



Legislative UPDATE

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Get Involved: TML Legislative Policy Committees

Your involvement in the development of the Texas Municipal League's 2017-2018 Legislative Program is critical to the League's success. The program is the "roadmap" by which League staff lobbies the Texas Legislature. The process starts in earnest next spring, and TML President C.J. Wax, Mayor of the City of Rockport, is seeking volunteers to provide input. No particular expertise is need. Volunteers need only have a willingness to learn and the ability to come to Austin for two full days in 2016.

Next year's topic-specific committees will be:

- **May 6:** Annexation and Regulation of Development.
- **May 27:** Revenue and Finance.
- **June 3:** Utilities and Transportation.

Service consists of appointment by the TML President to one of the above committees. Those committees will each meet once on the date indicated in Austin. All three will then combine to form the General Government Committee, which will meet on **August 19** in Austin. The General Government Committee will finish any topic-specific work and consider additional items.

The League's complete legislative policy development process is described [here](#). If you have questions or would like to volunteer for service on a legislative committee, please email JJ Rocha, TML Policy Analyst, at jj@tml.org. The deadline to apply is **December 23, 2015**. Please include your full contact information and your preferred topic-specific committee. Due to space limitations and other considerations, not all those who apply will be appointed to a committee, but will be considered for future volunteer opportunities.

Interim Hearings Begin: Cities on the Agenda

Interim hearings have begun, and cities are once again front-and-center. The Senate Committee on Intergovernmental Relations held its first interim hearing on December 2. The hearing was chock full of city-related discussion on the following charges:

- *Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law.*

The League was invited to testify, and provided an overview of general ordinance adoption authority for home rule cities. The discussion turned to the impact of two recent Texas Supreme Court decisions on ballot language used by home rule cities in charter amendment, initiative, and referendum elections. The League testified to the fact that the Texas Supreme Court has provided adequate guidance for the level of detail needed in a ballot proposition that is presented to city voters, and that further clarification in state statute is unnecessary.

- *Examine ways to improve government accountability in elections regarding the issuance of public debt. Include a review of the information that is currently provided to individuals in the voting booth and provide statutory recommendations, if necessary, to improve transparency.*

League testimony highlighted recent legislation that requires cities and other local governments to put together an annual report on debt information and make the report available to the public, as well legislation requiring various types of debt information to be included in the election order that is then posted on the city's website and at every polling place used in a bond election. The League will continue to oppose, as it did at this interim hearing, attempts to add limited and potentially misleading debt information to the ballot proposition itself, which has the effect of swaying voters towards rejecting debt issuances simply because they are not presented with a complete picture of a city's finances.

The next day, the Senate Veterans Affairs and Military Installations' Subcommittee on Border Security met to consider the following charge:

- *Study the various sanctuary city policies statewide, the number and types of crimes committed by previously arrested illegal immigrants within the jurisdiction of a "sanctuary policy," and possible solutions to discourage governmental entities from putting in place policies that conflict with immigration laws. Make recommendations to improve community safety.*

The charge refers to cities, but no city officials were invited to testify at the hearing. Witnesses consisted of the director of the Texas Department of Public Safety, a deputy

Texas attorney general, and the Jackson County sheriff (who is also the president of the Sheriffs' Association of Texas). The hearing focused on the technical minutiae of the federal [Priority Enforcement Program](#), which replaced the Secure Communities Program.

One of the witnesses promised to define a “sanctuary city.” After detailed testimony, however, no useful definition emerged. The committee chair also tried to pin down the definition, with little success. Some discussion of “pre-arrest treatment” versus “back-end cooperation with the federal government” took place, but it didn’t appear to firm up the definition at all. One committee member then stated that “we have certain locales that have said on the front end, we believe it is better policy not to enforce...we will not ask, and you [the officer] will not ask...” The League hasn’t been able to find a *city* with such a policy. Moreover, the witness from the attorney general seemed to advise that imposing a state mandate on a law enforcement officer to act in a certain way in any particular situation would be unconstitutional as a violation of the separation of powers doctrine.

The chair then asked whether there is delineation between sanctuary cities and sanctuary counties. The deputy attorney general concluded that the term “city” is a misnomer. It should be “sanctuary local government.” Another Senator asked if there is a legal definition of “sanctuary city” in state law. Of course, the answer was no.

By the end of the hearing – with no definition for or identification of any sanctuary city forthcoming – one senator suggested that maybe the real sanctuary cities were the ones that testified against his sanctuary city bill last session. He went on to suggest that the state might act to cut off grants to any such city that testified against his bill in 2015. According to legislative records, only one city actually did so.

In any case, the League’s position on immigration remains the same: City officials support local control. Elected city officials are accountable to their voters for law enforcement policies that keep their communities safe. Decisions about police department priorities should be made at city hall and reflect the desires of local voters.

These hearings represent only the tip of the iceberg this legislative interim. The Speaker and Lieutenant Governor have issued an almost unprecedented number of city-related charges, which means that the coming months will be busy with interim hearings. Stay tuned to the *Legislative Update* for complete recaps of each city-related hearing.

