



Essential Hour: Your First Ordinance or Resolution

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**City Attorneys Department “Essential Hour”
August 18, 2023**

Legal Authority for Ordinances and Resolutions

In California, cities are classified as either general law or charter cities. (Gov. Code, §§ 34100-34102.) The California Constitution confers upon all cities the power to adopt legislation that is as broad as the power exercisable by the state Legislature, subject to preemption by general state law. (*Birkenfeld v City of Berkeley* (1976) 17 Cal. 3d 129, 140.) Although the authority of both types of cities to enact ordinances and resolutions is broad, charter cities have broader authority over municipal affairs.

General Law Cities. The California Constitution states, “[t]he Legislature shall ... provide for city powers.” (Cal. Const., art. XI, § 2.) In enumerating the municipal authority it confers to cities, the State Constitution provides that cities “may make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) This broad grant of authority is the source of local “police power.” (See generally, *The California Municipal Law Handbook* (Cont.Ed.Bar 2023) §§ 1.15-1.18.) This constitutional grant of authority empowers cities to enact ordinances or take actions “to promote the economic welfare, public convenience and general prosperity of the community.” (*Miller v. Board of Public Works of City of Los Angeles* (1925) 195 Cal. 477, 485, citing *Chicago, B. & Q. Ry. Co. v. People of State of Illinois* (1906) 200 U.S. 561, 592.)

Charter Law Cities. Charter cities have even broader authority to regulate municipal affairs, free from state interference. (Cal. Const., art. XI, § 5.) The Constitution guarantees charter cities plenary “home rule” authority regarding their “municipal affairs.” (*State Bldg. & Const. Trades Council of Cal. AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555.) Home rule “was intended to give municipalities the sole right to regulate, control, and govern their internal conduct independent of general laws, and this internal regulation and control by municipalities form those ‘municipal affairs’ spoken of in the constitution.” (*Fragley v. Phelan* (1899) 126 Cal. 383, 387.) The Legislature may only preempt charter-city authority if it articulates a statewide concern justifying a uniform rule and if the rule is reasonably related and narrowly tailored to addressing the articulated concern. (*Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13, 17-24.)

Ordinances versus Resolutions. Cities may make legislative enactments by ordinance or resolution. (*Crowe v. Boyle* (1920) 184 Cal. 117, 149.) There is express statutory authority for cities to pass ordinances not in conflict with state or federal law (Gov. Code, § 37100), but there is no specific statute or authority that defines the differences between the two types of enactments. However, a California court has described their common usages as follows:

“Strictly speaking ... [a]n ordinance in its primary and usual sense means a local law. It prescribes a rule of conduct prospective in operation, applicable generally to persons and things subject to the jurisdiction of the city. 'Resolution' denotes something less formal. It is the mere expression of the opinion of the legislative

body concerning some administrative matter for the disposition of which it provides. Ordinarily it is of a temporary character, while an ordinance prescribes a permanent rule of conduct or of government. However, for many purposes the two words are equivalent terms.” (*Central Mfg. Dist., Inc. v. Board of Sup'rs of Los Angeles County* (1960) 176 Cal.App.2d 850, 860 [citation omitted].)

Care should be taken to ascertain whether a statute requires a specific enactment to take place by ordinance. The use of a resolution when an ordinance is required may invalidate the enactment. (See, e.g., *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030, 1038.)

For a list of common types of resolutions, see generally, *The California Municipal Law Handbook* (Cont.Ed.Bar 2023) at § 1.247.

Substantive Limitations

Ordinances and resolutions are subject to substantive limitations under federal and state law. These include:

Public Purpose. Enactments must be reasonably related to a legitimate governmental purpose and supported by reasonable basis in fact concerning their necessity. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 159; *Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal.2d 515, 522.)

Constitutional Limitations. City ordinances and resolutions cannot abridge the rights guaranteed under the federal Bill of Rights (e.g., First, Fourth, and Fifth Amendments), Fourteenth Amendment (Due Process and Equal Protection Clauses), and companion provisions of the California Constitution. (See generally, *The California Municipal Law Handbook* (Cont.Ed.Bar 2023) §§ 1.58-1.69.)

