

Fresno City Attorney's Office

Legal Update
2019

Topics

1. Charter Structure
2. Charter Official Authority and Responsibility
3. Sources of Law
4. Council Rules
5. CEQA
6. Contracting
7. Procurement
8. Brown Act
9. Public Records Act
10. FPPC
11. Discrimination / Harassment

Charter Officials

2. Charter Official Authority and Responsibility

- a. Council – all authority, unless delegated; includes legislation/budget; legal matters, appoint City Attorney and City Clerk; approve organizational structure and duties
- b. Mayor – prepares budget; hires and directs Manager; recommends policy; investigates; veto
- c. Manager – implements policy and budget via staff; supervises all directors and employees under her jurisdiction; advise Mayor
- d. Council President – presides over meetings; prepares agenda; speaks for Council; Mayor Pro Tem, if necessary
- e. City Attorney – represent and advise all City officials; prosecute Charter and FMC violations; approve contracts, resolutions, and FMC amendments; approve certain settlements and write-offs, along with Manager
- f. City Clerk – maintain records and books; prepare agenda; oaths; attest documents
- g. Controller – in charge of finances; CAFR; oversee payments and budget implementation; inventory City property; collections; write-offs

Sources of Law

3. Sources of Law

- a. Federal – Constitution; legislation re: civil rights, contracting, grants, drugs, etc.
- b. State – Constitution and statutes, but charter city exceptions – PRA, Gov't Code, Brown Act
- c. Court Decisions – all levels
- d. Grants – terms impose obligations and restrictions
- e. Charter – can vary from state law – our “constitution”
- f. FMC – force of law, subject to Charter
- g. Resolutions/Acts – also force of law, but primarily internal
- h. MOUs and Contracts – obligations have force of law
- i. AOs – Manager's authority over her employees

Council Rules

4. Council Rules

- a. Charter
- b. Resolution
- c. President and VP
- d. Meetings
- e. Agenda
- f. Voting
- g. Quorum
- h. Public Comment
- i. Motions – Main, Amend, Procedural, “Friendly”
- j. Closed Session
 - i. Litigation
 - ii. Real Estate
 - iii. Labor/Personnel
 - iv. Security

CEQA

5. California Environmental Quality Act

- a. “Project” - A discretionary approval that is likely to have an effect on the environment (contract or entitlement)
- b. Timing – Must be completed upon first discretionary approval
- c. “Documents – EIR, MND, Conformity, Addendum, Exemptions
- d. EIR – Upheld if any substantial evidence to support analysis – costly and time consuming, but defensible
- e. MND – Not upheld if fair argument there should have been an EIR – cheaper, quicker, but riskier
- f. Tribal consultation - Applies to any project for which a Notice of Preparation, Notice of Mitigated Negative Declaration, or Notice of Negative Declaration is filed

Contracting

6. Contracting

- a. Authority – With Council unless delegated; delegation:
 - i. Manager up to \$50,000
 - ii. Individual Councilmembers up to \$50,000 (District funds)
 - iii. City Attorney for outside counsel and expenses
 - iv. Settlement up to \$50,000 Manager/City Attorney
 - v. Write-offs up to \$50,000
 - vi. Code Enforcement up to \$100,000 Manager/City Attorney
 - vii. Purchasing Manager
- b. Competitive Process – Public Works of Improvement (\$138,000), bids, RFPs
- c. Appropriation – Budget or Budget Amendment and funds available
- d. Legal Review – “approved as to form”

Procurement

7. Procurement

- a. Competitive Process
 - i. Formal Spec/Bid \$138,000
 - ii. Design Build – “as you go” (rare)
 - iii. RFP – best value
 - iv. Informal
 - v. Exceptions
 - vi. Local Preference 5% (not state or federal)
 - vii. No Contact – Electeds no contact while pending
- b. Public Works of Improvement – building things
- c. Goods
- d. Services
- e. Other
 - i. Employment Contracts
 - ii. Governmental – inter agency MOUs
- f. No process for selling real estate

Brown Act

8. Brown Act

- a. Legislators
- b. Public Discussions
- c. Quorum 4
- d. Serial Meetings
- e. Council Meeting Agendas – Fair Notice
 - i. Regular – 72 hours
 - ii. Special – 24 hours
- f. Closed Sessions - Confidential
 - i. Litigation
 - ii. Real Estate
 - iii. Labor
 - iv. Personnel
 - v. Security

Public Records Act

9. Public Records Act

- a. Anyone can request “public records” - hard copies, electronic, video
- b. Not required to create record
- c. Can charge actual cost of copying (not time)
- d. Public records on private devices and accounts
- e. Exceptions: drafts, confidential, investigation, burdensome
- f. Changes re: PD records
- g. Internal process

FPPC

10. FPPC (Political Reform Act)

- a. Gifts
- b. Conflicts
- c. Elections
 - i. Filing Date
 - ii. Residency
 - iii. Fundraising

Discrimination / Harassment

11. Discrimination / Harassment

- a. Intentional
- b. Effect
- c. Objective and Subjective
- d. Training
 - i. Supervisors
 - ii. Non-supervisors
 - iii. Elected Officials
- e. City Policy
 - i. Applicable to All
 - ii. Mandatory Reporting
 - iii. Investigation
 - iv. Corrective Action
- f. New law: Single incident can be sufficient

Future Topics?

<https://www.fresno.gov/cityattorney>

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