



Administrative Law and Litigation

Practical Resources for Starting and Operating a Business: Navigating the Local & State Regulatory Framework

Selected Websites

Compiled by Brent Bernau, USD LRC Reference Librarian
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City of San Diego:

Business page / City of San Diego / <http://www.sandiego.gov/directories/business.shtml>

See, *10 Key Steps to Starting a Business (For Businesses within San Diego City Limits)*

<http://www.sandiego.gov/economic-development/pdf/10keysteps.pdf>

Business Directory categories include:

Business Assistance, which links include:

- Business Incentive Zone Maps
- Business Improvement Districts
- Development Services (Zoning information, Development Code & Local Coastal Program, etc.)
- Economic Development Programs
- Enterprise Zones
- Foreign Trade Zone
- New Business Information
- Redevelopment Agency
- Storefront Improvement Program
- Unified Certification Program (Equal Opportunity Contracting, Contract Compliance, Labor Compliance, etc.)

Licenses, Permits & Taxes, which links include:

- Business Tax Certificate
- Construction Permits (Industry, Small Business, Homeowners)
- Development Process: Step-by-Step

San Diego Municipal Code / Office of the City Clerk /

<http://www.sandiego.gov/city-clerk/officialdocs/legisdocs/muni.shtml> ; Print: LRC Reserve KFX 2343 .A35 1990 (looseleaf)

Municipal Codes of other California cities, see, e.g.,

- <http://igs.berkeley.edu/library/calcodes.html#Sa> / UC-Berkeley, Institute of Governmental Studies
- http://california.lp.findlaw.com/ca01_codes/municode.html / FindLaw, Legal Professionals

County of San Diego:

Business Resources / County of San Diego / <http://www.sdcounty.ca.gov/cs/brindex.html>

- Business Licenses (for businesses located in incorporated cities in San Diego County)
- Fictitious Business Names filing information
- Permits
- Small Business Development

Code of Regulatory Ordinances and/or Code of Administrative Ordinances http://www.amlegal.com/sandiego_county_ca/

Print: LRC Reserve KFC 1199 .S26 A35 1993 (looseleaf)

County and other Local Codes throughout California, see, e.g.,

- <http://igs.berkeley.edu/library/calcodes.html#Sa> / UC-Berkeley, Institute of Governmental Studies
- http://california.lp.findlaw.com/ca01_codes/municode.html / FindLaw, Legal Professionals

State of California

California Business Portal, Secretary of State Business Programs Division / Forms, Samples & Fees / http://www.sos.ca.gov/business/bpd_forms.htm#be

Business Entities covered include Corporations, Limited Partnerships, Limited Liability Partnerships & Companies, & General Partnerships

Types of forms included:

- Formation/Qualification Documents
- Amendment Documents
- Initial, Annual or Biennial Statements
- Termination Documents
- Merger Documents
- Conversion Documents
- Reservation of business entity name
- Records Requests

Also includes many links, including to California codes & regulations, related state & federal agencies, tax information; *Business Resources* link lists other agencies a business entity may need to contact to ensure proper compliance.

Business Permits Made Simple / CalGOLD / <http://www.calgold.ca.gov>

- Search by business type provides links to detailed information on the business permit, license and registration requirements at all levels of government.

Businesses / California Franchise Tax Board (FTB) / <http://www.ftb.ca.gov/businesses/index.shtml>

- Business Structures: Brief explanations of each of eight common structures
- Filing Requirements & Assistance
- Paying Tax or a Bill
- Tax Forms
- Starting, Running or Closing Your Business

California Business Portal / California Economic Development Partnership / <http://www.calbusiness.ca.gov/>

Tabs provide a portal to a number of resources for starting, growing, financing, expanding or relocating a business in California.

California Code of Regulations / California Office of Administrative Law

<http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome> ; Print: LRC California KFC 35 1990 .A22 (looseleaf)

Employer Registration (State Employment Tax) / California Employment Development Dept. (EDD) / <http://www.edd.ca.gov/>

Includes useful links to payroll tax information

State Agencies Directory (California) / <http://ca.gov/About/Government/agencyindex.html#agency>

- Links to the homepages of every state agency/board

State Bar of California, Business Law Section / http://calbar.ca.gov/state/calbar/calbar_sections_generic.jsp?cid=10701&id=7341

Can search site for articles, publications, links and Section Committees.

