

## INTRODUCTION

State law in California impacts many provisions in the ordinance codes of California counties and cities. This pamphlet is intended to assist municipal and county attorneys in the identification of provisions in ordinance codes that may require revision in light of state law. The information in this pamphlet is based upon the experience of the legal staff of Municipal Code Corporation in working with the ordinance codes of California counties and cities.

This pamphlet is current through ch. 870 of 2019 Regular Session. Not all provisions of this pamphlet will apply to your Code, nor does this pamphlet purport to include all state laws that may somehow affect the language of your Code.

The provisions of this pamphlet are intended to assist county and city attorneys and are not intended to be a substitute for the advice of counsel.

It is not the intent of Municipal Code Corporation in publishing this pamphlet to provide legal advice. An attorney admitted to practice in California must be consulted as to the applicability of a given statute or case to a particular situation.

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## GENERAL PROVISIONS

1. *Classification of counties.* For legislative purposes, counties are divided into 58 classes on the basis of population by Government Code § 28020 et seq. See Government Code § 28021.

2. *Source of county powers.* In terms of powers, counties may be classified as general law counties and chartered counties.

General law counties operate under California Government Code title 3 (commencing with § 23000) and other applicable California laws. Chartered counties operate under a charter authorized by Cal. Const., art. XI, § 3 and other applicable California laws.

The provisions of Cal. Const., art. XI, § 1 provides as follows:

### Sec. 1.

- (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.
- (b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

The provisions of Cal. Const., art. XI, § 4 provides as follows:

### Sec. 4. County charters shall provide for:

- (a) A governing body of five or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.
- (b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.
- (c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal.
- (d) The performance of functions required by statute.
- (e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.
- (f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.
- (g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by

the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

- (h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties.

The provisions of Cal. Const., art. XI, § 7 provide that "a county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."

In *Dibbs v. County of San Diego*, 8 Cal. 4th 1200, 884 P.2d 1003 (1994), the California Supreme Court in contracting the home rule authority of charters cities and chartered counties stated as follows:

Whereas charter county "home rule" authority is limited to matters concerning the structure and operation of local government, the version of 'home rule' afforded to a charter city is substantially more expansive. First, in comparison with charter counties, article XI, section 5, subdivision (b), gives charter cities even broader authority to structure and organize their government; for example, it grants 'plenary authority' over the election, removal, and compensation of municipal officers and employees. (*Ibid.*) In addition, and unlike charter counties, charter cities are also given broad authority to 'make and enforce all ordinances and regulations in respect to municipal affairs.... City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.' (Cal. Const., art. XI, § 5, subd. (a).) There is no corresponding grant of authority and autonomy over the 'county affairs' of charter counties. (*Johnson v. Bradley* (1992) 4 Cal. 4th 389, 406, 14 Cal. Rptr. 2d 470, 841 P.2d 990; see also *Sato*, "Municipal Affairs" in California (1972) 60 Cal. L. Rev. 1055, 1115.) Indeed, as noted above, the Constitution requires charter counties to provide for '[t]he performance of functions required by statute.' (Art. XI, § 4, subd. (d).)

8 Cal. 4th at 1206, 884 P.2d at 1007.

3. *Source of city powers.* For purposes of powers, cities may be classified as general law cities and chartered cities.

General law cities operate under California Government Code title 4 (commencing with § 34000) and other applicable California laws. Chartered cities operate under a charter authorized by Cal. Const., art. XI, § 3 and other applicable California laws.

The provisions of Cal. Const., art. XI, § 7 provide that "a county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."

The provisions of Cal. Const., art. XI, § 5 provide as follows:

- (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.
- (b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and

employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

In *Fisher v. City of Berkeley*, 209 Cal. Rep. 682, 729, 37 Cal. 3d 644, 693 P.2d 261, 308 (S. Ct. 1984), the following statement was made about municipal powers.

Every California city possesses the general power to 'make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' (Cal. Const., art. XI, § 7.) In addition, charter cities have even greater authority: they have exclusive power to legislate over 'municipal affairs.' (Cal. Const., art. XI, § 5, subd. (a).)

