

# TCAA NEWS

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## TCAA Fall Conference 2011

**Save the Date!** The TCAA Fall Seminar in conjunction with the TML Annual Conference is scheduled for October 13, 2011, in Houston. A link to registration and hotel information is available at [www.texascityattorneys.org](http://www.texascityattorneys.org).



**William "Mick" McKamie Earns IMLA's Prestigious Marvin J. Glink Award**

Mr. McKamie, co-founder of San Antonio-based McKamie Krueger, LLP, received the International Municipal Lawyers Association's prestigious Marvin J. Glink Private Practice Local Government Attorney Award in honor of his distinguished career and commitment to his community and profession. The award was presented at the 76<sup>th</sup> Annual IMLA Conference in Chicago on September 13.

### FREE CLE! The 2011 TCAA Summer Conference Available Online:

TCAA Online Seminars is a FREE SERVICE that allows TCAA members who are city attorneys, assistant city attorneys, or attorneys who regularly practice municipal law to view a video of past seminars in a single-session format. Viewing of the session allows attorneys to receive participatory CLE credit with the State Bar. To view available seminars, please go to [www.texascityattorneys.org](http://www.texascityattorneys.org) and click on the "TCAA Online Seminars" link. (Use the password "FreeCLE" to gain access to the sessions.)

### TCAA to Fill Board Position on October 13, 2011

Those interested in applying for a place on the Board should fill out an application and return it via e-mail to Scott Houston at [legalgovt@tml.org](mailto:legalgovt@tml.org). Application forms are available on the front page of TCAA's Web site at [www.texascityattorneys.org](http://www.texascityattorneys.org) and must be received by 5:00 p.m. on September 23, 2011.

### Legal Defense Program

TCAA, in conjunction with the Texas Municipal League, files amicus briefs in support of cities on many different cases. To keep up to date with the status of those briefs, go to [http://www.tml.org/legal\\_pdf/AmicusBrief.pdf](http://www.tml.org/legal_pdf/AmicusBrief.pdf).

### Municipal Attorney Job Openings

For the most recent Texas Municipal League classifieds postings, please go to <http://tml.associationcareernetwork.com/JobSeeker/Jobs.aspx?abbr=TML>.

## TML/TCAA Legal Defense Program Amicus Brief, Attorney General Opinion, and Administrative Comments Filed

**Substandard Buildings:** *City of Dallas v. Stewart*, No. 09-0257 (Supreme Court of Texas). TML and TCAA filed an amicus brief in support of the city's motion for rehearing. TML and TCAA argued that the Texas Supreme Court's opinion could: (1) be interpreted to require every administrative public health and safety abatement decision to be subject to de novo review; (2) be interpreted to require every administrative regulatory determination that involves property interests be subject to de novo review; and (3) expose cities to takings claims for every abatement or regulatory decision made in the past 10 years. Amici also argued that the Court should reverse its previous opinion or, in the alternative, narrow the opinion to provide sufficient guidance for cities to carry out nuisance abatement programs. The brief was filed on August 23, 2011.

**Property Development and Moratoria:** *City of Lorena v. BMTP Holdings, L.P.*, No. 11-0554 (Supreme Court of Texas) TML and TCAA filed an amicus brief in support of the city's brief on the merits. In this case, BMTP argued that the city did not have a right to enforce a sewer tap moratorium that it instituted under Chapter 212 of the Texas Local Government Code, after the threat of an enforcement action by TCEQ, because the city's wastewater plant was overtaxed. The lower court held that by filing a plat and having it approved, BMTP was exempted from the moratorium under the Chapter 212 definition of "property development." Amici argued that the lower court's interpretation was overbroad and placed the wishes of developers ahead of the protection of public health. The brief was filed on August 22, 2011.

**Emergency Detention:** RQ-0952-GA; *Law enforcement responsibility for an individual who is the subject of an emergency detention order*. TML, TCAA, and Texas Police Chiefs Association concurred in the City of Texarkana's argument that a county, not a city, bears the responsibility for supervision, oversight, and custodial security of a person who is the subject of an emergency detention order both before and after a court signs the detention order. In the alternative, TML, TCAA, and TPCA argued that neither Chapter 573 nor Chapter 574 of the Health and Safety Code requires that a peace officer retain custody of and responsibility for an individual after the individual is transported to a mental health facility. Opinion Number GA-0877 concluded that: (1) there is no provision in Chapter 573 that expressly requires a particular law enforcement agency to oversee a mentally ill person once the person is transported to a facility pursuant to a Section 573.002 emergency detention order; and (2) a sheriff's office must transport a person subject to court-order mental health services under Chapter 574 within a reasonable amount of time and without delay.