State Board of Equalization (California) / <http://www.boe.ca.gov/info/reg.htm> / Registration information (for “seller’s permit”, aka “resale permit”)

- Obtaining a Seller’s Permit
- Sales & Use Tax
- Special Taxes & Fees
 - Environmental Fees
 - Excise Taxes (e.g., alcohol/cigarette sales)
 - Fuel Taxes

Tax Service Center (California) / <http://www.taxes.ca.gov/index.shtml>

- Tabs for:
 - Income Tax
 - Payroll Tax
 - Sales & Use Tax
 - Other Taxes & Fees
- Employer Poster Requirements / http://www.taxes.ca.gov/Payroll_Tax/postingreqbus.shtml

Taxation (Both State & Federal): Simply written overview of requirements

Striking Gold in California: What You Need to Know About Taxes & Your Small Business (PDF) / <http://www.taxes.ca.gov/striking.pdf>

General (Not Specific to California):

ABA Section of Business Law / <http://www.abanet.org/buslaw> / Site can be searched to retrieve articles and links.

ADA Guide for Small Businesses (Americans with Disabilities Act) (PDF) / U.S. Small Business Administration Office of Entrepreneurial Development & the U.S. Dept. of Justice, Civil Rights Division / http://www.sba.gov/idc/groups/public/documents/sba_homepage/home_ada_smbusgd.pdf

- See also, SBA's Guide for Small Businesses and Other ADA Information / <http://www.sba.gov/ada/>
- See Also, ADA Business Connection / U.S. Dept. of Justice / <http://www.usdoj.gov/crt/ada/business.htm>

Business.Gov / <http://www.business.gov/> Official business site of the U.S. government includes guides & resources that help businesses comply with laws and regulations. *Good starting point*

- Provides searching and links to Federal, State & Local Sites categorized as follows:
 - Start a Business
 - Register, Licenses & Permits
 - Finance & Taxes
 - Expand Your Business
 - Stay Compliant with Laws
 - Industries
 - State & Local

Business Law Lounge / Lectric Law Library / <http://www.lectlaw.com/bus.html>

The Lounge is divided into sections:

- "Money Matters: Capital, Credit, Securities, Taxes & the like"
- "Business Organizations: Corporations, Partnerships, Limited Liability Companies, etc."
- "Laws, Rules & Regulations"
- "Employer/Employment Issues"
- "General Business Materials: Contracts, Cases, Scams, News & Other Assorted Treats"

Employment Eligibility Verification (I-9) / U.S. Citizenship & Immigration Services

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> (or obtain through Business.Gov link, above, or IRS Small Business site, below)

FindLaw for Small Business / <http://smallbusiness.findlaw.com/> / Source for lay people; Legal Professionals site has legal practice links

Small Business Topics include:

- Starting a Business
- Incorporation & Legal Structures
- Business Law & Regulations
- Business Finances & Taxes
- Business Forms & Contracts
- Business Operations
- Employment Law
- Immigration Law for Employers
- Workers' Compensation for Employers
- Closing a Business

Federal Employer Identification (EIN) / U.S. Dept. of Treasury / (Functions as the business' SSN) / <http://www.irs.gov/pub/irs-pdf/fss4.pdf>

Small Business & Self-Employed One-Stop Resource / IRS, U.S. Dept. of the Treasury / <http://www.irs.gov/businesses/small/index.html>

Good starting point

More than a repository of federal tax information for business, this resource has a wealth of information and links for all levels of government, all the way down to the local level. It might really live up to its billing as a "One-Stop Resource." There are a variety of paths to the information you will need, but a good one is *A-Z Index for Business*. (Under the *Businesses* tab, then *Small/Business/Self-Employed* tab.) This, for example, takes you to

- *Business Types*, which provides links to brief explanations of each of the business entities along with links to IRS publications and required forms.
- *By Subject*, includes *Starting a Business* and *EINs* (Employer Identification Number, which functions as the business' SSN).
- *A-Z Business Topics*,
 - Clicking *C*, then *California*, provides links to *Permits & Licenses*, various state websites (such as Secretary of State), and individual City and County web sites.
 - *E* takes you to *Employment Forms*, *Employer ID Numbers (EIN/SS-4)*, etc.

Taxation (Both Federal & State)

Striking Gold in California: What You Need to Know About Taxes & Your Small Business (PDF) / <http://www.taxes.ca.gov/striking.pdf>



Administrative Law and Litigation

The Adjudicatory Process

Courtesy of Peg Durkin
UC-Davis Mabie Law Library

An adjudicatory proceeding is an evidentiary hearing to determine facts under which an agency formulates and issues a decision. Proceedings are governed by the Administrative Procedure Act (APA), Cal. Gov't Code §§11340, et seq. APA rules apply to all agency adjudicatory proceedings unless exempted.

