

Fundamentals of City Regulation

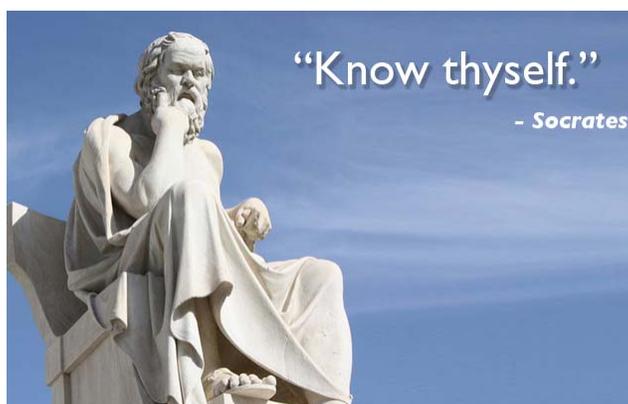
TML Newly Elected City Officials' Orientation
San Antonio, Texas
August 15, 2019
Presented by Amber McKeon-Mueller, TML Asst. General Counsel



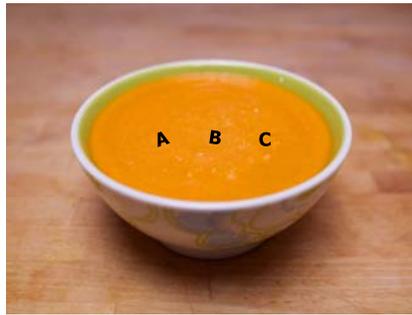
- Introduction and History
- Types of Cities and Authority
- Examples of Differences
- Preemption
- The TML Legal Department and Other Resources
- Questions



Introduction & History



General Law Cities



Borrowing Provisions (Local Gov't Code Chapter 51)

- Type B cities have the same authority, duties, and privileges as a Type A city, unless there is a conflicting state provision regarding only Type B cities
- Type C cities have the same powers as a Type B or Type A city (depending on population), unless the law specifically provides otherwise



A general law city may *only* exercise those powers that are specifically granted or necessarily implied in state law



What is an implied power?

Texas Supreme Court May 2016:

“[G]eneral-law municipalities have ‘only such implied powers as are **reasonably necessary to make effective the powers expressly granted**. That is to say, such as are **indispensable** to the declared objects of the [municipalities] and the accomplishment of the purposes of [their] creation.’ *Tri–City Fresh Water Supply Dist. No. 2 of Harris Cty. v. Mann*, 135 Tex. 280, 142 S.W.2d 945, 947 (1940) (emphasis added); *see also Foster v. City of Waco*, 113 Tex. 352, 255 S.W. 1104, 1106 (1923) (“A municipal power will be implied **only when without its exercise the expressed duty or authority would be rendered nugatory**.”). Thus, we strictly construe general-law municipal authority and ‘[a]ny **fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the [municipality]**, and the power is denied.’”



Changing City Type

Changing to a Type A City

1. Affirmative vote of 2/3 of city council;
2. Record taken and signed by mayor; and
3. Record filed and recorded in county clerk's office.

Changing to Home Rule

1. City council may order an election to create a charter commission, with 2/3 vote of council; or
2. Council must order an election if presented with a petition signed by at least 10 percent of the qualified voters



Other differences in general law and home rule cities



Maximum Property Tax Rate

- Home Rule: \$2.50 per \$100 valuation
- Type A with <5,000 population: \$1.50 per \$100 valuation
- Type A with >5,000 population: \$2.50 per \$100 valuation
- Type B: .25 per \$100 valuation
- Type C: Same as Type A if 501-4,999 population, or same as B if 201-500 population



- Citizen Initiative & Referendum
- Recall Election
- Term Limits



Preemption



Plastic Bags



Texas Health & Safety
Code § 361.0961(a)



Alcoholic Beverages



Texas Alcoholic Beverage
Code §§ 1.06 and 109.57



Dangerous Dogs



Texas Health & Safety Code
§ 822.047



Oil & Gas Regulation

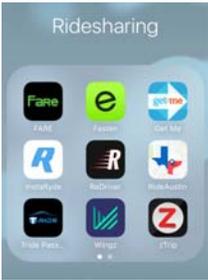


Texas Natural Resources
Code § 81.0523



Transportation Network Companies

Texas Occupations Code
Chapter 2402



Examples from 2019 Legislative Session

HB 234: No lemonade stand ordinances, probably preempts regulation of raw milk sales as well



HB 3231: Firearms preemption

SB 476: City can't prohibit dogs in outdoor portions of restaurants



2019 Legislative Session

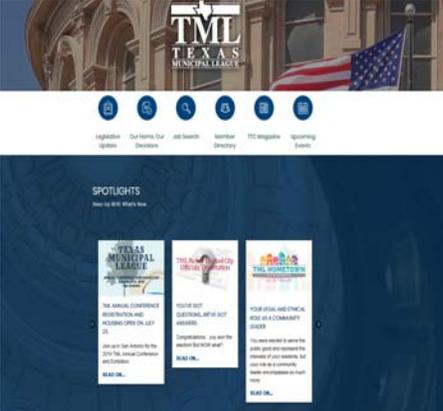
- Cutting Room Floor...
- Short-term rental regulation preemption
- Working conditions ordinance preemption
- Broad “super preemption” bills



Resources



www.tml.org



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Charters and Ordinances

franklinlegal.net
www.municode.com
www.amlegal.com

The screenshot shows the Franklin Legal website interface. At the top, there is a navigation bar with the Franklin logo and a search bar. Below this, a banner image features the text "EXPERTS IN ORDINANCE CODIFICATION, CODE SUPPLEMENTATION, AND CUSTOMER SERVICE". The main content area is titled "Texas" and includes a "View All Texas Codes" link. A list of cities is displayed in a grid format, including Anahuac, Baird, Balcones Heights, Big Sandy, Harker Heights, Heath, Ivanhoe, Keene, Pleasanton, Port Isabel, Sour Lake, and Stephenville. The TML Texas Municipal League logo is visible in the bottom right corner.

State Statutes

www.capitol.state.tx.us

The screenshot displays the Texas Constitution and Statutes website. It features a search bar with fields for "Code:", "Article/Chapter:", and "Act/Title:". Below the search bar, there is a list of Texas Statutes organized by code, including Alcohol Beverage Code, Business and Commerce Code, Civil Practice and Remedies Code, Code of Criminal Procedure, Education Code, Election Code, Estates Code, Family Code, Finance Code, Government Code, Health and Safety Code, Human Resources Code, Insurance Code, Labor Code, Local Government Code, Natural Resources Code, Occupations Code, Parks and Wildlife Code, Penal Code, and Probate Code. The TML Texas Municipal League logo is located in the bottom right corner.

Questions?

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or any of the TML legal staff at

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