

*California
Cities*

**WORK
TOGETHER**

LEAGUE OF CALIFORNIA CITIES

HANDBOOK for NEW COUNCILMEN

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by Charles R. Martin*

Congratulations on becoming a City Councilman. You are joining approximately 2100 other councilmen in just over 400 cities in California.

In your new status as a director of a municipal corporation, every citizen in the city is a stockholder entitled to be heard and to criticize your public and private conduct. Your actions on the city council are everyone's business and for very good reason.

As a city councilman, you share with the other members of your city council powers over the lives and over the property of your municipal stockholders to:

1. declare their conduct criminal;
2. tax them;
3. condemn their property for public use;
4. regulate their business; and
5. tell them how and for what purposes they may use their property.

In return for giving the city council these powers, the community makes the council responsible for protecting it against crime, disease, fire, and a host of other natural, social and economic evils. The powers are necessary if the responsibility is to be fully discharged.

Cities are but one of the three levels of government which possess these government responsibilities and authority. Cities perform the functions of most vital and direct concern to the health and safety of their inhabitants, while Federal and state governments concern themselves generally with the broader economic and social interests of the community. Counties generally operate as an arm of the state and have very little regulatory authority within a city, while special purpose districts (such as flood control, sanitation, air pollution, etc.) serve only limited functions. Regionalism either in the form of a new layer of government or in the form of voluntary cooperation is currently under study.

The hundreds of California cities are tied together in a federation called "The League of California Cities." This organization holds annual conferences and acts in the common interest of all cities in matters of research, legislation, litigation and planning. Approximately 80 percent of the cities in California are general law cities, governed primarily by the Government Code; the remaining 20 percent are charter cities which have adopted local "by-laws" and are governed by both charter provisions and applicable general laws.

While the full scope of municipal matters is, of course, beyond the scope of this handbook, it is hoped that the following material will constitute an outline of the various facets and functions of the role you have undertaken.

I. the city council

City councils in California consist of five or more members usually elected at large (by districts in a few cases) on a non-partisan basis. The mayor is generally chosen by the city council from their own membership to preside at council meetings and to act as the ceremonial head of the city.

The city council establishes local laws, sets policy, approves programs, appropriates funds, establishes the

city's tax rate, and in general, supervises the operations of city government, the construction of public works, and provides to the citizenry a better, more attractive and healthier place in which to live.

The local ordinances adopted by the city council are compiled in a book called the municipal code. These laws are enforceable by the city, and violation constitutes a misdemeanor. Other directives and policies of the city council are recorded in council resolutions or in the council minutes.

The municipal code is generally divided into the principal categories of municipal activity, such as:

- a. taxes
- b. administration
- c. public safety (crimes, traffic, fire)
- d. public welfare and morals
- e. sanitation and health
- f. business regulations
- g. public works
- h. building regulations
- i. planning, zoning and subdivisions
- j. nuisance abatement

The salaries of city councilmen may be set within prescribed limits by act of the city council. In general law cities, councilmen serve four-year overlapping terms with municipal elections being held on the second Tuesday in April of every even-numbered year.

II. city officials

THE CITY MANAGER

The "City Manager," or other similar title, is the administrative head of city government. He is appointed by the city council to enforce city laws, to direct the daily operations of city government, and to prepare and observe the municipal budget.

THE CITY ATTORNEY

The City Attorney is usually an appointed officer on either a part-time or full-time basis who is the legal advisor for the council, the city manager, and department heads. He represents the city in any legal action, handles the acquisition or condemnation of property, supervises assessment district proceedings, and prepares all ordinances, contracts, resolutions and opinions.

THE CITY CLERK

In most cities the City Clerk is an elected official, but the trend today is to make this position appointive. The City Clerk is charged with the responsibility of maintaining records of council actions and of maintaining a permanent record of all city transactions.

THE CITY TREASURER

In most cities the City Treasurer is an elected position, and is responsible for the custody and investment of all city monies. In a few cities this position has been made an appointed position.

BOARDS, COMMISSIONS, AND SPECIAL COMMITTEES

Boards, commissions and special committees composed of local citizens are frequently appointed by the city council to advise or to perform an administrative function in one or more aspects of city government. Common advisory commissions include parks, recreation and traffic. Commissions commonly administrative in nature include planning, library and civil service commissions.

