

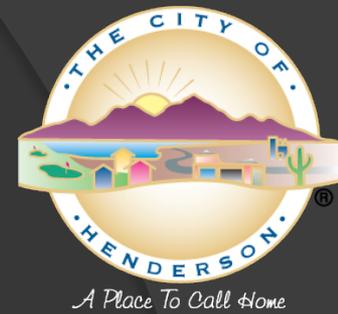
A Place To Call Home

The City Charter and Home Rule

CHARTER COMMITTEE

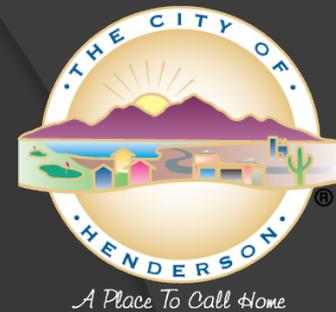
MARCH 29, 2016

The City Charter and Home Rule



The *Nevada Constitution* grants the Nevada Legislature the power to control the organization and powers of Nevada cities

The City Charter and Home Rule



The *Nevada Constitution*, in Article 8, Section 8, states:

“The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; provided, however, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.”

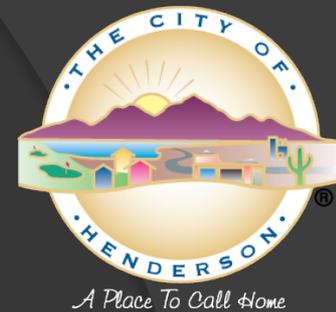
The City Charter and Home Rule



The Three Concepts of City Power

- **EXPRESS:** Powers granted to a city in express words
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The City Charter and Home Rule



How are Cities Structured in Nevada?

1. Under “general laws” (Nev. Const. Art. 8 § 8 and NRS Chapter 266)
2. Under “special law” (Nev. Const. Art. 8 § 1, NRS Chapters 267 and 268)

The City Charter and Home Rule



Cities created under “general laws”

- These are cities without a city charter
- The provisions of NRS Chapter 266 govern the structure and operation of the city
- Seven Nevada cities are governed under general laws

The City Charter and Home Rule



Cities created under “special law”

- Cities that are governed by a City Charter
- The City Charter governs the structure and operation of the city
- NRS Chapter 268 may provide additional powers
- Twelve Nevada cities exist by special laws



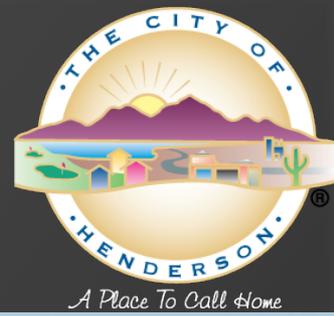
The City Charter and Home Rule

How is a Charter Amended?

(NRS 268.010)

1. By the Legislature
or
2. By the voters, after:
 - A) Majority vote of the City Council;
 - B) Petition signed by registered voters equal to 15% of the number of voters who voted at the last preceding general election, and;
 - C) Wins a majority vote from the voters

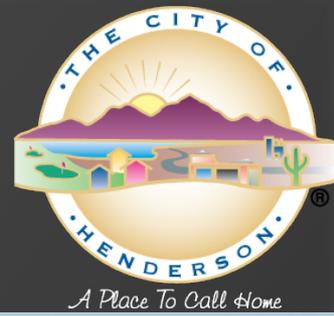
City of Henderson Charter



Section 1.010: Legislative Intent

“...the intent of the legislature that all provisions of this charter be liberally construed to carry out the express purposes of the charter and that the specific mention of particular powers shall not be construed as limiting in any way the general powers necessary to carry out the purposes of the charter.”

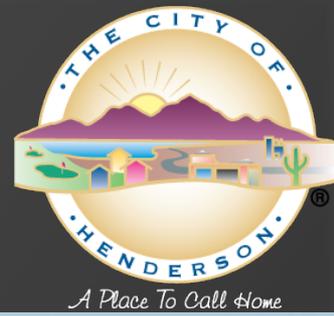
City of Henderson Charter



Section 2.080 – Powers of City Council: Ordinances

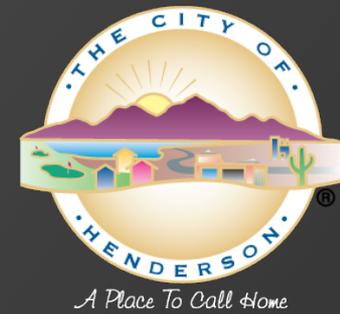
“The City Council may make and pass all ordinances, resolutions and orders not repugnant to the Constitution of the United States or the State of Nevada, or to the provisions of Nevada Revised Statutes or of this charter, necessary for the municipal government and the management of the affairs of the City, and for the execution of all the powers vested in the City.”

