions which are objectively unlikely to be in conformance with the legal constraints on the city’s actions.
3. The city attorney’s guiding principle in providing advice and services should be sound legal analysis. The city attorney should not advise that a course of action is legal solely because it is a common practice (“everyone else does it that way”), a past practice (“we have always done it that way”), or because the risk of suit or other consequence for action is considered low.
4. The city attorney’s advice should reflect respect for the legal system.
5. If the city has made a decision that the city attorney believes may be legally harmful to the city, the city attorney should encourage the city to take any necessary corrective action but do so in a way that minimizes any damage to the city’s interests.
6. The city attorney should be willing to give unpopular legal advice that meets the law’s purpose and intent even when the advice is not sought but the legal problem is evident to the attorney.

¹² <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Committees/Rules-Revision/Rules-Commission-2014> (accessed March 6, 2019).

7. The city attorney should not only explain and advise the city on the law, but should encourage the city to comply with the law’s purpose and intent.

This principle and the examples implicate several rules.

In terms of the Principle’s Explanation’s suggestion to “report up the chain of command to the highest level of the organization that can act on the client’s behalf,” Rule 1.13 (Organization as Client) now includes an express obligation to report legal violations that are likely to result in substantial injury to the organization up the food chain. However, notwithstanding that city attorneys work for public agencies and have a unique position of public trust, it is important to note that this is a report “up,” not report “out” obligation. The prohibition on disclosure of confidential client (here, the organization) information still governs over any sentiment that the public has a “right to know.”¹³ In fact, the Rules Commission considered whether to create a special carve out to the prohibition on disclosure for government attorneys as whistleblowers—but the Commission felt that the need for trust in the attorney-client relationship would be jeopardized in the government setting if the client knew that confidential communications could be disclosed by the government attorney.¹⁴

Example 1 above references the duty to follow the law, but also allows for good faith arguments to change the law. Example 2 clarifies this is not intended to encourage attempts to justify illegal conduct. Rule 3.1 (Meritorious Claims and Contentions) prohibits a lawyer from asserting positions in litigation that are not warranted under existing law, unless they can be supported by a good faith argument for an extension, modification, or reversal of existing law. Rule 3.3 (Candor Toward the Tribunal) requires a lawyer to disclose to a tribunal in any litigation adverse legal authority, and now requires the further step of taking remedial measures to clarify or correct for the court any material evidence that the lawyer knows to be false.

In terms of Example 6’s suggestion that the city attorney should be willing to give unpopular legal advice, note that Rule 1.4(c) (Communication with Clients) does allow a lawyer to delay communication of certain information where the lawyer reasonably believes that the client would likely react in a way that may cause imminent harm to the client or others. “Imminent harm” is not defined, and the report notes that this is an exception that could swallow the rule in terms of the duty to communicate with a client.¹⁵ Nevertheless, what constitutes “imminent harm” may be relevant when determining whether to communicate certain information during a public council meeting where emotions may be running high, for example.

Principle 2 (Client Trust). The city attorney should earn client trust through quality legal advice and the manner in which the attorney represents the city’s interests.

Explanation. It is difficult for the city attorney to effectively represent the city if public officials do not trust the city attorney’s competence and professionalism.

¹³ See Rule 1.13(c).

¹⁴ Rule 1.6 Report of the Rules Commission at p. 49.

¹⁵ Rule 1.4 Report of the Rules Commission at p. 9.

Examples

1. The city attorney should use available resources to maximize his or her ability to advise knowledgeable on issues of municipal law.
2. The city attorney should be clear with individual council members and staff on the extent to which their communications with the city attorney can and will be kept confidential. The city attorney should be especially clear when confidentiality cannot be lawfully maintained.
3. Sometimes the city attorney will be asked a question during a public or private meeting and the city attorney is unsure of the answer. When time permits, the city attorney should advise that additional time is needed to research the matter and provide an appropriate response. If extra time is not available, then the city attorney should be candid regarding any uncertainty he or she feels about the answer given.
4. When a question is posed and the city attorney knows there is no definitive, clear conclusion, the city attorney should describe the competing legal considerations, as well as inform the city of the legally supportable courses of action, together with an evaluation of the course that is most likely to be upheld.
5. In the event the city attorney is asked in a public forum to provide advice that could undermine the city's ultimate position, the city attorney should seek to meet in closed session, if legally permissible, or, if time permits, provide his or her opinion in a confidential memorandum. If the advice must be given during an open session, then the city attorney must be mindful of the impact that advice given in public may have on the city's ultimate position.
6. When the city attorney has a duty to provide documents or other information to outside law enforcement authorities, he or she should do so in a way to minimize harm to the city consistent with that duty.

