

What Municipalities Do and How They Do It

Frayda S. Bluestein
School of Government
Kimberly S. Hibbard
North Carolina League of Municipalities



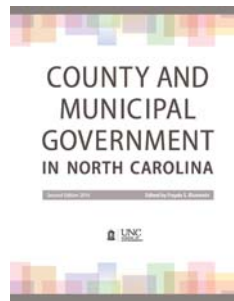
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Resources on Municipal Law

BLOG:



BOOK:



WEBSITE:



Three Key Concepts

Municipal Authority

Individual Authority

Transparency

Key Concept: Municipal Authority

All municipal authority comes from the legislature. You should understand what things are within your discretion, and what things are restricted by state law.



Key Concept: Individual Authority

Municipal powers are exercised by the governing board unless specifically delegated by statute or by the board. Individual board members have few independent powers.



Key Concept: Transparency

State public records and open meetings laws provide broad public access to your meetings and records.

These laws create obligations for the unit and for you as an individual.



Questions about municipal authority for discussion at your table.

- Newly elected majority has an agenda:
 - Adopt an ordinance to deannex property for disgruntled property owners.
 - Appropriate funds for a new downtown elementary school.
 - Adopt an ordinance requiring adequate housing for backyard chickens.
 - Conduct a city referendum on whether to ban the discharge of firearms within the city.

Legislature Creates Local Governments



All Municipal Powers Exist by Legislative Delegation



Cities

Counties

Schools

160A

153A

115C

Municipal Powers May Be Limited- “Preempted” by Federal and State Law





Local Acts Affect Some Cities

- Local Acts (Charter Amendments)
 - Apply to one or a few units
 - Modify or clarify local authority
 - Examples (2015)
 - An act to remove certain described property from the corporate limits of the Town of Polkton
 - An act to amend the charter of the City of Raleigh and the cities and towns in Mecklenburg County to allow the city to donate retired animals used by the police department to the police officer who had normal custody of the animal

Statutes Allow Some Locally Adopted Structural Modifications

- Governing board size
- Governing board term
- Mode of election
- Method of election
- Governing board name
- Selection of mayor
- Forms of government
- Style of corporation
- Name of unit

[School of Government
Forms of Government Website](#)

Recent Trends in Local Legislation

- 2013 session brought significant restrictions on authority for some individual cities:
 - Land use decisions (rezoning, ETJ)
 - Control of assets (utilities, airports, land)
- 2015 session brought election and boundary changes:
 - City and county redistricting
 - Deannexation of properties

Relationship With Legislature Is Important



League
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Some Statutorily Authorized City Functions

- Police
- Fire
- Streets
- Water
- Sewer
- Zoning
- Solid waste collection
- Regulation to protect general health, safety, and welfare



What Must Cities Do?



Building Code Enforcement

“Meaningful services” required to annex.
Some major services required to incorporate
and to receive state shared funds.

Compare County Functions

- Law enforcement
- Jail
- Medical examiner
- Court facilities
- Building code enforcement
- Public school support
- Social Services
- Public health
- Mental health
- Deed registration
- Election administration
- Tax assessment

Centralization

- Cities tend to be centralized organizations
- Counties are highly decentralized, with separate elected officials and important functions under operating control of other boards



What Discretion Do You Have?

- Within the powers granted, the governing body decides:
 - What regulations
 - What services
 - What structure
 - What employees
 - What policies
 - What budgetary priorities
 - What external partnerships and resources

Restraints on Board Discretion

- Must have delegated authority
- Must act within the scope of authority
- Must comply with specific procedures/limitations on exercise of authority
 - Examples:
 - Thresholds for bidding contracts
 - Procedures for disposing of property
 - Certain actions require board approval

What powers and possible liability do I have as an individual city governing board member?



Questions about individual authority for discussion at your table

- Newly elected board member:
 - Asks the clerk to post minutes on city website.
 - Insists that each individual board member has the legal right to add items to the board agenda.
 - Demands that the clerk include her specific remarks in the board minutes.
 - Asks the HR director to provide her access to personnel records of the police chief.

Individual board members do not have authority to act on behalf of the unit unless such authority has been delegated by the board.





Board must act as a board in **legal** meetings

- Proper notice to members
- Proper notice to public
- Quorum present

Individual Liability

Rarely authorized to act individually

Rarely liable for individual actions

- Criminal liability for self-dealing or gifts and favors
- Individual liability for knowing violation of law (against legal advice)
 - release of personnel information
 - violation of constitutional rights
 - violation of open meetings/public records

Key Concept: Transparency

State public records and open meetings laws provide broad public access to your meetings and records. Retention requirements apply to both the unit and to you as an individual.