**Stormwater:** *Comments on Proposed Preliminary Draft General Permit for Small MS4s (TXR040000)*. TML filed comments thanking the TCEQ for their hard work and for being conscientious about including cities and other stakeholders in the process, and encouraged TCEQ staff to take the substantive and technical comments of cities into account when drafting the general permit language to be taken to the Environmental Protection Agency for review. TML asked in particular that TCEQ staff remain mindful of issues of practicality, effectiveness, and cost in carrying out the requirements of any new language.

**Open Meetings Act:** *Asgeirsson v. Abbott and the State of Texas*, 11-50441 (5<sup>th</sup> Cir.). This is the continuation of the challenge to the constitutionality of the criminal closed meeting provisions in the Texas Open Meetings Act (TOMA). The Texas Municipal League, the South Dakota Municipal League, the National League of Cities, and the International Municipal Lawyers Association, as amici, argued that many individuals across this nation volunteer their time and expertise to serve their local communities as elected and appointed officials. In doing so, these individuals come to understand the requirements of applicable open government laws. Amici do not take exception to the policies underlying open government laws, and our members understand the importance of and support open government. Open government laws should not, however, impinge on the First Amendment rights afforded to speech by officials made pursuant to their official duties and, certainly should not restrict their political expression. In order to maintain public officials' First Amendment protections, open government laws that restrict and criminalize their speech must be measured against the proper standard. In regard to TOMA's criminal provisions, that means a court must apply strict scrutiny analysis. The brief was filed on August 17, 2011.

**Regulatory Takings:** *City of Houston v. Maguire Oil*, 11-0486 (Supreme Court of Texas). This appeal is part of protracted litigation between the City of Houston and an oil company that has been ongoing for decades. TML and TCAA argued that a regulatory taking claim cannot be based on an invalid or inapplicable land use regulation because the takings clause of the Texas Constitution has no application to the enforcement of an invalid or inapplicable regulation. Where a regulation is invalid or inapplicable, a property owner has a remedy by way of an official capacity lawsuit against the local officials who seek to enforce the regulation. The brief was filed on August 17, 2011.

## Recent Texas Cases of Interest to Cities

*Note: Included cases are from the period beginning on the 10<sup>th</sup> of the previous month through the 10<sup>th</sup> of the current month.*

**Governmental Immunity—Employee: *City of Dallas v. Albert, No. 07-0284 (Tex. August 26, 2011)*.** In this case, firefighters and police officers (plaintiffs) from the City of Dallas sued the city for underpayment of wages based on city ordinance. The city countersued the plaintiffs, arguing that they had actually been overpaid, not underpaid. The city later dropped the countersuit. The city then filed a plea to the jurisdiction arguing that it was protected by governmental immunity from the plaintiffs' claims. The trial court denied the city's plea and the city appealed. The court of appeals held that the city's nonsuit of its claims reinstated the city's immunity suit, but sent the case back on other immunity issues. The city then appealed. The issues are: (1) does a city regain its immunity from suit after it drops its countersuit; (2) is a city immune from a claim for a declaratory judgment if the claim is for retrospective relief; and (3) whether an ordinance adopted through referendum election waives a city's immunity from suit.

The citizens of Dallas approved a referendum in 1979 dealing with police officer pay. The ordinance provided for a fifteen-percent pay raise and that pay differentials would remain the same. The plaintiffs sued the city about whether the pay raise was a one-time raise or whether any time one pay differential received a raise, all pay differentials had to receive a raise. The plaintiffs sought a declaration that the ordinance required raises for lower pay differentials when higher pay differentials received a raise and for back pay and benefits. The city countersued saying that if what the plaintiffs argued was correct, then all pay raises given in that time frame were invalid and that all the officers who received any raise had to repay the city the overpayment.