The first rule implicated by this Principle is Rule 1.1 (Competence). The new Rules break this out from the former rule, which also included diligence and supervision, to more closely track the ABA Model Rules. The rule of competence requires that you possess the requisite learning and skill and mental, emotional and physical ability reasonably necessary to perform the requested legal services. If you do not have sufficient learning and skill, you are required to associate in others who do, or learn what you need to learn prior to the time of performance. For those technologically challenged, the rule of competence includes competence with relevant forms of technology.¹⁶

Example 2 above, deals with confidentiality of information. Confidentiality is covered in Rule 1.6 (Confidential Information of Client) and Business and Professions Code Section 6068(e)(1) "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Confidentiality is also potentially implicated by Example 5 above, and Rule 1.8.2 (Use of Current Client's Information) provides that confidential client information cannot be disclosed without the express consent of the client.

¹⁶ Rule 1.1 Report of the Rules Commission, p. 15.

Example 2 also relates to the identity of the client, in that only confidential information provided by the client is confidential—although ascertaining which constituent members of the political organization are the “client” in any given circumstance may be tricky. Rule 1.13 (Organization as Client) provides that when an organization is the client, the organization acts through its duly authorized directors, officers, employees, members, shareholders or other constituents overseeing the particular engagement. Interestingly and unhelpfully, comment 6 to that rule provides that “It is beyond the scope of this rule to define precisely the identity of the client and the lawyer’s obligations when representing a governmental agency.” So good luck.

Principle 3 (No Politicization). The city attorney should provide legal advice in a manner that avoids the appearance that the advice is based on political alignment or partisanship, which can undermine client trust.

Explanation. The city attorney and the city attorney’s advice needs to be trusted as impartial by the entire council, staff and community.

Examples

1. The city attorney should provide consistent advice with the city’s overall legal interests in mind to all members of the city team regardless of their individual views on the issue.
2. Each city council member, irrespective of political affiliation, should have equal access to legal advice from the city attorney, while legal work on a matter consuming significant legal resources should require direction from a council majority.
3. The city attorney or persons seeking to become city attorney should not make campaign contributions to or participate in the campaigns of that city’s officials, including candidates running for that city’s offices or city officers running for other offices. For private law firms serving as city attorney or seeking to become city attorney, this restriction should apply to the law firm’s attorneys.
4. When considering whether to become involved in policy advocacy on an issue that may potentially come before the city, the city attorney should evaluate whether such involvement might compromise the attorney’s ability to give unbiased advice or create the appearance of bias.

Example 2 above, again implicates both Rule 1.13, (Organization as Client), discussed above, and Rules 1.6 (Confidential Information of Client) and 1.8.2 (Use of Current Client’s Information) in terms of client confidentiality. Rule 1.13(f) (Organization as Client) requires the lawyer to make clear the identity of the client when the interests of the organization and the particular constituent with whom the lawyer is speaking may be adverse. At times making such a determination can be problematic, for example when speaking with an elected who is advocating a position with which the majority of the council does not agree.

Example 4 speaks to conflicts of interest. Rule 1.7 (Conflict of Interest: Current Clients), comment 1 indicates that loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Comment 4 provides that even where there is no directly adverse conflict, a

conflict may still exist where a lawyer’s ability to advise a client will be materially limited as a result of other professional or personal interests.

Principle 4 (No Self Aggrandizement). The city attorney should discharge his or her duties in a manner that consistently places the city’s interests above self-advancement or enrichment.

Explanation. The city attorney, by his or her acts and deeds, should demonstrate that his or her highest professional priority is to serve the city’s needs.

Examples

1. The city attorney’s operating and legal services budget requests should be based on the goal of efficiently serving the client city’s realistic legal needs (*i.e.* avoid “empire building”).
2. The city attorney should provide advice without a focus on garnering personal support or avoiding personal criticism.
3. While it is appropriate for a city attorneys to provide both advisory and litigation services, a city attorney should give the city a full range of reasonable options including alternatives to litigation for resolving issues.

Rule 1.5 (Fees for Legal Services) generally relates to Example 1, dealing with legal service budgets.

Rule 1.1 (Competence), Rule 1.3 (Diligence) and Rule 1.7 (Conflict of Interest: Current Clients) all speak to having the City’s needs as the highest professional priority. Of note, the diligence rule does not require “promptness,” that term (included in the ABA Model Rule) was specifically rejected in California, as the Rules Commission felt the “promptness” obligation is specifically referenced in other rules.¹⁷

Example 3 concerning the range of litigation and non-litigation options speaks to Rule 1.4 (Communication with Clients). Rule 1.4(a)(2) specifically requires a lawyer to reasonably consult with the client about the means by which to accomplish the client’s objectives.

