

## Local Agency Powers and Limitations

What can local agencies do to address issues that arise within their boundaries? The answer to that question turns on the division of labor between state and local government in California's constitution. Federal can sometimes also be a limiting factor.

### Regulatory (“Police”) Powers

For example, as general purpose governments, California's counties and cities get some aspects of their authority directly from the California Constitution. That document says that cities and counties may make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.<sup>1</sup> This is commonly known as the “police power,” and is the source of counties' and cities' regulatory authority to protect public health, safety and welfare.

Cities exercise this authority within their boundaries (known sometimes as “incorporated areas” reflecting the notion that residents voted to form/”incorporate” the city). Counties exercise this authority in the areas not within cities (unincorporated areas).

For purposes of comparison, special districts are creatures of state law. They get their authority from the statute that authorizes the district's creation and do not have police power. Special districts have only those powers given to them by the Legislature.<sup>2</sup>

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These materials are summaries of complex law written for clarity for a non-attorney audience. They are not legal advice and local officials are well advised to ask local agency counsel how these principles may apply in specific situations.

For more information and to access the Institute's resources on Local Government 101, go to [www.ca-ilg.org/localgovt101](http://www.ca-ilg.org/localgovt101).

The Institute welcomes feedback and suggestions on enhancing this resource:

- *Email:* [info@ca-ilg.org](mailto:info@ca-ilg.org) Subject: Local Agency Powers and Limitations
- *Fax:* 916.444.7535
- *Mail:* 1400 K Street, Suite 205 • Sacramento, CA • 95814

## Preemption

As a general matter, the restriction on the exercise of a county or city's authority depends on whether the proposed local enactment conflicts with federal or state general laws. This is a concept known as "preemption." Federal or state law may preempt local officials' ability to legislate in a particular area, either explicitly or by implication.

The test for preemption of local law by federal or state laws is similar. A local ordinance will be preempted by state law when it is in express conflict with state or federal law.<sup>3</sup> Preemption may also occur even when there is no direct conflict if the state or federal government has fully occupied the area of law in general.<sup>4</sup> In the absence of judicial decisions determining whether a particular form of local legislation is preempted, the analytical process local agency lawyers must engage in to advise their clients that a matter on whether such legislation has been preempted can be complex.

### California's Constitution Available Online

Local officials and others interested in reading what California's constitution says about local government can access the constitution online at <http://www.leginfo.ca.gov/const.html>.

Most of the provisions discussed in this document are in Article XI of California's Constitution, which is the local government section (see endnotes for specific section references within article XI).

## Exception to Preemption: Charter City Powers

Under California's constitution, certain kinds of cities have an additional measure of protection from state preemption. Charter cities have an extra measure of authority over municipal affairs.<sup>5</sup> If a matter is a "municipal affair" (and not a "matter of statewide concern"), a charter city has power to act, even to the extent that the city's action may be at odds with a state law. The chief restriction on local action under these circumstances is whether the action would be inconsistent with the city's charter or the state and federal constitutions.

In a charter city, the residents adopt a charter. This charter functions as a local constitution that provides for the organization and structure of the city. It also can create limits on city powers and functions. Some charters have a great deal of detail; others are quite brief. Either way, when residents have determined that their city should be a charter city, their city then has the option deviating from state law with respect to municipal affairs.

Courts, rather than the Legislature, are the ultimate deciders of whether a subject is a municipal affair or a matter of statewide concern.<sup>6</sup> This determination is made on a case-by-case basis, which means that it frequently takes litigation to determine the scope of charter cities' exercise of authority.

More specific information on charter city authority can be found on the League of California Cities website at [www.cacities.org/chartercities](http://www.cacities.org/chartercities).

## Charter County Powers

Another section of California's Constitution provides special prerogatives for counties to become charter counties. The courts have determined that the charter county provision of California's constitution, because it is worded differently, confers less authority on counties.<sup>7</sup>

The authority extends to the subjects described in the constitution's charter county language, which refers to such issues as:

- How the five member board of supervisors are elected (by district, at large or at large, from a district);
- Compensation, terms and removal of supervisors;
- Elected sheriffs, district attorneys, assessors and other officers (their election or appointment, compensation, terms and removal);
- Specified personnel functions (including setting compensation).<sup>8</sup>

Nonetheless, these charter county provisions were one reason that the California Supreme Court overturned legislation that would have imposed binding arbitration to resolve public safety employees' salary negotiation impasses.<sup>9</sup>

## Other Restrictions on State Legislative Powers Relating to Cities and Counties

California's Constitution forbids the Legislature from taking certain kinds power away from county and city officials and giving it to private parties.<sup>10</sup> More specifically, the Legislature may not delegate to private persons or entities power over municipal improvements, money (including taxes and assessments), property, or functions.<sup>11</sup>

The Legislature also may not single out a particular city or county for special legislation.<sup>12</sup> However, the courts have allowed the Legislature to create classes of cities and counties as long as the individualized treatment bears a rational relationship to a legitimate state purpose.<sup>13</sup> One way of classifying counties and cities is by population.<sup>14</sup>

### What about School Board Powers?

The California School Boards Association has a useful handbook describing school board responsibilities and powers. It's available at

<http://www.csba.org/~/media/51E3FBB839504700825CB16B7265F3>

[C4.ashx](http://www.csba.org/~/media/51E3FBB839504700825CB16B7265F3) California's Department of Education has documented the complex history of school district governance in California. The history is available at

<http://www.cde.ca.gov/re/lr/do/>

## Operation of Public Works

The California Constitution provides that counties and cities may establish, purchase, and operate public works to furnish their inhabitants with light, water, power, heat, transportation, or means of communication.<sup>15</sup> It may furnish those services outside its boundaries, except within another municipal utility's boundaries that furnishes the same service and does not consent.

