

# Legal Briefs

*News You Can Use from the City of Oakland Office of the City Attorney*

*Legal Briefs is a series of essays by City Attorney John Russo to update the community on key projects, major initiatives and important legal developments in the Office of the City Attorney.*

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## LAW IN SERVICE OF THE PUBLIC:

### The Influence of Law and Politics in Shaping Oakland's History

*By John A. Russo, City Attorney*

*In honor of Oakland's 150<sup>th</sup> anniversary, this month's essay highlights Oakland's remarkable legal and political history—showcasing both the significant and the obscure—and acknowledges a few of the legal and political giants who have graced our City over time.*

#### The Early Days

Oakland's colorful history has been shaped by the confluence of law and politics from the city's birth. Oakland's first mayor, Horace Carpentier, was a shrewd attorney and a member of the founding trio who leased land from Vicente Peralta along the waterfront and present-day downtown, land that ultimately became Oakland.

According to historian Beth Bagwell, "the three began selling lots, even though they did not own the land and had no right to sell it." This "wild west" approach was typical in early California, where property rights and the sovereignty of old Spanish land grants were in legal flux following California's annexation. According to Bagwell, Carpentier and others took advantage of the "fluid legal situation that existed at the time." Whether it was motivated by vision or greed, Carpentier's initiative led to Oakland's incorporation by the State legislature in 1852.

From its humble beginnings as a hamlet of 75 citizens, Oakland has grown to become the 8<sup>th</sup> largest city in America's most populous state. Oakland is now regarded as one of California's most influential and vibrant urban centers. One factor in Oakland's prominence as a municipal government is the innovative use of the law to enhance the lives and protect the rights of Oakland's people.

#### Law as a Tool to Serve the Public

As with any social tool that serves the public good, law evolves over time and reflects the values, social circumstances, human needs, and political reality of the times. Looking back at Oakland's legal history, there are policies and regulations on the books that range from the sublime to the ridiculous, from landmark policies which broke new ground in municipal law to those that are amusingly outdated.

First, a look at the silly rules. For example:

- ✓ It is illegal to import or distribute squirrels in the City of Oakland. *(Prior code § 3-9.31)*
- ✓ Citizens may not sell confetti that has been gathered from public streets.  
*(Prior code § 4-7.05)*
- ✓ Purveyors of pickles please note: it is illegal to manufacture pickles within city limits; storing more than 1,000 gallons of pickles is also not allowed, unless one does so in specific proximity to the railroad tracks. *(Prior code § 5-13.03)*
- ✓ Riding on top of a moving street car or railroad train is strictly prohibited.  
*(Prior code § 2-5.09)*
- ✓ All establishments that sell imitation whip cream must place a sign in a conspicuous location in plain block letters not less than six inches high with the words “imitation whip cream toppings sold here.” *(Prior code § 4-8.562)*
- ✓ Spitting is not only disgusting and unsanitary, but also illegal in Oakland.  
*(Prior code § 4-5.04)*
- ✓ It is unlawful for any person to operate a miniature golf course between 1:30 and 7 a.m. *(Prior code § 5-4.15)*
- ✓ It is illegal to fly a kite or play any game of ball on any street, lane or alley in the city.  
*(Prior code § 2-5.13)*

Although these regulations seem obscure and ridiculous now, undoubtedly there was a compelling circumstance at the time these laws were passed which demanded a legal solution.

### **Oakland’s Landmark Legislation**

*“The functions of government must be readjusted from time to time to restrain the strong and protect the weak. That is the preservation of liberty itself.”*

—Herbert Hoover, 1935

On the serious side, as a “home rule” charter city, Oakland is allowed great power under the California Constitution to make laws to protect its citizens. Oakland has demonstrated leadership in California and the nation in developing policies that address the social health and welfare of our citizens. In fact, our innovative policies are viewed as a bellwether for municipal lawmakers statewide. Notable examples include:

- In the early 1980s, Oakland prohibited its contractors from doing business with oppressive governments such as the apartheid regime in South Africa.  
*(Ordinance #10611, 1985)*
- With the increased severity of the AIDS epidemic, in the mid 1990s the Oakland City Council passed a compassionate use ordinance supporting the use of medical cannabis to treat severely ill people with AIDS, cancer and other wasting conditions.

(OMC Section 8.46, 1998)

- In 1998, Oakland passed a living wage ordinance to help employees of City contractors to earn a decent living. (OMC Section 2.28, 1998)
- City contractors are also now required to provide domestic partner benefits to their employees, as the City began doing for its own employees in the mid-1990s. (Ordinance #12394, 2001)
- Last year, Oakland passed the first “equal access to services” ordinance that requires City departments to provide information and services to the public in Chinese and Spanish. (OMC Section 2.30, 2001)
- This month the City of Oakland hopes to win a key victory in court against less responsible elements in the powerful banking industry, elements which are attempting to gut our groundbreaking ordinance prohibiting predatory lending practices. Oakland is the first city in the nation to restrict lenders from engaging in nefarious business practices to manipulate mostly poor and uneducated people, especially seniors, into bad loans. This landmark case—which is being closely watched by cities and lenders alike around the country—will define what cities can do in California to protect their citizens. (OMC Section 5.33, 2001)

## **A Rich and Proud History**

These examples of innovative and progressive legislation embody our motto in the City Attorney’s Office: *law in service of the public*. Our mission is to apply the law in ways that improve the quality of life for our residents and protect the rights of our citizens.

From a legal and political standpoint, we have a lot to be proud of in the City of Oakland. As we commemorate 150 years of Oakland’s history, it is important to acknowledge what makes this city special. The richness, beauty, vitality, and energy in our city come from our collective willingness to live, to risk, to debate, and to stake our individual futures together in one of the most diverse, forward-thinking, and promising cities in the nation.

In recognition of this rich legal and political history, the following are some interesting historical facts:

### ***Legal and Political Leaders Who Have Graced Our Fair City***

- ✓ Not a bad place to start: **Earl Warren**, the 14<sup>th</sup> Chief Justice of the United States Supreme Court, began his career of public service in 1919 as Deputy City Attorney in the City of Oakland.
- ✓ Former U.S. Attorney General under President Ronald Reagan **Edwin Meese, III** was born in Oakland and began his public service career as an Alameda County Deputy District Attorney.

- ✓ As a young adult living in Oakland, **President Herbert Hoover** cast his first ballot in the 1896 Presidential election.
- ✓ In 1911, **President William Taft** laid the cornerstone for City Hall, which was the first government building designed as a skyscraper and the tallest building west of the Mississippi at the time.
- ✓ Oakland native **Ronald Dellums** served 27 years with distinction in the U.S. House of Representatives as a leading advocate for health care, civil rights, peace and social justice.

### ***Significant Milestones in the History of City Governance***

- 1852** State legislature approves incorporation of Oakland
- 1910** City regains control of the waterfront by settling a 50-year legal battle against the railroads, spurring tremendous expansion in maritime commerce
- 1911** Re-incorporation changes the City charter from a council to a commission system
- 1930** Charter amendments divide Oakland into City Council Districts and establish a Council-Manager form of government
- 1998** Measure X, brought forward by newly elected former California governor Jerry Brown, changed the charter to a “strong mayor” or Mayor-Manager form of government with an elected, not appointed, City Attorney.