### Countersuit Waiver of Immunity

Under *Reata Construction Corp. v. City of Dallas*, a city waives its governmental immunity from suit as to money damages when it counterclaims for monetary relief related to the other parties' suit. 197 S.W.3d 371, 376-77 (Tex. 2006). However, it is in the legislature's discretion whether to waive governmental immunity. The city nonsuited its counterclaim in this case in order to retain immunity under the *Reata* analysis. The Court held that once the city had entered the litigation with an affirmative claim for monetary relief, it must then participate as an ordinary litigant. Immunity from suit cannot be reinstated by nonsuiting the claim. The trial court retained jurisdiction over any of the plaintiffs' claims that the trial court had jurisdiction over before the city's countersuit was nonsuited. But the plaintiffs "could not prevail on

their breach of contract claims because they could not recover a judgment for damages and the City was not pursuing a claim for damages to which an offset would apply." *City of Dallas v. Albert*, 2011 WL 3796339 \*5.

### Retrospective Relief

The Declaratory Judgment Act (Act) waives a city's governmental immunity from suit if the validity of a city ordinance is involved. TEX. CIV. PRAC. & REM. CODE § 37.006(b). However, a suit for money damages will not be allowed simply because it is brought under the Act. *City of Houston v. Williams*, 216 S.W.3d 827, 828-29 (Tex. 2007) (per curiam). See *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2000). In *Heinrich*, the Court held that a city (through a city official in their official capacity) is not immune from ultra vires claims for prospective relief. In this case, the plaintiffs only asked for retrospective relief and therefore the city is immune from the plaintiffs' claims for monetary damages.

### Effect of Referendum

The plaintiffs argue that because the pay ordinance was adopted through a vote of the citizens through referendum, then the city's immunity is automatically waived. The Court held that an ordinance that is adopted by referendum is no more effective than a regular ordinance and therefore the same immunity applies. The Court also alludes to the argument that a city ordinance may not be able to waive a city's immunity unless the legislature has already allowed for such a waiver.

The Court sent the case back to the trial court. Justice Hecht, which Chief Justice Jefferson joined, and Justice Willett both filed dissenting opinions.

**Open Meetings Act: *City of Combine v. Robinson, No. 05-10-01384-CV (Tex. App.—Dallas August 16, 2011) (mem. op.)*.** This case involved, among many other claims, an alleged violation of the Open Meetings Act by a newly-elected city council. Subsequent to the election of three new councilmembers, the city council unanimously (by a 5-0 vote) voted to terminate all of the city's reserve police officers and two of its paid officers. All of the officers were given honorable discharges. At the same meeting, the city council voted unanimously to terminate Robinson as city secretary based on a no-confidence vote. (Robinson served as a police officer and the city secretary.)

Robinson requested on behalf of herself, her fellow police officers, and the general public that the city council hold an open meeting to discuss her

employment status along with the status of her fellow police officers' employment. She alleged that, instead, the city council held a closed meeting or executive session to discuss her's and the others' employment status, resulting in their termination. The city council later conducted an open meeting and again considered the future employment of the members of the police department. By a 5-0 vote, the council expressly ratified all actions taken at the previous meeting.

The fired officers alleged several causes of action against the city and several councilmembers in their official capacity, including among others, a declaratory judgment for a violation of Section 551.074 of the Government Code (Personnel Matters; Closed Meeting).

The city councilmembers challenged whether the officers' Open Meetings Act claims "present a justiciable controversy outside of [a]ppellants' immunities and invoke this Court's jurisdiction." The "personnel exception" is derived from the Open Meetings Act, and the officers contended that the city council violated the open meetings requirement when they held the executive session that resulted in the first termination decision.

However, the officers acknowledge the following in their brief: "Having realized that the July 24, 2010 [meeting] violated the Texas Open Meetings Act . . . Appellants conducted a new City Council meeting on August 9, 2010. At the August 9, 2010 meeting, Appellants again considered the future employment of the members of the City of Combine Police Department, despite allegedly terminating these employees on July 24, 2010."

And the officers did not contest that the second, August 9, 2010, meeting was held in compliance with the Texas Open Meetings Act. A city council "can meet again and authorize actions which were previously authorized at an invalid meeting."

Thus, the court held that the vote at the second meeting ratified the actions taken at the previous meeting and, thereby, negated any justiciable controversy as to the validity of the July 24<sup>th</sup> vote.

**Official Immunity: *City of Dallas v. Brooks*, No. 05-10-00692-CV (Tex. App.—Dallas August 30, 2011).** A City of Dallas police officer was en route to provide backup to another police officer when he hit and killed a woman. Plaintiffs—individually and as representatives of the woman's estate—sued the City and the officer.

