

Legal Q&A

By Bill Longley, TML Legal Counsel

What is the general rule with regard to municipal regulation of peddlers?

Cities generally regulate peddlers, who sell products and services, in order to help prevent fraud and protect 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 Sections 51.035; 51.051; *Ex parte Faulkner*, 158 S.W.2d 525 (Tex. Crim. App. 1942).

What regulations do municipal peddler ordinances typically contain?

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.

City ordinances usually provide for the expiration of licenses or permits, and permit durations vary 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. The licensing fees also vary according to duration, usually with a one-year license costing one hundred dollars or more, but a shorter license costing as little as five dollars per day. By statute, most general law cities may charge an amount reasonably necessary to cover their administrative and regulatory costs or costs reasonably related to their legitimate licensing objective. *See* TEX. LOC. GOV’T § 215.033; 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. *Id.* § 215.034.

Ordinances frequently require reasonable hours that a peddler may approach private residences or work in city streets or public areas (for example, from sunrise to sunset). *See Houston Chronicle Publ’g Co. v. City of League City*, 488 F.3d 613 (5th Cir. 2007). An ordinance may also regulate which city streets and public property vendors and solicitors may or may not use for their business, so long as there are adequate alternate places for solicitation. *See id.*; Op. Tex. Att’y. Gen. JC-0145. 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). A city may also compile a “no solicitations” list that residents may sign, and the city can give this list to potential peddlers. The peddlers and solicitors can be required to comply with “no solicitor” signs, and if they are licensed, they could have their license revoked if they ignore the list. *See, e.g.*, Tex. Loc. Gov’t §§ 215.031; 215.033.

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

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).

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

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.

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

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.