Principle 5 (Professionalism and Courtesy). The city attorney should conduct himself/herself at all times in a professional and dignified manner, interacting with all elected officials, city staff, members of the public, and the media with courtesy and respect.

Explanation. The city attorney should be a role model of decorum and composure.

Examples

1. The city attorney should provide advice and information to the council and individual council members in an evenhanded manner consistent with city policy governing the provision of legal services to the city.

¹⁷ Rule 1.3 Rules Commission Report, Executive Summary p. 2.

2. The city attorney should communicate in a way that is sensitive to both the context and audience, explaining the law in a way that is understandable.
3. In interactions with the public, the city attorney's role is to explain procedures and the law, but not engage in debate.
4. The city attorney should show professional respect for city staff, colleagues, the legal system and opponents. The city attorney should not personally attack or denigrate individuals, particularly in public forums.
5. The city attorney should not seem to endorse, by silence or otherwise, offensive comments made to him/her about others.
6. Sometimes the city attorney will provide advice in public, either because of a city's approved practices or as necessitated during a public meeting. Such advice should be provided in a low-key, dispassionate and non-confrontational manner.
7. The tone of the city attorney's advice and representation should not give the appearance of a personal attack on an individual, even when it is necessary to explain that a particular official's action is unlawful.
8. The city attorney should be open to constructive feedback and criticism.

In terms of communicating with members of the public, Rule 4.1 (Truthfulness in Statements to Others) prohibits lying (materially) to a third party or failing to disclose a material fact when acting on behalf of a client, tempered by the obligations of confidentiality. Of note, this restriction would also apply when appearing before another public body on behalf of a client.¹⁸

With regards to exhibiting professional respect for city staff, colleagues, the legal system and opponents, Rule 4.2 (Communicating with a Represented Person) governs communication with represented persons. Rule 4.3 (Dealing with Unrepresented Person) now requires a lawyer to clarify that they are representing an adverse party, if that is not understood by the unrepresented person.

Perhaps more interesting, Rule 8.4.1 (Prohibited Discrimination, Harassment, and Retaliation) prohibits unlawful harassment or discrimination based upon a protected characteristic in the representation of a client. This rule was just referenced in *Fernando Martinez v. Stephen Stratton O'Hara*, in which the language in the notice of appeal filed by plaintiff's attorney was determined by the appellate court to manifest gender bias. And even though the notice of appeal was filed before Rule 8.4.1 took effect, the Court referenced the rule in a footnote, and also reported the attorney to the State Bar.¹⁹

Apparently, the court of appeal did not appreciate the following line from the notice of appeal: "The ruling's succubustic adoption of the defense position, and resulting validation of the defendant's pseudohermaphroditic misconduct prompt one to entertain reverse peristalsis unto its four corners." The appellate court noted that the definition of "succubus" includes "a demon

¹⁸ See Rule 4.1 Rules Commission Report, pp. 7-8.

¹⁹ (2019) 32 Cal.App.5th 853.

assuming female form to have sexual intercourse with men in their sleep,” and that the trial court judge was female.

Principle 6 (Policy versus Law). The city attorney’s obligation is to understand the city’s policy objectives and provide objective legal advice that outlines the legally defensible options available to the city for achieving those objectives.

Explanation. The city attorney must respect policymakers’ right to make policy decisions.

Examples

1. The city attorney may offer input on policy matters, but should make clear when an opinion is legal advice and when it is practical advice.
2. The city attorney should not let his or her policy preferences influence his or her legal advice.
3. If a city attorney finds it necessary to advise the city that a particular course of action would be unlawful, the city attorney should strive to identify alternative approaches that would lawfully advance the city’s goals.

Rule 2.1 (Advisor) is described by the Rules Commission as a core duty of every lawyer:²⁰ “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.” The comments to the rule indicate that a lawyer may refer to considerations other than the law, such as moral, economic, social and political factors. So even though the Principle indicates a city attorney should respect the rights of electeds to make policy decisions, Rule 2.1 recognizes that a lawyer can include non-legal factors in providing advice.

With regard to Example 2, comment 3 to Rule 1.2 (Scope of Representation) states that “A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” That may give one comfort--when dealing with the State Bar--but I’m not sure that the public always shares the same view.

Finally, as mentioned before, Rule 1.4 (Communication with Clients) does require a lawyer to consult with a client about the means to accomplish the client’s goals.

Principle 7 (Consistency). The city attorney should conduct his or her practice in a way that consistently furthers the legitimate interests of cities.