CITY EMPLOYEES

City employees comprise the majority of city government; they perform the day-to-day functions necessary to provide services to the community. Department heads administer specific functions of city government and are responsible to the city manager. Examples of such posi-

tions are public works director, planning director, police and fire chief, among others. Miscellaneous employees may or may not be under civil service and may or may not be entitled to pension rights under PERS. Employees have been guaranteed the right of collective bargaining with the city council or its representative, but may not legally strike.

III. functions of government

A primary reason for the existence of municipal government today is to provide such services to the taxpayer as the taxpayers cannot (for financial, functional or other reasons) or will not provide for themselves. A number of services provided by municipal government might be performed by the property owner, but only at considerable expense or inconvenience.

The services of municipal government can be readily observed in action, but the typical citizen is generally unaware of many of them. This is because he is so accustomed to those services that he often takes them for granted.

To provide desired services, municipal governments are organized into various departments, each responsible for a specific function.

The following departments are the ones most often found in the municipal governments of California. This list will vary, however, depending upon the desires for service by the citizens and whether or not the city contracts for services.

BUILDING DEPARTMENT

The Building Department is responsible for the enforcement of minimum standards, regulating building construction, electrical, plumbing, and sewer installations on private property. Its purpose in enforcing these minimum standards is to safe-

guard life and limb, health, property and public welfare through the regulation and control of designed construction, quality of materials, use occupancy, location and the maintenance of all buildings and structures within the city limits. The Building Department usually assists the license division in enforcement of business licenses, enforcing the zoning ordinance and cooperating with other departments to secure code requirements in the issuance of building permits.

FINANCE DEPARTMENT

The Finance Department is responsible for planning and directing the fiscal operations of municipal government. This department works closely with the city manager, keeping him informed of the financial picture relating to revenues, investments and expenditures. Most Finance Departments are broken down into different divisions. Generally they are accounting, purchasing and licensing. The Finance Department is also responsible for the preparation of payrolls, administration of the employees' retirement program, and processing of information for the municipal data processing program.

FIRE DEPARTMENT

The principal function of a city's Fire Department is the prevention and extinguishing of fires within the city's boundaries. The modern fire prevention program now in effect in California cities involves the inspection, investigation and education of citizens in an effort to reduce the number of fires and the amount of resultant damage. Generally, fire protection within a city is provided from fire stations strategically located so as to provide quick response to any call for help. Current fire protection programs within cities have progressed through highly trained employees and the latest in fire fighting equipment. Because of this progress, cities have been given better ratings by the National Board of Fire Underwriters.

PARKS AND RECREATION DEPARTMENT

With an increase in the leisure time of citizens in California cities, the establishment of Parks and Recreation Departments has grown in municipal government. This department in many cities has two interrelated functions, the maintenance of city parks and conducting organized recreational activities for all age groups within the city.

This department, often in cooperation with the schools, conducts year-around recreation programs involving sports, games and crafts, as well as social and cultural programs for the enjoyment of citizens.

PLANNING DEPARTMENT

The Planning Department acts as the technical staff advisor to the city council, planning commission and city manager on all planning matters. Most planning activities are processed within the Planning Department. However, other activities require review and decision by a planning commission or zoning board. Many of the decisions referred to planning commissions are zone changes, variances from present zoning within the city conditional use permits, plot plans, lot splits and many others.

Usually a Planning Department's function is divided into two main categories: advance planning and current planning. Advance planning concerns the preparation and maintenance of a long-range and comprehensive general plan to provide guidance for the physical development of a city. Current planning relates to the immediate plans for physical improvement and concerns the processing of applications for zoning and subdivisions. Also, it involves departmental coordination with the building department and business license division.

Perhaps no one function of local government impinges upon so many citizens as that of zoning and zoning administration, and certainly this

function can cause city councilmen many headaches.

POLICE DEPARTMENT

A Police Department's basic responsibility is to protect and serve the public and the property within the city's boundaries. Some of the broad areas of service provided by the Police Department include: the prevention of crime, eradicating the causes, repression of crime, lowering of incidences, apprehension of criminals, and effective rehabilitation when possible.