City of Henderson Charter



Section 2.080 – Powers of City Council: Ordinances

“When power is conferred upon the City Council to do and perform anything, and the manner of exercising such power is not specifically provided for, the City Council may provide by ordinance the manner and details necessary for the full exercise of such power.”



Powers Granted Under the City of Henderson Charter

ORDINANCES
PUBLIC PROPERTY
EMINENT DOMAIN
BUSINESS LICENSING
& REGULATION
POLICE ORDINANCES
FIRE PROTECTION
PUBLIC HEALTH
BUILDINGS
CONSTRUCTION
ZONING & PLANNING
RIGHTS-OF-WAY
PARKS

TRAFFIC CONTROL
PARKING
AIRPORTS
RAILROADS
NUISANCES
ANIMALS
INSECT & RODENTS
SEWERS
UTILITIES
FRANCHISES
CITY PROPERTY SALES
MUNICIPAL COURT
ELECTIONS

LIDS
DEBT
PUBLIC TRUST
MUNICIPAL TAXES
REVENUE
SUBPOENAS
ACQUISITION OF
UTILITIES
CIVIL SERVICE
PROPERTY MAINTENANCE
PUBLIC GATHERINGS
HANDBILLS

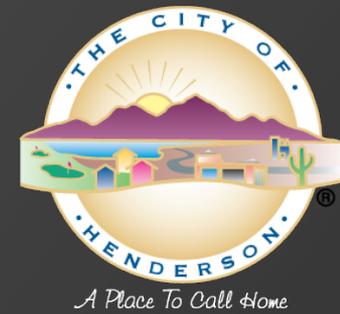
Powers Granted Under NRS 268



A Place To Call Home

CIVIL PENALTIES
DEMANDS AGAINST THE CITY
PUBLIC EXPENDITURES
CAPITAL IMPROVEMENT FUND
CITY PROPERTY SALE FOR ECONOMIC
DEVELOPMENT
PROPERTY MANAGERS
LIQUOR REGULATIONS
FARMERS' MARKETS
LICENSE TAXES
TAX ON TAXIS
PAWNBROKERS
TENT SHOWS & CIRCUSES
PLANNING COMMISSION
DISABILITY PENSIONS FOR PUBLIC SAFETY
GRAFFITI
AIR POLLUTION REGULATION
ELECTRIC WHEELCHAIRS
DROUGHT/WATER WASTE ORDINANCES

ABATEMENT OF NUISANCES ON PRIVATE
PROPERTY
CRIMINAL GANG ACTIVITY
PROMOTION OF CIVIL RIGHTS
ESTABLISH A HEALTH DISTRICT
CHARITABLE CONTRIBUTIONS ON ROADS
USING CITY MONEY TO MARKET THE CITY
TRANSPORTATION DISTRICTS
ECONOMIC DEVELOPMENT FINANCING
ANNEXATION
CITY BONDS
COMMUNITY DEVELOPMENT/BLOCK GRANTS
EXCLUSIVE OR LIMITED FRANCHISES FOR:
*AMBULANCES, TAXIS, PUBLIC TRANSPORT, WASTE
DISPOSAL, CONCESSION ON CITY PROPERTY, WATER &
SEWAGE TREATMENT, LANDFILLS, SEARCH & RESCUE,
INSPECTION SERVICES AND "ANY OTHER SERVICE
DEMANDED BY THE INHABITANTS OF THE CITY WHICH THE
CITY ITSELF IS OTHERWISE AUTHORIZED BY LAW TO
PROVIDE"*



Powers Granted Under Other State Statutes

EXAMPLES INCLUDE:

