



## What Does the City Attorney Have to Do with Obesity Prevention? A Fact Sheet for Advocates

City and county officials often work with in-house attorneys on government business. Although these attorneys do not make policy, they can play a key part in the lawmaking process—and they have an important role to play in the movement to prevent childhood obesity.

Local government lawyers (commonly known as *city attorneys*, *county counsel*, *city solicitors*, or *corporation counsel*) draft and review contracts and local policy, and provide legal advice and representation to local officials. They do not represent individual residents but rather the local government, which includes city or county officials, staff, and agencies. And as the client, the local government has the benefit of an attorney-client relationship with its attorneys, which includes confidentiality.

When an elected official (a city councilmember or mayor, for example) wants to enact or change a law, the city attorney evaluates the proposed policy to assess whether the new law raises any legal issues exposing the city to potential litigation or liability. The city attorney is also responsible for drafting the proposed new legislation. By drafting new laws setting forth policies that promote nutrition, physical activity, and overall health, local government attorneys play an important role in obesity prevention.

*Local government attorneys have a critical role in developing law and policy, making them important allies in the movement to prevent childhood obesity. This fact sheet explains how advocates can work with city attorneys and other government lawyers to promote new policies addressing nutrition and physical activity.*

That's why local government attorneys are a target audience for NPLAN resources such as model ordinances and model contracts. NPLAN drafts model laws and contracts, researching the legal issues involved. Local government attorneys build on this foundation, analyzing their state and local law to determine whether the community can adopt the model—and if so, they tailor the model to conform to local practice and conditions.

### The Local Government Attorney's Role: A Scenario

Suppose that you and fellow residents of your town have formed a coalition to advocate for restrictions on fast food restaurants near schools. You've downloaded NPLAN's *Model Healthy Food Zone Ordinance* and accompanying fact sheet and have spoken at numerous city council meetings to convince the city council to pass such an ordinance. After much hard work, your coalition has finally won support from several council members, who have shared the model ordinance and fact sheet with the city attorney and asked her to advise them as to whether they can pursue the ordinance.

The city attorney will analyze local and state laws to determine whether the ordinance can be adopted. Community advocates can make the city attorney's job easier by demonstrating (perhaps with fact sheets, memos, and other resources provided by NPLAN) that there are no legal barriers to the proposed ordinance.

Once the city attorney has advised the city council on what the law would accomplish and the risks associated with any potential legal issues, the next stage will likely unfold in one of two ways:

- 1) After reviewing the model ordinance and fact sheet, the city attorney advises the city council on what the law says and what it would accomplish. The city attorney also advises the council of any potential legal issues and the risk and cost of litigation. Based on that advice, the city council decides to proceed with passing the law. The city attorney then drafts a new law that tailors NPLAN's *Model Healthy Food Zone Ordinance* for the town's specific needs.

Or:

- 2) The city council decides not to pass the law, perhaps because the risk and cost of potential litigation is too great. The city council declines to pursue the proposed law any further.

Despite NPLAN's best efforts as we draft our resources, and community advocates' best efforts to promote their cause, local legislators might decide that the proposed legislation is not a good idea. A city council may believe that the risk of costly litigation is too great, that their constituents would rather they focus on other issues, or that the proposed legislation would alienate local businesses. Whatever the reason, the local legislative body makes the ultimate decision as to whether to enact a new law.

### Litigation: Risks and Possibilities

Sometimes a lawsuit is the only way to clarify an area of uncertain law, clearing the way for public health advocates to move forward with strong local policies. For example, the New York State Restaurant Association sued the New York City Board of Health for enacting a law requiring restaurants to provide calorie information on their menus.<sup>1</sup> But the law was legally sound and the city had the resources to defend the lawsuit. When the city prevailed, doors opened for similar legislation across the nation.

Localities with the courage to take the risk of defending strong new public health laws need and deserve tremendous support from the advocacy community. There is no denying that litigation can be expensive, so it is important for officials to balance the benefits of a new law against the risk of a potentially expensive lawsuit. Some communities are unable to afford these costs—especially if industry opponents purposely drive up costs with legal maneuvers to intimidate other communities from enacting similar laws.

Communities must think strategically about the risk of litigation when enacting new public health legislation. While NPLAN cannot provide legal advice to advocates or government attorneys, we design our resources and technical assistance to assist local government attorneys in making the best decision for their client.

There has been a growing trend among local government attorneys toward engaging in “affirmative litigation” to protect consumer rights and promote residents' health. In affirmative litigation, the local government entity is the *plaintiff*, the party bringing the lawsuit. For example, local governments have sued the tobacco industry, leading to fundamental reform in the industry's marketing practices. Local governments have also sued the lead paint industry, insurance companies, and others in order to protect consumers.

### Conclusion

Local government attorneys play a critical role in developing law and policy, and it is important for advocates to understand how these attorneys interact with city or county officials. NPLAN's resources can help local government attorneys assess the benefits of a new law or policy and provide strategies for minimizing the risk of litigation.

*The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of ChangeLab Solutions. ChangeLab Solutions is a non-profit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

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<sup>1</sup> *N.Y. State Restaurant Ass'n v. N.Y. City Bd. of Health*, 556 F.3d 114 (2d Cir. 2009).