Your Legal Powers and Obligations

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LEGAL RESOURCES

**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
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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

PREEMPTION

• 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”
GENERAL LAW V. CHARTER CITIES

• 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


BROWN ACT

• 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
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

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
PUBLIC RECORDS ACT

• “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.”
“PUBLIC RECORDS”

• 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 COUNCIL-CITY ATTORNEY RELATIONSHIP

- 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?