

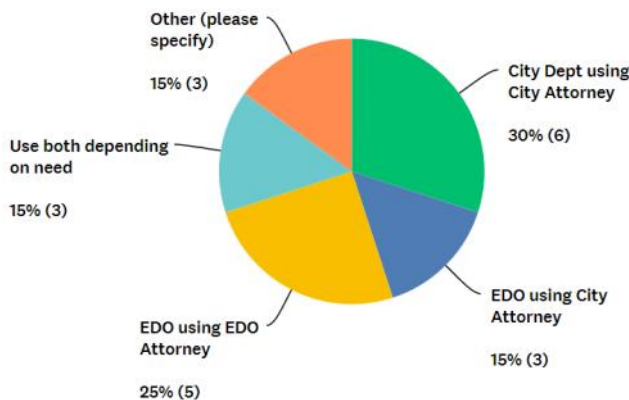
**BPAP Distribution & Response:** The question was distributed to 39 BPAB members and 20 executed the survey for a 51% response rate.

Following are results of questions asked, and additional comments, if any. [BACK TO TOP](#)

**What types of issues / projects cause you to engage an attorney?**

- Incentive Agreements: Drafting, Chapter 380, performance, job creation / incentives, tax abatement
- Other Agreements: Developers, business contracts, construction / maintenance
- Negotiations: Public-Private Partnerships, issues not addressed in policies
- Real Estate: Transactions, contracts, acquisitions, sales, leases, deeds, eminent domain
- Procedures: Project related
- Legal Conflicts: Civil lawsuits, being sued
- Interpretations / Opinions: Board member liability, allowable projects and guidelines, Local Government Code, new state laws, local ordinances, deeds, ethical questions
- Administration: Bylaw updates, EDO resolutions, organization / administrative contracts, bond issues
- E.D. Districts: TIRZ eligible projects

**What is your current practice for legal / attorney services?**



- We represent 25 cities and only use our select attorney of record so as to avoid confusion and conflicts.

**Positive / negative aspects of using the City Attorney?**

**Positives:**

- Real Estate Experience: Very proficient on RE matters
- Cost: No cost to the EDO
- Accessibility: Available, easy to contact, same bldg.
- Responsiveness: Quick response time (usually)
- Conflict Reduction: Minimizes, if not completely eliminates, differences of opinion (i.e. angst) within the City, streamlines processes, and minimizes legal disagreements within the City, good alignment
- City Familiarity: Incentives that are acted on by City Council. Works having in-house City Attorney in tune with the Council calendar, familiarity with City ordinances and procedures and joint agreements

**Negatives:**

- Accessibility: More expensive and inconvenient since their offices are in another city
- Conflicts: Situations where the City and the EDC are on opposite sides of an issue, if / when the City Attorney gets at odds with the elected officials (to whom he/she directly reports, at least in our City), then the City Attorney's Office can sometimes reflect some political pressure.
- Concern about Comments: Inability to speak freely about City, CC, City Manager, etc.
- Responsiveness: Typically takes much longer in our case to get things done from the City Attorney, City Attorney to busy with City business to meet our timelines
- E.D. Experience: Less knowledgeable on special E.D. projects / transactions, not "up-to-speed"
- Conservative Nature: Our City Attorney is way too conservative and it difficult, sometimes, to get a definitive answer. He likes to give a "best practice" answer instead of what is required by law. He is narrowly focused on eco dev., less likely to be open to new ideas, which are different from their legal position

### Positive / negative aspects of using a dedicated EDO Attorney?

#### Positives:

- Responsiveness: Quick response and engaged in our activities because services are paid directly by EDO
- Accessibility: EDO attorney could attend Board meetings which was necessary and most helpful.
- Focused on EDO: No conflict of interest, dedicated to EDO causes. Further removed from the political process, therefore more likely to give unprejudiced, objective, legal advice which benefits the EDO.
- Approach: Approach is "How do we get to yes?"
- Communications: More open dialogue

#### Negatives:

- Communications: Not always in tune with City Council approval issues.
- Costs: Expensive in some cases; however, our attorney provides services on a minimal retainer.
- Availability: Can be delayed on work for other clients.
- Conflicts: Differences in legal opinion between the EDO Attorney and the City Attorney can create arguments / angst within the City, and politicize E.D.

### What recommendations can you offer an EDO evaluating which way to go?

- Really depends on how closely the EDO works with the City, the relationship with the city attorney. Prefer private council if you can afford it.
- Using an attorney with the same law firm as the City's attorney was a big advantage in getting deals done.
- Determine what the issues are, and evaluate your City Attorney's capabilities to deal with E.D. issues, or whether someone with more focused capacity in that area would help. I think it would depend on the quantity of projects and the detail involved in each to determine if you need a more specialized attorney than a general municipal attorney.
- If you have a local City Attorney, use them. If your City Attorney represents other cities, you might want to use a local attorney for most needs because of cost, convenience, speed and dedication to your EDO.
- I recommend utilizing both unless the City Attorney is proficient with all E.D. issues.
- I recommend having your own attorney familiar with ED issues.

- Find an attorney, preferably as local as possible, that has a decent knowledge of Municipal Law, EDO laws and AG cases, not trial or criminal law attorneys.
- Find an attorney that fits with your philosophies, if you want to be creative (or conservative) in incentive deals, make sure they will help with that process.
- If you handle real estate, make sure the attorney (probably private) regularly deals with business and land transactions. Obviously, make sure the attorney works on contracts (preferably with businesses).
- For smaller EDO's budget for legal services and use an attorney as-needed
- In financial situations where a city is handling EDO financial management by legal agreement, for instance, it's better to have a dedicated attorney if one party or another doesn't live up to its agreement.
- First, consider the: a) structure of the EDO (i.e. separate 501-C3, City Dept., 501-C6, publicly funded, privately funded, etc.), b) political landscape of the community (i.e. political tension and fighting?), and c) the degree of support for E.D. in your community. Second, if you're a 501-C6, you probably have to use a separate EDO Attorney. If you're a department of the City, you will likely have to use the City Attorney. If you're a 501-C3, you likely will have a choice to use the City Attorney or a separate EDO Attorney. Third, consider: 1) If your community is prone to having political tension, then the EDO and City should use the same attorney; 2) If the community is generally or very supportive of E.D., then focus on using an attorney that understands the law regarding E.D. in Texas and is creative finding solutions that will support E.D. in your community; 3) If your community is NOT generally or very supportive of E.D., then either try to select a City Attorney that is fair and equitable with respect to the law, or use an experienced EDO Attorney, particularly if you're NOT a department of the City, that is NOT prone to getting drawn into political fights to patiently lay the groundwork for a successful E.D. program.
- It is ultimately up to the CC if they want a board to utilize the City Attorney. If the CC is open, I would recommend a thorough interview process and questions that lead you to your ultimate goal of what you want from the attorney.