

Q: Are cities authorized to regulate peddlers, solicitors, or canvassers?

A: Yes, but to differing degrees based on the group that is regulated.

Peddlers. Cities generally have broad authority to regulate peddlers to help prevent fraud and protect residents' privacy. *See Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 165 (2002). Express statutory authority for most general law cities to "license, tax, suppress, prevent, or otherwise regulate" peddlers is found in Section 215.031 of the Local Government Code. Home rule cities are not expressly forbidden from regulating peddlers, and thus may do so pursuant to their broad powers of self-government. *See also* TEX. LOC. GOV'T CODE §§ 51.035, 51.051; *Ex parte Faulkner*, 158 S.W.2d 525, 526 (Tex. Crim. App. 1942).

Canvassers. Canvassers are not immune from regulation under the state's police power, whether the purpose of regulation is to protect from danger or to protect the peaceful enjoyment of the home. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619-20 (1976). On the other hand, it is very difficult for cities to regulate canvassers who promote political or religious ideas through handbills or other means because of First Amendment concerns. *Watchtower*, 536 U.S. at 165-66. When regulating canvassers, a city must give due respect to the protected right to distribute and receive literature. *Martin v. Struthers, Ohio*, 319 U.S. 141, 146-47, 148-49 (1943). Free speech concerns may likely limit canvasser regulation to a minimum.

Solicitors. Solicitors fall in the middle. A city may generally regulate solicitors to prevent against fraud and protect privacy. *Watchtower*, 536 U.S. at 165; *Hynes*, 425 U.S. at 619-20. However, charitable solicitations have been found to be protected speech, even though the speech is in the form of a solicitation to pay or contribute money. *Village of Schaumburg v. Citizens of a Better Environment*, 444 U.S. 620, 633 (1980). Solicitation is subject to reasonable regulation with due regard for a solicitor's protected speech. *Id.* at 632. Any regulations that do not adequately balance the city's interests with free speech concerns will often lead to litigation.

Q: May a city completely bar all peddlers, solicitors, and canvassers from transacting business in the city?

A: Probably not. The state has given general law cities the authority to regulate peddlers and solicitors, but has not granted the authority to completely prohibit them on both public and private property. TEX. LOC. GOV'T CODE § 215.031; *Faulkner*, 158 S.W.2d at 527. Cities have authority to prohibit peddlers and solicitors from conducting business in public places. *Faulkner*, 158 S.W.2d at 526; *Ex parte Hogg*, 156 S.W. 931, 932 (Tex. Crim. App. 1913). Although there is no direct case law, it is likely that a city may similarly regulate canvassers on public property. However, free speech concerns may likely limit any canvasser regulation to a minimum.

Regulations on private property are different. Cities, even home rule cities with broad powers of self-government, arguably do not have the authority to completely bar peddlers or solicitors on private property. *Faulkner*, 158 S.W.2d at 527; *Hynes*, 425 U.S. at 619-

20; *Schaumburg*, 444 U.S. at 633; Op. Tex. Att’y Gen. No. JC-0145 (1999). Cities clearly may not prohibit canvassers from private property. *Watchtower*, 536 U.S. at 165-66; *Martin*, 319 U.S. at 149.

Q: What are some limitations regarding how a city may regulate peddlers?

A: The main issue in regulating peddlers is unlawful discrimination. A city must treat all vendors who are selling similar goods alike. *See Faulkner*, 158 S.W.2d at 527. An ordinance regulating peddlers must comport with the equal protection provisions of the Texas and United States Constitutions. A city may classify peddlers according to their business and may apply different rules to different kinds of businesses, so long as the differences are reasonably related to the city’s permissible purposes in its regulations. In *City of New Orleans v. Dukes*, the ordinance in question only allowed food vendors who had been in the city for a certain amount of time, and prohibited all new food vendors. 427 U.S. 297, 298-99 (1976) (per curiam). The Supreme Court validated the ordinance’s distinction between new food vendors and established food vendors because the city’s purpose in promoting the appearance and culture of the French Quarter was permissible, and the distinction within the ordinance could reasonably achieve the city’s permissible purpose. *Id.* at 304; *See also Hixon v. State*, 523 S.W.2d 711 (Tex. Crim. App. 1975). However, in *City of Houston*, Houston’s ordinance prohibiting the sale of newspapers on city streets, while allowing the sale of ice cream and flowers, was struck down partly because the distinction was unlawfully discriminatory. *Houston Chronicle Publ’g Co. v. City of Houston*, 620 S.W.2d 833, 838 (Tex. Civ. App.—Houston [14th Dist.] 1981). The city claimed that the purpose of the regulation was to promote traffic safety. *Id.* However, the court struck down the ordinance because prohibiting the sale of newspapers, an activity that implicates freedom of the press, while allowing the purely commercial activity of selling ice cream and flowers, is not a reasonable distinction. *Id.* Also, the city did not provide a sufficient reason to justify the limitation of the fundamental right of freedom of the press. *Id.*

The regulation of certain peddlers also invokes fundamental personal rights, such as freedom of speech, freedom of the press, and equal protection. If an ordinance restricts these rights, the city must show that the regulation is necessary to promote a compelling city interest, and that there is no less restrictive means of achieving the city’s regulatory purpose. *See Houston Chronicle Publ’g Co. v. City of League City*, 488 F.3d 613, 622 (5th Cir. (Tex.) 2007); *Houston Chronicle Publ’g Co. v. City of Houston*, 620 S.W.2d 833, 838 (Tex. Civ. App.—Houston [14th Dist.] 1981).