Plaintiffs alleged that the officer was negligent and not entitled to official immunity. Among other things, plaintiffs argued that the police department's general orders did not allow the officer to speed without using emergency warning devices (e.g., lights and sirens), establishing a lack of discretion and good faith. The City filed a plea to the jurisdiction claiming immunity. The trial court denied the plea to the jurisdiction and the City appealed.

The appellate court explained that "if official immunity shields a governmental employee from liability, his governmental employer remains immune from vicarious liability for his actions." *City of Dallas v. Brooks*, No. 05-10-00692-CV, 2011 WL 3805531 at \*3 (Tex. App.—Dallas Aug. 30, 2011). Thus, the appeal focused on the issue of whether the officer had official immunity.

In order to prove the official immunity defense, it must be shown that the governmental employee was: (1) performing a discretionary function; (2) acting with the scope of authority; and (3) acting in good faith.

The appellate court concluded that the officer was operating his patrol car in an emergency situation (responding to a call for backup) and, therefore, was performing a discretionary function. *See Harless v. Niles*, 100 S.W.3d 390, 396 (Tex. App.—San Antonio 2002, no pet.). The appellate court concluded, and plaintiffs conceded, that the office was discharging duties generally assigned to him and thus, was acting within his scope of authority. As to whether the officer was acting in good faith, the appellate court explained:

In the context of a high-speed pursuit case, an officer acts in good faith if 'a reasonably prudent officer, under the same or similar circumstances, could have believed that the need to immediately apprehend the suspect outweighed a clear risk of harm to the public in continuing the pursuit.'

*Id.* at \*6. *See City of Lancaster v. Chambers*, 883 S.W.2d 650, 656 (Tex. 1994). After considering the evidence, the appellate court concluded that the officer was acting in good faith when he responded to the call for backup.

Because the City conclusively proved each element of the official immunity defense, the appellate court reversed the trial court's order and dismissed the suit for lack of jurisdiction.

**Permit Vesting: *Harper Park Two, LP v. City of Austin*, No. 03-10-00506-CV (Tex. App.—Austin August 18, 2011).** Under Chapter 245 of the Local Government Code, once an application for the first permit required to complete a development “project” is filed with a city, the agency’s regulations applicable to the “project” are effectively “frozen” and the city is prohibited from enforcing subsequent regulatory changes to further restrict the property’s use. Vested rights protections are, however, lost or forfeited to the extent that the development being pursued constitutes a new or different “project” from the one for which the initial permit was sought.

This appeal examined how to identify the relevant “project” to which vested rights attach under Chapter 245. Harper Park Two, a developer, and the City of Austin, disagreed about whether the identification of a single lot as an “office” use in an application for a preliminary plan for a larger mixed-use commercial development project established that the relevant “project” with respect to that individual lot was limited to construction of an office building and did not extend to construction of a hotel.

The district court rendered judgment declaring that Harper Park Two would be vested only to development of the lot for office use and that any other type of commercial development must comply with the city’s current—and more restrictive—land-use regulations.

The court of appeals reversed, holding that the legislature defined “project” in Chapter 245 in terms of a single “endeavor” that may require a “series” of permits to complete. It further provided that “[a]ll permits required for the project,” including “[p]reliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats[,] are considered collectively to be one series of permits for a project.” Thus, the court concluded that it is the filing of “the original application for the first permit in that series” that triggers the vested rights under the statute: “From these interrelated provisions, it is evident that the relevant ‘project’ is, as Harper Park Two contends, the single ‘endeavor’ reflected in the original application for the first permit in th[e] series.”

Under the vesting statute, a developer who files a preliminary plan may change the uses contemplated within the plan while retaining the right to build under the regulations in place at the time of the original filing.

**Sexually Oriented Businesses: *E.B.S. Enterprises, Inc. v. City of El Paso*, No. 08-10-00088-CV (Tex. App.—El Paso August 10, 2011).** In 2007, several sexually oriented businesses (“SOBs”) sued the City of El Paso, arguing that the City’s newly-enacted sexually-oriented business ordinance was unconstitutional. The City passed the ordinance after reviewing extensive studies and court cases dealing with the negative secondary effects of SOBs in urban areas and considering local testimony and hearings. The trial court granted summary judgment in favor of the City. This case is the appeal filed to that summary judgment by some of the SOBs (specifically, adult bookstores) involved in the original case. The SOBs argued that the trial court erred in granting the City’s motion for summary judgment because: (1) the City’s secondary-effects evidence was not relevant to the type of business in question (adult bookstore versus cabaret); (2) there was a genuine issue of fact in the case; and (3) the ordinance was preempted by a state statute.