Administrative Decisions

1. Statutory Framework

a. Administrative Procedure Act (APA)

i. Adjudication sections

1. Cal. Gov't Code §11370 et seq.—provides for the Office of Administrative Hearings (OAH).
2. Cal. Gov't Code §§11400 et seq.—general provisions & procedures for administrative adjudication
3. Cal. Gov't Code §§11500 et seq.—formal hearing requirements

b. State agencies

- i. Larger ones—in-house process
- ii. Smaller agencies—Office of Administrative Hearings process

c. Office of Administrative Hearings (OAH)

- i. The OAH is a quasi-judicial tribunal that hears administrative disputes
 1. Adjudication and alternate dispute resolution
 - a. Independent Administrative Law Judges (ALJ)
 2. Conducts hearings for 150 state agencies and 800 local government agencies

2. Decisions

a. Precedential—Cal. Gov't Code §11425.60

- i. No uniform publication
- ii. Regulatory Notice Register

b. Non-precedential/not reported

- i. "Public Records"

c. Status of decisions by agency

- i. Daniel Martin, *Henke's California Law Guide*, 8th, pp.251-255

d. Agency websites

e. Lexis/Westlaw

3. Resources

a. California Administrative Practice, 2nd, (CEB)

- i. Appendix A—State agencies and procedures that apply to adjudicative hearings

b. California Administrative Mandamus, 3rd, (CEB)

- i. A petition for a writ of mandate is the legal process used to obtain judicial review of most agency decisions
 1. A form of judicial review
 2. Civil action—Cal. Code of Civ. Proc. §§23,363



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The Rulemaking Process

Courtesy of Peg Durkin
UC-Davis Mabie Law Library

Regulations implement, interpret or make specific
the laws administered by an agency and govern its procedure.

Agency Actions:

1. The APA describes the procedures that must be followed when adopting, amending or repealing a regulation.
2. Agency starts rulemaking file, writes proposed regulations and prepares Initial Statement of Reasons.
3. A notice of the agency's intent to write or amend regulations is printed in the *California Regulatory Notice Register*.
4. A public notice of any proposed changes or additions to regulations must be sent to all persons on the agency mailing list.
5. Submit proposed regulations to agency for review.
6. Hold 45-day public comment period and make contents of the regulatory file available upon request.
7. Schedule a public hearing.
8. Submit comments, responses and proposed revisions to the agency for review and approval.
9. Respond in rulemaking file to pertinent comments and questions received.
10. Provide additional 15-day comment period to those who submitted comments or requested notification if related changes made to original proposal.
11. Submit comments, responses and proposed revisions to the agency for review and approval.
12. Mail new notice and set another 45-day public comment period if substantive changes are made to the original proposal.
13. Submit proposed regulations to the agency for final review and approval.

Information Required:

1. Public notice must contain information required by OAL.
2. A complete record of each rulemaking activity must be retained and made available to the public.
3. Prepare Final Statement of Reasons summarizing comments and responses.
4. A complete rulemaking file must be submitted to OAL including:
 - a. Data and factual information submitted by the public
 - b. Written comments, petitions, minutes of public hearings
 - c. A summary of each comment and the agency's response to or rejection of explained
 - d. Regulation text as adopted
 - e. Final statement of reasons
 - f. Updated *Informative Digest*

OAL Review Process:

1. OAL has 30 days to review the regulatory file and issue its decision
2. The regulatory file must document that the agency's proposals meet the APA standards of necessity, clarity, authority, non-duplication, reference and consistency
3. Regulations approved by OAL are filed with the Secretary of State and become effective 30 days after filing. They are printed in the *Official California Code of Regulations*
4. Disapproved regulations are returned to the agency and the reasons for the disapproval are printed in the *California Regulatory Notice Register*
5. Agency may appeal OAL's disapproval to the Governor
6. Agency may deal with OAL's reservations and resubmit

For a graphical depiction of this process,
see pp.7-8, *How to Participate in the Rulemaking Process*,
<http://www.oal.ca.gov/pdfs/HowToParticipate.pdf>

Locating California's administrative code

In print:

Barclay's Official California Code of Regulations (West).

The code is divided into 28 titles. Title 24 is a separate copyrighted title which is published by the International Conference of Building Officials (ICBO) containing the state building codes and is not published as part of Barclay's. Code sections can be found by title and section number, by subject using the topical index and by agency using the agency index. The index volume also contains a *Table of Statutes to Regulations*.

