



Legislative UPDATE

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The League's Legislative Policy Development Process

The primary function of the Texas Municipal League is lobbying on behalf of its member cities. That's the way it has been since the League's formation in 1913 because many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials. Now, just as they did over a century ago, newly elected mayors and councilmembers quickly realize the legislature can address virtually any aspect of city government.

This fact is vividly demonstrated during each legislative session. For example, during the 2019 session, almost 7,500 bills or resolutions were introduced, and more than 2,000 of them would have affected Texas cities in some substantial way. In the end, over 1,400 bills or resolutions passed and were signed into law, and more than 300 of those impacted cities in some way.

The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2019, that percentage had increased to almost 25 percent. In other words, almost a quarter of the legislature's work is directed at cities, and much of that work aims to limit municipal authority.

The League lobbies against those efforts (and also seeks to pass beneficial legislation) based on a "legislative program" that is developed by member city officials. The program is essential to the legitimacy of the League's advocacy efforts. To develop the program, city officials provide input in primarily two ways.

First, a member city, TML region, or TML affiliate may submit a resolution for consideration at the business meeting of each year's annual conference. Each city is asked to provide one delegate to serve as its liaison at the meeting. (See article on how to do so elsewhere in this edition.) The delegates will be briefed on the content of the resolutions and given a chance to discuss and vote on whether they merit inclusion in the legislative program. The resolutions form the basis of a "fixed" legislative program, under which – each session – modifications to the program will be made only if needed.

Second, member city officials can participate in the League's "Municipal Policy Summit" during the summer of 2020. The report of the Summit takes the form of a resolution that is submitted to the annual conference in interim years. The summit participants will be appointed by the TML President in early 2020 based on volunteers and others chosen to balance the demographics of the TML membership at large.

The Summit will be an intensive, two-day workshop during which League staff briefs the participants on the issues faced by cities. Most will be issues that arise each session, but several will consist of solicited or unsolicited issues brought by city officials. Even if no changes are recommended to the "fixed" program, which is an unlikely prospect, staff will fulfill its educational goal through continued briefing on all of the issues. After each subject-matter briefing, the participants will make concise recommendations on the issues. Those recommendations are placed into resolution form and submitted to the League's annual business meeting, discussed above.

The somewhat complex policy development process is necessary to ensure that the League advocates as directed by its members. The League is nothing without the involvement and expertise of its members, and participation in the process is an invaluable part of protecting municipal authority.

The League's 2019-2020 legislative policy development schedule is roughly as follows:

October 2019 – the TML membership will consider resolutions at the 2019 Annual Conference at the annual business meeting.

April 2020 – the chair, vice-chairs, board representative, and participants of the League's Municipal Policy Summit will be appointed by the TML President.

June 2020 – Municipal Policy Summit materials will be distributed to the membership.

August 2020 – the Municipal Policy Summit, a two-day policy briefing at which the members make recommendations for the League's 2021-2022 legislative program, will meet.

October 2020 – the report of the Municipal Policy Summit, along with any other resolutions, will go forward to the annual business meeting at the 2020 Annual Conference.

December 2020 – the TML Board will finalize the League’s 2021-2022 legislative program based on resolutions passed in both 2019 and 2020.

Have questions or comments? Contact Scott Houston or JJ Rocha, TML Legislative Liaison, at 512-231-7400.

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 sign up electronically at <https://www.tml.org/FormCenter/Member-Resources-5/2019-TML-Business-Meeting-66> prior to the meeting or can sign up 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.

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>.

Post Session Update: Proposed Budget Lobby Expenditure Reporting

[H.B. 1495](#), which is effective now, provides, among other things, that the proposed budget of a political subdivision must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in the state’s lobby law. (Similar legislation related to legal notice publication cost was passed in 2017.)