The case was complicated by the fact that the SOBs’ sole response to the City’s motion for summary judgment was a notice that they adopted the objections filed by other SOBs involved in that part of the case. The court found that the SOBs’ response was filed too late and improperly, and thus none of the points raised by the other SOBs would be considered in this appeal. This included the third issue raised by the SOBs; the argument that because Texas Local Government Code §243.010(b) proscribes violations of sexually-oriented business ordinances as a class A misdemeanor, the City could not make certain violations of its ordinance Class C misdemeanors. The court did not discuss at issue.

The SOBs’ first argument was that the City’s motion for summary judgment failed to show how the ordinance’s provisions, specifically provisions dealing with open booths, unobstructed employee observations, overhead lighting, and employee licensing, were tailored to a governmental interest in regulating adult bookstores rather than cabarets; specifically that the City’s motion did not identify and negate the SOBs’ claims in their petition. The SOBs alleged that the ordinance was unconstitutional because it was based on false assumptions that adult bookstores are frequently used for unlawful sexual activities and that no evidence, justification, or basis was presented by the City to justify the requirements of the ordinance. Thus, the SOBs claimed the ordinance was unconstitutional, as it was adopted without substantial evidence reasonably related to any legitimate governmental interest. However, the court held that the ordinance was constitutional, and that the City’s motion for summary judgment pointed to local evidence of negative secondary effects from adult bookstores in some detail.

In addition, the City included case law citations in its motion to demonstrate that the licensing requirement was narrowly tailored to the City's interest in regulating sexually-oriented businesses. The court also recognized that while not all of the cases and studies taken into account in creating the ordinance might apply to adult bookstores specifically (as opposed to cabarets or other types of SOBs), it is still clear that the ordinance was tailored to the governmental interest of alleviating negative secondary effects, and thus, is constitutional.

The SOBs also argued that there was a genuine issue of material fact as to whether the City met its evidentiary burden to demonstrate that the ordinance was necessary to combat negative secondary effects of SOBs. The SOBs made three main claims: (1) that the City failed to demonstrate how reports prepared by other local governments were relevant to the City's situation; (2) that the SOBs' expert affidavit cast doubt on the City's studies; and (3) that the opposing affidavit raised an issue of material fact. The court disagreed on each issue. First, the court held that a city is not required to conduct new studies into secondary effects before enacting a sexually-oriented business ordinance, so long as the City believed the evidence was relevant. *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 46, 51-52. The court also held that a city may rely on evidence showing the negative secondary effects caused by one type of sexually-oriented business to support regulations on other types of SOBs and that a city may rely on judicial opinions that describe secondary effects. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 296-297; *Renton*, 475 U.S. at 51-52. While the SOBs argued that the studies used in this case were not shown by the City to be relevant, the court found that they were applicable to the city's urban area, and that the City further relied upon local evidence. Accordingly, the court found that the evidence support the City's rationale for regulation and was thus legally sufficient to support the ordinance's adoption, and there was no genuine issue of material fact as to whether the city met its burden to demonstrate that the ordinance was necessary to accomplish the stated governmental purpose. The court dismissed the SOBs' second and third arguments on this issue because the expert affidavit cited by the SOBs was part of the evidence submitted by the other SOBs in the case, which the court held that the SOBs could not submit as evidence in this appeal.

The court, having found for the City on every issue raised by the SOBs in the appeal, affirmed the trial court's judgment.

**Collective Bargaining:** *City of Beaumont v. Fowler, No. 09-11-00068-CV (Tex. App.—Beaumont August 11, 2011) (mem. op.)*. The court of appeals held that an individual employee could sue under a collective bargaining agreement, not just the union as a party to the contract, because it is a third party beneficiary agreement from which this employee would benefit.

**Condemnation:** *Martin v. City of Temple, No 03-09-00723-CV (Tex. App.—Austin August 11, 2011) (mem. op.)*. The court of appeals dismissed Martin's claims against the city based on his purchase of a house under a city condemnation order because: (1) he did not give adequate notice to the city under Section 101.101 of the Texas Civil Practices and Remedies Code; and (2) he did not sue the city within the proper time.