Generally, the organization of a Police Department consists of four basic divisions: administration, service, investigation and uniform patrol. A Police Department maintains 24-hour watch to deter, prevent and apprehend criminals. It regulates traffic, assists in the event of any disaster and provides a variety of information and service to the general public. The present day policeman has received extensive training in the scientific methods of his work. Many police officers working for municipal government have received degrees in Police Science from universities and colleges.

PUBLIC WORKS DEPARTMENT

The Public Works Department of a city may be organized to perform a variety of services. Generally, there are three divisions to be found in most Public Works Departments. These divisions are engineering, street maintenance and sanitation.

Primarily a Public Works Department is responsible for the design and preparation of plans, specifications and estimates for construction of public works projects such as streets, alleys, storm drains, sanitary sewers, street lights, traffic signals and many others. Inspection of public works projects performed under contract by utilities and subdividers is also the responsibility of this department.

As a special project, the Public Works Department usually handles

assessment district proceedings whereby particular properties are assessed the cost of particularized projects.

Included in the more routine operations of a Department of Public Works is the erection and maintenance of street and traffic signs, stripping of streets, painting of pavement markings, sweeping of streets, maintenance and repair of streets, maintenance of sanitary sewers, maintenance of trees and parkways, and the administration of the collection of refuse and the administration of weed removal from vacant lots in the city.

OTHER DEPARTMENTS

The above list by all means does not exhaust the types of departments found in the municipal governments of California, and in no way attempts to establish departmental importance. Many cities, for example, have some or all of the following departments in their organization: personnel, library, civil defense, health, dog pound, environmental control and human resources.

IV. financing

It has been pointed out that the city is the level of government closest to the average citizen. Everyone receives service from the city and likewise everyone must contribute to its support.

The means of this support varies widely, depending upon the type of community served. Some cities have a high percentage of commercial and industrial properties while others are primarily residential in nature.

There are several general classifications in all cities into which the various means of financing can be placed:

PROPERTY TAXES

The major source of revenue in most cities is the Real Property Tax. This is the traditional tax in American municipal government and is based

upon the amount of real property which each citizen owns. The city sets this tax rate each year prior to September 1st.

Each taxpayer receives an annual property tax bill. This bill may not, in fact, come from the city involved, as most cities in California contract with their local county to prepare and mail the tax bill and collect the taxes with all collections being remitted to the city on a periodic basis. The county charges a small fee for this service; however, the ultimate cost is far less than if the city attempted to provide this service separately.

The normal means of determining the amount of taxes to be paid is by the "tax rate" which usually means the amount in dollars to be paid per \$100 of "assessed valuation" of real property owned by the taxpayer. "Assessed valuation" is a term, used primarily in the real property tax field and in California is a figure roughly equivalent to 25 percent of the market value of the property. To this figure is applied the municipal tax rate, usually limited to \$1.00 per \$100 of assessed value, plus smaller rates for parks, retirement, etc. For cities which depend in major part on property taxes, the receipt of these funds in January to June of each year can present a cash flow problem under a July 1st fiscal year, thus necessitating a build-up of reserves or short-term borrowing to get over the interim problem.

SALES TAXES

The next most significant source of revenue for most California cities is the Sales Tax. Heavy commercial and industrial uses in a city sometimes permit the use of the sales tax to partially or even completely replace the property tax as the primary means of revenue.

Sales taxes in California are essentially uniform at five percent. Of this, four percent is for state and public transportation purposes and one percent for cities. Here again, cities

have found it economical to permit another level of government to collect this tax for them. The state does this for almost all cities, remitting the collections after having subtracted their collection costs. This is another example of the relations of one level of government using the pre-existing organized machinery of another level to avoid duplication wherever possible. From time to time special supplemental sales taxes are imposed by the state for limited periods.

UTILITIES

Many cities provide municipal utility service in the form of water and power. The rates charged are not subject to the Public Utilities Commission and in some cases can be operated at a profit.

UTILITY FRANCHISES

Each city usually has one or more public utilities desirous of operating within the city limits. Examples of these are your local gas and electric companies.

It has been customary that public utilities pay a franchise tax to the city normally calculated at a certain percentage of their annual sales within the city. While not providing a major source of revenue, it is an important one and is paid by the utility companies in exchange for the right to exclusively serve the citizens in that particular area. This franchise is granted by the city council and is usually made on a very long term basis. Because they pay a franchise tax, utilities are then usually excluded from the requirement that they pay a business license fee.

