

# New Mayors and Council Members Academy

January 27, 2022



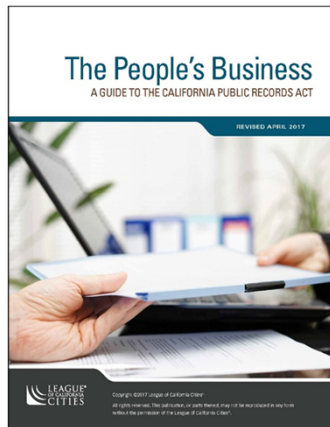
LEAGUE OF CALIFORNIA CITIES

Strengthening California Cities through Advocacy and Education

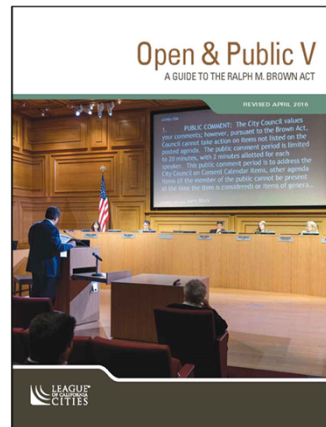
## Your Legal Powers and Obligations; Open Government & Conflicts of Interest

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## Legal Resources



[www.calcities.org/CPRAguide](http://www.calcities.org/CPRAguide)



[www.calcities.org/BrownActguide](http://www.calcities.org/BrownActguide)

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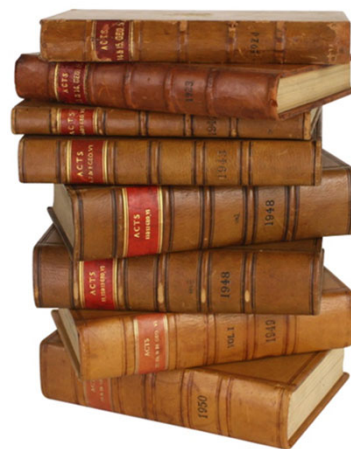


## Agenda

- 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”

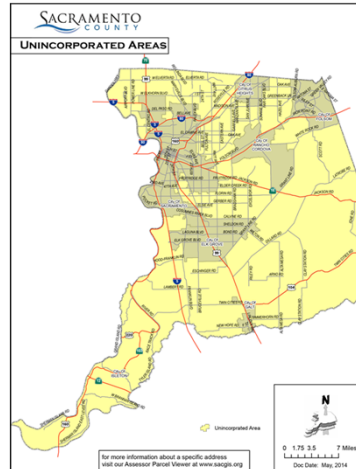


## Police Power

- 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

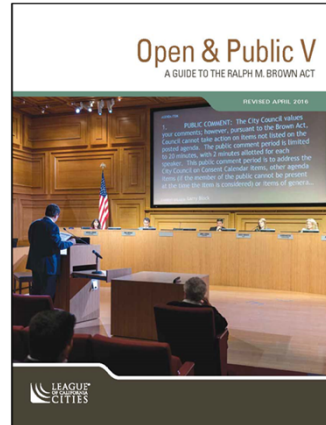
- Taxes
  - General- requires majority approval
  - Special – requires 2/3 approval
  - Proposition 26 broadly defines tax unless an exemption applies
- Fees
- Assessments
- Debt Financing



# Open Government and Transparency



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# Brown Act

- Requires “meetings” of a “legislative body” to be “open and public”



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## “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:

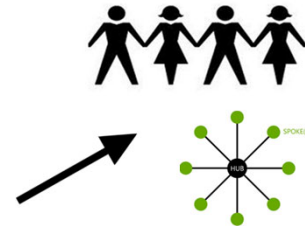
- Temporary advisory committees composed of less than a quorum
- Groups that advise a single decision maker





## “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”
    - Daisy chains or hub-and-spoke meetings
    - Use caution with email/social media



## “Meetings”

- Use of email 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
- Social media legislation: AB 992 (effective 2021)
  - 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



## AB 361 (effective October 1, 2021)

- Allows legislative bodies to meet remotely under certain conditions without following certain teleconferencing rules.
- Applies to meetings held during a declared state of emergency when:
  - Local officials have imposed or recommended social distancing; or
  - Legislative body determines meeting in person would present imminent risk to health or safety as a result of the emergency
- Circumstances of emergency must be confirmed 30 days after first remote meeting and every 30 days thereafter to continue exemption from teleconference rules.

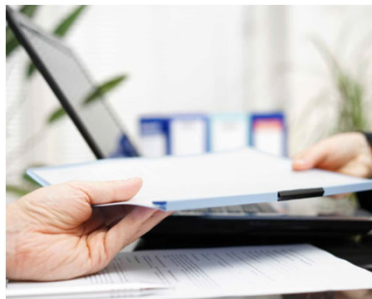
## AB 361 (effective October 1, 2021)

- Conditions:

- Public must be given ability to address legislative body directly
  - Must provide call-in or internet-based option
  - If call-in or internet-based option fails, meeting must be stopped
- Public cannot be required to submit comments in advance
- Pre-registration requirement is prohibited except as required by call-in or internet platform
- Public must be given a reasonable time to register to provide comment
- Cities that provide a timed public comment period shall not close public comment until that timed period has expired

## 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 official 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

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