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## MEMORANDUM

To:        Members of the Common Council  
From:     Alex Highley, Legislative Fiscal Analyst – Lead  
Date:     April 2, 2024  
Subject:  Peer Municipal Restrictions on City Attorney Outside Law Practice

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### Background

This memo is in response to your request for information relating to restrictions placed on city attorneys or corporation counsels of peer municipalities and their ability to engage in the private practice of law.

In April 1991, the Milwaukee Common Council passed File Number 900568, which added language to the Ethics Code that “the city attorney may not engage in the private practice of law for compensation during the period in which he or she holds office.” As of April 2024, there is a pending ordinance (File Number 231647) in the Judiciary and Legislation Committee which would expand the prohibition of the private practice of law for compensation to all licensed attorneys in the City Attorney’s office. If passed, this ordinance would replace the above text of s. 303-5-9 with the following language:

**9. PRIVATE PRACTICE OF LAW PROHIBITED FOR LICENSED ATTORNEYS IN CITY ATTORNEY’S OFFICE.** The city attorney, and any other licensed attorney in the city attorney’s office, may not engage in the private practice of law for compensation, during the period in time that he or she holds office, or is employed by the city. Each instance of a licensed attorney’s private practice of law documented in a billing statement shall constitute a separate violation subject to the penalties set forth in s. 303-35.

Please note that the laws of many peer cities do not specifically prohibit city attorneys from outside practice, but there are often general provisions within their municipal codes which prohibit all employees from engaging in outside work that would be considered incompatible with the discharge of their official duties.

For example, Madison, Wisconsin’s code states that “no incumbent shall engage in or accept employment or render service whether compensated or uncompensated when such employment or service would impair or reasonably appear to impair her or his independence of judgment or action in the performance of official duties.” Additionally, Indianapolis’s code stipulates that employees “shall not knowingly...accept other employment involving compensation of substantial value if the responsibilities of that employment...are inherently incompatible with the responsibilities of his or her position.”

The ordinances of the following municipalities explicitly prohibit the outside private practice of law by city attorneys or general counsel, and in Chicago's case, by all employees and elected officials.

### **Abilene, TX**

Section 74 of the Abilene Code of Ordinances stipulates that:

Neither the city attorney nor assistant city attorneys shall be engaged in the private practice of law while serving as city attorney or assistant city attorneys.

### **Boston, MA**

Section 5-8.2 of the Boston Municipal Code specifies the following prohibition:

No person connected with the Law Department shall, except as hereinbefore provided, appear in court in any case to which the City is not a party.

### **Chicago, IL**

Section 2-156-090-a of the Chicago Code of Ordinances prohibits all City staff from engaging in the outside practice of law. It reads:

No elected official or employee may represent, or derive any income or compensation from the representation of any person other than the City in any formal or informal proceeding or transaction before any City agency, employee, or official in which the agency's, employee's, or official's action or non-action is of a nonministerial nature; provided that nothing in this subsection shall preclude: (i) any employee from performing the duties of their employment; (ii) any elected official from appearing without compensation before any City agency on behalf of their constituents in the course of their duties as an elected official; or (iii) any elected official or employee from appearing without compensation before any City agency on behalf of a not-for-profit entity seeking to donate goods or services to the City or City residents.

### **Jacksonville, FL**

Section 7.02 of the Jacksonville Charter and related laws stipulates that:

The general counsel shall devote his/her entire time and attention to the business of the office and shall not engage in the private practice of law.

### **South Lake Tahoe, CA**

Section 2.20.040 of the South Lake Tahoe City Code places a limitation upon private law practice:

The city attorney shall not engage in the private practice of law without the consent of the city council, and then only upon such conditions as the city council may impose. (Ord. 1085 § 1 (Exh. A))

Please let me know if you would like additional information.

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