In *Isaac v. City of Los Angeles*, 77 Cal. Rep. 2d 752, 760, 66 Cal. App. 4th 586, 599---600 (2nd Dist. 1998), the court presented the following analysis of municipal powers and the effect of statutes upon them:

Every California city may enact and enforce within its limits local ordinances not in conflict with general laws. (Cal. Const., art. XI, § 7.) Chartered cities, such as Los Angeles, are granted exclusive power to legislate their municipal affairs. (Cal. Const., art. XI, § 5; Government Code § 34101.) Under home rule, the state Legislature's authority to intrude into matters of local concern is curtailed. The benefits of home rule are numerous, because cities are familiar with their own local problems and can often act more promptly to address problems than the state Legislature. Therefore, cities are only precluded from enacting laws on non-local matters if it is the intent of the Legislature to occupy the field to the exclusion of municipal regulation. (See *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 61-62, 81 Cal. Rptr. 465, 460 P.2d 137.)

Whether a city ordinance is valid therefore requires a determination of whether (1) the local regulation or ordinance is a 'municipal affair,' upon which the municipality has the exclusive authority to regulate, or (2) whether the subject is a matter of statewide concern such that state legislation preempts any municipal attempt at lawmaking. Because the California Constitution does not define 'municipal affairs,' it has become a question to be decided on the facts of each case, as the concept of a municipal affair changes over time as local issues become issues of statewide concern. (*Bishop*, supra, at p. 62, 81 Cal. Rptr. 465, 460 P.2d 137; *Century Plaza Hotel* (1970) 7 Cal. App. 3d 616, 620, 87 Cal. Rptr. 166.) Although the state Legislature may have attempted to deal with a particular field, this does not automatically ordain preemption. The Legislature may also express its intent to permit local legislation in the field, or the statutory scheme may recognize local regulations. (*City of Dublin v. County of Alameda* (1993) 14 Cal. App. 4th 264, 276, 17 Cal. Rptr. 2d 845.)

Whether a particular matter is of 'statewide concern' is another way of stating that the matter is preempted and conflicting local legislation is prohibited. *Fisher* recognized a three-part test to infer a legislative intent to preempt conflicting municipal enactments only where (1) the subject matter has been so fully and completely covered by general law as to clearly indicate it has become exclusively a matter of state concern, (2) the subject matter has been partially covered by general law stated in such terms as to indicate clearly a matter of paramount state concern which will not tolerate further or additional local action, and (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance outweighs the possible benefit of the law to the municipality. (*Fisher*, supra, at p. 708, 209 Cal. Rptr. 682, 693 P.2d 261.)

4. *Codification of ordinances.*
  - a. *Counties.* Codification of ordinances is authorized by Government Code §§ 25126 and 50022.1 et seq.
  - b. *Cities.* Codification of ordinances is authorized by Government Code § 50022.1 et seq.

5. *Penalties for ordinance violations.*

- a. *Counties.* The maximum penalties for ordinance violations are governed by Government Code § 25132 and Penal Code § 19. The provisions of Government Code § 25132 were amended by Acts 2018, c. 970.
- b. *Cities.* The maximum penalties for ordinance violations are governed by Government Code §§ 36900, 36901. The provisions of Government Code § 36900 were amended by Acts 2018, c. 970.
- c. *Administrative fines and penalties.*
  - (1) *Counties.* Government Code § 53069.4 authorizes administrative fines or penalties in amounts not exceeding the fine or penalty amounts for infractions in Government Code § 25132(b).
  - (2) *Cities.* Government Code § 53069.4 authorizes administrative fines or penalties in amounts not exceeding the fine or penalty amounts for infractions in Government Code § 36900(b).

6. *Procedure on arrest; notice to appear.* The time fixed in a notice to appear for a county or city ordinance violation is at least ten days after arrest if the duplicate notice is to be filed by the officer with the magistrate. See Penal Code § 853.6.

## ADMINISTRATION

1. *Compensation of mayor and councilmembers.* Government Code § 36516 et seq. governs compensation of the mayor and councilmembers. It would appear that these provisions only apply to general law cities. See 84 Ops. Cal Atty. Gen. 13.

2. *City elections.* Elections Code provisions pertaining to city elections apply to city elections except as otherwise provided by the constitution or charter. See Elections Code § 10101.

3. *Bond of city treasurer and city clerk.* The bonds of the city treasurer and city clerk are recommended by the city attorney and fixed by the city council by resolution. See Government Code § 36518.

4. *Personnel systems, merit systems, civil service systems.* A personnel system, merit system, or civil service system for the selection, employment, classification, advancement, suspension, discharge, and retirement of appointive officers and employees must be established by ordinance. See Government Code § 45001. See also Government Code § 45005.