Explanation. Consistency in the legal positions taken by city attorneys is vital to city attorneys’ credibility with the courts, clients, and the public.

Examples

1. The city attorney should not represent a private client if that representation will necessitate advancing legal principles adverse to cities’ clearly recognized and accepted interests.

²⁰ Rule 2.1 Commission Report, p. 1.

2. When providing advice, the city attorney should inform his or her city of any far-reaching negative impacts a position may have on the city's own potential future interests as well as cities' interests in general, particularly when establishing legal precedent.

3. The city attorney should carefully consider whether to hire or recommend a firm that advances legal principles adverse to city interests on behalf of private clients.

With regard to Example 1 above, Rule 1.7 (Conflict of Interest: Current Clients) is a little more specific about that circumstance. Comment 6 to the rule indicates that advocating a legal position on behalf of a client that might create precedent adverse to the interests of another client does not create a conflict that requires written consent. However, where the lawyer may temper the lawyer's advocacy on behalf of one client out of concern about creating precedent adverse to the interest of another client, or where the action on behalf of one client will materially limit the lawyer's effectiveness in representing another client, then a conflict would exist.

Principle 8 (Personal Financial Gain). The city attorney's primary responsibility is to serve the city's interest without reference to personal financial gain.

Explanation. An important aspect of the city attorney profession is public service.

Examples

1. The city attorney should provide the highest possible quality work regardless of the remuneration received.

2. The city attorney's representation should be based on a realistic understanding of the city's needs in light of the city's fiscal and other constraints. However the city attorney should advise the city when additional resources are necessary to provide the level of legal services the city requires.

3. The city attorney should refrain from providing unnecessary or redundant services to the city.

4. The city attorney should never use the power, resources or prestige of the office for personal gain.

Rule 1.5 (Fees for Legal Services) prohibits the charging of "unconscionable" fees. An unconscionable fee is one that is so exorbitant and wholly disproportionate to the services performed as to shock the conscience of those to whose attention it is called²¹. The Rules Commission rejected a suggestion that the rule should prohibit "unreasonable" fees, based upon a concern that too many complaints to the bar would turn into fee disputes. California law has other methods to address fee disputes (arbitration, etc.).²² Regardless of the standard used by the Bar, the public, and non-lawyer electeds may have different measures that need to be taken into consideration.

²¹ Goldstone v. State Bar (1931) 214 Cal. 490, 498.

²² See Rule 1.5 Commission Report, p. 9.

In terms of financial gain from referrals, Rule 1.5.1 (Fee Divisions Among Lawyers) does now allow fee splitting among attorneys—but city attorneys may need to take into consideration the associated Political Reform Act and Government Code Section 1090 implications for such arrangements.

And one further note on a city attorney’s pecuniary interest, Rule 1.8.8 (Limiting Liability to Client) does not allow a lawyer to prospectively limit their liability for malpractice.

Principle 9 (Hiring by and of City Attorneys). The selection and retention of the city attorney and city attorney staff should be based on a fair process that emphasizes professional competence and experience. The process should not include inappropriate considerations such as political, personal or financial ties.

Explanation. The public’s trust in the quality of the city’s legal services is undermined if it appears that considerations other than competence affected the decision to hire someone.

Examples

1. The city attorney should engage staff and vendors based on objective standards relating to professional competence and experience.
2. The city attorney should avoid providing gratuities to decision-makers during the pendency of decisions relating to the city attorney’s employment.
3. City attorneys must keep employment negotiations separate from the city attorney’s role as the city’s legal advisor.
4. The city attorney should not undermine the employment of an incumbent city attorney. The city attorney may respond to unsolicited inquiries from a potential client about future representation.
5. The city attorney should maintain an office that is open to employees from diverse backgrounds and remove unnecessary barriers to success in his or her office and in the legal profession.
6. The city attorney should not award or recommend award of litigation or legal services-related contracts if the public could question whether the contract was awarded for reasons other than merit, such as the contractor (or member of the contractor) providing gifts to or participating in political campaigns of (including making campaign contributions to) officials with the power to award the contracts.
7. The city attorney should hire or recommend staff and consultants who adhere to these ethical principles and encourage existing staff and consultants to do likewise.
8. The city attorney should seriously consider refusing to represent cities that do not support the city attorney’s adherence to these principles

In terms of the city attorney hiring staff, Rule 8.4.1(b)(1)(iii) (Prohibited Discrimination, Harassment, and Retaliation) prohibits discrimination in hiring. This new rule eliminated the prior

threshold requirement of a determination by a court that the alleged unlawful conduct has occurred—thus the State Bar now has original jurisdiction to deal with claims of alleged discrimination in hiring.