**Governmental Immunity—Tort:** *City of Dallas v. Patrick, No. 05-10-00727-CV (Tex.App.—Dallas August 15, 2011)*. The court of appeals dismissed Patrick's negligence claims against the city due to a fall at the zoo because: (1) the city had governmental immunity that was further protected by the Recreational Use Statute at Texas Civil Practices and Remedies Code § 75.002; and (2) negligence per se did not apply because Section 469.001 of the Texas Government Code, which was allegedly violated by the city, only protects individuals with disabilities.

**Civil Service:** *City of Houston v. Bates, No. 14-10-00542-CV (Tex. App.—Houston [14<sup>th</sup> Dist.] August 16, 2011) (mem. op.)*. The court of appeals interpreted Houston-only statutes related to pay and civil service, holding that the city could not get around paying overtime to officers by requiring them to be physically present to earn the overtime pay.

**Governmental Immunity—Employee:** *City of Houston v. Johnson, No. 14-10-01098-CV (Tex. App.—Houston [14<sup>th</sup> Dist.] August 16, 2011)*. The court of appeals rejected the plaintiff's claim that governmental immunity provided by the Texas Tort Claims Act violates the equal protection clause of the constitution.

**Zoning:** *City of Gatesville v. Hughes, No. 10-11-00030-CV (Tex. App.—Waco August 17, 2011) (mem. op.)*. The court of appeals upheld the city's zoning change, changing a lot from single family residential to community facility, because the change: (1) would not benefit a specific landowner; (2) did not cause substantial detriment to surrounding lands; (3) would be more suitable; and (4) bears a substantial relationship to the public health, safety, morals, and general welfare.

**Governmental Immunity--Contract: *Southern Elec. Servs., Inc. v. City of Houston*, No. 01-10-00649-CV (Tex. App.—Houston [1<sup>st</sup> Dist.] August 18, 2011) (op. on motion for rehearing).** The court of appeals held that SES's breach of contract claim failed because SES failed to show any damages related to the alleged breach of contract when it failed to show increased labor costs based on a change in the prevailing wage rates provided by the city.

**Takings: *City of El Paso v. Ramirez*, No. 08-10-00174-CV (Tex. App.—El Paso August 24, 2011).** The court of appeals held that the plaintiff's inverse condemnation claim failed because the city's actions which may have caused damage to their property did not provide any public benefit and therefore were not actionable as an inverse condemnation claim under Texas Constitution Article I, Section 17.

**Takings: *Allen v. City of Baytown*, No. 01-09-00914-CV (Tex. App.—Houston [1<sup>st</sup> Dist.] August 25, 2011) (mem. op.).** The court of appeals held that: (1) the sign owner's declaratory judgment claim against the city was invalid because he did not exhaust his administrative remedies under the city's ordinances or under Chapter 216 of the Local Government Code; the sign owner's regulatory takings claims was allowed to proceed because his claim was ripe even though he may not have exhausted his administrative remedies; and (3) the sign owner could argue that the city performed a regulatory taking of his billboards by not allowing him to rebuild them after they were damaged by Hurricane Ike.

**Takings: *El Dorado Land Company, L.P. v. City of McKinney*, No. 05-10-00381-CV (Tex. App.—Dallas August 30, 2011).** The court of appeals held that El Dorado's claims that the city violated a deed restriction on city property did not rise to the level of a compensable taking because El Dorado had no property interest in the city's property.

**Public Information Act: *Bonner v. City of Burleson*, No. 10-11-00060-CV (Tex. App.—Waco August 31, 2011) (mem. op.).** The court of appeals held that a plea to the jurisdiction was the wrong procedural vehicle for denying access to Bonner for his PIA request even though he was the incorrect party to bring the mandamus for its release. The court of appeals held that it should be brought as a summary judgment motion, and that, had it been brought as a summary judgment, the city would still have been successful.

**Takings: *Como v. City of Beaumont*, No. 09-10-00192-CV (Tex. App.—Beaumont August 31, 2011) (op. on motion for rehearing).** This court reviewed this takings case in light of *City of Dallas v. Stewart*, 2011 WL 2586854 (Tex. July 1, 2011) allowing the property owner to bring a takings claim although she did not exhaust her administrative procedures under Chapter 214 of the Local Government Code.



# Legislative UPDATE



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