Q: What regulations do city ordinances typically contain?

A: Ordinances typically provide for the granting and issuing of licenses, direct how the licenses are issued and registered, and set the fees to be paid for licenses for commercial peddlers and noncommercial solicitors who ask for donations.

For example, the *Watchtower* case indicates that a license or permit application can request information that would allow a city to verify whether a potential peddler gives

correct information and whether the peddler poses a threat of fraud or crime. 536 U.S. at 169. Ordinance provisions that require names, addresses, business names, and photo identification are arguably permissible, and perhaps even necessary for a valid ordinance that provides for the issuance of a permit or license. *See id.* (holding that the ordinance's permit requirement was not permissible partially because the ordinance did not require the city to verify the peddlers' identities).

City ordinances usually provide for the expiration of licenses or permits, the duration of which varies from one day to one year. Under statute, most general law cities may not issue a license for a period of more than one year, and a license may not be assigned except as permitted by the governing body of the city. TEX. LOC. GOV'T CODE § 215.033. The licensing fees also vary according to duration, ranging from five dollars for a daily license, to over one hundred dollars for a yearly license. By statute, most general law cities may charge an amount reasonably necessary to cover their administrative and regulatory costs or costs reasonably related to a legitimate licensing objective. TEX. LOC. GOV'T CODE § 215.033; *See* ; Op. Tex. Att'y Gen. No. JC-0145 (1999). Cities can deny or revoke a license based on their investigation or other factors. However, for most general law cities, the license can be suspended or revoked only through the municipal court based on ordinance violations. TEX. LOC. GOV'T CODE § 215.034. A city cannot require a license or license fee for a peddler who is already licensed by the state, such as an insurance salesman. *Combined Am. Ins. Co. v. City of Hillsboro*, 421 S.W.2d 488 (Tex. Civ. App.—Waco 1967). A city may not levy an occupation tax on street vendors or peddlers, since the state has not chosen to levy such a tax. *See* TEX. CONST. art. VIII, § 1(f).

Limited time, place, and manner regulations are often permissible. Ordinances frequently require reasonable hours during which a peddler may approach private residences or work in city streets or public areas (for example, from sunrise to sunset). *See City of League City*, 488 F.3d at 622. However, a city may not completely prohibit peddlers from approaching private residences. *Faulkner*, 158 S.W.2d at 526; Op. Tex. Atty. Gen. No. JC-0145 (1999). An ordinance may also regulate which public property and city streets that peddlers, solicitors, and canvassers may or may not use for their business, so long as there are adequate alternate places for solicitation. *See id.*; Op. Tex. Atty. Gen. No. JC-0145 (1999). A city may also provide peddlers with a “no solicitations” resident list, similar to the Do Not Call Registry. The peddlers and solicitors can also be required to comply with “no solicitor” signs, and if licensed, could have their license revoked if they fail to comply. *See Watchtower*, 36 U.S. at 168; *Schaumburg*, 444 U.S. at 639.

Q: May cities prohibit sex offenders from receiving a peddler, solicitor, or canvasser license?

A: Probably so. A general law city possesses those powers and privileges that the State expressly confers upon it. *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 645 (Tex. 2004); Op. Tex. Atty. Gen. No. GA-0526 (2007). General law cities have been granted specific authority to “license, tax, suppress, prevent, or otherwise regulate” peddlers, which should include preventing a sex offender from receiving a

peddler license. TEX. LOC. GOV'T CODE § 215.031. Additionally, both general law and home rule cities have been granted broad authority by the State's police power for the protection of the public, which should authorize the prohibition of sex offenders receiving peddler, solicitor, or canvasser licenses. TEX. LOC. GOV'T CODE §§ 54.001, 54.004; *City of Dallas v. Smith*, 107 S.W.2d 872, 874-75 (1937). The Legislature has not, with "unmistakable clarity," preempted the licensing of sex offenders as peddlers, solicitors, or canvassers from a home rule city's broad powers. See Op. Tex. Atty. Gen. No. GA-0526 (2007); *Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

While Texas has not had a case that addresses this sex offender regulation issue, North Carolina has dealt with it recently. In *Standley v. Town of Woodfin*, a city ordinance prohibited sex offenders from entering the city's public parks. 661 S.E.2d 728, 729 (N.C. 2008). Like Texas, North Carolina has granted its cities police power for the protection of the public. *Id.* at 731, citing *State v. Ballance*, 51 S.E.2d 731, 734 (N.C. 1949); N.C. GEN. STAT. § 160A-174 (2007). The North Carolina Supreme Court found that the ordinance banning sex offenders from public parks was rationally related to the legitimate government interest of protecting the city's residents from sexual attacks. *Standley*, 661 S.E.2d at 731-32. Similar reasoning suggests that Texas cities may protect residents by prohibiting sex offenders from receiving licenses that permit close contact with the public, especially on private property.