5. *Political activities of public employees.* Subject to certain exceptions therein stated, Government Code § 3201 et seq. governs political activities of public employees and is preemptive. See Government Code § 3201. See also Government Code § 3207.

6. *Purchasing.* Purchasing policies and procedures, including bidding regulations, governing purchases of supplies and equipment must be adopted by ordinance. See Government Code §§ 54202, 54203.

7. *Disposal of unclaimed property.* Civil Code §§ 2080.4 and 2080.6 provide minimum requirements for ordinances pertaining to unclaimed property.

8. *Cities; collection of nuisance abatement expenses.* Per Government Code § 38773, to collect expenses of nuisance abatement, a city must adhere to either Government Code § 38773.1 or 38773.5. Under Government Code § 38773.1, a lien is obtained. Under Government Code § 38773.5 expenses are collected as a special assessment. Many cities provide that either procedure can be followed.

9. *Judicial review of county decisions.* Until a 1993 amendment to Code of Civil Procedure § 1094.6, such section was only applicable to counties that adopted same. The 1993 amendment made the section applicable to all counties. Any language that purports to track such section requires review as there have been other amendments to such section.

10. *Special assessments.* The power to impose special assessments (nuisance abatement expenses excepted) has been restricted by Cal. Const., art. XIID (a/k/a Proposition 218).

11. *Online or electronic filing of campaign statements and reports.* City and counties may adopt ordinances providing for electronic or online filing of campaign statements and reports. See Government Code § 84615.

12. *Public contracts for goods or services with a person engaged in investment activities in Iran.* Ordinances, rules, or regulations of any local public entity involving public contracts for goods or services with a person engaged in investment activities in Iran are preempted to the state. See Public Contract Code § 2206.

## **ANIMALS**

1. *Potentially dangerous or vicious dogs.* Ordinances controlling potentially dangerous or vicious dogs cannot be breed specific, except that in accordance with Health and Safety Code § 122331 breed specific spay and neuter programs and breeding requirements are permissible. See Food and Agricultural Code § 31683.

## **BUILDINGS AND BUILDING REGULATION**

1. *Solar panel fees.* Permissible fees for photovoltaic systems have been revised. See Government Code § 66015.

## **BUSINESSES**

1. *Taxicabs.* Government Code § 53075.5 requires that cities and counties adopt certain minimum requirements for regulation of taxicabs.

2. *Veterinary medicine; cleanliness and sanitation.* Enforcement of cleanliness and sanitation requirements of Business and Professions Code §§ 4809.5 and 4854 are preempted to the state. See Business and Professions Code § 4809.6.

3. *Automated checkout systems; item pricing.* Automatic checkout system item pricing is preempted to the state. See Civil Code § 7106.

4. *Nonpublic personal information.* Regulation of the use and sharing of nonpublic personal information by financial institutions is preempted to the state. See Financial Code § 4058.5.

5. *Automated teller machines.* Customer safety at automated teller machines is preempted to the state. See Financial Code §§ 13000, 13070.

6. *E-mail.* Ordinances regarding notice of electronic mail termination by providers of electronic mail service are preempted. See Business and Professions Code § 17538.35.

7. *Alarm system companies.* Local authority relative to alarm system companies is restricted. See Business and Professions Code § 7592.8.

8. *Sidewalk vendors.* Local regulation of sidewalk vendors is restricted. See Government Code § 51036 et seq.

9. *Transportation network company drivers.* Local licensing of transportation network company drivers is restricted. See Business and Professions Code § 16550 et seq.

10. *California Consumer Privacy Act.* The California Consumer Privacy Act of 2018 is a matter of statewide concern and supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection and sale of consumers' personal information by a business. See Civil Code § 1798.180.

## **ENVIRONMENT AND NATURAL RESOURCES**

1. *Pest control.* The whole field of regulation regarding the registration, sale, transportation, or use of pesticides is preempted to the exclusion of all local regulation. See Food and Agricultural Code § 11501.1.
2. *Transportation of waste or used tires.* Ordinances regulating the transportation of waste or used tires are preempted. See Public Resources Code § 42963.
3. *Transportation of hazardous waste.* Regulation of transportation of hazardous waste is preempted to the state. See Health and Safety Code § 25167.3.
4. *Oil pipelines.* Ordinances that govern the granting of franchises to construct facilities which are part of a pipeline system transmitting oil or other products thereof are preempted. See Public Utilities Code §§ 6001.5, 6205.1.
5. *Personal care products in plastic bottles at lodging establishments.* Local regulation of personal care products in plastic bottles at lodging establishments is restricted. See Public Resources Code § 42372.