COURT FINES AND FORFEITURES

Court fines for law violations occurring in a city are a traditional city revenue. In some California counties where the municipal courts are actually administered by the county, the fines and forfeitures are with the city receiving the major share.

All funds received for violation of the State Motor Vehicle Code must be spent for specific purposes. These funds are used for expenditures relating to police enforcement of traffic laws and other costs relating to traffic such as signs and street striping.

LICENSES AND PERMITS

There are a number of licenses and permits issued by cities for which a fee is charged. Some of these are actually designed to produce revenue whereas others are more of a regulatory nature with the fee charged being designed to cover the actual cost of enforcement.

The city incurs many increased costs as a result of commercial activity such as the need for additional traffic police patrol. The business license has been a traditional means by which businesses have contributed to the support of their city.

The most common types of regulatory permit fees in cities are building, electrical and plumbing permits. There are other similar permits for which fees are charged, such as street and curb and also sewer permits. Here again, the fee is set so that the additional cost to the city is borne by the person making the improvement.

REVENUE FROM OTHER AGENCIES (SUBVENTIONS)

A significant part of the revenue received by cities comes from other governmental agencies. Certain taxes are actually levied by the state and county governments for the benefit of cities. An example of this in California is the Motor Vehicle In Lieu Tax. State law does not permit county and city governments to levy a property tax on automobiles and this tax is paid when the owner renews his license each year. It is calculated as a percentage of the market value of the vehicle.

The state also collects all gasoline taxes. Once collected, this money is

then distributed to counties and cities, based upon their populations. The local jurisdictions are then required to spend this money for street construction and maintenance. Currently these gasoline taxes may average about \$10.00 per capita.

A portion of the gas tax funds received by counties from the state is remitted to the cities in the county for designated street projects. Therefore, it is conceivable that the average taxpayer could pay a dollar in gas tax at the time of purchase with the money being sent to Sacramento and then to the local county, but eventually being spent where the sale actually occurred.

In addition, special taxes such as cigarette taxes or liquor taxes are collected by the state and returned to cities.

SERVICE CHARGES

Another source of revenue for cities is the service charge. Actually, these charges are levied for a number of activities of diverse nature ranging from trash collection to recreation classes.

Cities often operate enterprises for which a charge is made for admission. There is usually no attempt made to recover the complete cost of operation of these facilities as they are designed to be primarily of a service nature.

V. powers and limitations

In 1879, the California Constitution was amended to grant local jurisdictions the five basic grants of home rule. And when that term "home rule" is used, we refer to the "structure" made up of those five cornerstones:

1. Cities may enact any local "regulation" which is not in conflict with state law;
2. The state may not enact special laws which affect specific cities;
3. The state shall not impose local taxes, but instead keep its taxing au-

thority restricted to state purposes on an across-the-board basis;

4. Cities may provide and have plenary jurisdiction with respect to municipal utilities; and

5. Chartered cities may exercise exclusive jurisdiction over "municipal affairs."

Over the years, limitations have been imposed by statute and case law upon these home rule powers. Some of the more important restrictions are:

1. Limitations on Secrecy

The Brown Act. The Ralph M. Brown Act is a law which provides that no city board — whether the city council, the library board, the park and recreation commission or any other commission or official committee thereof — shall hold any meeting at which action is taken other than a duly called and regularly held meeting, notice of which is provided either by ordinance or resolution or by adjournment of a prior meeting. A "meeting" takes place whenever a quorum is present and official business is conducted; excluded are certain labor, personnel and "attorney" sessions.

The Public Records Act. This law provides that all public records are available to any interested citizen and may be inspected at any reasonable time at the city clerk's office. Reasonable rules designed to protect the records or expedite work may be permitted.

2. Limitations upon Official Action

Public Expenditures. All public funds must be expended for a public or municipal purpose and there may not be a "gift" of public funds for a private purpose. The taxpayers' monies cannot be diverted into projects other than those which serve a public or municipal purpose. An improper expenditure (not authorized by law) may result in personal liability.

