

Legal Q&A

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Q What is a city seal?

A A city seal (sometimes called a corporate seal) refers to an official city emblem or insignia. It is typically incorporated into a tool used to stamp or emboss official city documents, similar to a notary stamp. For instance, the City of University Park's Code of Ordinances provides as follows:

- (a) The seal of the city shall be a design, circular in shape, with a star in the center, and around the outer edge of the circle shall be written or printed the words: "CITY OF UNIVERSITY PARK, DALLAS COUNTY, TEXAS."
- (b) The official seal of the city shall be affixed to all ordinances of the city, the minutes of the meetings of the city council, all deeds, contracts in writing made on behalf of the city, leases, bills of sale, bonds, and other contracts and obligations of the city where required by law or custom, when signed by the mayor, or the mayor pro tem in the absence of the mayor, and attested by the city secretary.

University Park, Tex., University Park City Code, ch. 1, § 1.02.001.

In addition to being stamped or embossed on official city documents, the city seal is sometimes displayed on city letterhead stationery, employee uniforms, websites, and other similar locations.

Q Under what authority does a city adopt and use a seal?

A A city may be expressly empowered by state law or city charter to adopt and use a seal. *See, e.g.,* TEX. LOC. GOV'T CODE § 51.016 (authorizing a Type A general law city to adopt, use, change, and renew a seal); Lake Dallas, Tex., City Charter, art. 2, § 2.01 (providing that the City of Lake Dallas may design, adopt, and use a corporate seal).

At least one Texas court has held that a city has the inherent power to have and use a corporate seal. *See Ball v. Texarkana Water Corp.*, 127 S.W. 1068, 1070 (Tex. Civ. App. 1910).

Q Does state law dictate the design of a city seal?

A Cities have some leeway in designing the city seal. Many include the city's name and date of incorporation.

From a legal perspective, city officials should keep in mind that the composition and use of seals with religious imagery have been challenged under the First Amendment's Establishment Clause and Free Exercise Clause. For instance, a plaintiff challenged the City of Austin's seal which

contains a Christian cross. *See Murray v. City of Austin*, 947 F.2d 147 (5th Cir. 1991), *cert. denied*, 505 U.S. 1219 (1992). While the court in that case ultimately held that the City of Austin’s seal did not violate the First Amendment, the result has been different in other cases. *See, e.g., Harris v. City of Zion*, 927 F.2d 1401 (7th Cir. 1991), *cert. denied*, 505 U.S. 1218 (1992).

Q Who keeps and uses a city seal?

A Details regarding who is responsible for keeping and using a city seal may be found in statutes, city charter, city ordinance, and city policies.

In a type A general law city, for example, state law provides that the city secretary “shall . . . keep the corporate seal.” TEX. LOC. GOV’T CODE § 22.073(b). Home rule city charters often contain similar language. *See, e.g., Village of Bee Cave, Tex., City Charter*, ch. 5, § 5.02 (“The City Secretary shall . . . Hold and maintain the City Seal and affix it to all appropriate documents as required”).

While the city secretary is frequently the keeper of the city seal, statutes, city ordinances, and case law indicate that other officials may keep and use a city seal. For example, one city’s ordinance authorizes a deputy city secretary to “sign, attest or certify and use the city seal when appropriate and necessary on documents such as mylars of plats and replats, publications, notices, ordinances, and resolutions” in the city secretary’s absence. *See Odessa, Tex., Odessa City Code*, art. 1-6, § 1-6-4. And a case describes the tax assessor-collector of a city using a city seal to certify a tax statement introduced as evidence in a tax collection suit. *See F-Star Socorro, L.P. v. City of El Paso*, 281 S.W.3d 103, 105 (Tex. App.—El Paso 2008, no pet.).

One Texas court held that a charter provision requiring one officer (the comptroller) to impress the corporate seal on a paving assessment was a purely ministerial duty and could be performed by another officer (the city secretary) who was given custody of the city seal under an ordinance adopted by the city council. *See Thompson v. Thurber Brick Co.*, 42 S.W.2d 93 (Tex. Civ. App. 1931, error ref’d).