## **OFFENSES AND MISCELLANEOUS PROVISIONS**

1. *Public possession of alcohol.* Ordinances cannot prohibit or regulate public possession of alcohol. See Cal. Const., art. XX, § 22. See *People v. Ramirez*, 25 Cal. App. 4th Supp. 1, 30 Ca. Rep. 626 (Cal. Super., 1993); *People v. Duran*, 52 Cal. Rep. 2d 79, 43 Cal. App. 4th Supp. 1 (Cal. Super., 1995).
2. *Duplicate bridge.* Ordinances regulating or prohibiting the playing of duplicate bridge are prohibited. See Government Code § 53070.
3. *Firearms.* The entire field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code is preempted to the state. See Government Code § 53071.
4. *Imitation firearms.* Subject to certain exceptions, the entire field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in Penal Code § 16700(a), is preempted to the state, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in Penal Code § 16250. See Government Code § 53071.5.
5. *Internet privacy.* Requirements for posting of a privacy policy on an internet web site are preempted to the state. See Business and Professions Code § 22578.
6. *Computer spyware.* Provisions relative to spyware and notices to consumers from computer software providers regarding information collection are preempted to the state. See Business and Professions Code § 22947.5.
7. *Sales of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.* Ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine are preempted to the state. See Health and Safety Code § 11100.
8. *Smoking prohibitions.* Local ordinances regulating smoking of tobacco must meet certain minimum standards. See Health and Safety Code § 118940.
9. *Hazardous waste transportation.* Ordinances pertaining to the transportation of hazardous waste are preempted. See Health and Safety Code § 25167.3.
10. *Medicinal and adult-use cannabis.* Local regulation of medicinal and adult-use cannabis is authorized. See Business and Professions Code § 26200.
11. *Domestic partnerships.* Subject to certain exceptions, ordinances that provides for the creation of a domestic partnership are preempted to the state. See Family Code § 299.6.

## **TAXATION**

1. *Sales and use tax.* All local sales or use taxes must be imposed in the same manner and use the same tax base as prescribed in Revenue and Taxation Code § 7200 et seq. See Government Code § 37101(a).
2. *Cigarette tax.* Local cigarette or tobacco product taxes are prohibited. See Revenue and Taxation Code § 30111.
3. *Prepaid telephone service.* The imposition of a local charge upon the consumption of prepaid mobile telephony services is restricted. See Revenue and Taxation Code § 42100.

## **TRAFFIC AND VEHICLES**

1. *Preemption.* Except as otherwise expressly provided, the provisions of the Vehicle Code preempt ordinances on the matters covered by such Code. See Vehicle Code § 21.

## **UTILITIES**

1. *Fluoridation of water.* Local government regulations, ordinances, and initiatives that prohibit or restrict the fluoridation of drinking water by public water systems with 10,000 or more service connections are preempted. See Health and Safety Code § 116409.
2. *Metering of water.* The metering of water is subject to certain minimum requirements. See Water Code §§ 529, 537.3.

## **ZONING**

1. *Application to charter cities.* Except as otherwise provided, the provisions of Government Code title 7, div. 1, ch. 4 (Government Code § 65800 et seq.) do not apply to a charter city, except to the extent that the same may be adopted by charter or ordinance of the city. See Government Code § 65803.
2. *Family day care centers.* Family day care centers are single-family dwellings for purposes of zoning. See Health and Safety Code § 1597.45.
3. *Manufactured homes.* Subject to minor exceptions, a city, including a charter city, county, or city and county, must allow the installation of manufactured homes certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC 5401 et seq.) on a foundation system, pursuant to Health and Safety Code § 18551, on lots zoned for conventional single-family residential dwellings. See Government Code § 65852.3.
4. *Mobilehome parks.* Mobilehome parks are a permitted land use on all land planned and zoned for residential land use, except that use permits may be required. See Government Code § 65852.7.
5. *Affordable housing.* A zoning ordinance may require as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Health and Safety Code §§ 50079.5, 50093, 50105, and 50106. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. See Government Code § 65850(g).
6. *Efficiency units.* Local regulation of efficiency units is restricted. See Health and Safety Code § 17958.1.
7. *Accessory dwelling units.* Local regulation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use is restricted. Government Code § 65852.2.