Debt. A city may not contract to expend in any fiscal year in excess of

current revenues plus reserves. A city has no power to incur a present debt in excess of its present ability to pay, and thus cannot purchase property on the installment plan or on a conditional sales contract. Financing must be accomplished through bonding, assessment districts, non-profit corporations, joint authority, lease-options, lease-leaseback, redevelopment agencies, tax increment bonds or short-term borrowing.

Eminent Domain. The power of eminent domain or condemnation is the right to take property for public purposes, for example, to build a city hall or acquire a park. Property, however, may not be taken unless the owner is paid the fair market value for the property in cash. Conversely, whenever the city intentionally or inadvertently takes or damages private property, or exacts it as a condition to a permit (unless justified under the police power) it must pay fair value.

Discrimination. A city may not enforce its rules, regulations, or ordinances on a discriminatory basis in favor of any individual person, race, or segment of its population, but all facilities, rules, regulations and ordinances must be applicable on an equal basis.

Equal Protection. All laws and ordinances must be so written as to apply with equal protection to all facets of the population; it is improper to adopt a regulation which applies only to certain individuals or classes, unless the classification is germane to the purpose of the regulation.

Pre-emption. This is a long and involved subject and one currently in a state of flux especially in the field of morals and morality; generally it may be stated that a city is but a creature of the state and subservient thereto and therefore cannot make any rule or regulation which conflicts with the implicit policies or regulations of the state.

Due Process. In all procedural functions of local government whether

legislative, administrative or quasi-judicial, the council must accord due process. This term is somewhat amorphous but in general means conforming to fundamental principles of justice and constitutional guarantees. Unfair determinations, such as bias, predetermination, refusal to hear, etc., may invalidate actions.

Civil Liberties. The state and Federal constitutions guarantee certain civil liberties and civil rights, such as the right of peaceful protest, assembly, worship, speech, etc. Municipal regulations which unreasonably impinge on the lawful exercise of these rights, whether by prior restraint, prohibition, arbitrary regulation or arrest, are invalid. A permit system designed to afford reasonable notice and assure adequate control and freedom from unnecessary risks may be appropriate.

Reasonableness. Implicit in every constitutional statutory and judicial authorization is the recognition that every action of municipal government based thereon must be reasonable both from the standpoint of accomplishing a municipal purpose and from the counterpoint of preventing unnecessary restriction. In other words, no municipal action can be arbitrary or excessive in scope. While obviously the primary responsibility for the determination of reasonableness lies with the local body, the courts do have jurisdiction to enjoin confiscatory, abusive or capricious action.

Procedural Requisites. The legislature has determined that many activities which local government might otherwise undertake may be pursued only according to strict procedural steps. For example, zoning requires prescribed hearings, assessment districts, procedural complexities; and major public works construction, a bid procedure. Failure to follow such rules will usually invalidate the action taken.

Redelegation. A delegated duty may not be redelegated, and the city council, having been delegated the

power to perform legislative functions, may not in turn redelegate that authority to a different agency without the consent of the electors of the legislature, or without reserving the right of final appellate review thereon. Unless specifically restricted, a delegation of administrative functions with appropriate standards is proper.

Tort Liability. Years ago, the Supreme Court discarded the concept of sovereign immunity. Now, a city is like any other firm or corporation and has (except for a few remaining specific immunities) the same liability for the negligent acts of its employees.

3. Limitations on Personal Activities

Conflict of Interests. No public officer may occupy a dual position constituting a conflict of interest, that is, he may not vote on a matter in which he has a direct or financial interest, whether such matter is a contract, a finding or an ordinance. Such conflicts not only constitute a disqualification of the particular officer, but could in some cases invalidate the action taken.

Incompatibility. No public officer may occupy two different public offices at the same time, if the same are incompatible one with the other; that is it would be impossible for a councilman to serve also as city manager, city treasurer or any other such position.

Use of Public Property. No public officer may use any public property or equipment or facilities for a personal or private purpose. The law books are replete with cases where individual public officers have been reprimanded, fined or even imprisoned for use of public property for private purposes whether the same constitutes the use of a city car, or use of city stationery.

