



Legislative UPDATE

August 7, 2020
Number 31

Business Facilities Magazine Rankings: Governor's Office Praises Texas Cities

Adriana Cruz, the governor's executive director for economic development and tourism, shared the following this week:

"We are excited to share the results from Business Facilities Magazine's 16th Annual State and Metro Rankings Report. Texas received a whopping 50 state and metro rankings across 22 categories! The top honor of "Best Business Climate in America" adds to our state's unmatched portfolio of awards and rankings from the magazine, including four State of the Year Awards.

We would like to congratulate all economic developers across the state as these honors would not be possible without the important economic development efforts executed at the local and regional levels. We would also like to extend a special congratulations to the many Texas communities that were honored in this year's rankings! A listing of Texas' 2020 state and metro rankings can be found below. To read the full story and rankings report from Business Facilities Magazine, click [here](#)."

The governor's office recognized the following selection of cities in the rankings:

- Best Business Climate (Large) – Austin (#3); Houston (#5); Dallas (#7)
- Best Business Climate (Mid-Sized) – Lubbock (#5)
- Best Business Climate (Small) – Midland (#2)
- Cyber Cities – San Antonio (#1); Dallas (#10)

- Startup Ecosystem – Austin (#2); Houston (#4)
- Tech Hubs (Growth) – Austin (#2)
- Millennial Magnets – Dallas (#1); Houston (#3); Austin (#5)
- Corporate HQ Leaders – Houston (#2); Dallas (#5); Irving (#7)
- Food Processing – Dallas County (#7)
- Job Growth Leaders – Williamson County (#6); Travis County (#8)
- Lowest Cost of Living – Harlingen (#1); McAllen (#2)
- GDP Leaders (Large MSAs) – Dallas-Fort Worth-Arlington (#4); Houston-The Woodlands-Sugar Land (#7)
- Data Center Leaders – Dallas-Fort Worth (#4); Austin-San Antonio (#8)
- Fastest-Growing Metros (Mid-Sized) – Frisco (#1); New Braunfels (#3); McKinney (#4); Cedar Park (#7); Conroe (#9); Round Rock (#13)”

Thanks to the governor’s office for recognizing the fact that cities are the economic engines of the state, and powerhouse engines they are!

City Parking Fines and Fees: Are They Excessive?

In last month’s [Pimentel v. City of Los Angeles](#) opinion, the federal Ninth Circuit Court of Appeals held that Los Angeles’s \$63 parking fine did not violate the Eighth Amendment’s prohibition on excessive fines. Although the Ninth Circuit’s rulings don’t govern Texas (Texas is in the Fifth Circuit), the case is instructive for Texas cities.

The plaintiffs in *Pimentel* challenged the Los Angeles parking ordinance as violating the Eighth Amendment’s Excessive Fines Clause. In the ordinance, the fine for a parking meter violation is \$63. If the violator pays the fine past the 21-day deadline, the late-payment fine is also \$63. The ordinance provides for additional late payment fees. Depending on when the violator pays the fine, the fine ranges from \$63 to \$181.

According to the Supreme Court, a fine is excessive if it is “grossly disproportional to the gravity of the defendant’s offense.” The Supreme Court has not specified any rigid factors to make the determination. In response, the Ninth Circuit adopted a four-part test to decide if the fine is disproportionate to the offense.

The Ninth Circuit needed only two parts of the test to conclude that the \$63 fine was not excessive: (1) the plaintiffs knew they were violating the parking ordinance when they failed to pay for over-time use of the parking meter; and (2) traffic congestion and impeded traffic flow harms the city.

The Ninth Circuit did not rule on the late-payment penalties because it did not have enough evidence. Thus, according to *Pimentel*, Texas cities’ parking fines should be constitutional, but it remains unclear if late-payment fees are excessive. Of course, cities should consult with their local counsel in drafting their parking ordinances and deciding whether parking fees are constitutional.

National Coalition Files FCC Collocation Comments

In September of last year, the Wireless Industry Association (WIA) and the Communications Technology Industry Association (CTIA) filed petitions with the Federal Communications Commission to further limit local oversight of wireless towers and pole attachments.