Open Meetings: Public Notice and Access



Official Meetings
of **Public Bodies**

What's a Public Body?

- Public Body
 - 2 or more members
 - Intentionally created or appointed
 - Governmental (not private)
 - Exercising any one of 5 functions
- Functions
 - legislative
 - policy-making
 - quasi-judicial
 - administrative
 - advisory

Does not apply to meetings solely among staff.

Official Meeting

- A majority of the members
- Gathering simultaneously in person or electronically
- To conduct a hearing, deliberate, vote, or otherwise conduct public business.

Questions about open meetings for discussion at your table.

Are these “official meetings”?

- Seven-member board designates members A, B, and C as a committee to make recommendations on an issue. A calls B on the phone to discuss the issue.
- One board member sends email to the others, proposing a new policy. The members comment, using “reply all,” and the board member then emails a modified proposal.
- A majority of the board travels together to Raleigh for Town Hall Day.

A purely social occasion is not an official meeting.



Limited authority to meet in closed session



Process: Motion in open session, stating purpose of closed session

Closed Session Purposes

- Consider performance, qualifications, appointment, of individual public employees and public officers (not members of the board itself or other boards)
- Preserve attorney client privilege/consider handling of claims
- Discuss economic development
- Discuss bargaining position for property acquisition
- Matters involving alleged criminal misconduct
- Preserve confidentiality of records

Questions for discussion at your table.

Which of these things can be done in closed session?

- Deciding on cost-of-living adjustment for all employees.
- Discussing mayor's adversarial attitude toward board members.
- Voting on whether to settle a lawsuit.

Confidentiality of Closed Session

- Board members retain their constitutional rights to free speech, and there is no blanket prohibition in state law on revealing what was discussed in closed session.
- However, a board member who reveals information that is otherwise protected by law could have individual liability – e.g. revealing confidential personnel information in violation of the personnel privacy statute
- Can request (but not compel) members to sign a confidentiality agreement

Sanctions for Violation

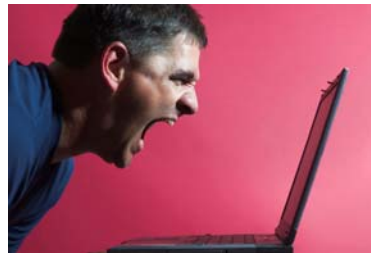


Court Order:

1. Declaring that a violation occurred.
2. Prohibiting the city from future violations.
3. Invalidating actions taken.
4. Personal liability (intentional action; not following attorney's advice).

Public Records:

- Any person has a right to inspect or obtain copies of records made or received in the transaction of public business, unless an exception applies.



Broad definition of “record”



Exceptions

- Some records are confidential: release is prohibited except as authorized by statute. Example: Employee records
- Some records are not public records: not right of public access, but city can release. Example: Law enforcement records

- Two Key Concepts:

Records created on **personal devices or accounts** are public records if the content involves public business.



Records created on government devices or accounts are **not public records if the content does not involve public business**. The government may have access to these records for internal purposes depending on computer use policies in effect.

Content, not location, determines status of email.



Does the record involve the transaction of public business?

Records Retention

- [State issued records retention schedules](#) dictate what must be kept, and for how long and provide legal authority to destroy
- Records of “short term value” need not be retained
 - Personal messages (including electronic mail) not related to official business.
 - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives.

Motive doesn't matter.



What can you charge?

- Actual, direct costs only
- Not personnel time



Public Employee Records

Public Records Act

Most records of public agencies are public



Exception: Personnel Privacy Statutes

Most public employee records are not public



Exception to the exception: Personnel Privacy Statutes

Specific employee information is public

Employee Information that is Public

- Name
- Age
- Date of hire
- Terms of Contract
- Current salary
- Date and amount of each increase and decrease (salary history)
- Date and type of certain personnel actions
- Date and general description of reasons for promotion
- Copy of notice of final dismissal for disciplinary reasons, setting forth basis for dismissal.

Sanctions for Violation



Citizen may file suit to force release of records.

1. Parties may mediate the dispute
2. Judge may require payment of attorneys fees unless city reasonably relies on case law or attorney general opinion.
3. Individual liability only if not following city attorney's advice.