Binding Future Councils. It is a basic rule of municipal law, that one city council cannot forever tie the hands of future city councils with respect to legislative enactments; no

ordinance passed by one city council may remain beyond the repeal or amendment of a future city council. Each city council is elected by the people to serve the needs and desires of the people at that time, and cannot be restricted, from a legislative standpoint, by prior council action. A council may, however, enter into certain long-term contracts such as leases and rubbish contracts.

4. Reserved Rights

Recall. The people have retained the right to recall any elected representative not fulfilling their desires. Naturally, the processes of recall are somewhat difficult, in that public officers, once elected, should not be promiscuously recalled; but at any time the electors by a 25 percent petition determine to oust any public officer, a recall election must be held.

Referendum. The right of referendum is one of the most important rights reserved to the individual electors. This is the right that guarantees that at any time more than 10 percent of the electors do not approve of a (non-urgent) legislative regulation, that 10 percent, by filing a petition within 30 days, may demand that the proposed regulation (if not of statewide concern or a case where the city is acting as agent for the state) be submitted to the electorate for a majority vote of approval or disapproval.

Initiative. This is the reciprocal of referendum, and is the vehicle by which the electors can by 10 percent petition force an election to pass a law which the city council has for one reason or another refused to do.

Taxpayers' Suits. If at any time any taxpayer feels that the city council or any board or commission thereof is improperly expending public funds or violating any law, he may seek an injunction to stop the proposed action, or compel the individual city councilmen to reimburse the treasury the amount of the inappropriate expenditure.

VI. conflict of interest

A public officer owes an undivided duty to the public whom he serves, and is not permitted to place himself in a position which will subject him to conflicting duties or expose him to the temptation of acting in any manner other than in the best interest of the public. It is in consonance with this principle that city officers may not, under any circumstances, use their official position for their own benefit, or for the benefit of anyone except the city itself, and they may not represent the city in any transaction in which they are personally interested in obtaining an advantage. It makes no difference that the principal was not in fact injured, that the agent intended no wrong, that the other party acted in good faith, or that the agent acted fairly and honorably toward both.

An interest of a personal or private nature is sufficient to disqualify; a general or sentimental interest, if it is in conflict with the public interest or if it will expose the public officer to the temptation of acting in any manner other than in the best interest of the public, may sometimes disqualify; an interest which is common to all persons similarly situated does not constitute a disqualifying interest.

In any case where a public officer has knowledge of the existence of a personal interest in any non-contractual matter coming before the body of which he is a member, he should protect himself by disclosure and refraining from participating in the voting. This should be done not only because the law requires such disclosure, but also in the interests of good public relations between the legislative or administrative body and the public, not only because to vote would be contrary to public policy, but because participation in such a transaction might result in possible disqualification to act in a quasi-judicial capacity and possible criminal penalties. This rule may sometimes be tempered under the "rule of neces-

sity," which may be explained by the city attorney.

The law now requires any councilman voting on a non-contractual matter in which he has a financial interest to disclose the interest. Any financial interest in a contractual matter is prohibited.

VII. legislative procedure (subject to charter requirements and procedural ordinances)

1. **REGULAR MEETINGS.** Regular meetings may be held within the city limits only at the place indicated by ordinance and at the time set by resolution; once convened such meeting may be adjourned to another location within the city if unusually large crowds or other circumstances warrant.

a. *Adjourned Meetings.* All meetings may be adjourned to a time, place and date certain, but not beyond the next regular meeting. Once adjourned the meeting may not be reconvened.

b. *Special Meetings.* Special meetings may be called by the mayor or majority of councilmen on 24-hour notice, as set forth in Government Code § 54956. Only matters contained in the notice may be considered and no ordinances (other than urgency ordinances) may be adopted.

2. **NOTICE.** No notice of regular meetings is required; posted and mailed notice is required of special meetings and of meetings adjourned by city clerk; posted notice is required of all other adjourned meetings.

3. **QUORUM.** A majority of the council is sufficient to do business, and motions may be passed two to one if only three attend, but ordinances, resolutions granting franchises and payment of money require at least three affirmative votes.

4. **ROLL CALL.** There is never a legal requirement for roll call voting

unless some member of the council demands it. However, since all ordinances, resolutions for franchises, and motions for the payment of money require the affirmative vote of at least three councilmen, most cities follow the roll call procedure for these particular enactments.