NRS 271 – LOCAL IMPROVEMENT DISTRICTS

NRS 277 – INTER-LOCAL AGREEMENTS

NRS 278 – PLANNING & ZONING

NRS 278B – IMPACT FEES

NRS 279 – REDEVELOPMENT

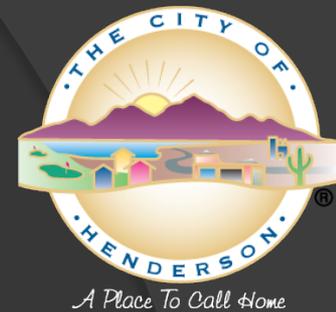
NRS 287 – PUBLIC EMPLOYEE BENEFITS

NRS 350 – MUNICIPAL DEBT

NRS 432A – OUT OF SCHOOL RECREATION PROGRAMS

NRS 463 – GAMING

The City Charter and Home Rule

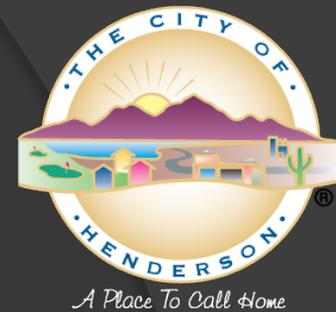


Dillon's Rule

"A municipal corporation possesses and can exercise the following powers and no others:

- ***First**, those granted in express words*
- ***Second**, those necessarily implied or necessarily incident to the powers expressly granted*
- ***Third**, those absolutely essential to the declared objects and purposes of the corporation -- not simply convenient, but indispensable*
- ***Fourth**, any fair doubt as to the existence of a power is resolved by the courts against the corporation -- against the existence of the power." (Merriam v. Moody's Ex'rs, 25 Iowa 163, 170 (1868))*

The City Charter and Home Rule



Dillon's Rule

- Dillon's Rule was adopted in Nevada in 1876 (*Rosenstock v. Swift*, 11 Nev. 128 (1876))
- 31 states follow Dillon's Rule, 9 states have a modified version, the others are "Home Rule" states
- Judicially created rule that measures local government actions against its narrow standards
- Any fair doubt concerning the existence of power is resolved by the courts against the city.

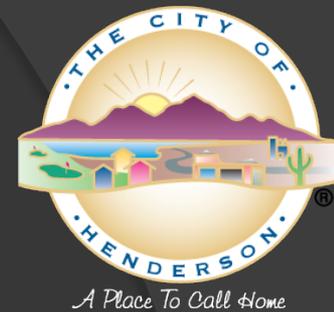
The City Charter and Home Rule



What is “Home Rule?”

The delegation of power from the state to a local government that creates local autonomy and limits the degree of state interference in local government affairs

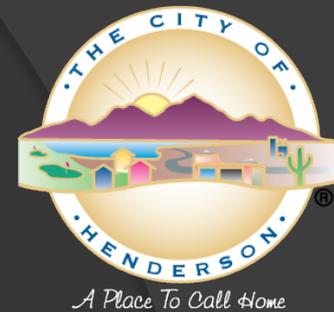
The City Charter and Home Rule



Types of Home Rule

- **Structural:** Power to choose the form of government, charter and enact charter revisions
- **Functional:** Power to exercise local self government; day to day functions of government with a degree of autonomy
- **Fiscal:** Authority to determine revenue sources, set tax rates, borrow funds and other related financial activities
- **Personnel:** Authority to set employment rules, remuneration rates, employment conditions and collective bargaining

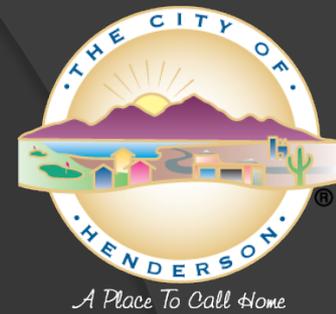
The City Charter and Home Rule



Legislative Discussion of Home Rule in Nevada

- 1951/1963 – Interim Legislative Studies on Home Rule
- 2003/2005/2007 – Legislation to abolish Dillon’s Rule introduced
- 2009 – Interim study
- 2011/2013/2015 – Various pieces of legislation to grant cities increased Home Rule