Persons or corporations supplying those services may operate within cities upon conditions and under regulations that the city may prescribe.<sup>16</sup>

## Revenue Authority

California's system for financing local government operations is a complex web of constitutional and statutory provisions. This system is summarized in *Understanding the Basics of County and City Revenues*, available at [www.ca-ilg.org/revenuebasics](http://www.ca-ilg.org/revenuebasics).

## State and Federal Constitutional Limitations

Local officials' actions must also comply with the United States Constitution and federal law. Areas of federal law that frequently arise for local agencies include:

- The First Amendment establishment of religion, free exercise of religion and free speech clauses.<sup>17</sup>
- The Fourth Amendment prohibition against unreasonable search or seizure.<sup>18</sup>
- The Fifth Amendment right to remain silent (for example, in police interrogations) and the requirement of just compensation for the taking of property.<sup>19</sup>
- The Fourteenth Amendment's protections of due process, equal protection and property rights.<sup>20</sup>

California's Constitution also contains similar declarations of rights, as well as other provisions that may limit local actions. Some examples include provisions relating to water rights,<sup>21</sup> workers compensation,<sup>22</sup> alcoholic beverage regulation,<sup>23</sup> public housing projects<sup>24</sup> and the non-partisan nature of municipal government.<sup>25</sup>

Local officials should also be aware of the various federal civil rights laws, which prohibit public agencies from discriminating against individuals based on a number of protected characteristics (for example, race, gender, physical disability and age). The state also has a number of laws that contain similar—but not always the same—protections.

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## Notes and References

<sup>1</sup> Cal. Const., art. XI, § 7.

<sup>2</sup> *Los Angeles County Flood Control Dist. v. Southern California Edison Company*, 51 Cal. 2d 331, 339, 333 P.2d 1 (1958).

<sup>3</sup> *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141, 10 L. Ed. 2d 248, 83 S.Ct. 1210 (1963) (federal law conflicts when it is physically impossible to comply with both federal and state/local law); *Cohen v. Board of Supervisors*, 40 Cal. 3d 277, 290, 219 Cal. Rptr. 467 (1985) (Local legislation that conflicts with state law is void).

<sup>4</sup> *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604, 115 L.Ed. 2d 532, 111 S. Ct. 2476 (1991) (federal law preemption by occupying the field analysis); *Candid Enterprise v. Grossmont Union High School District*, 39 Cal. 3d 878, 886, 218 Cal. Rptr. 303 (1985) (state preemption by occupying the field).

<sup>5</sup> See generally Cal. Const., art. XI, § 5.

<sup>6</sup> The threshold inquiry is whether a conflict exists between a charter city law and state law. If no conflict exists, the charter city law stands. If a conflict exists, the court will find the matter is a municipal affair unless it qualifies as a matter of statewide concern. Even if the subject matter is of statewide concern, the state law must be reasonably related and narrowly tailored to address that statewide concern. See *Johnson v. Bradley*, 4 Cal. 4th 389, 14 Cal. Rptr. 2d 470 (1992).

<sup>7</sup> See *Johnson v. Bradley*, 4 Cal. 4th 389, 405, 14 Cal. Rptr. 2d 470 (1992).

<sup>8</sup> Cal. Const., art. XI, § 4.

<sup>9</sup> *County of Riverside v. Superior Court*, 30 Cal. 4th 278, 132 Cal. Rptr. 713 (2003).

<sup>10</sup> Cal. Const., art. XI, § 11.

<sup>11</sup> Cal. Const., art. XI, § 11.

<sup>12</sup> Cal. Const., art. IV, § 16.

<sup>13</sup> *City of Los Angeles v. State*, 138 Cal. App. 3d 526, 534, 187 Cal. Rptr. 893 (1982).

<sup>14</sup> *Keenan v. San Francisco Unified School District*, 34 Cal. 2d 708, 713, 214 P.2d 383 (1950).

<sup>15</sup> Cal. Const., art. XI, § 9(a).

<sup>16</sup> *Id.*

<sup>17</sup> U.S. Const. amend. I.

<sup>18</sup> U.S. Const. amend. IV.

<sup>19</sup> U.S. Const. amend. V.

<sup>20</sup> U.S. Const. amend. XIV, § 1.

<sup>21</sup> See Cal. Const., art. X.

<sup>22</sup> See Cal. Const., art. XIV, § 4.

<sup>23</sup> See Cal. Const., art. XX, § 22.

<sup>24</sup> See Cal. Const., art. XXXIV.

<sup>25</sup> See Cal. Const., art. II, § 6.