5. **CORRECT LEGAL DOCUMENT.** Upon occasion, ordinances or resolutions are submitted in longhand or in draft form with on-the-spot amendments. These preliminary papers may be re-typed in final form; such re-draft, when signed and attested, becomes the original and proper document to be retained in the files.

6. **THE MINUTES.** Minutes are the concern of the city clerk until presented to the council for approval; the council may then, by motion, make such corrections as conform to fact.

a. The minutes should be a clear and concise statement of the council actions, including the motions made and the vote thereon. Reasons for making a motion, council debate and audience reaction are usually irrelevant and may be included or omitted as the clerk and/or council may choose.

b. Whenever the council acts in a quasi-judicial proceeding such as re-assessment or zoning matters, it is necessary to compile a complete summary of the testimony.

7. **RULES.** The council may establish its own rules, prescribe an agenda, limit debate and eject unruly persons. When a motion is made and seconded, it should be stated by the mayor before debate. A motion may not be withdrawn by the mover without the consent of the member seconding it and the approval of the council.

a. *Motions Out of Order.* The mayor may at any time, by majority consent of the members, permit a member to introduce an

ordinance, resolution, or motion out of the regular agenda order. b. *Division of Question.* If the question contains two or more divisionable propositions, the mayor may, upon request of a member shall (unless appealed), divide the same.

8. **VOTING.** On the passage of every motion, the vote shall be taken by voice or roll call and entered in full upon the record.

a. *Roll Call.* Upon demand of any member, made before the negative has been put, the roll call shall be called for yeas and nays upon any question before the council. It shall not be in order for members to explain their vote during the roll call. Any member may change his vote before the next order of business.

b. *Failure to Vote.* Every member should vote unless disqualified for cause accepted by vote of the council or by opinion of the city attorney. Self-disqualification, without approval, which results in a tie vote should be avoided as thwarting council action.

1. The abstainer, in effect "consents" that a majority of the quorum may act for him.

2. Tie votes are "lost" motions, but may be reconsidered later.

9. RESOLUTIONS

a. Where the particular resolution has been prepared and is available for presentation:

1. Procedure: motion, second, discussion, voice vote (i.e., all in favor signify by saying "aye," etc.), result declared. (It is not necessary to read a resolution in full or by title, except to identify it.)

2. Any member may call for a roll call vote, or demand that the resolution be read in full.

b. Where the particular resolution has not been prepared:

1. Procedure: motion, second, "no objections? — so ordered!" process instructing the city attorney to prepare such a resolution for presentation.

2. This process may be waived in some rush matters and the resolution may be presented verbally in motion form together with instructions for written preparation thereof for later execution. In this event, voting procedure No. a(1) above should be followed after the resolution has been verbally stated. This short-cut procedure should be avoided except when absolutely necessary; and should be avoided entirely when resolutions are required by law or in improvement acts, zoning matters, and force account work on public projects.

10. ORDINANCES

a. Where the particular ordinance has not been prepared in advance:

1. The "no objection" process may be followed, instructing the city attorney to prepare the same.

b. Where the particular ordinance has been prepared in advance:

1. Introduction (first reading):

a. Technically, no action is necessary to introduce an ordinance other than for the sponsor thereof to declare the same to be introduced by the reading thereof in full.

b. The more usual and probably preferable method is to have the same introduced or placed on first reading by motion:

i. Any ordinance may be read at either or both of first and second reading "by title only."

ii. Voice vote procedure to "read by title only" is set forth below. (Any member may demand roll

call vote, and vote must be unanimous, otherwise motion fails and the ordinance must be read in full).

iii. No changes except clerical corrections are allowed after first reading.

2. Adoption (at least five days later):

a. Either must be read in full, or voice vote procedure to be read "by title only":

i. Mayor or clerk reads title; then council votes on such motion. (Roll call, if demanded.)

ii. If passed unanimously, ordinance is ready for adoption, otherwise must be read in full.

b. Roll call procedure to adopt. (Voice vote is legally sufficient.) Note: Each ordinance should be passed only by this double motion method: a combination motion to "adopt by reading title only" is dangerous in that if the council splits four to one or three to two, the passage is defective; reading in full can only be waived by unanimous vote.

3. Effective Date. All ordinances, except as provided in Section 36937, Government Code, shall become effective 30 days after adoption or upon such later date as may be designated in the ordinance.

