

# Fundamentals of City Regulation

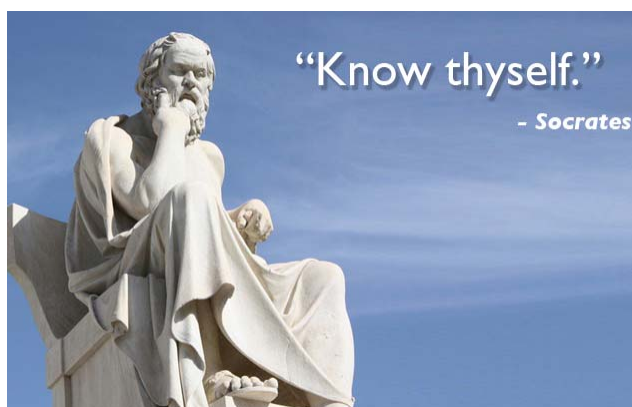
TML Newly Elected City Officials' Orientation  
Allen, Texas  
July 21, 2022  
Presented by Amber McKeon-Mueller, TML Legal Counsel



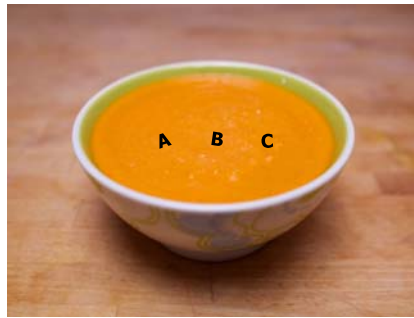
- Introduction and History
- Types of Cities and Authority
- Examples of Differences
- Preemption
- The TML Legal Department and Other Resources
- Questions



# 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.’”



# Home Rule Cities



Texas Supreme Court May 2016:

“Home-rule municipalities derive their powers from the Texas Constitution and possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power.”



## 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: \$ 0.25 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



## Let's Summarize

	General Law Cities	Home Rule Cities
Does the city have a charter?	No	Yes
Where does the city get its authority?	Express grant of power (or necessarily implied) from the Legislature	Full power of self government and look to the Legislature only for limitations on its power
Can the city have citizen initiative and referendum?	No	Yes, only if the charter allows for it
Can the city have a recall election or set term limits?	No	Yes, only if the charter allows for it



## Preemption (Story Time)





## 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

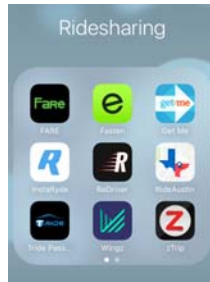


Texas Natural Resources  
Code § 81.0523



# Transportation Network Companies

Texas Occupations Code  
Chapter 2402



# Building Materials

Texas Government Code Code  
Chapter 3000



## Examples from 2021 Legislative Session

HB 957: Preemption of regulation of firearm suppressors (silencers)

HB 2622: Preemption of firearm regulation

HB 525/HB 1239/SJR 27: Governments can't interfere with religious activities, including during disaster



## 2021 Legislative Session

### Cutting Room Floor...

- Chickens, rabbits, and bees
- Working conditions ordinance preemption
- Broad "super preemption" bill



**What's with all this legislative stuff?**

**Who comes up with what TML does during the legislative session?**



**Answer: TML Member-Cities!**

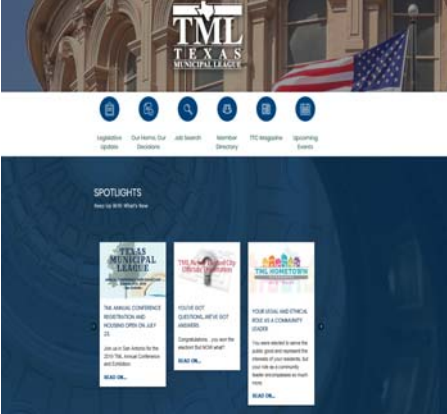
- Information on the TML Legislative Program [here](https://www.tml.org/DocumentCenter/View/2374/TML-Legislative-Program-2021-2022) on page 1:  
<https://www.tml.org/DocumentCenter/View/2374/TML-Legislative-Program-2021-2022>
- Your council can submit a resolution for potential inclusion in the TML legislative program (more information [here](https://www.tml.org/DocumentCenter/View/3195/2022-Memo-to-Cities):  
<https://www.tml.org/DocumentCenter/View/3195/2022-Memo-to-Cities>)



# Resources



[www.tml.org](http://www.tml.org)



[legalinfo@tml.org](mailto:legalinfo@tml.org)  
512-231-7400



# 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 the navigation bar, there is a banner image with 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. Below this, there is a grid of city names: 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 shows the Texas Constitution and Statutes website. At the top, there is a navigation bar with the Texas Capitol logo and the text "Texas Constitution and Statutes". Below the navigation bar, there is a search bar with the text "Texas Constitution and Statutes" and a "Home" link. The main content area is titled "Texas Constitution and Statutes" and includes a "Home" link. Below the search bar, there is a "Texas Constitution" section with a list of codes: AGRICULTURE CODE, ALCOHOLIC BEVERAGE CODE, AUXILIARY WATER LAWS, BUSINESS AND COMMERCE CODE, BUSINESS ORGANIZATIONS 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, PROBATE CODE.



## Questions?

Contact me:

[amber@tml.org](mailto:amber@tml.org)

or any of the TML legal staff at

[legalinfo@tml.org](mailto:legalinfo@tml.org)

512-231-7400

