



Your Legal Powers and Obligations

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Legal Issues: The Law and Making Things Happen in Your Jurisdiction

Summary and Overview

Legal considerations frequently affect how you are able to pursue the goals that you and your colleagues set for your community. A basic understanding of the legal structure that governs cities will help you provide more effective community service.

This paper highlights some of the laws and legal principles that may impact your decision-making on the city council. It is not comprehensive by any means. You will want to forge a positive relationship with the city attorney in your city, who can help navigate the relevant laws and legal principles and assist in avoiding legal mistakes that could be costly for your city.

SECTION I: Sources of the Law and Municipal Powers

What are the Sources of Law for Cities?

The “law” affecting California cities can be found in a number of places:

- **The California Constitution** specifies the relationship among the various levels and branches of government, and establishes a number of individual rights. Cities derive a number of their powers directly from the California Constitution. Changing the Constitution requires a vote of the people. Proposals to change the Constitution may be placed on the ballot by either the Legislature or by initiative petition.
- **City Charters**, in those cities where citizens have elected to have charters, determine how a city is organized and, in some circumstances, give cities certain home rule prerogatives even in the face of conflicting state statutes. There are two types of cities in California: “charter cities,” which operate under the city's local charter, and “general law cities,” which operate under the general laws of the state.¹ Charters can also contain (self-imposed) limitations on city activities.
- **State Statutes** are typically enacted by the State Legislature and are printed in a series of “codes.” The California Government Code, for example, contains a number of provisions relating to the organization of general law cities, as

¹ See Cal. Gov. Code, §§ 34101 and 34102.

well as land use, planning and employee relations matters. Voters can also amend state statutes through the initiative process.

- **Local Ordinances** represent local agencies' exercise of law-making powers within their respective jurisdictional boundaries.
- **The Federal Constitution and Statutes** apply nationwide and typically act as restrictions on the exercise of power by state and local governments.
- **Judicial Decisions** interpret all of the above, frequently resolving ambiguities or conflicts among them.

What Powers Do Cities Have and How Are They Limited?

This section provides a brief overview of the sources of city authority and the factors that may constrain a city's ability to exercise that authority. A relevant consideration is whether your city is a charter or general law city since charter cities may retain local authority even when their enactments conflict with state law.

The "Police" Power

The California Constitution provides that a city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.² This is commonly known as the "police power," and is often referred to as the city's regulatory authority to protect the public health, safety and welfare.

Preemption

A city's regulatory authority may be restricted if the proposed local ordinance or regulation conflicts with federal or state general laws. This is a concept known as "preemption." Federal or state law may preempt a city's ability to legislate in a particular area, either explicitly or by implication.

The test for preemption of local law by federal or state laws is similar. A local ordinance will be preempted by state law when it is in express conflict with state law.³ Preemption may also occur even when there is no express conflict if the state law has fully "occupied the field" of regulation.

² Cal. Const., art. XI, § 7.

³ Cal. Const., art. XI, § 7. Note, however, that charter cities are exempt from this restriction in regard to "municipal affairs." *Johnson v. Bradley*, 4 Cal.4th 389, 397 (1992).

Determining what constitutes a “conflict with general laws” is not always easy. Sometimes the Legislature expressly declares its intent to preempt local regulation. Oftentimes, the courts may be called upon to make the final determination.⁴

Charter City Powers

Perhaps the strongest expression of home rule or local control in California’s Constitution relates to a charter city’s authority over municipal affairs.⁵ If a matter is a “municipal affair” (and not a “matter of statewide concern”), a charter city has power to act, even to the extent that the city’s action may be at odds with a state statute. The chief restriction on local action under these circumstances is whether the action would be inconsistent with the city’s charter or the California or United States Constitutions.

Courts, rather than the Legislature, are the ultimate arbiters of whether a subject is a municipal affair or a matter of statewide concern.⁶ This determination is made on a case-by-case basis, which means that it frequently takes litigation to vindicate a charter city’s exercise of its authority. More information on charter cities can be found at www.cacities.org/chartercities.