On June 9, 2020, the FCC adopted a [Declaratory Ruling and Notice of Proposed Rulemaking](#) pursuant to those petitions. The Order, which also requested additional comments, has the potential to undermine a city's authority to enforce aesthetic standards applicable to wireless facilities, including small cells in the public rights-of-way. Specifically, the NPRM, among other things:

- Allows height increases for cell towers that are outside of the public rights-of-way.
- Expands how many equipment cabinets can be added to an existing site.
- Reduces the time a city has to review an application.

As with other recent FCC preemptive orders, the League is participating in a national coalition that filed comments and reply comments with the FCC. In addition, a court challenge to the order is forthcoming.

City-Related News from Other Organizations

In this new and occasional feature of the *Legislative Update*, the League may include articles and other information from city-related organizations, law firms, and others, when they have good information for city officials. For example, Focused Advocacy (a consultant for TML and many cities) prepared the following excellent information on upcoming legislative activities:

New RFIs issued by House Natural Resources, Higher Education, and International Relations & Economic Development committees

Focused Advocacy remains ready to help you formulate, edit or file your comments

Since our last update, new RFIs were published by House committees seeking public input on interim charges and other subjects:

House Natural Resources Committee:

Interim Charges 1 - 4

Emerging issues in groundwater and surface water interaction

Water markets in Texas

[Read the RFI](#)

Submissions Due by Sept. 25, 2020

House International Relations & Economic Development Committee

Interim Charges 1 - 6

[Read the RFI](#)

Submissions Due by Aug. 31, 2020

House Higher Education Committee

Special Questions Regarding Impact of COVID-19 - [Read the RFI](#)

Interim Charge #1 - [Read the RFI](#)

Interim Charge #2 - [Read the RFI](#)

Interim Charge #3 - [Read the RFI](#)

Interim Charge #4 - [Read the RFI](#)

Interim Charge #5 - [Read the RFI](#)

Submissions Due by Sept. 1, 2020

**Here are all of the RFIs posted to date
and the due dates for submissions:**

- **Due Aug. 14:** House Culture Recreation and Tourism Charges 1-6. [Review RFI](#)
- **Due Aug. 14:** House Land and Resources Management Charges 1-4. [Review RFI](#)
- **Due Aug. 28:** House Appropriations Subcommittee on Article II Charges 1-7. [Review RFI](#)
- **Due Aug. 31:** House International Relations & Economic Development Charges 1-6. [Review RFI](#)
- **Due Sept. 1:** Higher Education Special Questions Re: Impact of COVID-19 ([Review RFI](#)), Charge 1 ([Review RFI](#)), Charge 2 ([Review RFI](#)), Charge 3 ([Review RFI](#)), Charge 4 ([Review RFI](#)), Charge 5 ([Review RFI](#))
- **Due Sept. 14:** House Ways and Means Charges 1.3, 2, 3 and 4. [Review RFI](#)
- **Due Sept. 25:** Natural Resources Charges 1-4, ground and surface water interactions, water markets in Texas. [Review RFI](#)
- **Due Nov. 13:** House Ways and Means Charge 1.1 (Senate Bill 2). [Review RFI](#)

Interim Charges

Formal Requests for Information

Resolutions for the 2020 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 2020, 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 31, 2020.

For details on the submission process, go to:

https://www.tml.org/DocumentCenter/View/2020/Memo-for-Cities-2020-05312020_final_corrected-date

To learn more about how resolutions fit within the League's Legislative Policy Development Process, go to:

<https://www.tml.org/DocumentCenter/View/1859/2019-2020-Policy-Process-53120>.

Coronavirus (COVID-19) Updates

The Texas Municipal League is open for business. The building is closed to all but essential personnel and most staff is working remotely, but the League remains open for business and is fully ready to serve. Cities are encouraged to call or email for legal assistance, help with ordinances, or for general advice or assistance. Let us know how we can assist you and your city.

Call TML staff at 512-231-7400, or email Scott Houston for legal assistance at SHouston@tml.org; Rachael Pitts for membership support at RPitts@tml.org; and the training team for questions about conferences and workshops at training@tml.org.

The League has prepared a coronavirus clearinghouse [web page](#) to keep cities updated. In addition, everyone who receives the *Legislative Update* should receive a daily email update each afternoon with information on new developments. The daily email updates will be our primary means of communication during the pandemic. Those emails are being archived [chronologically](#) as well as by [subject matter](#).

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.