Online:

California Code of Regulations at <http://ccr.oal.ca.gov>.

The online version of the code is almost identical to the print version. It may be searched by agency, table of contents, keyword search, or by section number and title.

Lexis: CAL; CAADMN (by Dot Command)

Westlaw: CA-ADC



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Key Websites

Office of Administrative Law (OAL) / <http://www.oal.ca.gov/>

Links include:

- Websites of every California State Agency
- *California Code of Regulations, Notice Register* and statutes
- California Administrative Procedures Act (APA)
- *How to Participate in the Rulemaking Process*,
<http://www.oal.ca.gov/pdfs/HowToParticipate.pdf>
- Underground Regulations & OAL Determinations
- *What is a Regulation?* http://www.oal.ca.gov/pdfs/What_Is_a_Regulation.pdf
- *Code of Federal Regulations* and *United States Code*

Office of Administrative Hearings (OAH) / <http://www.oah.dgs.ca.gov/>

- *The Office of Administrative Hearings (OAH) is a quasi-judicial tribunal that hears administrative disputes. Where there is disagreement with an action intended to be taken by certain government agencies against an individual or business, a hearing before OAH may be requested. Typically, this occurs when an agency seeks to discipline one of its licensees. OAH provides independent Administrative Law Judges (ALJs) to conduct hearings for over 150 State and 800 local government agencies. OAH provides both adjudication and alternative dispute resolution services. Of the approximately 6,000 cases filed with OAH each year, 40 percent are resolved by settlement.*

Legal Opinions of the California Attorney General / 1997-present

- <http://ag.ca.gov/opinions.php> (1997-present); also, LexisNexis, 1960-present
- Also available in print/microform in the LRC, v.1 (1943)-present

Statutes

Administrative Procedure Act, Cal. Gov. Code §§11340, et seq.

Open Meetings:

State Agencies: *Bagley-Keene Open Meeting Act*, Cal. Gov. Code §§11120, et seq.

Local Agencies: *Brown Act*, Cal. Gov. Code §§54940, et seq.

Public Records Act, Cal Gov. Code §§6250, et seq.

Tort Claims Act, Cal Gov Code §§810, et seq.

Regulations

California Code of Regulations:

Office of Administrative Law, Title 1, §§1-280

Office of Administrative Hearings, Title 1, §§1000-1440

Overviews

Henke's California Law Guide, 8th

California Administrative Law (ch 8); *Local Government* (ch 9)

LRC Reserve & Reference KFC 74 .H46 2006

Judicial review of agency action / Recommendation of the California Law Revision Commission

<http://www.clrc.ca.gov/Mreports-publications.html#V27>

- Includes the Commission's recommendation & three background studies.
- All are also available in print at the LRC.

Open Meetings:

- *A handy guide to the Bagley-Keen Open meeting Act 2004* / California Attorney General
 - http://ag.ca.gov/publications/bagleykeene2004_ada.pdf
 - Summarizes law governing all state boards & commissions.
- *The Brown Act: open meetings for local legislative bodies* / California Attorney General
 - http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf
 - Summarizes law governing local boards & commissions.

Public Records:

- *Summary of the California Public Records Act 2004* / California Attorney General
 - http://ag.ca.gov/publications/summary_public_records_act.pdf

Practice Guides

California administrative hearing practice, 2nd / CEB

LRC Reserve KFC 780 .C162; also, OnLaw

California administrative mandamus, 3rd / CEB

LRC Reserve KFC 780 .S79 2003; also, OnLaw and LexisNexis

Handling administrative mandamus: here's how & when to do it / CEB Action Guide 2007

LRC Reserve KFC 782 .Z9 A23 2007

California civil practice: torts / Bancroft-Whitney /

Governmental Immunity (ch 29), *Tort Claims Act* (ch 30), *Liability of Public Entities* (ch 31)

LRC Reserve KFC 310 .A6 B36; also, Westlaw: CCP-TORTS

California civil writ practice, 4th / CEB

LRC Reserve KFC 1075 .C15; also, OnLaw

California forms of pleading and practice / Matthew Bender

Overview of Public Administrative Law through Review of Agency Rulemaking (v.41)

Public Agency Adjudications Judicial Review (v.41A)

LRC Reserve KFC 1010 .A65 C15; also, LexisNexis

California government tort liability practice, 4th / CEB

LRC Reserve KFC 332 .C35; also, OnLaw