Neither the bill nor current law defines what it means to “directly or indirectly influence or attempt to influence legislation.” It’s safe to say that money spent on a contract lobbyist should

be included, but what about internal expenditures related to influencing legislation? Those internal expenditures might include staff travel time to Austin and related expenses to meet with a legislator or testify before a committee. What to include is ultimately up to each city to decide in good faith based on the advice of local legal counsel. (Note: TML member service fees are not spent to influence legislation. As such, they need not be included in the budget comparison.)

Post-Session Update: City Maps

During the 2019 legislative session, the legislature passed [Senate Bill 1303](#) by Senator Paul Bettencourt (R – Houston). The bill imposes new requirements related to maps of the city limits and extraterritorial jurisdiction (ETJ).

Under existing law, every city is required to prepare a map that shows the boundaries of the city and its ETJ. Under S.B. 1303, every city must maintain a copy of the map in a location that is easily accessible to the public, including the city's website if it maintains one. Every city must also make a copy of its map publicly available without charge.

S.B. 1303 also imposes additional mapping mandates on home rule cities. A home rule city is required to create, or must contract for the creation of, a digital map that must be made publicly available without charge and in a format widely used by common geographic information system (GIS) software. The bill provides that, if a home rule city does not have common GIS software, the city must make the digital map available in any other widely used electronic format. Presumably, this provision authorizes a city without GIS technology to make its map available in a PDF format.

In addition, S.B. 1303 makes changes to the annexation process that are not directly related to the new mapping requirements. For the very few types of unilateral annexations that remain after the annexation reforms in H.B. 347 (e.g., a city-owned airport, reservoir, or a navigable stream), a home rule city must publish notice of annexation hearings in any area that would be newly included in the city's ETJ by the expansion of the city's ETJ resulting from the proposed annexation. The required notice for each hearing must include:

1. a statement that the completed annexation of the area will expand the city's ETJ;
2. a description of the area that would be newly included in the city's ETJ;
3. a statement of the purpose of ETJ designation under Local Government Code Sec. 42.001; and
4. a brief description of each city ordinance that would be applicable in the area proposed to be included in the city's ETJ.

All of the above requirements go into effect on September 1, 2019. Cities should see to it that their city and ETJ maps comply with the new requirements by that date.

Post Session Update: Flood Mitigation

Governor Abbott recently signed legislation creating new flood financing programs and a state flood planning process to be administered by the Texas Water Development Board (TWDB). The programs will greatly expand the State's efforts to plan for and mitigate flooding, as well as provide funding for drainage and flood projects.

For more information on the programs, please view the TWDB's newly-released [frequently asked questions](#).

To ensure it creates programs that meet the needs of a diverse state, TWDB will be asking for comments from the public and as many stakeholders as possible. Later this summer, TWDB will be holding meetings around the state and will have a process in place to receive comments as it develops administrative rules for the programs.

To receive all the information on that process, please sign up for TWDB [email updates](#). That link will take you to a sign-up page that allows you to choose various topics for which you would like to receive emails. **(Be sure to check the box for TWDB Flood Information.)**

For more information, please email flood@twdb.texas.gov or call 512-463-8725.

Federal Appeals Court: President's Blocking of Twitter Users Violates First Amendment

Last year, the League [reported](#) that a federal district court concluded that President Trump's blocking of Twitter users because they posted tweets criticizing him and his policies violated the users' First Amendment right to free speech. This week, the federal Court of Appeals for the Second Circuit, in [Knight First Amendment Inst. at Columbia Univ. v. Trump](#), upheld the district court's ruling.

The issue was whether the President acted in a governmental capacity or as a private citizen when he blocked some users' access to his Twitter account, which is otherwise open to the public at large. If he acted in a governmental capacity, the First Amendment would prohibit him from blocking the tweets.

The President argued – among other things – that the Twitter account, which was created by him before he assumed office, is a private, personal account over which he will continue to retain personal control over after his presidency.

To decide whether it was governmental or private, the court reviewed the extent of government involvement with, and control over, the President's Twitter account. The court found as follows:

- The account is presented by the President and his staff as belonging to, and operated by, the President; the account is registered to “Donald J. Trump, 45th President.”