Rule 5.1 (Responsibilities of Managerial and Supervisory Lawyers) now imposes supervisory responsibilities on city attorney offices²³, and violations of the State Bar rules, including the prohibition against discrimination, harassment, etc. can be attributable to the head of the office. The supervisor must ensure that measures are in place to see that lawyers and non-lawyers in the office comply with the State Bar Rules. The supervisor must also take remedial action to correct or mitigate the consequences of a violation of the rules once discovered.

In terms of undermining the employment of the current city attorney set out in Example 4, Rule 7.3 (Solicitation of Clients) prohibits in-person, live telephone or real-time contact to solicit professional employment. “The concern is the ability of lawyers to employ their skills in the persuasive arts to overreach and convince a person in need of legal services to retain the lawyer without the person having had time to reflect on this important decision.”²⁴ A prior similar rule against accountants was overthrown, but the U.S. Supreme Court has drawn a distinction between lawyers and accountants, finding that the latter, as opposed to the former, are not “skilled in the persuasive arts.”²⁵

And in terms of the issue of gifts mentioned in Example 2, Rule 7.2(b)(5) (Advertising) does allow gifts to a person who recommended hiring of the lawyer, after the lawyer is hired.

Principle 10 (Professional Development). The city attorney should contribute to the profession’s development by improving his or her own knowledge and training and by assisting other public agency attorneys and colleagues in their professional development.

***Explanation.** For city attorneys to remain a vital, positive part of municipal government, members of the profession should take affirmative actions to advance respect for and proficiency by its practitioners.*

Examples

1. City attorneys have a strong tradition of assisting their colleagues through formal or informal sharing of their knowledge and expertise, including active participation in the League of California Cities, the State Bar and a local municipal attorney group or bar association. This tradition also includes sharing of research and opinions when consistent with protecting client confidences.

2. The city attorney should continually strive to improve his or her substantive knowledge of the law affecting municipalities through presenting or attending appropriate educational programs.

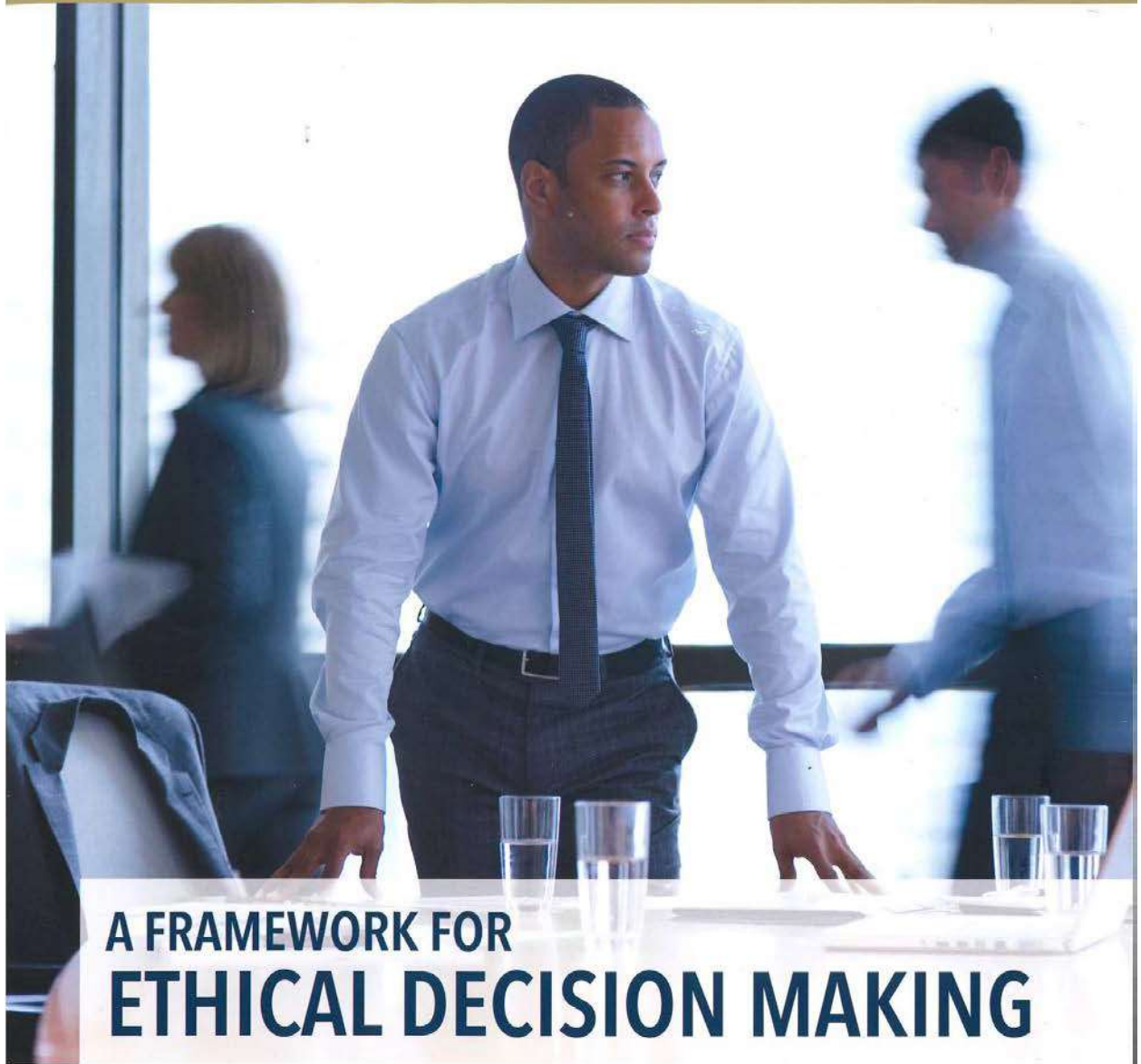
²³ The Rule speaks in terms of law “firms”, but the definition of firm includes the legal department of a government agency—see Rule 1.0.1