Federal Preemption. City ordinances and resolutions are subject to the Supremacy Clause of the United States Constitution. They are preempted when they conflict with federal statutes or regulations. (*Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.* (1985) 471 U.S. 707, 713; *City of Burbank v. Lockheed Air Terminal Inc.* (1973) 411 U.S. 624, 633; see generally, *The California Municipal Law Handbook* (Cont.Ed.Bar 2023) §§ 1.33-1.35.)

State Preemption. City enactments may not “conflict with general laws.” (Cal. Const., art. XI, § 7.) Ordinances or resolutions conflict with state law when they duplicate, contradict, or regulate a field that state law has fully occupied, either expressly or impliedly. (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484-485; see generally, *The California Municipal Law Handbook* (Cont.Ed.Bar 2023) §§ 1.36-1.41.)

Adoption Process

General Ordinances. A two-step process governs the adoption of general city ordinances. First, the ordinance must be introduced. Second, at a *regular*² public meeting not fewer than five days after introduction, the ordinance must be enacted. (Gov. Code, § 36934.) The ordinance cannot be enacted if, after its introduction, any substantive changes are made. (*Id.*) However, correction of “typographical or clerical errors” are not considered substantive changes. (*Id.*)

For many years, the standard practice has been to “waive the reading” of the ordinance as part of the motion calling for its introduction or enactment. This allows councils to dispense with reading the full ordinance aloud during the meetings in which introduction or enactment is considered, so long as the titles of the ordinances are “read.” State law has, however, recently been amended to provide that the reading of the title is not required if the title is included in the published meeting agendas and a copy of the full ordinance is made available online and in print at the meeting before introduction and enactment. (*Id.*)

Observance of the correct procedure is critical. Ordinances enacted in violation of the above requirements are invalid, regardless of their subject matter. (*National Independent Business Alliance v. City of Beverly Hills* (1982) 128 Cal.App.3d 13, 22.)

In addition to the adoption procedure, ordinances must have an enactment clause that states: “[t]he city council of the City of ____ does ordain as follows:[.]” (Gov. Code, § 36931.) They must be approved upon recorded vote. (*Id.*, § 36936.) They must be signed by the mayor and attested by the city clerk. (*Id.*, § 36932.) They must also be published within 15 days of passage, with the names of the council members voting for and against the ordinance, at least once in a newspaper of general publication circulated in a city. (*Id.*, § 36933, subd. (a).) Ordinances are often long and, thankfully, state law provides a procedure by which only summaries may be published. (See, *id.*, § 36933, subd. (c); see generally, *The California Municipal Law Handbook* (Cont.Ed.Bar 2023) §§ 1.241.)

General ordinances take effect on the 30th day following enactment. (Gov. Code, § 36937.)

Urgency Ordinances. Ordinances may take effect immediately when adopted for the “immediate preservation of the public peace, health or safety[.]” (Gov Code, § 36937(b).) When enacted on an urgency basis, the ordinance must contain a statement of facts justifying the urgency. (*Id.*) Although courts may not investigate the truth of these facts, the mere declaration that an ordinance is passed for the immediate preservation of public peace, health, or safety is insufficient to withstand challenge. (*Crown Motors v. City of Redding* (1991) 232 Cal.App.3d 173, 179.)

Zoning Ordinances. Under the California Planning and Zoning Law (Gov. Code, § 65000 et seq.), zoning ordinances are adopted differently than general ordinances. (See Gov. Code, § 65853 [stating that zoning amendments “shall” be enacted as set forth in Gov. Code, §§ 65854-

² It is important to note the requirement that general ordinances be enacted at regular meetings. The governing statute provides that enactment may also occur at an adjourned regular meeting. (Gov. Code, § 36934.) *But general ordinances may not be enacted at special meetings.*

65857].) Before a zoning ordinance may be adopted, the Planning and Zoning Law requires that (1) the planning commission hold a hearing to recommend approval or disapproval of the ordinance (Gov. Code § 65854); (2) the planning commission forward its recommendation in writing to the city council (*id.*, § 65855); and (3) the city council act on the ordinance by approving, rejecting, or modifying the planning commission recommendation (*id.*, §§ 65856-65857).