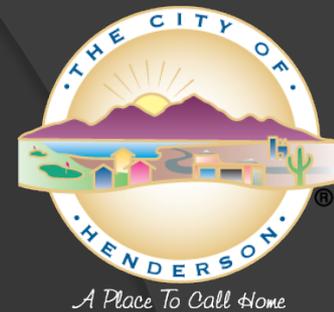
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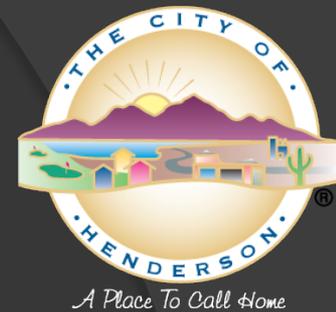
The City Charter and Home Rule



AB 493

- Amends NRS 268 (Charter Cities)
- Modifies Dillon's Rule when there is no clear authority granted by the Legislature
 - Subject to various limitations and conditions
- Provides Restrictions on Implied Authority

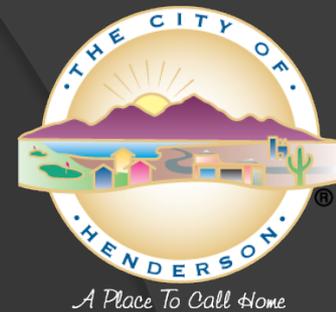
The City Charter and Home Rule



Greatest Benefit of AB 493

- **Modifies the Dillon's Rule presumption**
 - **Dillon's Rule:** Any fair doubt concerning the existence of power is resolved by the courts against the city
 - **AB 493:** If there is any reasonable doubt concerning the existence of a power of the city to address "a matter of local concern," it must be presumed that the city has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature

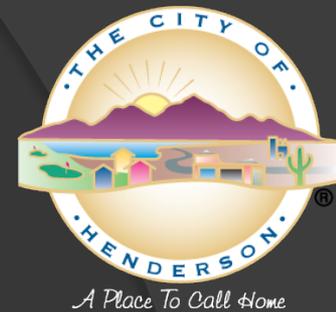
The City Charter and Home Rule



“Matter of Local Concern”

- “Necessary or proper to address matters of local concern for the effective operation of local government”
- Primarily affects or impacts areas located in the city
- Does not have a significant effect or impact on areas located in other cities or counties
- Specific examples include: Public health, safety and welfare; Planning, zoning, development and redevelopment; Nuisances and graffiti; Outdoor assemblies; City contracts and purchasing; Operation of city jails; Public property; Roads, highways and bridges, and; Parks, rec centers, libraries and museums.

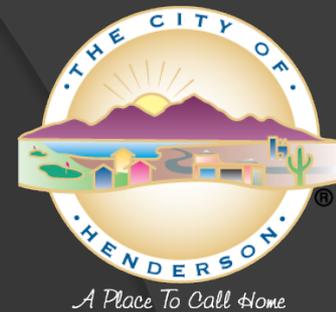
The City Charter and Home Rule



“Matter of Local Concern”

- Does not concern:
 - Something that is “within the exclusive jurisdiction of another governmental entity”
 - “A state interest that requires statewide uniformity of regulation”
 - “The regulation of business activities that are subject to substantial regulation by a federal or state agency”
 - “Any other federal or state interest that is committed by the Constitution, statutes or regulations of the United States or this State to federal or state regulation that preempts local regulation”

The City Charter and Home Rule

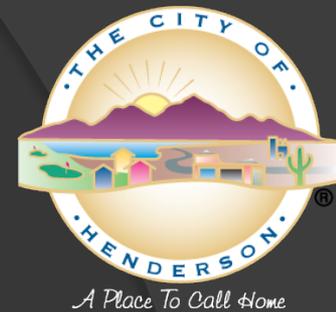


AB 493 “Shall Nots”

Unless it is expressly authorized, cities **shall not:**

- Condition or limit its civil liability (unless pursuant to an agreement)
- Prescribe law governing civil actions
- Impose duties on other governmental entities (unless pursuant to an agreement)
- Impose a tax
- Order or conduct an election

The City Charter and Home Rule



AB 493 – User Charges/Service Fees

Cities *may* charge a “service charge or user fee” *only if*:

- It is expressly authorized by a state statute or a city charter; or,
- It is “necessarily or fairly implied in or incident to powers expressly authorized by a statute or a city charter”

AB 493 New Program Analysis

Is there a prohibition in state or federal law?



Is there express authority?



Is there implied authority?