Operation of Public Works

The California Constitution provides that a city may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication.⁷ It may furnish those services outside its boundaries, except within another municipal utility’s boundaries that furnishes the same service and does not consent. Persons or corporations supplying those services may operate within cities upon conditions and under regulations that the city may prescribe.⁸

⁴ For example, one court ruled that a city could not enact housing occupancy standards more stringent than the uniform standards contained in state housing law. *Briseno v. City of Santa Ana*, 6 Cal.App.4th 1378, 8 Cal.Rptr.2d 486 (1992). Another court held that a city could not regulate the storage of firearms. *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1997). On the other hand, courts have found local ordinances allowing mobile home rent increases to fund capital improvements, prohibiting boisterous conduct in card clubs, and regulating nuisances related to the sale of alcoholic beverages not to be preempted by state law on related subjects. *Robinson v. City of Yucaipa*, 28 Cal. App. 4th 1506, 34 Cal. Rptr. 2d 291 (1994); *Lowe v. City of Commerce*, 59 Cal. App. 4th 1075, 69 Cal. Rptr. 2d 356 (1997); *City of Oakland v. Superior Court*, 45 Cal. App. 4th 740, 53 Cal. Rptr. 2d 120 (1996).

⁵ See generally Cal. Const., art. XI, § 5.

⁶ The threshold inquiry is whether a conflict exists between a charter city law and state law. If no conflict exists, the charter city law stands. If a conflict exists, the court will find the matter is a municipal affair unless it qualifies as a matter of statewide concern. Even if the subject matter is of statewide concern, the state law must be reasonably related and narrowly tailored to address that statewide concern. See *Johnson v. Bradley*, 4 Cal. 4th 389, 14 Cal. Rptr. 2d 470 (1992); see also *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista*, 54 Cal. 4th 547, 279 P. 3d 1022 (2012).

⁷ Cal. Const., art. XI, § 9(a).

⁸ Cal. Const., art. XI, §9(b).

State and Federal Constitutional Limitations

Local officials' actions must also comply with the United States Constitution and federal law. Areas of federal law that frequently arise for cities include:

- The First Amendment establishment of religion, free exercise of religion and free speech clauses.
- The Fourth Amendment prohibition against unreasonable search or seizure.
- The Fifth Amendment right to remain silent (for example, in police interrogations) and the requirement of just compensation for the taking of property.
- The Fourteenth Amendment's protections of due process, equal protection and property rights.

California's Constitution also contains similar declarations of rights, as well as other provisions that may place limits on city actions. Some examples include provisions relating to water rights,⁹ workers compensation,¹⁰ alcoholic beverage regulation,¹¹ public housing projects¹² and the non-partisan nature of municipal government.¹³

City officials should also be aware of the various federal civil rights laws which prohibit public agencies from discriminating against individuals based on a number of protected characteristics (for example, race, gender, physical disability and age). The state also has a number of laws that contain similar—but not always the same—protections.

Indemnity and Immunity

When acting within the bounds of their authority, city council members, as public officials, enjoy a number of statutory immunities that shield them from personal liability and provide immunity under most circumstances.

Except as otherwise provided by law, the city must pay any judgment or any compromise or settlement so long as the following are true: (1) the claim or action arose from an act or

⁹ See Cal. Const., art. X.

¹⁰ See Cal. Const., art. XIV, §4.

¹¹ See Cal. Const., art. XX, §22.

¹² See Cal. Const., art. XXXIV.

¹³ See Cal. Const., art. II, §6.

omission occurring within the scope of employment; (2) a request for defense is made in writing at least 10 days before trial; and (3) the employee reasonably cooperates in good faith in the defense of the claim or action.¹⁴ For purposes of this discussion, council members are considered city employees, regardless of whether they are compensated or not.

But the city's duty to defend or indemnify a council member does not apply in the context of alleged conflicts of interest in violation of the Political Reform Act or other conflict of interest laws. Liability for conflicts of interest is personal to the council member. However, a council member is entitled to seek an opinion on conflict of interest issues from the Fair Political Practices Commission ("FPPC"). A written advisory letter from the FPPC will provide immunity to a public official who has requested and obtained such a letter. The same is not true for conflict advice a council member may have received from the city attorney, or for informal advice received from FPPC staff by telephone.

Exercising Power

Taking Legislative Action

Cities usually exercise their regulatory authority by adopting ordinances or resolutions. For general law cities, state law requires that the city attorney draft all ordinances.¹⁵ Further, state law requires that the mayor of a general law city sign the ordinances and that the city clerk attest the ordinances.¹⁶ The city clerk must, within 15 days after its passage, cause the ordinance to be published at least once in a newspaper of general circulation, or post the ordinance if no newspaper of general circulation is published in the city.¹⁷

After the ordinance has been introduced, it cannot be finally passed until the expiration of at least five days. The only exception is an urgency ordinance, which can be finally passed at the same meeting at which it is introduced.¹⁸ An ordinance in general law cities must be passed by a majority of the entire city council.¹⁹ The voting requirement also applies to resolutions.