Q What is the effect of embossing or stamping the city seal on a document?

A As a general matter, placing the city seal on a document serves as a sort of “city signature” to indicate a document is a valid or important document of an incorporated city.

In the litigation context, there are specific rules that address the effect of the city seal. Both the Federal and Texas Rules of Evidence provide that a document is self-authenticating when it bears the city seal and a signature purporting to be an execution or attestation. That means no other evidence that the document is what it claims to be is necessary in order for the document to be admitted as evidence. *See* FED. R. EVID. 902(1); TEX. R. EVID. 902(1); *see also Adams v. Dignowity*, 28 S.W. 373, 379 (Tex. Civ. App. 1894, error ref’d). (“It is equally well settled that a conveyance of real estate, regular on its face, and under the corporate seal, executed by a municipal corporation having the power to dispose of its property, will be presumed to have been

executed in pursuance of that power, and that it is not necessary for the grantor, or party claiming under it, to produce the special resolution or ordinance authorizing its execution.”)

Q What types of city documents should be sealed?

A A requirement that a document be impressed with the city seal may be found in statutes, city charter, city ordinance, and city policy.

While it is not feasible to provide a comprehensive list of all the state laws that require a city document be sealed, following are some examples:

- an ordinance adopted in a general law city (TEX. LOC. GOV'T CODE § 22.073(b)(1) requires that an ordinance be “enrolled” which is understood to mean authenticated and filed by having the municipal clerk sign it, seal it, and place it in a book or file of original ordinances);
- certain election returns sent to the state (*Id.* §§ 9.007, 61.007);
- certain records filed with a county clerk (*Id.* §§ 6.012(3), 51.052(b)); and
- certain leases (*Id.* § 253.006(c)(2)).

Generally, a statutory requirement to seal a document has been treated as directory, not essential. *See Brennan v. City of Weatherford*, 53 Tex. 330 (1880) (holding that a city that had existed for 20 years without a corporate seal was estopped from denying its corporate existence); *Thornburgh v. City of Tyler*, 43 S.W. 1054 (Tex. Civ. App. 1897, writ ref'd) (holding that the bonds of a city executed without a seal were not invalid).

Q Are there any circumstances under which state law authorizes the use of a digital facsimile of the city seal?

A Texas is one of many states that have adopted the Uniform Facsimile Signatures of Public Officials Act which allows the use of a facsimile seal in connection with the issuance of public securities or payment instruments. *See* TEX. GOV'T CODE §§ 618.001-.009. Under the Act, any “appropriate authorized officer may authorize the printing, engraving, lithographing, stamping, or other placement of a facsimile of the seal on the document.” *Id.* § 618.007. The term “authorized officer” is defined to mean any official of the city whose signature is required or permitted to be placed on a public security, eligible contract, instrument of payment, or certificate of assessment. *Id.* § 618.002.

Q May a city trademark its corporate seal?

A In 2009, the City of Houston applied to register its official seal with the U.S. Patent and Trademark Office (USPTO). *See In re City of Houston*, 731 F.3d 1326 (Fed. Cir. 2013), *cert. denied*, 571 U.S. 1202 (2014). (Information about the City of Houston’s seal is available here: <https://www.houstontx.gov/about/houston/cityseal.html>.)

The USPTO’s Trademark Trial and Appeal Board (TTAB) refused to register the city’s seal pursuant to Section 2(b) of the Lanham Act, which prohibits the registration of any trademark

that “[c]onsists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.” 15 U.S.C. § 1052(b); *see also* TEX. BUS. & COMM. CODE § 16.051(a)(3) (prohibiting the registration of a trademark depicting, comprising or simulating the seal of the United States, a state, a municipality, or a foreign nation).

