

WHAT GIVES CITIES AND COUNTIES THE AUTHORITY TO CREATE CHARTERS, ORDINANCES, AND CODES?

BY PETER J. EGLER

Peter J. Egler is Reference Librarian at the Sacramento County Public Law Library in Sacramento, Calif.

Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.

Introduction

The purpose of this teachable moment is to provide a brief overview of “local law” or city and county charters, ordinances, and codes. The law of the state in which the city or county is located will govern the nature of these local laws. While charters, ordinances, and codes may be difficult to locate initially, they are essential to identifying the powers, privileges, rules, and regulations of a municipality or county. Prudent researchers will

check the state legislative code to gain a better understanding of the nature and structure of local laws.

City and County Charters

Every form of government in the United States has some express authority that justifies and defines its existence. For the federal government, the United States Constitution is this authority. Each of the 50 states has a constitution. Cities and counties have some type of charter, which defines their terms of existence. The charter is the city or county’s “constitution,” and the starting point for all other regulations.

States grant cities and counties the ability to administer government on the local level. A state’s constitution and/or legislative code sets forth the powers of cities and counties organized under the laws of that state. For example, Article XI, Sections 1 and 2 of the Constitution of the State of California direct the state legislature to prescribe a uniform procedure for the formation of cities and counties in that state. Under that directive, the California Government Code, sections 23000 et seq. and sections 340000 et seq., include the procedure for the creation of cities and counties, and set out the status and powers of counties and cities organized under California state law.

Although some states have other systems, and occasionally the terminology varies, most states recognize two kinds of charters: general law charters and home rule charters. Cities and counties that operate under the procedures set forth in the laws and constitution of their state have a general law charter. General law charters are created by and are consistent with the state law. State constitutions also give cities and counties the ability to write and adopt their own charter. These are home rule charters. State constitutions and laws will specify the procedures a city or county must go through to create and adopt a home rule charter. Article XI, Section 3 of the Constitution of the State of California gives cities and counties the ability to draft and adopt home rule charters.

Typically, a majority of the population in a city or county must vote in favor of a home rule charter in order for the charter to be adopted. Once the home rule charter is adopted, it becomes

the governing law of the city or county. Because state laws authorize the creation of the home rule charter, the home rule charter is seen as having the same force as state laws. If a state law conflicts with a home rule charter provision, the charter provision overrides the state law within the city or county jurisdiction. As a result, home rule charters provide cities and counties with a degree of independence from the state's legislature. Home rule charters don't override the state's constitution. The ability to create and modify cities and counties, and their charters, will vary by state.

Charters list the powers and structure of the city or county government. For example, the charter for the city of Sacramento, California, includes provisions outlining the powers of the city, the structure of the city government, city elections, and the city's board of education. The charter for the county of Sacramento, California (an entity separate from the city of Sacramento that governs the unincorporated areas of the county), includes provisions defining the powers of the county, the structure of county government, county elections, county fiscal procedures, and county roads.

Ordinances

Through their laws and constitutions, state governments give city and county governments the power to regulate matters of local concern, such as animal control, local law enforcement, local parks, and local roads. Cities and counties create ordinances to regulate these matters. An ordinance is the equivalent of a statute, passed by a city council, county council, or an equivalent body.

Cities and counties have only those legislative powers that are expressly granted to them by their state's constitution or laws. The Constitution of the State of California, Article XI, Section 7, states 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" of the state of California. This provision applies to both general law and home rule cities and counties. Note that the constitution provision expressly gives the state law precedence over the local ordinance.

The Constitution of the State of California, Article XI, Sections 4 and 5, state that home rule charter cities and counties may develop ordinances to govern local affairs. The constitution further states that ordinances passed by home rule charter cities and counties take precedence over conflicting state laws as to local affairs. State laws take precedence over home rule charter ordinances as to matters that are not local affairs. There has been a large amount of litigation in the state of California debating what constitutes a local affair.