Acting in a Quasi-Judicial Capacity

The city council is primarily a legislative and administrative body, but often sits in a quasi-judicial capacity. Quasi-judicial matters may include variances, use permits, annexation protests, and personnel disciplinary actions. Quasi-judicial proceedings tend to involve the

¹⁴ Cal. Gov. Code, § 825(a).

¹⁵ Cal. Gov. Code, § 41802.

¹⁶ See Cal. Gov. Code, § 36932.

¹⁷ See Cal. Gov. Code, § 36933.

¹⁸ See Cal. Gov. Code, § 36934.

¹⁹ See Cal. Gov. Code, § 36936.

application of generally adopted standards or rules to specific fact situations, much as a judge applies the law to a particular set of facts.

Those persons subject to a quasi-judicial proceeding must be given meaningful notice and an opportunity to be heard. A record should be kept of the witnesses and their testimony, the evidence introduced on both sides, and the council's findings.

"Findings" are the city council's explanation for its action. Findings are not only important to those interested in the council's decision, but to courts reviewing the council's action in the event of a legal challenge.

To satisfy due process obligations, the decision-maker must be fair and impartial.²⁰ Council members should be careful to listen to the testimony in such hearings if they vote on the matter, leaving biases, prejudices and pre-conceived ideas outside the hearing.²¹

SECTION II: The Money to Make Things Happen

California cities raise revenue to pay for public facilities and services in a variety of ways, including through taxes, fees, assessments, and debt financing. There are numerous laws and regulations related to raising revenue, including requirements for notice to and approval by the public and affected property owners. During this conference, you will participate in a financial responsibilities and city revenues workshop, in which you will receive training and educational materials that will assist you in complying with the complex laws that govern revenue-raising activities in your city.

SECTION III: Ethics, Conflicts of Interest and Open Government

As part of your participation in this conference, you will also receive what is commonly referred to as "AB 1234 training." Enacted in 2005, AB 1234 requires local elected officials to receive training every two years on the laws related to ethics, conflicts of interest and open government. The Institute for Local Government, in conjunction with the Attorney General's office and other stakeholders, has developed educational materials that will assist you in understanding these important, but often complicated, areas of the law.

²⁰ See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (1996) (explaining basic requisites of due process in the context of a council's quasi-judicial action on a zoning appeal); *cert. denied*, 520 U.S. 1167, 117 S. Ct. 1430, 137 L. Ed. 2d 538 (1997).

²¹ See *Mennig v. City Council of City of Culver City*, 86 Cal. App. 3d 341, 150 Cal. Rptr. 207 (1978).

Transparency, Public Access & Trust: Keeping Local Government Open through Social Distancing Answers to Frequently Asked Questions

Local government continues to provide essential services during times of crisis. While the mode of operations may change, values should remain the same: transparency, ethics, responsiveness and public involvement. ILG hosted a webinar featuring award-winning law firm Best Best & Krieger and Southern California's City of Temecula in early April 2020. The discussion addressed key transparency topics including the Brown Act, Public Records Act and conflicts of interest. Below are some of the common questions asked before, during and after the webinar. Access the [recording of the webinar here](#).

Public Meetings and the Brown Act

What are the technology requirements for virtual public meetings?

The requirements include:

- The public must be able to observe and address the meeting
- Notice must be posted in a timely manner (72 hours for regular meeting, 24 hours for special meeting)
- Notice must clarify how the public can attend and provide comment
- Reasonable accommodations must be provided. (Think through visual and hearing needs, prepare with your technology department, and plan for special cases.)

How can a local government make sure to maintain control of and manage disruptions during public meetings?

- From a technology standpoint, try to pre-plan what disruptions may occur. Agency staff should brainstorm solutions to various scenarios in advance (e.g. What if an elected official or presenter loses sound or their internet connection? What if a public comment is garbled and drops off?)
- Make sure your meeting logistics team has complete control of and full access to your technology (IT team, meeting chair, clerk, etc.).

- Designate the meeting chair as responsible for announcing any disruptions and the solution to maintain the flow of the meeting.
- Keep members of the press and media informed and consistently participating if an agency does need to clear the virtual room.

What is the best way to handle closed sessions with online or teleconference platforms?

- Create a separate conference call line or virtual platform for closed session. Only provide the closed session information to essential participants, including the governing body and key staff.
- Transparency is particularly important now, which means most discussions related to the emergency should take place in an open session. Under limited circumstances there may be a justification for closed session, such as for labor negotiations, risks to facility security or specific threats of litigation.

