

# Your Legal Powers and Obligations

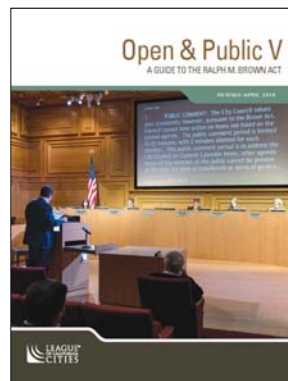
Corrie Manning, League of California Cities®  
Thomas B. Brown, Burke, Williams & Sorensen LLP



## LEGAL RESOURCES



[www.cacities.org/CPRAGuide](http://www.cacities.org/CPRAGuide)



[www.cacities.org/BrownActGuide](http://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





## SOURCES OF LAW

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



## CITY POWERS

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

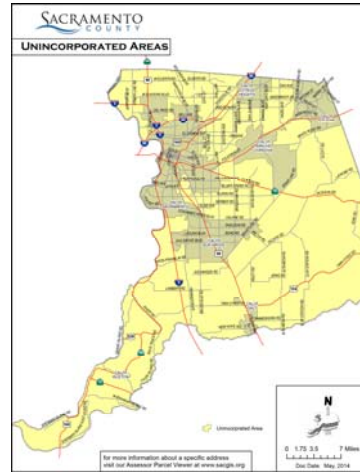


## POLICE POWER

- 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

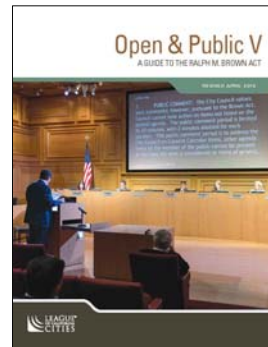
- Taxes
  - General – requires majority approval
  - Special – requires 2/3 approval
  - Proposition 26 broadly defines tax unless an exception applies
- Fees
  - If new, must fit under exception
- Assessments
- Debt Financing



## OPEN GOVERNMENT AND TRANSPARENCY



[www.cacities.org/CPRAGuide](http://www.cacities.org/CPRAGuide)



[www.cacities.org/BrownActGuide](http://www.cacities.org/BrownActGuide)

## 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





## “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”

- 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

PRIVILEGED

## 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?

League of California Cities® | [www.cacities.org](http://www.cacities.org)