Codes

After federal laws are passed, they are codified, or systematically arranged by subject area, and placed into the *United States Code*. After state laws are passed, they are codified and placed into the state legislative codes. After ordinances are passed, they are codified and placed into the city or county codes. All types of codes are arranged in some sort of subject order so that the laws of the jurisdiction can be more easily accessed.

For example, the Sacramento City Code includes chapters governing public health and safety, vehicles and traffic, streets and sidewalks, buildings and construction, and zoning regulations. The Sacramento County Code includes chapters governing revenue and taxation, animals, "public peace, morals, and safety," airports, water and sewers, trees, and land development.

Locating Charters, Ordinances, and Codes

The charters, ordinances, and codes of a city or county can usually be found at the jurisdiction's public law library, usually at the city or county courthouse. If the jurisdiction doesn't have a public law library, or the public law library doesn't have the information you are looking for, try contacting the clerk or the legal department for the city or county. Many city public libraries maintain a copy of their city and county codes, and many academic law libraries collect the laws of local jurisdictions.

In the past, many city and county codes and charters have been difficult to locate because they were not widely distributed outside of the city or

county. Currently, many city and county charters and codes are now available on the World Wide Web. The city or county's main Web page should contain a link to its code if it is available online. The increased access to city and county codes provided by the World Wide Web has been a major benefit to researchers.

The following Web sites contain links to county and city government information and are exceptionally well organized and maintained:

1. *Piper Resources State and Local Government on the Net*. <www.piperinfo.com/state/index.cfm>
2. *Seattle Public Library Municipal Codes Online*. <www.spl.org/govpubs/municode.html>
3. *Municipal Code Corporation*. <www.municode.com/database.html>
4. *National City Government Resource Center*. <www.geocities.com/CapitolHill/1389>

Updating Codes

Updates to city and county codes are usually issued several times per year. To determine the current status of a particular section, check the date the code was last updated and then review all ordinances passed after that date to see if the code section was amended or new relevant code sections were passed. Traditionally, the uncodified ordinances were kept in notebooks or files, with limited finding tools. Finding newer materials usually involved paging through individual ordinances. Today's researchers will find that many cities and counties are publishing their codes and ordinances online, enhancing both retrieval and research. Check your city or county government home page for links to this information.

Historical Research

Researchers may need to determine what city or county code provision was in effect at a previous date. It is the responsibility of the local jurisdiction to maintain its historical codes. All too often, local jurisdictions fail to keep useful history notes or to maintain repealed ordinances in an accessible format. A researcher's best bet when researching a historical code provision is to find a local library that archives that jurisdiction's old ordinances and codes.

Conclusion

States grant cities and counties the power to exist and the power to govern local affairs. States have also granted cities and counties the ability to draft their own charters and create their own powers, as long as these powers do not conflict with the state's powers to govern. Cities and counties create their power to govern through their charters, and in turn, govern through their ordinances. Researchers working on local issues need access to city and county charters, ordinances, and codes. Fortunately, as local governments embrace the Web as a tool to respond to citizen requests for information and access to governmental services, researchers benefit from the increased availability of city and county charters, codes, and ordinances.

Bibliography

For additional information on the law of cities, towns, and counties, see the following:

- Antieau, Chester J. and John M. Antieau, *Antieau on Local Government Law*, 2d ed., New York: Matthew Bender, 1955-.
- McQuillin, Eugene, *The Law of Municipal Corporations*, 3d ed. by Clark A. Nichols, et al., Chicago: Clark Boardman Callaghan, 1949-.
- Moore, Ralph J., *Municipal Legal Forms with Commentary*, Rochester, NY: Callaghan, 1976-.
- Sands, C. Dallas, Michael E. Libonati and John Martinez, *Local Government Law*, Wilmette, IL: Clark Boardman Callaghan, 1981-.

© 2001 Peter J. Egler