

Lianyungang Training Session

February 14, 2012

LEGAL ISSUES



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ATTORNEYS AT LAW

OVERVIEW OF LEGAL SYSTEM



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3 Branches of Government

- 1. Legislative Branch:** Makes the laws
- 2. Executive Branch:** Enforces the laws
- 3. Judicial Branch:** Rules on the laws



3 Levels of Authority

- 1. Federal Level:** U.S. constitution and federal government
- 2. State level:** state constitutions and government of each state
- 3. Local level:** city codes and government of each city



Examples - federal and state

- **Federal:**
 - Legislative branch: Congress
 - Executive branch: President
 - Judicial branch: U.S. Supreme Court
- **State (California):**
 - Legislative branch: California Legislature
 - Executive branch: Governor
 - Judicial branch: California Supreme Court



Examples - cities

- **General law city (Montebello):**
 - Legislative branch: City Council
 - Executive branch: City Administrator
 - Judicial branch: City Council [!]
- **Charter city:**
 - Legislative branch: City Council
 - Executive branch: Mayor/City Manager
 - Judicial branch: City Council [!]



Key points

- Most planning decisions are made by cities
- Cities need to be careful when making decisions
- Cities can be sued when their decisions violate the law
- Cities can sue others who fail to follow the law



LOCAL PLANNING LAWS



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General Layout

- **City Council:** sets policy and makes key decisions
- **City Manager:** implements policy and manages day-to-day matters
- **City Staff:** carryout policy through daily work
- **Planning Commission:** advises City Council on policy matters and makes lower-level decisions



Planning Principles

- **General Plan:** the guiding plan for a city – a broad overview
- **Specific Plan:** closer overview of plans for particular sections in a city
- **Zoning:** describes permitted and prohibited uses – must be consistent with General Plan and Specific Plan



Planning Process

- Minor issues are decided by City Staff or City Manager
- Bigger issues are decided by Planning Commission
- Biggest issues are decided by City Council
- Appeals are also decided by City Council



Public Participation

- Most decisions must be made at a public hearing
- Public hearings must be open to the public
- Any member of the public may speak at the public hearing
- Cities must public notice of upcoming public hearings so people will know what matters are being considered
- Anyone may speak through their attorney



THE ROLE OF ATTORNEYS



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What do attorneys do?

- Advise cities on what is legal and what is not
- Draft legal documents for cities
- Represent people, businesses, and organizations in disputes with cities
- Defend cities when they are sued
- Prosecute lawsuits when a city's decision is challenged



Examples

- City attorney will tell staff whether a policy might violate the constitution
- Attorney drafts contract for a city project
- Homeowners hire attorney to challenge a development project near their neighborhood
- City attorney defends the lawsuit
- City prosecutor sues building owner for violating zoning restrictions



Who has an attorney?

- City Attorney and Deputy City Attorneys
- City Prosecutors
- Special Counsel
- Attorneys for federal agencies
- Attorneys for state agencies
- Attorneys representing businesses
- Attorneys representing organizations



Key points

- Cities' decisions can be very contentious
- Planning matters can be very complex
- Attorneys are often involved to assert their clients' rights



LEGAL ISSUES COMMON IN PLANNING DECISIONS



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Main Laws

- U.S. Constitution
- Federal Laws
- State Constitution
- State Laws
- City Codes (Municipal Code)



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Examples

- **U.S. Constitution:** First Amendment prohibits cities from regulating billboards
- **Federal Laws:** Endangered Species Act stops construction of homes near a forest
- **State Constitution:** Prop 13 prevents city from raising property taxes
- **State Statutes:** Solar Rights Act requires city to approval solar panels on homes
- **City Codes:** Zoning ordinance prevents restaurant from selling beer



U.S. Constitution

- Due Process
- Equal Protection
- Takings
- First Amendment – Free Speech
- First Amendment – Freedom of Religion
- First Amendment – Separate of Church-and-State
- Second Amendment – Right to Bear Arms
- Limitations – Commerce Clause, etc.



Federal Laws

- Clean Water Act
- Environmental Quality Act
- Endangered Species Act
- Fair Housing Act
- RLUIPA
- Telecommunications Act



State Constitution (California)

- Due Process
- Equal Protection
- Takings
- Free Speech
- Police Powers Clause
- Prop 13
- Prop 218
- Alcoholic Beverages



State Laws (California)

- Brown Act
- Planning & Zoning Act
- Subdivision Map Act
- CEQA
- CESA
- CFHEA
- Building Codes



City Laws (Montebello)

- General Plan
- Specific Plans
- Zoning Ordinances
- Subdivision Regulations
- Business Licensing
- Programs and Policies
- Code Enforcement



Key Points

- A city's planning decision can involve many layers of law
- The law tries to make the process fair
- Planning decisions can often lead to legal disputes



LEGAL DISPUTE



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How are legal disputes resolved?

- Lower-level decisions can usually be appealed to the City Council
- City Council usually has the “final say”
- City Council decisions may be challenged by a lawsuit
- The lawsuit is decided by a judge, not the city



Separation of Powers

- Judges are within the Judicial Branch
- They are entirely separate from cities – in the “Superior Court” system
- Cities are on an “equal footing” with their opponents in court
- Judges who have an “undue influence” must be recused
- The judge’s decision may be appealed in Judicial Branch but is otherwise final



What authority do judges have?

- Judges may only apply the law
- Usually, decisions must be made “on the record”
 - judges may only consider the facts that the City Council considered
- Judges must try to maintain “separation of powers”
- City action will be reversed when a judge sees that the law was not followed



Key Points

- The legal process allows the public a way to stop bad projects
- Cities are more responsible because their decisions can be challenged in court



ABOUT AGC

Alvarez-Glasman & Colvin is a boutique law firm specializing in representing businesses, investors, developers, and government agencies in the legal aspects of aspects of land development and real estate investment.

AGC's areas of practice include:

- Real Property
- Land Use Law
- Planning and Urban Development
- Redevelopment Law
- Municipal Law
- Litigation
- Environmental Law
- Public agency law
- Legislative advocacy
- Housing Rights



Contact AGC

- Internet: agclawfirm.com
- E-Mail: mgorman@agclawfirm.com
- Northern California:

6795 Washington Street
Building D - Suite R
Yountville, CA 94599
tel **707.944.0540** | fax 707.944.0580

- Southern California:

13181 Crossroads Pkwy North
Suite 400 - West Tower
City of Industry, CA 91746
tel **562.699.5500** | fax 562.692.2244



QUESTIONS



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