

TMCCP Presents
Legislative Update Seminar

August 17-18, 2017, San Marcos, Texas

HANDOUT FOR

“Sex Offender Restrictions”

with speaker Bradford E. Bullock

Attorney, Partner, Russell Rodriguez Hyde Bullock, LLP

TEXAS MUNICIPAL CLERKS CERTIFICATION PROGRAM

1155 Union Circle #305067, Denton, Texas 76203-5017

940-565-3488 | municlerks@unt.edu | municlerks.unt.edu

Sex Offender Residency Regulations - Update

Bradford E. Bullock
Russell Rodriguez Hyde Bullock, LLP

History of Challenges to General Law Cities' SORROs

- In 2015, 46 general law cities received a demand from Texas Voices for Reason and Justice (TVRJ), a "statewide criminal-justice advocacy group" that represents sex offenders.
- The letter asked these cities to repeal their sex offender residency restriction ordinances (SORROs).
- TVRJ followed through with its threat by filing lawsuits against several of the cities that didn't repeal their SORROs, including West Lake Hills. (That's how I got involved - thanks Alan.)

History of Challenges to General Law Cities' SORROs - Continued

- The substance of the sex offenders' claims - that general law cities have no authority to enact a SORRO - is largely based on a March 2007 opinion from the Texas attorney general's office.
- The lawsuits allege that, because they are incorporated under the general laws, and no general law expressly delegates the authority to enact a sex offender residency restriction ordinance, the defendant cities are not authorized to enact one.
- This was the AG's one-sentence conclusion as well.

History of Challenges to General Law Cities' SORROs - Continued

- In my humble legal opinion, that 2007 opinion is conclusory and flawed.
- It does not even cite, much less analyze, provisions like Local Gov't Code § 51.012 and §§ 211.001 and 217.002, which clearly grant general law cities police power authority such as -
 - Laws necessary for government, interest, welfare or good order; and
 - Laws promoting public health, safety, morals and general welfare

Status of Legal Challenges to SORROs

- Before the Legislature got involved this session, there were a number of legal challenges to SORROs at various stages in the litigation process.
- There have recently been favorable court decisions upholding various aspects of SORROs.

Duarte v. City of Lewisville, Texas, 858 F.3d 348 (5th Cir. 2017)

- Lewisville, Texas enacted a SORRO prohibiting registered sex offenders from living within 1,500 feet of "where children commonly gather."
- The Fifth Circuit held that registered sex offender was not entitled under Due Process to a hearing to prove that offender was not currently dangerous because Due Process was satisfied by underlying criminal proceeding in which offender was found guilty.

City of Westworth Vill. v. Texas Voices for Reason & Justice, Inc. (Tex.App.-Fort Worth May 18, 2017).

- The City of Westworth Village was one of the general law cities originally challenged by TVRJ to abolish its SORRO.
- The City filed a plea to the jurisdiction challenging TVRJ's ability to bring the claim on behalf of its alleged "members."
- In finding for the City and throwing out TVRJ's lawsuit, the court held that TVRJ did not have "members" in the traditional sense, and that because the organization lacked "members," it could not bring a lawsuit challenging the ordinance on their behalf.

The Texas Legislature Steps In ...

- TVRJ's claims against general-law cities was premised on the idea that they did not have the authority to enact SORROs because the Legislature had not specifically said that they can.
- Certainly, the cities TVRJ sued disputed that claim and asserted that the Legislature had already granted them the power to enact "police power" regulations/laws for the health, safety, welfare and morals of the community.

The Texas Legislature Steps In... Continued

- The Texas Municipal League stepped in and once again lobbied on behalf of Texas cities, asking the Legislature to clarify that general law cities can enact SORROs.
- In the preceding regular session, the Legislature finally took action and passed Tex. H.B. 1111, 85th Leg., R.S. (2017), which will be codified at TEX. LOC. GOV'T CODE § 341.906).

H.B. 1111

- House Bill 1111 provides that:
 - (1) the city council of a general law city by ordinance may restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone in the city;
 - (2) the specified distance in the ordinance may be **no more than 1,000 feet**;
 - (3) a "child safety zone" is defined as premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children, but excluding a church;

H.B. 1111 - Continued

- (4) it is an affirmative defense to prosecution of an offense under the ordinance that the registered sex offender is in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes;
- (5) the ordinance **must** provide procedures for a registered sex offender to apply for an exemption from the ordinance; and
- (6) the ordinance **must** exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted.

H.B. 1111 - Continued

- H.B. 1111 becomes effective **September 1, 2017**.
- Any general law city that has already adopted a SORRO should consult with its legal counsel to review its existing ordinance and amend it, if necessary, to make sure it conforms to the requirements of H.B. 1111.
- If at all possible, it should accomplish this by September 1, 2017, so as to avoid any unnecessary legal challenges by TVRJ or other entities.

H.B. 1111 - What does it mean? How does it work?

- H.B. 1111 has some key provisions that you should consult about with your legal counsel to make sure that your ordinance complies with this new state law.
- For example -
 - It is an affirmative defense for sex offenders to be within 1,000 feet of a "child safety zone" for a "legitimate purpose."
 - But what is a "legitimate purpose?"
 - The legislation does not limit it to work-related activities or an offender transporting their child to school.
 - This will probably be a jury question in any enforcement action.

H.B. 1111 - What does it mean? How does it work? - Continued

- What procedures must a city provide for a registered sex offender to apply for an exemption?
- First, any procedure must meet Due Process requirements.
- This means that a city must provide an applicant with **notice and an opportunity to be heard**.

H.B. 1111 - What does it mean? How does it work? - Continued

- Notice and an opportunity to be heard - continued.
- This means applications can be treated like any other variance application, but cities would be well-advised to adopt guidelines under which exemptions can be granted similar to variance guidelines.
- Moreover, cities would be well-advised to have legal counsel present for any hearing.
- Cities should also be prepared for increased community interest in any hearing since it would have to comply with Open Meetings notice requirements.

Conclusion

- Lawsuits like those brought by TVRJ against general-law cities should be mooted with the passage of H.B. 1111.
- But that does not mean TVRJ can't continue trying to assert legal challenges to SORROs.
- Cities should consult with their legal counsel in drafting new SORROs or amending their existing SORRO to comply with state law.
- Cities must provide exemption procedures and public hearings, and should probably have legal counsel present during any hearing.