²⁴ Rule 7.3 Rules Commission Report, p. 12.

²⁵ *Edenfield v. Fane* (1993) 507 U.S. 761, pp. 774-775.

3. The city attorney should keep in mind the dynamic nature of municipal law and update his or her understanding of the law on an issue, rather than relying on past knowledge.

Rule 1.1, requires competence and Rule 1.3 requires diligence. Aside from that, I guess this Principle would be reason #4 as to why I wrote this paper...



A FRAMEWORK FOR ETHICAL DECISION MAKING

This document is designed as an introduction to thinking ethically. We all have an image of our better selves—of how we are when we act ethically or are “at our best.” We probably also have an image of what an ethical community, an ethical business, an ethical government, or an ethical society should be. Ethics really has to do with all these levels—acting ethically as individuals, creating ethical organizations and governments, and making our society as a whole ethical in the way it treats everyone.



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A FRAMEWORK FOR ETHICAL DECISION MAKING

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WHAT IS ETHICS?

Simply stated, ethics refers to *standards of behavior* that tell us how human beings *ought to act* in the many situations in which they find themselves—as friends, parents, children, citizens, businesspeople, teachers, professionals, and so on.

It is helpful to identify what ethics is **NOT**:

Ethics is not the same as feelings. Feelings provide important information for our ethical choices. Some people have highly developed habits that make them feel bad when they do something wrong, but many people feel good even though they are doing something wrong. And often our feelings will tell us it is uncomfortable to do the right thing if it is hard.

Ethics is not religion. Many people are not religious, but ethics applies to everyone. Most religions do advocate high ethical standards but sometimes do not address all the types of problems we face.

Ethics is not following the law. A good system of law does incorporate many ethical standards, but law can deviate from what is ethical. Law can become ethically corrupt, as some totalitarian regimes have made it. Law can be a function of power alone and designed to serve the interests of narrow groups. Law may have a difficult time designing or enforcing standards in some important areas, and may be slow to address new problems.

Ethics is not following culturally accepted norms. Some cultures are quite ethical, but others become corrupt—or blind to certain ethical concerns (as the United States was to slavery before the Civil War). “When in Rome, do as the Romans do” is not a satisfactory ethical standard.

Ethics is not science. Social and natural science can provide important data to help us make better ethical choices. But science alone does not tell us what we ought to do. Science may provide an explanation for what humans are like. But ethics provides reasons for how humans ought to act. And just because something is scientifically or technologically possible, it may not be ethical to do it.

WHY IDENTIFYING ETHICAL STANDARDS IS HARD

There are two fundamental problems in identifying the ethical standards we are to follow:

1. On what do we base our ethical standards?
2. How do those standards get applied to specific situations we face?

If our ethics are not based on feelings, religion, law, accepted social practice, or science, what are they based on? Many philosophers and ethicists have helped us answer this critical question. They have suggested at least five different sources of ethical standards we should use.

FIVE SOURCES OF ETHICAL STANDARDS

THE UTILITARIAN APPROACH

Some ethicists emphasize that the ethical action is the one that provides the most good or does the least harm, or, to put it another way, produces the greatest balance of good over harm. The ethical corporate action, then, is the one that produces the greatest good and does the least harm for all who are affected—customers, employees, shareholders, the community, and the environment. Ethical warfare balances the good achieved in ending terrorism with the harm done to all parties through death, injuries, and destruction. The utilitarian approach deals with consequences; it tries both to increase the good done and to reduce the harm done.