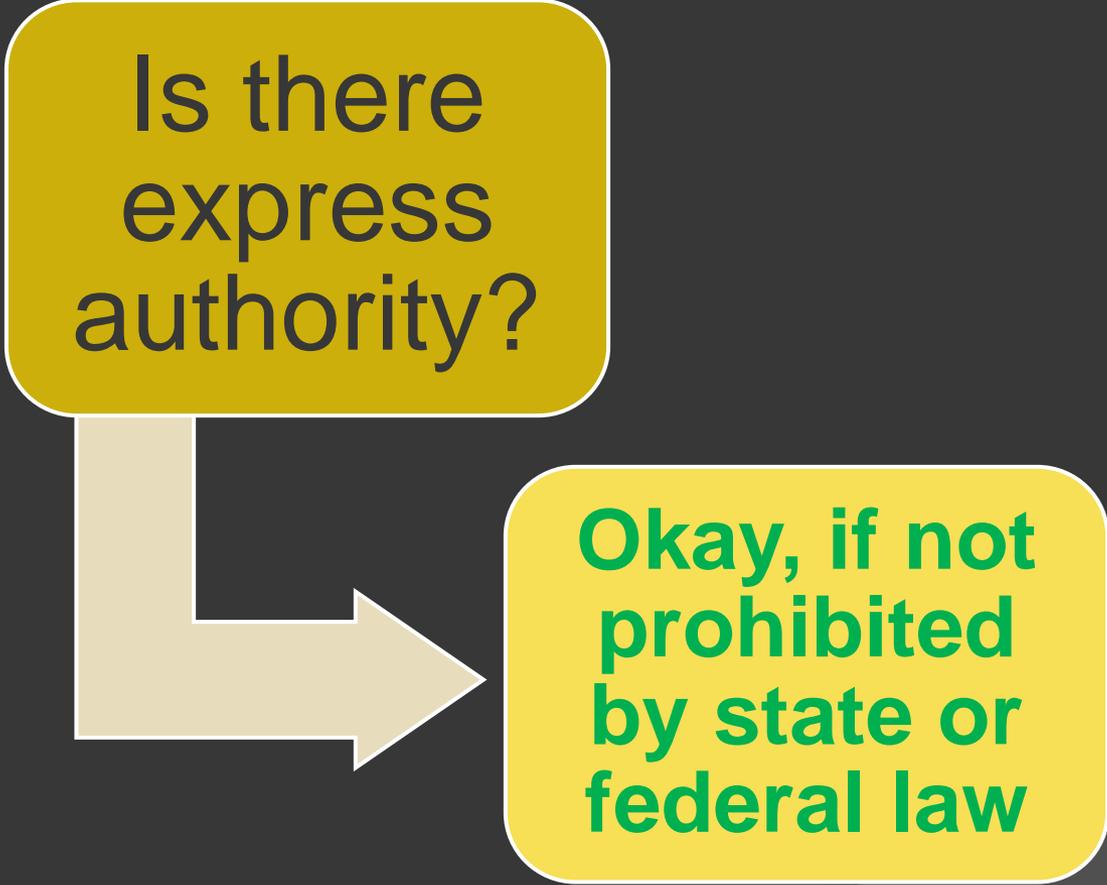


No Authority - Is it a matter of local concern?

AB 493 New Program Analysis

Express Authority

Is there
express
authority?



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graph TD; A[Is there express authority?] --> B[Okay, if not prohibited by state or federal law]
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Okay, if not
prohibited
by state or
federal law

AB 493 New Program Analysis

Implied Authority

Is there implied authority?