How should we handle roll call voting?

- Roll call votes are required under the Brown Act for teleconference meetings. Ensure that your agency's roll call voting procedure is clarified and adequately described at the beginning of the meeting. Develop a meeting script to explain the approach and ensure that your meeting chair and all voting members understand the process.
- For consent calendars, one vote is sufficient unless an item is pulled from consent. In that instance, the pulled item would need its own vote.

We usually post agendas at a location that is currently closed to the public. How can we make sure to comply with the posting requirements?

- Document how you are posting your agendas and post them in as many traditional places as possible within required periods. [See Temecula's affidavit of posting as an example](#). Ensure that the agenda is also posted on the agency's website.

Public Comment

What are the best ways to comply with public comment requirements when holding virtual public meetings?

Agenda Language. When noticing your meeting, provide public participation instructions. [See sample agenda provided by the City of Temecula.](#)

- **Clarify how individuals can participate.**
 - Describe the methods for attending, including the type of webinar platform, YouTube channel, etc. and be consistent.
 - Clarify how individuals can submit comments and the specific rules for doing so. Explain how comments will be treated and any criteria for submissions (time limit, word count, etc.).
- **ADA.** Address ADA requirements and maintain a standard statement about special assistance. Provide a direct telephone number where residents can ask specific access questions and receive special assistance. Any telephone numbers must forward to staff to ensure that messages will be received. The agency may ask for 48 hours to resolve special requests but staff may want to be prepared to resolve items on a case-by-case basis with less time.

Tailor Your Solution to Your Community. The Governor's Executive Order requires that agencies give the public the ability to observe and address the meeting telephonically or by other electronic means. Agencies must still allow for public comments, but that can take many different forms. Some agencies may use a dedicated email address, webinar comments, a teleconference line, or a physical location to drop off comments. Make sure to take into consideration who is in your community, and what methods will best serve your community, when deciding on how you are going to receive public comments.

Public Records Requests

Are we still required to comply with the Public Records Act?

Yes, responses are still due within 10 days. Production of all documents within that time might not be reasonable given remote work circumstances. Demonstrate good faith in your response with an explanation of what is available, when the agency will follow-up, etc. Ensure that all email replies and voice messages

to the requestor clearly outline the process and expected timelines.

Conflicts of Interest

How should we handle possible conflicts of interest?

- For conflicts identified during a meeting, the decision-maker should announce the conflict, leave the meeting and rejoin later. A best practice is to leave the meeting by ending the conference line or leaving the webinar and then rejoining once the agenda item discussion is complete. If not feasible, the decision-maker should mute their line and not participate.
- Form 700 Filing: The deadline has been extended until June 1st, but officials are encouraged to file as soon as possible.

Other Tips and Strategies

Platforms. When choosing a platform, consider how much control your agency will have and the features available for the agency as the host, like mute options for addressing audio interruptions, etc.

Script Your meetings. Creating a written script for the meeting chair will help guide the meeting and support the meeting protocols/decorum. It should contain specific instructions on how to provide comment for both the council or governing body and the public. The script should serve as a guide to keep the meeting continuity and flow. Maintain script guidelines during business items and during public comments. Repeat the voting and roll call procedures for each item to help all officials and the public understand what is happening and to ensure effective virtual participation. [See Temecula's script as an example.](#)

Outreach and Customer Service:

- Communicate early and often about meeting and public records access; inform the public via the agency's website, public access television, social media and any other channels so the public understands how to participate.
- For public records requests, consider what can be done through the Uniform Electronic Transactions Act to prepare materials.

Virtual Setting Tips:

- Before logging into the virtual meeting, staff and officials should consider lighting, environment, background, potential noises, etc.
- Be prepared to show a headshot that ranges between head and chest. Consider using a virtual background.
- Inform users, especially those using platforms for the first time, how to use the technology, including how to switch views (e.g. toggling between gallery view or seeing the current speaker).

In-Person Meetings:

- If you are holding any in-person meetings, plan to demonstrate and model physical/social distancing requirements.

For additional information, please see [ILG's COVID-19 webpage](#) or [Best Best & Krieger COVID-19 Legal Updates](#).

Disclaimer: Open meeting practices continue to evolve as the COVID-19 crisis continues and agencies use a wide range of technology to meet their needs. The information provided in this document is for general informational purposes only and is not intended to provide legal advice to any individual or entity. ILG urges you to consult with your own legal advisor before taking any action based on this information.