To determine which ordinances are considered zoning ordinances subject to this process, refer to Government Code section 65853. This section identifies such ordinances as including:

"A zoning ordinance or an amendment to a zoning ordinance, which amendment changes any property from one zone to another or imposes any regulation listed in Section 65850 not theretofore imposed or removes or modifies any such regulation theretofore imposed"

Government Code section 65850 specifies several types of zoning enactments, including those that regulate the use of buildings, structures, and land; signs and billboards; permissible height, size, intensity, and use of buildings and lots; parking requirements, setbacks, and affordability requirements.

Moratoria Ordinances. The Planning and Zoning Law also provides for an urgency ordinance in zoning matters, often referred to as a “moratorium” ordinance. (See generally, Gov. Code, § 65858.) Like a general urgency ordinance, this type of ordinance takes effect immediately and requires legislative findings that the ordinance is necessary to address an immediate threat to the public, health, safety, or welfare. (*Id.*) Moratoria are covered more fully in the California Municipal Law Handbook (Cont.Ed.Bar 2023) at §§ 10.235-10.237.

Resolutions. Resolutions may be adopted with less formalities than ordinances. Resolutions are not subject to the two-step process for adopting general ordinances, generally need not be published, and take effect immediately. State law imposes no format for resolutions. It provides only that, like ordinances, resolutions be approved upon recorded vote. (Gov. Code, 36936.)

Other Requirements for Approval

Public Hearings Required? Some ordinances and resolutions are subject to public-hearing requirements. When these are required, notices of the proposed action must usually be published in a newspaper of general circulation or otherwise made available to the public. A listing of matters for which public hearings are required is beyond the scope of this paper, but generally such hearings are required in matters involving land use, zoning, and general plans; adoption of or proposals for taxes, fee, and special assessments; and acquisitions of real property through eminent domain. For further information, see The California Municipal Law Handbook (Cont.Ed.Bar 2023) at § 2.57.

Vote Thresholds

General ordinances and resolutions are approved by a majority vote of a quorum present. (Gov. Code, 36936.) Urgency and moratoria ordinances must be approved by a four-fifths vote of the city council. (*Id.*, § 36397(b); 65858.)

A number of additional “supermajority” vote requirements are scattered throughout California’s various statutory codes. A paper submitted to the League of California Cities, City Attorneys Department, Annual Conference identified, as of the date of its presentation, a number of these requirements. The paper can be accessed from the link in the footnote below.³ Because this paper was presented in 2006, counsel should verify the cited references remain valid and note that additional supermajority requirements may have been adopted following the date of the presentation.

Interpretation

City ordinances are subject to the same rules as apply to interpretation of state statutes. (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290.) Familiarity with these rules is helpful to effective drafting. To this end, helpful court opinions best describing the judicial approach to interpreting statutes can be found in *Jackpot Harvesting Co., Inc. v. Superior Court* (2018) 26 Cal.App.5th 125, 140-142 and *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1237-1240. For exhaustive summaries of the numerous canons, aids, and methods for construing statutes, see also, 58 Cal. Jur. 3d Statutes §§ 84-178 and 7 Witkin, Summary 11th Const Law §§ 130-137 (2023).

Enforcement

Violations of city ordinances are misdemeanors, unless by ordinance they are made infractions. (Gov. Code, § 36900(a).) Violations may be prosecuted in the name of the People of the State of California or redressed by civil action. (*Ibid.*) When violations are declared as infractions, fines are authorized in amounts depending on the number of and types of violation. (*Id.*, § 36900(c)-(d).) Cities may also establish an administrative process which provides for the imposition, collection, enforcement, and imposition of fines and penalties. (See generally, *id.* § 53069.4.)

Conclusion

The above discussion should make clear that cities have broad authority to enact ordinances or adopt resolutions that promote the public health, safety, or welfare. Despite the breadth of these authorities, counsel should take care that legislative enactments not transgress constitutional or

³ https://www.ca-ilg.org/sites/main/files/file-attachments/resources_LEAGUE_OF_CITIES_VOTING_REQUIREMENTS_ABSENCES_VACANCIES_ABSTENTIONS_AND_DISQUALIFICATIONS-1.pdf?1395441985

statutory limitations. Counsel should also ensure strict adherence to the procedures for enactment and adoption.