



## County of Santa Clara

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**Policy Type:** Board

**Category:** Legal

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### **3.27 POLICY REGARDING COUNTY COUNSEL REVIEW OF DOCUMENTS AND TRANSACTIONS; PARTICIPATION IN CONTESTED MATTERS (Adopted 1-12-99; Amended 8-27-02; Amended 12-13-11; Amended 1-26-21)**

#### **3.27.1 Document Review**

It is the policy and expectation of the Board of Supervisors that all legal documents (such as contracts, memoranda of understanding/memoranda of agreement, side letter agreements, ordinances, and resolutions) being presented to the Board for approval, or for approval based on a delegation of authority, be first reviewed (and approved as to form and legality) by the Office of the County Counsel. This policy does not apply to routine, non-urgency salary ordinance amendments that concern only the addition of positions, removal of positions, or wage adjustments pursuant to a Board-approved agreement prepared using a form previously approved by the Office of the County Counsel and so identified. All other salary ordinances must be reviewed and signed as to form and legality by County Counsel. Any legal document not bearing signature approval as to form and legality by the Office of the County Counsel is voidable and is not binding on the County or any other entity for which the Board is the governing body.

In order to implement this policy, Agencies, Departments, Districts, officers, and other parties intending to place such items on the Board's agenda or



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otherwise process such items for approval shall provide the Office of the County Counsel with all relevant material sufficiently in advance of the Board meeting or applicable deadline to allow thorough legal review and modifications or clarification where required. "All relevant material" includes the legal document in question together with all exhibits and/or attachments, a copy of the draft transmittal, and information regarding the target date for Board or delegate consideration. In the case of contract amendments, the original contract and all previous amendments shall be provided.

It is further the policy of the Board of Supervisors that all transmittals to the Board which raise potential legal issues should first be reviewed by the Office of the County Counsel. This includes, for example, memoranda which reference prior or current legal advice of the County Counsel's Office, interpretations of statutes or ordinances, or conclusions or recommendations regarding legal liability of the County or other parties. It also must include any transmittal which requires the Board to make legal findings and/or take a legal action in a legislative or quasi-judicial hearing.

### **3.27.2 Timing of Review**

Ordinarily, such materials shall be provided to the Office of the County Counsel no later than three (3) weeks prior to the Board meeting or applicable deadline at which it is desired that the matter be considered, which is approximately one week prior to the date items for that meeting must be submitted to the County Executive's Agenda Review Committee. This time period will usually allow adequate time for review, identification of any legal issues, any necessary changes to the document(s), and where necessary, preparation of a separate written communication to the Board or delegate regarding legal matters. Where special circumstances exist which prevent a department from adhering to this schedule (such as a Board referral with a short turnaround time, an urgency situation, or changed



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circumstances or funding which require immediate amendment to a contract), the department shall contact the County Counsel or the attorney assigned to that department to make mutually-acceptable arrangements for review of the documents.

If the County Counsel's Office determines that there is insufficient time to permit a thorough review of the matter, the County Counsel's Office will inform the Board or person with delegated authority.

### **3.27.3 Training**

To assist in the smooth implementation of this policy, County Counsel will provide training to staff regarding the legal requirements for documents being presented to the Board for approval.

### **3.27.4 Involvement in Negotiation of Contracts and Other Transactions**

In order to protect and to further the interests of the County, and to avoid delays when County Counsel is first consulted late in the process of developing or negotiating significant transactions, it is the policy and expectation of the Board that County staff shall consult with County Counsel regarding significant transactions at a time early enough to allow meaningful consideration of legal strategy and risk analysis. For purposes of this policy, a "significant transaction" is a proposed contractual arrangement, project or program that may result in non-routine changes to the County's fiscal or legal obligations or in the operations of a county program. A "significant transaction" in labor contract negotiations is a proposed change in contract language, including, for example, settlement agreements and side letter agreements, but excluding changes solely relating to base salary or corrections of a clerical nature.

### **3.27.5 Involvement in Contested Matters**



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In order to reduce County liability and to protect and further the County's interest, it is the policy and expectation of the Board that County staff shall consult with the Office of the County Counsel in any matter in which an attorney is handling a matter adverse to the County. This includes but is not limited to labor grievance resolutions, labor arbitrations, personnel board matters, any agreement that settles a contested matter regardless of the name of said agreement, and land use hearings. For purposes of this policy, when County staff consult with the Office of the County Counsel, they shall collaboratively determine the appropriate handling and staffing of the matter.

### **3.27.6 Involvement in Written Responses to State and Federal Investigative Agencies**

In order to reduce County liability and to protect and further the County's interest, it is the policy and expectation of the Board that all formal written responses to State or Federal agencies investigating alleged violations of law, including but not limited to the Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), the Public Employment Relations Board (PERB), and other regulatory and licensing agencies, shall be reviewed by the Office of the County Counsel prior to submission to those agencies. In order to implement this policy, written responses and all relevant materials shall be provided to the Office of the County Counsel sufficiently in advance of the due date for submission of the written response to allow for an appropriate and meaningful legal review.

#### **Related Policies**

None.



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### Related Forms and Information

- Memo from County Counsel James R. Williams dated 12/28/17 Regarding County Counsel Review of Standard Service Agreements - [\[url\]/sites/policies/FormsrelatedtoPolicies/Memo-County-Counsel-Review-of-Standard-Service-Agreements-122817.pdf](#)

### History

Date	Changes Made
1/26/2021	Policy Amended. <a href="#">View legislative file.</a>
1/24/2014	Policy Uploaded. (John Myers)
12/13/2011	Policy Amended. <a href="#">View legislative file.</a>
8/27/2002	Policy Amended. <a href="#">View legislative file.</a>
1/12/1999	Policy Adopted. <a href="#">View legislative file.</a>