4. Publishing. It is the duty of the city clerk to publish or post the ordinance as set forth in Section 36933, Government Code within 15 days after adoption; failure to do so may invalidate the ordinance.

5. Emergency Ordinances. Emergency ordinances must pass by a 4/5ths vote, must state the findings for urgency, must be published, and become effective immediately. Emergency ordinance may be declared void if no true urgency existed.

11. MOTIONS

a. Motions may usually be adopted by the "no objection" method unless any member prefers voice or roll call vote. This method of expediting long agenda is common practice, and any defects are probably cured by the later approval of minutes which should reflect a "no objection" vote as "unanimously carried." Note: Approval of minutes should be effected only by voice or roll call vote.)

b. Distinction between motion and resolution:

1. In most cases a resolution is little more than a formal motion set forth in a separate written document. In a few matters such as assessment procedures or rezoning, a resolution is required.

2. Motions will generally suffice unless a resolution is specifically called for by law, or unless there is some reason for desiring the particular action formalized by separate instrument.

12. RELATIONSHIP OF COUNCIL TO ELECTORS.

It must be remembered, that the councilmen are elected by *all* of the people to serve as representative of *all* of the people; authority and responsibility for legislative enactments are vested in the council. California follows the council type of government where it is the function of the representatives to do that which in their best judgment is proper. California does not follow the "Town Meeting" type of government where the people legislate. Therefore, the council has authority to limit debate on any subject and to act in good faith regardless of the viewpoints of limited minorities. The purpose of council meetings is for the council to debate openly on particular matters, to hear public expression thereon, and to inform the public of what the council is doing. No council is infallible and it is proper that

public opinion be sought, but no councilman can permit his judgment to become subservient to the criticism of council meeting attendants. Conversely, councilmen should remember that they are servants of the people, not free agents, in administering the affairs of government.

a. It is the responsibility of the chair to control public debate so that repetitive or irrelevant remarks are not made; so that everyone has had a chance to speak before others speak for a second time; and to expedite the business at hand.

b. The responsibility of making decisions is not easy nor without its problems, but it is the responsibility of councilmen to vote and decide issues, regardless of personal hesitation. There will always be segments of the population dissatisfied with any decision. The purpose of government is to balance, legally, fairly and without favor, the limitations, restrictions or losses that are to be placed upon the individual or several individuals against the good, the benefit or welfare of or to a majority of the people.

* Charles R. Martin, City Attorney of Bradbury, Irwindale, Monterey Park, San Marino, Sierra Madre, South Pasadena, and Temple City, has compiled this Handbook for New Councilmen. It is based on numerous papers prepared for the League of California Cities. May 1972.

INDEX

Adjourned Meetings	10	Motions	13
Binding Future Councils	9	Motions Out of Order	11
Boards	2	Notice	10
Building Department	3	Ordinances	12
City Attorney	2	Parks and Recreation Department	4
City Clerk	2	Permits	6
City Council	1	Planning Department	4
City Employees	2	Police Department	4
City Manager	2	Powers and Limitations	7
City Officials	2	Pre-emption	8
City Treasurer	2	Procedural Requisites	8
Civil Liberties	8	Property Taxes	5
Commissions	2	Public Expenditures	7
Committees	2	Public Records	7
Conflicts of Interests	9, 10	Public Works Department	4
Correct Legal Documents	11	Quorum	10
Court Fines and Forfeitures	6	Reasonableness	8
Debt	7	Recall	9
Discrimination	8	Redelegation	8
Division of Question	11	Referendum	9
Due Process	8	Relationship of Council	
Eminent Domain	8	to Electors	13
Equal Protection	8	Reserved Rights	9
Failure to Vote	11	Resolutions	11
Finance Department	3	Roll Call	10, 11
Financing	5	Rules	11
Fire Department	3	Sales Taxes	5
Functions of Government	3	Service Charges	7
Incompatibility	9	Subventions	6
Initiative	9	Taxpayers' Suits	9
Legislative Procedure	10	Tort Liability	9
Licenses and Permits	6	Use of Public Property	9
Meetings, Regular	10	Utilities	6
Meetings, Special	10	Utility Franchises	6
Minutes	11	Voting	11