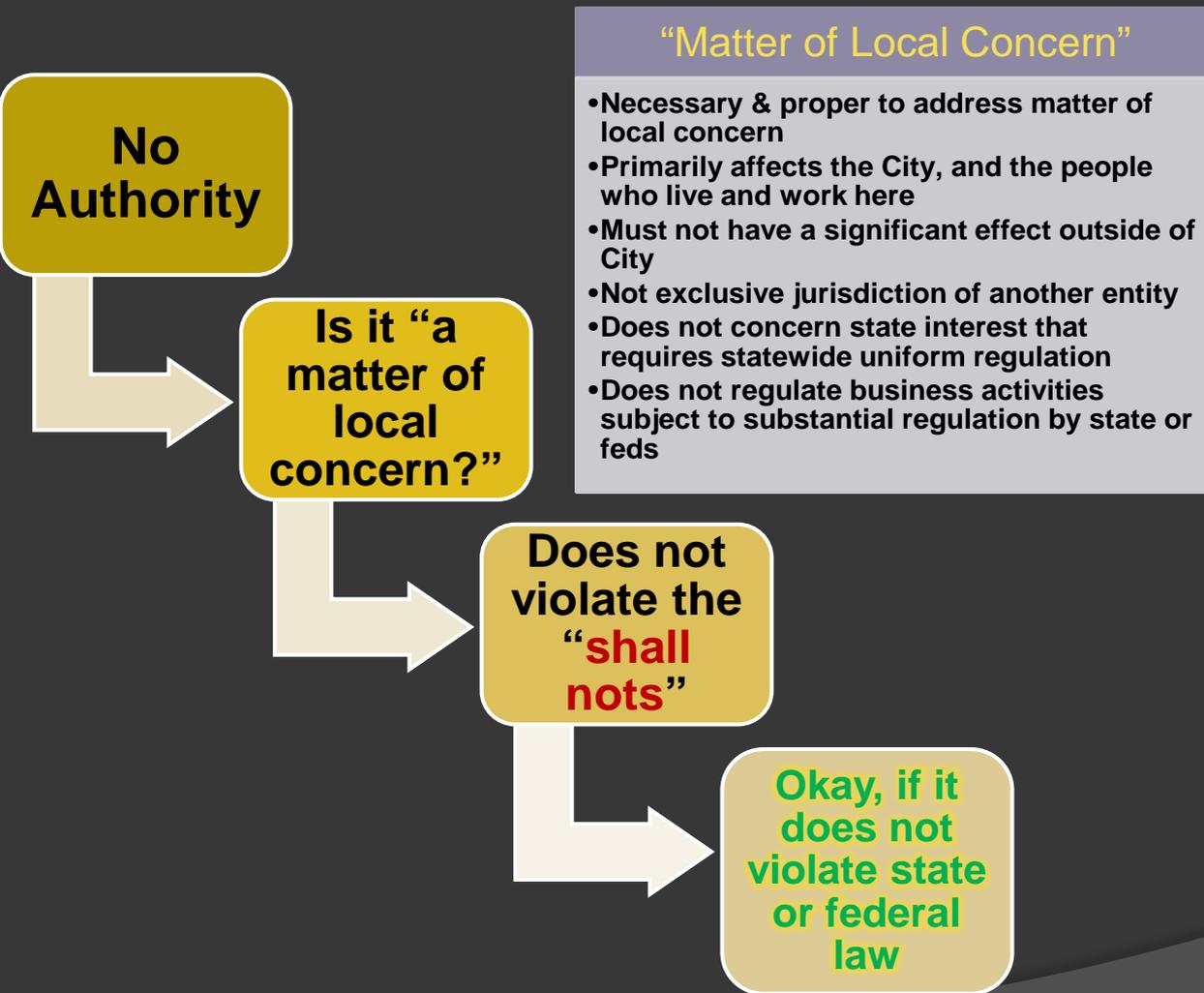
Does not violate the “shall nots”

Okay, if not prohibited by state or federal law

- The “Shall Nots”
- Condition City’s civil liability
- Govern Civil Actions
- Impose duty on other governments
- Impose a tax
- Order or conduct an election

AB 493 New Program Analysis

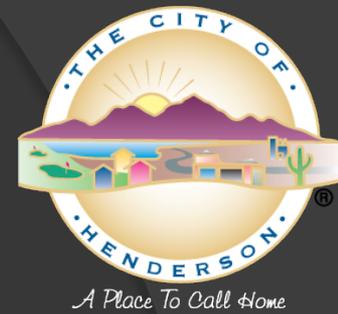
No Statutory Authority



"Shall Nots"

- Condition City's Liability
- Govern Civil Actions
- Impose duty on other governments
- Impose a tax
- Order or conduct an election
- Impose a service charge or fee
- Regulate business activities subject to substantial state or federal regulation

The City Charter and Home Rule



Implementation

- AB 493 requires the Nevada League of Cities to report on the implementation of AB 493 by Nevada cities prior to the commencement of the 2017 Legislative Session

Questions?