THE RIGHTS APPROACH

Other philosophers and ethicists suggest that the ethical action is the one that best protects and respects the moral rights of those affected. This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral rights—including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on—is widely debated; some now argue that non-humans have rights, too. Also, it is often said that rights imply duties—in particular, the duty to respect others' rights.

THE FAIRNESS OR JUSTICE APPROACH

Aristotle and other Greek philosophers have contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally—or if unequally, then fairly based on some standard that is defensible. We pay people more based on their harder work or the greater amount that they contribute to an organization, and say that is fair. But there is a debate over CEO salaries that are hundreds of times larger than the pay of others; many ask whether the huge disparity is based on a defensible standard or whether it is the result of an imbalance of power and hence is unfair.

THE COMMON GOOD APPROACH

The Greek philosophers have also contributed the notion that life in community is a good in itself and our actions should contribute to that life. This approach suggests that the interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others—especially the vulnerable—are requirements of such reasoning. This approach also calls attention to the common conditions that are important to the welfare of everyone. This may be a system of laws, effective police and fire departments, health care, a public educational system, or even public recreational areas.

THE VIRTUE APPROACH

A very ancient approach to ethics is that ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act according to the highest potential of our character and on behalf of values like truth and beauty. Honesty, courage, compassion, generosity, tolerance, love, fidelity, integrity, fairness, self-control, and prudence are all examples of virtues. Virtue ethics asks of any action, "What kind of person will I become if I do this?" or "Is this action consistent with my acting at my best?"

PUTTING THE APPROACHES TOGETHER

Each of the approaches helps us determine what standards of behavior can be considered ethical. There are still problems to be solved, however.

The first problem is that we may not agree on the content of some of these specific approaches. We may not all agree to the same set of human and civil rights. We may not agree on what constitutes the common good. We may not even agree on what is a good and what is a harm.

The second problem is that the different approaches may not all answer the question "What is ethical?" in the same way. Nonetheless, each approach gives us important information with which to determine what is ethical in a particular circumstance. And much more often than not, the different approaches do lead to similar answers.

MAKING DECISIONS

Making good ethical decisions requires a trained sensitivity to ethical issues and a practiced method for exploring the ethical aspects of a decision and weighing the considerations that should impact our choice of a course of action. Having a method for ethical decision making is absolutely essential. When practiced regularly, the method becomes so familiar that we work through it automatically without consulting the specific steps.

The more novel and difficult the ethical choice we face, the more we need to rely on discussion and dialogue with others about the dilemma. Only by careful exploration of the problem, aided by the insights and different perspectives of others, can we make good ethical choices in such situations.

We have found the following framework for ethical decision making (see back page) a useful method for exploring ethical dilemmas and identifying ethical courses of action.

HOW TO MAKE AN ETHICAL DECISION

RECOGNIZE AN ETHICAL ISSUE

1. Could this decision or situation be damaging to someone or to some group? Does this decision involve a choice between a good and bad alternative, or perhaps between two "goods" or between two "bads"?
2. Is this issue about more than what is legal or what is most efficient? If so, how?

GET THE FACTS

3. What are the relevant facts of the case? What facts are not known? Can I learn more about the situation? Do I know enough to make a decision?
4. What individuals and groups have an important stake in the outcome? Are some concerns more important? Why?
5. What are the options for acting? Have all the relevant persons and groups been consulted? Have I identified creative options?

EVALUATE ALTERNATIVE ACTIONS

6. Evaluate the options by asking the following questions:
 - Which option will produce the most good and do the least harm? **(The Utilitarian Approach)**
 - Which option best respects the rights of all who have a stake? **(The Rights Approach)**
 - Which option treats people equally or proportionately? **(The Justice Approach)**
 - Which option best serves the community as a whole, not just some members? **(The Common Good Approach)**
 - Which option leads me to act as the sort of person I want to be? **(The Virtue Approach)**

MAKE A DECISION AND TEST IT

7. Considering all these approaches, which option best addresses the situation?
8. If I told someone I respect—or told a television audience—which option I have chosen, what would they say?

ACT AND REFLECT ON THE OUTCOME

9. How can my decision be implemented with the greatest care and attention to the concerns of all stakeholders?
10. How did my decision turn out and what have I learned from this specific situation?

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This Framework for Ethical Decision Making is the product of dialogue and debate at the Markkula Center for Applied Ethics at Santa Clara University. Primary contributors include Manuel Velasquez, Dennis Moberg, Michael J. Meyer, Thomas Shanks, Margaret R. McLean, David DeCosse, Claire André, and Kirk O. Hanson.