Federal Transportation Funding Bill

(Editor’s note: The following article was reprinted directly from the National League of Cities. For more information about this bill, contact Matthew Colvin at colvin@nlc.org or 202-626-3176.)

With remarkable bipartisan support, the House and Senate passed a multi-year transportation bill yesterday that is headed to the President’s desk for signature.

The last time Congress passed a bill that gave five or more years of certainty to our nation's local leaders was 1998's *Transportation Equity Act for the 21st Century* (TEA-21), which makes the speedy passage of the FAST Act in both the House and Senate last night something of a small December miracle. This monumental effort would not have been possible without the lobbying efforts by city officials.

Thanks is also due to the strong leadership of Chairman Inhofe and Ranking Member Boxer on the Senate Environment and Public Works Committee as well as Chairman Shuster and Ranking Member DeFazio on the House Transportation and Infrastructure Committee, their conferees, and leaders on several other committees with jurisdiction over our nation's surface transportation programs.

Passage of the FAST Act is truly great news for cities, which count on vital sources of federal funds like the Surface Transportation Program and the Transportation Alternatives Program to ensure the economic and physical wellbeing of America's cities, towns, and villages. What's more, it increases funding for locally owned infrastructure, and provides greater access to popular programs for smaller cities.

In the coming days and weeks, NLC will be hosting webinars for city officials to inform them on key provisions in the legislation and to answer questions they might have.

For now, here's a link to a comprehensive summary of the bill: [FAST Act Summary](#).

Update: General Law Cites and Sex Offenders

Many cities have enacted ordinances governing where registered sex offenders can live. In 2007, the Texas attorney general's office issued opinion [No. GA-0526](#). The opinion analyzed whether state laws relating to sex offenders preempted a city from enacting such an ordinance. The opinion concluded that they do not. However, the attorney general also opined that:

[W]e note that you do not specify whether your question concerns general-law or home-rule municipalities. *See id.* at 1-2. A general-law municipality is a political subdivision "created by the State and, as such, possess[es] those powers and privileges that the State expressly confers upon [it]..."

We have found no law authorizing a general-law municipality to adopt this type of residence restriction. Thus, unless the Legislature expressly authorizes it, a general-law municipality may not adopt an ordinance restricting where a registered sex offender may live.

Based on the above, and as reported in a previous edition of the *Legislative Update*, a group called Texas Voices for Reason and Justice (TVRJ) has sent a letter to each of the 46 known general law cities that have adopted a sex offender residency restriction ordinance (referred to by TVRJ as a "SORRO"). The letter demands that each city repeal its SORRO by December 19, 2015, and claims that TVRJ will file suit against any city that refuses to do so.

Many attorneys believe that the attorney general opinion is incomplete in its analysis, and that a general law city's authority to regulate for the safety and welfare of its residents authorizes a SORRO. Others are more conservative.

In any case, each city that received the TVRJ letter should consult with its city attorney about what it plans to do should the threatened lawsuit be filed. Any city that is actually sued should inform its liability carrier and notify Heather Mahurin, TML legal counsel, at heather@tml.org. Questions should also be directed to Ms. Mahurin.

Texas Ethics Commission Adopts Vendor Disclosure Rules

At its November 30 meeting, the Texas Ethics Commission adopted rules to implement an important ethics bill, ignoring several suggested improvements submitted by the League. As [previous editions](#) of the *Legislative Update* described, House Bill 1295 and the adopted rules require business entities entering into certain contracts with cities to disclose "interested parties" to those contracts.

This new requirement will apply to all contracts entered into **after December 31, 2015**, that meet either of the following conditions: (1) the value of the contract is at least \$1 million; or (2) the contract requires an action or vote by the governing body of the governmental entity. Before an affected contract may be executed, the vendor must submit the disclosure form to the Commission. The governmental entity must then confirm with the Commission that it has received the form.

Despite the efforts of the League and others, many of the questions that the League raised about the bill, the new rules, and the new form have gone unanswered. Member cities are encouraged to work with their local legal counsel to implement these new requirements.

Please contact Christy Drake-Adams, TML Legal Counsel, at christy@tml.org with questions.

Railroad Commission Municipal Outreach

Chairman David Porter and Texas Railroad Commission staff have announced the commission's *Local Government Outreach Workshop Series* to educate city officials on its rules, regulations, processes and policies, as well as to strengthen relationships between the commission and local regulatory partners. If your city wants someone from the commission as a speaker, email publicassist@rrc.texas.gov.

Religious Displays at City Hall

Although the topic of decorating public spaces can arise any time of year, the issue always seems to come to the forefront during the winter holiday season. The only way for a city to ensure its holiday display does not face a constitutional challenge is to make the display strictly secular in

nature. Of course, many cities will decide to include certain religious imagery in decorating their public spaces. In these cases, it is important for city officials and employees to have a general understanding of this area of the law and to work with their city attorney. For that reason, the League has prepared a more detailed memo on this topic, available [here](#).

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