



Legislative UPDATE

August 16, 2019
Number 31

Act Now: Who Will Represent Your City at the TML Business Meeting at the 2019 TML Annual Conference and Exhibition?!

The 2019 TML Annual Conference in San Antonio on October 9-11 will feature a new process to consider resolutions submitted by the membership. In lieu of a separate resolutions committee meeting, all resolutions will go directly to the membership at the TML business meeting on October 10 at 3:30 p.m. Each city is entitled to one voting delegate at the business meeting. The delegate isn't required to have any special expertise, and an elected official delegate is encouraged but not required. The delegate must either sign up electronically at <https://www.tml.org/FormCenter/Member-Resources-5/2019-TML-Business-Meeting-66> prior to the meeting or in person at a table outside of the meeting room. Cities are encouraged to sign up their delegate early using the link above. All city officials are welcome to attend the meeting, whether or not they are a voting delegate.

Paid Sick Leave Ordinances

In the past year, three cities (Austin, San Antonio, and Dallas) adopted paid sick leave ordinances that have been challenged in court.

The League [reported](#) that, in November 2018, the Austin court of appeals struck down the City of Austin's paid sick leave ordinance. In response, the City of Austin filed a petition for review with the Supreme Court of Texas, which is currently pending.

The City of San Antonio adopted its paid sick leave ordinance effective August 1, 2019. That city's council did so after it received a petition signed by over 144,000 city residents directing it

to either adopt the ordinance or place it on the ballot for a vote. A lawsuit was filed against the City of San Antonio, but the parties to the lawsuit have agreed to [stay](#) the implementation of the ordinance until December 1, 2019.

Most recently, the City of Dallas was [sued](#) for adopting a paid sick leave ordinance that was to take effect on August 1, 2019.

The lawsuits generally allege that the ordinances, which require private employers to provide paid sick leave to some of their employees, violate the Texas Minimum Wage Act because they require such employers to pay more than the minimum wage set by state law.

The League will continue to monitor and report on the progress of the cases.

Post-Session Update: Procurement Handbook

The 2019 legislature passed several bills related to procurement. Of particular interest to city officials is [H.B. 2826](#) by Representative Greg Bonnen (R – Friendswood). The bill relates to the procurement of contingent fee legal services, and it requires that various steps be taken prior to entering into such a contract. For example, in addition to other steps, the city must first give written notice to the public of: (1) the reasons for pursuing the matter; (2) the competence, qualifications, and experience of the attorney or firm; (3) the nature of the relationship between the political subdivision and the attorney or firm; (4) the reason the legal services cannot be adequately performed by attorneys and personnel of the political subdivision; (5) the reason the contract cannot be based on the payment of hourly fees without contingency; and (6) the reason the contingent fee contract is in the best interest of the residents. The attorney general must then approve the contract.

The League's [Municipal Procurement Laws Made Easy Handbook](#) has been updated to reflect this and other changes.

Post-Session Update: Cities and Firearms

The 2019 legislature passed several bills related to firearms. Of particular interest to city officials is [H.B. 1177](#) by Representative Dade Phelan (R – Beaumont). The bill provides that: (1) a person, regardless of whether he or she holds a license, may carry a handgun if: (a) the person carries the handgun while evacuating from an area following the declaration of a state or local disaster with respect to that area or reentering that area following the person's evacuation; (b) not more than 168 hours have elapsed since the state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun under the bill; and (c) the person is not prohibited by state or federal law from possessing a firearm.

In addition, the bill provides that: (1) a person may carry a handgun, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, on the premises of a location

operating as an emergency shelter during a declared local or state disaster if the owner, controller, or operator of the premises or a person acting with apparent authority authorizes the carrying of the handgun, the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises, and the person is not prohibited by state or federal law from possessing a firearm.

A detailed paper relating to cities and firearms is available [here](#).

FCC Issues Cable Franchise Order: Another Budget Hit for Some Cities

On August 1, the Federal Communications Commission (FCC) voted 3-2 to approve a [report and order](#) that will make dramatic changes to cable franchises managed by state and local governments. (Texas is under a state-administered cable franchise system under which a provider pays five percent of gross receipts as a franchise – or “right-of-way rental” – fee.) The order, which will go into effect 30 days after it is published in the *Federal Register*, relates to “in-kind” components of franchise agreements and their relationship to franchise fees.

The National League of Cities (NLC) [opposed the order](#), as did TML, the Texas Coalition of Cities for Utilities Issues, and a large number of local governments. Despite that opposition, the FCC adopted it. It will, for some Texas cities, reduce state cable franchise revenue and wholly preempt state and local authority over the growing broadband and wireless services being provided by cable companies. The FCC claims the order will expand broadband access, but it provides no requirement on or assurance from cable companies that reduced franchise obligations will reduce costs for consumers or increase broadband deployment in underserved areas.

Franchise fees were capped at five percent of a cable provider’s revenue by the federal Cable Act of 1984. Many cities also negotiated additional, non-cash provisions when creating franchise agreements with cable companies to operate in their state or city. The FCC offers the following definition for in-kind cable related contributions: “...[A]ny non-monetary contributions related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise, including but not limited to free or discounted cable service to public buildings, non-capital costs in support of PEG access, and costs attributable to the construction [construction, maintenance, and service] of I-Nets.”

The Texas system allows cities that received in-kind services under a local franchise to continue to receive them when the cable provider switched to a state franchise. The services include, for example, the value of service or infrastructure to government and school buildings and institutional networks (I-Nets). When the order goes into effect, cable providers will be able to deduct the “fair market value” of any in-kind franchise obligations from their cash franchise payments.

NLC will host a [webinar on Tuesday, August 27](#) at 1:00 p.m. central time to cover the content of the order and possible next steps. In the meantime, each city should determine what in-kind

provisions it receives from its cable providers. Cable providers can begin deducting the value of those in-kind franchise obligations as soon as 30 days after the FCC order is published in the federal register, so this budget hit will be just as cities are finalizing their budget process for the year.

Cities remain very concerned that the FCC will further preempt local governments in the name of providing concessions to industry. Commissioners Carr and O'Reilly clearly indicated during the August meeting that they would have liked to go further on the franchising order. Unless Congress or the courts rein them in, it appears these preemption efforts will not slow down.

[Editor's note: The edited article above was reprinted with the permission of the National League of Cities.]

Payday Lending Clearinghouse Updates

The League's "Payday Lending Clearinghouse" webpage, available [here](#), includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. On August 7, the Texas attorney general's office received a request for a payday-related opinion. The request asks about "the authority of a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan." It appears that some lenders wish to begin offering new loan products. Interested cities can submit comments on the request electronically by submitting them to opinion.committee@texasattorneygeneral.gov.

Resolutions for the 2019 TML Annual Conference

The TML Constitution states that resolutions for consideration at the annual conference must be submitted to the TML headquarters 45 calendar days prior to the first day of the Annual Conference. For 2019, this provision means that resolutions from any member city, TML region, or TML affiliate must arrive at the TML headquarters no later than 5:00 p.m. on **August 26, 2019**. For details on the submission process, go to: <https://www.tml.org/DocumentCenter/View/1224/2019-Resolutions-Memo>.

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