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EXHIBIT C

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Morro Bay, a general law city and municipal corporation (hereinafter referred to as "THE CITY"), and Brian Stack, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1 EMPLOYEE was hired by THE CITY as an at-will City Attorney effective August 18, 2025³ serving at the pleasure of the City Council of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT").

2.2 THE CITY and EMPLOYEE desire that EMPLOYEE separate from employment with THE CITY and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between THE CITY and EMPLOYEE by means of EMPLOYEE's separation by means of _____ as of _____, _____. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under THE CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

3. CONSIDERATION

3.1 EMPLOYEE shall receive payment to EMPLOYEE at the time of EMPLOYEE's voluntary separation all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by state, federal or municipal law or THE CONTRACT or any other agreement with THE CITY.

3.2 In exchange for the waivers and releases set forth herein, THE CITY shall cause to be paid to EMPLOYEE an additional compensatory payment as severance pay by means of a lump sum payment of _____ and ____ cents (\$_____.00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to

EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT. The lump sum payment shall be subject to applicable state and federal withholdings as determined appropriate by THE CITY.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges THE CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "THE CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at anytime from the beginning of time up to and including _____, _____ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §12900 *et seq.*, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency. Furthermore, nothing herein shall be interpreted as a release or waiver of THE CITY's statutory obligations relative to providing defense and indemnification of public employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6. This AGREEMENT, however, does operate to prevent EMPLOYEE from seeking or recovering monetary damages or other individual-specific relief in connection with any such claims or administrative action brought by a state or federal agency.

3.4 Specific Acknowledgment of Waiver of Claims under ADEA and OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the “ADEA”) makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual’s employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the “OWBPA,” Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights EMPLOYEE may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

(a) This waiver/release is written in a manner understood by EMPLOYEE;

(b) EMPLOYEE is aware of, and/or has been advised of, EMPLOYEE’s rights under the ADEA and OWBPA, and of the legal significance of EMPLOYEE’s waiver of any possible claims EMPLOYEE currently may have under the ADEA, OWBPA and/or similar age discrimination laws;

(c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE’s own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;

(d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the EFFECTIVE DATE of this AGREEMENT;

(e) EMPLOYEE has been advised by this writing that EMPLOYEE should consult with an attorney prior to executing this AGREEMENT;

(f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, EMPLOYEE’s counsel of choice or at least had the opportunity to do so, and EMPLOYEE represents by signing this AGREEMENT that EMPLOYEE does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has **seven (7) days following EMPLOYEE’s execution** of this AGREEMENT to revoke the AGREEMENT;

(h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 7.9 herein, and must state, “I hereby revoke my acceptance of our Agreement of Severance and General Release;” and

(i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE’s execution of same (“EFFECTIVE DATE”).

4. UNKNOWN CLAIMS

In relation to the release provisions of Paragraph 3 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:

“General Release--Claims Extinguished”

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

5. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3 and 4 above.

6. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

6.1 **Advice of Counsel:** The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

6.2 **No Fraud in Inducement:** No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

6.3 **Independent Investigation:** Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

6.4 **Mistake Waived:** In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any

fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

6.5 Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against THE CITY or THE CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

6.6 Indemnification: EMPLOYEE agrees to indemnify and hold harmless THE CITY or THE CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that EMPLOYEE shall be exclusively liable for the payment of all taxes for which EMPLOYEE is responsible, if any, as a result of EMPLOYEE's receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

6.7 Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during EMPLOYEE's employment. Said services shall be provided as needed by THE CITY at a rate of \$100.00 per hour.

6.8 Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of EMPLOYEE's employment with THE CITY.

6.9 No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed,

EMPLOYEE shall forthwith withdraw and dismiss any such complaints or charges. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency.

6.10 Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

6.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

6.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other agreement to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

7. MISCELLANEOUS

7.1 No Admission: Nothing contained herein shall be construed as an admission by THE CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

7.2 Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

7.3 Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

7.4 Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

7.5 Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

7.6 Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

7.7 Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.

7.8 Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

7.9 Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given and/or received on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to EMPLOYEE:

At EMPLOYEE's home address on file with THE CITY.

As to THE CITY:

Mayor
City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

IN WITNESS WHEREOF, THE CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this AGREEMENT, and the attorneys for THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED:

EMPLOYEE, Brian Stark

By: _____

DATED: _____

THE CITY

By: _____

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____
_____, City Attorney

[EMPLOYEE'S ATTORNEY'S LAW FIRM]

By: _____
[Counsel Name]

EXHIBIT D

GOVERNMENT CODE SECTION 53243-53243.4

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.