The City of Houston appealed the TTAB decision. As support for its legal position that it should be able to register its seal, the city argued that: (1) because it was a governmental entity seeking to register its own seal, it was not an “applicant” under Section 2(b) of the Act, and that improper use of government insignia leads to confusion among the public as to whether goods and services bearing such insignia are actually sponsored by or affiliated with the government; and (2) a bar on government registration of its insignia frustrates the purpose of the Act which is to protect consumers from “pirates and cheats.” *See In re City of Houston*, 731 F.3d 1326, 1330 (Fed. Cir. 2013), *cert. denied*, 571 U.S. 1202 (2014). The Federal Circuit disagreed and upheld the TTAB’s decision that Section 2(b) of the Lanham Act prohibits the federal registration of government seals.

The Federal Circuit suggested the City had other options to prevent the fraudulent or potentially confusing use of its insignia, including passing an ordinance banning such activity or working to amend the Lanham Act. *Id.* at 1331. However, some local government ordinances have faced challenge, and attempts to amend the Lanham Act have, thus far, been unsuccessful. *See, e.g., Rothamel v. Fluvanna Cty.*, 810 F.Supp.2d 771 (W.D. Va. 2011) (holding that a county ordinance restricting the display or use of image of the official county seal violated the First Amendment); Helsel, Tyler M., *Under Seal But Not Under Law: In re City of Houston’s Effect on Municipal Insignias*, 20 Marq. Intell. Prop. L. Rev. 137 (2016) (discussing proposed amendments to the Lanham Act).

Q If the city seal is not protected by trademark, does that mean any person can use a city seal in any manner?

A No. There are various laws that work to prohibit the misuse of a city seal. For instance:

- It is a crime to present or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record. *See* TEX. PENAL CODE § 37.10; *see also Haywood v. State*, No. 01-02-00305-CR, 2003 WL 1848621 (Tex. App.—Houston [1st Dist.] April 10, 2003) (mem. op.) (involving a defendant convicted to 12 years in prison for possessing 26 blank Department of Public Safety temporary permits, each depicting a graphic of a state seal).
- It is a crime to forge a writing (including a license, certificate, permit, seal, title, letter of patent, or similar document issued by government) with intent to defraud or harm another. *See* TEX. PENAL CODE § 32.21(e).
- It is a crime for a public servant to use city resources (e.g., city letterhead stationery) for personal purposes. *See id.* § 39.02.
- The Uniform Facsimile Signatures of Public Officials Act (discussed above) provides that a person commits a felony “offense if, with intent to defraud, the person places on a public security, instrument of payment, certificate of assessment or eligible contract” a

facsimile city seal or a reproduction of a facsimile city seal. *See* TEX. GOV'T CODE § 618.009.

And, as previously mentioned, some cities have local ordinances and policies that restrict use of the city seal.

Finally, it's important to point out that, just like a city, a private person is prohibited from registering a city seal under Section 2(b) of the Lanham Act. In addition, the prohibition against registering a city seal does not necessarily extend to marks of departments or agencies of the city. *See, e.g., City of New York v. Blue Rage, Inc.*, No. 17-CV-3480, 2020 WL 423432 (E.D.N.Y. 2020) (discussing that the term “insignia” in the Lanham Act should not be construed broadly and finding defendant guilty for trademark infringement as to the NYPD Shield, NYPD Mark, and FDNY Shield as used on certain merchandise).

Q Are city-related entities authorized to adopt and use a corporate seal?

A State law expressly authorizes certain entities created by cities to adopt, use, and alter their own corporate seal. *See, e.g.,* TEX. LOC. GOV'T CODE § 601.027 (parking authority); *id.* § 254.023(b) (board created to manage island property).

State law requires a municipal court to “have a court seal, the impression of which must be attached to all papers issued out of the court except subpoenas, and which must be used to authenticate the official acts of the clerk and of the recorder.” TEX. CODE CRIM. PROC. art. 45.012(g). The court seal may be created electronically. *Id.* In a municipal court of record, the seal must include the phrase “Municipal Court of/in _____, Texas.” TEX. GOV'T CODE § 30.000125. There is no specific language required for the seal of a non-record court. A state law requiring that the seal of a municipal court contain a five-point star was repealed in 1999.