The Supreme Court also noted that the ordinance was founded on fact. North Carolina's Legislature had formally found that "sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest." *Id.*, citing N.C. GEN. STAT. § 14-208.5 (2007). The North Carolina Supreme Court also cited a report that stated "released sex offenders are four times more likely to be rearrested for subsequent sex crimes than other released offenders." *Id.*, citing Patrick A. Langan, et al., U.S. Dep't of Justice, *Recidivism of Sex Offenders Released from Prison in 1994*, at 1 (2003). The danger of sex offenders has also been discussed by the U.S. Supreme Court. *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003); *McKune v. Lile*, 536 U.S. 24, 32-33 (2002) (plurality).

Municipal regulation of peddlers is a complex area of the law. Each city should consult with local legal counsel prior to adopting or amending an ordinance.

Q: What is the relationship between state law and city regulation of peddlers who sell alarm services?

A: Many Texas cities have recently received correspondence from certain alarm companies stating that they are exempt from all "license or permitting fees" charged by Texas cities, including fees and permits under a municipal peddler ordinance.

Alarm installation companies are considered to be "security services contractors" under the Texas Occupations Code. TEX. OCC. CODE § 1702.102. As such, they are licensed by the Department of Public Safety (DPS). *Id.* Because alarm companies are regulated by

the State of Texas, they are not required to pay a “local permit or licensing fee” to a city to perform their services. *Id.* at § 1702.134(a). However, it is unclear whether the exemption was meant to prohibit municipal licensing requirements under a city’s *peddler* ordinance (see below).

Q: What changes were made to the state licensing process for alarm installation companies in the last legislative session?

A: House Bill 2730, the DPS sunset bill, passed in 2009 and placed additional regulations on alarm installation companies. Because many alarm companies are based out of state, law enforcement officials have traditionally had difficulty investigating whether or not a certain salesperson was licensed. After the passage of H.B. 2730, alarm companies doing business in Texas must have a physical address in Texas, and that information must be provided to the DPS. *Id.* at § 1702.110(b). In addition, alarm companies are now required to maintain personnel records and provide those records to the DPS. *Id.* at § 1702.127.

Q: Could a city impose licensing requirements on an alarm installation company pursuant to a peddler ordinance?

A: Section 1702.134 of the Occupations Code exempts an alarm company that holds a state license from certain city regulations. On one hand, the statute can be read to exempt an alarm company from any licensing requirements, regardless of how they are imposed. Further, a city cannot require a license or license fee for a peddler who is already licensed by the state, such as an insurance salesman. *Combined Am. Ins. Co. v. City of Hillsboro*, 421 S.W.2d 488 (Tex. Civ. App.—Waco 1967).

On the other hand, the statute provides that a state-licensed alarm company is exempt from local requirements to obtain a permit from a city “to engage in business or perform a service under this chapter.” TEX. OCC. CODE § 1702.102(a). Many city attorneys have interpreted this section to only exempt alarm companies from city-issued licenses to engage in business in the city limits. Under that interpretation of the statute, the alarm companies would not be exempt from licensing requirements imposed on a peddler for door-to-door sales. Because of the public safety interest in keeping individuals from posing as alarm salespersons and going door to door to evaluate the security capabilities of homes within the city limits, many believe that the legislative intent behind this statute does not limit the application of local peddler ordinances.

Municipal regulation of peddlers is a complex area of the law. Each city should consult with local legal counsel prior to enforcing an ordinance against alarm company salespersons.

Q: Can a city prohibit all panhandling?

A: No. Courts have held that panhandling is protected speech under the First Amendment. *See Gresham v. Peterson*, 225 F.3d 899, 904 (7th Cir. 2000); *see also Smith v. City of Fort Lauderdale*, 177 F.3d 954, 956 (11th Cir. 1999); *Loper v. New York City*

Police Dep't, 999 F.2d 699, 704 (2d Cir. 1993). This means that any such restriction should be a time, place, or manner restriction on these activities that is narrowly tailored to meet the governmental interest. One court of appeals upheld a city ordinance that prohibited panhandling at night, near public transportation facilities, at parked or stopped vehicles, at sidewalk cafes, and near banks. *Gresham*, 225 F.3d at 906. The court held that this was narrowly tailored to meet the city's interest in protecting its citizens and still left many avenues open for panhandling, including the ability to panhandle during the day. Another court allowed an ordinance prohibiting panhandling on a five mile stretch of beach because individuals could panhandle in other places and the ordinance was narrowly tailored to meet the city's purposes. *Smith*, 177 F.3d at 956. But a law prohibiting begging in all public places was held to be unconstitutional. *Loper*, 999 F.2d at 705-06.

Thus, a city can arguably pass a panhandling ordinance, but it must be narrowly tailored to meet the city's purposes and cannot completely restrict panhandling.

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