Your Legal Powers and Obligations

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LEGAL RESOURCES

www.cacities.org/CPRAGuide

www.cacities.org/BrownActGuide
AGENDA

• City Powers and Limitations
• General Law Cities v. Charter Cities
• Raising Revenue
• Open Government and Transparency
• Ethics
• Councilmember’s Role Concerning City Employees
SOURCES OF LAW

- California Constitution
- United States Constitution
- State Statutes
- Federal Statutes
- City Ordinances
- City Charters
- Court Decisions
Good News
Presbyterian

Coronado Elementary School
Worship 9:00 AM

480-982-4331
YOUR COMMUNITY CHURCH
www.goodnewspres.com
SOURCES OF LAW

- California Constitution
- United States Constitution
- State Statutes
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CITY POWERS

- Tax
- Eminent Domain
- Public Works
- Corporate
- “Police Power”
POLICE POWER

• Granted by the California Constitution

• Power to regulate to further the public’s health, safety, convenience and general prosperity

• Examples:
  • Land use regulations
  • Fire and safety regulations
  • Fees
LIMITATIONS ON POWERS

• City limits

• No gifts of public funds
  • Expenditures must have a public purpose

• Preemption by state or federal law
• Basic Rule: when there is a conflict between laws, the “higher” government wins

• A “conflict” exists when:
  • An ordinance contradicts federal/state law
  • An ordinance duplicates federal/state law
  • An ordinance regulates an area “fully occupied” by federal/state law

• Charter cities have authority over “municipal affairs”
• 121 charter cities

• General law cities are bound by state law

• Charter cities have authority over “municipal affairs”
RAISING REVENUE

• Taxes
  • General – requires majority approval
  • Special – requires 2/3 approval
  • Proposition 26 broadly defines tax unless an exception applies

• Fees
  • If new, must fit under exception

• Assessments

• Debt Financing
OPEN GOVERNMENT AND TRANSPARENCY

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www.cacities.org/BrownActGuide
• Requires “meetings” of a “legislative body” be “open and public”
“LEGISLATIVE BODY”

• Includes:
  • Governing body (city council)
  • Newly elected members who have not yet assumed office
  • Appointed bodies
  • Standing committees (regardless of composition)
  • Governing body of a private organization in limited circumstances
“LEGISLATIVE BODY”

• Does not include:
  • Temporary advisory committees composed of less than a quorum
  • Groups that advise a single decision maker
“MEETINGS”

• Includes:
  • Any gathering of a majority of the legislative body “to hear, discuss, deliberate, or take action” on a matter within the agency’s subject matter jurisdiction
  • Oral collective briefings
  • Legislative retreats
  • “Serial meetings”
    • No daisy chains or hub-and-spoke meetings
    • Use caution with email/social media
“MEETINGS”

• Use of e-mail or other technology/media by a majority of a legislative body to discuss, deliberate, or take action on items within the body’s jurisdiction violates the Brown Act

• New Legislation re Social Media: AB 992

  • Clarifies communications officials can have on social media platforms open to the public

  • Officials can communicate on social media but...

  • Should not directly respond/react to anything posted/shared regarding city business by another member of the legislative body.
“MEETINGS”

• Does not include:
  • Individual contacts or staff briefings
  • Conferences
  • Community meetings
  • Meetings of other legislative bodies
  • Social and ceremonial gatherings
  • Attending standing committee meeting
“OPEN AND PUBLIC”

- Includes:
  - Notice
    - Must post agenda in advance containing brief general description of items to be discussed
      - 72 hours for regular meeting
      - 24 hours for special meeting
      - Also on website
    - Teleconferencing rules
  - Cannot discuss non-agenda items
  - Public Comment
“OPEN AND PUBLIC”

• Does **Not** Include:
  • Closed Sessions
    • Examples:
      • Litigation
      • Real Estate Negotiations
      • Public Employment
      • Labor Negotiations
  • Requirements:
    • Agenda – “safe harbor” descriptions
    • Public report of actions and votes
    • Confidentiality
COVID-19 EXECUTIVE ORDERS

• EO N-25-20 (March 12): Suspends Brown Act to allow members and staff to attend by phone so long as location for public is provided

• EO N-29-20 (March 17): Revised to withdraw requirements for any physical location

• EO N-35-20 (March 21): Suspends Brown Act to allow collective briefing outside of a properly noticed meeting (but no deliberation)
COVID-19 Executive Orders

- EO N-29-20:
  - Allows public meetings to be by video, teleconference or other electronic means during the period in which health officers have imposed or recommended social distancing measures.
  - Suspends other requirements including:
    - To identify physical location of members participating by teleconference
    - To post agendas at all teleconference locations
    - For a quorum of the legislative body to be within the jurisdiction for the meeting
  - Still requires:
    - Advance notice and agenda posting within time frames
    - Provide for members of the public to observe and offer public comment
    - Advertise and implement a procedure for receiving and resolving Americans with Disabilities Act accommodation requests
• “Public records” must be disclosed unless they are “exempt”
“PUBLIC RECORDS’

- Includes:
  - Any writing containing information relating to the conduct of the public’s business that is prepared, owned, used or retained by the agency regardless of physical form or characteristic
  - Electronic records
    - *City of San Jose v. Smith*: “writings about public business are not excluded simply because they have been sent, received or stored in a personal account.”
• Does **not** include:
  
  • Statutory list of exemptions
  
  • “Catchall” allows nondisclosure where the public interest in nondisclosure clearly outweighs the public interest in disclosure
ETHICS

• Political Reform Act
  • Prohibits official from making, participating in, or influencing a governmental decision in which he or she has a financial interest
    • Reporting obligations

• Government Code section 1090
  • Prohibits official from having a financial interest in their agency’s contract

• Incompatible Offices
  • Prohibits public officials from holding multiple offices that are incompatible with one another
COUNCILMEMBER’S ROLE WITH RESPECT TO CITY EMPLOYEES

• May have appointing authority over the city’s highest officials (e.g., city manager)
• City is the client

• Consult the city attorney early and often

• Relay all pertinent facts and objectives

• Recognize that a concrete answer is not always possible
Questions?