- The use of the account is described as “modern day presidential.”
- Staff describes the account as a channel through which the President communicates directly with the American people.
- The official Twitter account run by the government directs Twitter users to follow the President’s Twitter account for the latest news from the President.
- According to the National Archives and Records Administration, tweets from the President’s account are official records that must be preserved under the Presidential Records Act.
- The President uses the account on almost daily basis as a channel of communicating and interacting with the public about his administration.
- The President utilizes White House staff to post tweets and maintain the account.
- The President uses it to announce matters related to official government business, including high-level staff changes and major national policies.

The court concluded that the factors above mean that the account is public, rather than private. The President intentionally opened the account for public discussion when he, upon assuming office, repeatedly used it as an official vehicle for governance and made its interactive features accessible to the public without limitation. While the President’s initial tweets are government speech, the retweets, replies, and likes of other users in response to his tweets are not government speech, and viewpoint discrimination against them is thus prohibited.

The court did not address whether an elected official violates the Constitution by excluding persons from a “wholly private” social media account. Whether First Amendment concerns are triggered when a public official uses a Twitter account will depend on how the official describes and uses the account, to whom features of the account are made available, and how others – including governmental officials and agencies – regard and treat the account.

The case may be appealed to the Supreme Court of the United States. League staff will provide updated information as the case unfolds.

Briefing Filed in Challenge to FCC Small Cell Order

A nationwide coalition of cities and state leagues, including the Texas Municipal League, filed a lawsuit last year to overturn the Federal Communications Commission’s preemptive “small cell” order. The order federalizes municipal right-of-way authority and compensation. Last month, the coalition filed its formal briefing in the case.

Some of the key arguments against the order are as follows:

- **Tenth Amendment:** The order violates the Tenth Amendment to the U.S. Constitution, which reserves to the states powers not given to the federal government. The argument is particularly poignant in this case because the FCC isn’t merely preempting state laws. Rather, the federal government is actually appropriating state property (municipal rights-of-way and facilities) for private use by cell phone providers. According to one court, the order is nothing less than “[a] forced transfer of property that is in principle no different

from a ‘congressionally compelled subsidy from state governments’ to cell phone companies.

- **Fifth Amendment:** The order caps rental fees at \$270 per small cell node annually. That artificially low cap means that the order actually works an uncompensated taking on the city’s residents in violation of the Fifth Amendment to the U.S. Constitution. (Texas law also caps annual rental fees, and the League is also participating in a state court lawsuit to overturn that cap.)
- **Proprietary Rights:** The federal government can’t deprive a state (and its cities) from its authority as a proprietor (i.e, owner) of property. In other words, cities aren’t acting as regulators over companies that want to place their facilities on city equipment. Instead, the city is an owner of that equipment. As such, the FCC has no power to tell a city how to use it.
- **Other Arguments:** The order: (1) violates a city’s due process rights by imposing unreasonable “shot clocks” within which installations must be approved; (2) goes beyond the authority granted to the FCC by the federal Telecommunications Act; and (3) ignores evidence in the record submitted by local governments, including evidence related to fair market value of public rights-of-way (TML has submitted comments in this and other FCC proceedings explaining that the Texas Constitution requires fair market value rent for municipal rights-of-way).

The complex litigation will likely take some time to work its way through the courts. Cities that expect small cell installations may want to consider participating in the coalition. To do so, contact Gerard “Gerry” Lederer, partner at Best Best and Krieger LLP in Washington, D.C. by email at Gerard.lederer@bbklaw.com.

2019 City Tax and Budget Deadlines Memo Now Available

Every year, TML posts a memo containing the annual calendar deadlines for the budget adoption and tax rate setting process. The 2019 document has recently been posted online and can be accessed [here](#). (Note: Because the changes made to the property tax rate adoption process under S.B. 2 are not effective until January 1, 2020, the memo does not incorporate those provisions.)

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