



# Legislative UPDATE

September 11, 2020  
Number 36

## **TML Region 10 (Highland Lakes - Austin Area) Virtual Legislative Roundtable on September 14**

TML will be hosting a virtual legislative roundtable discussion with Region 10 city officials on Monday, September 14, at 6:00 p.m. We are excited to be joined by Representatives John Raney (R-Bryan) and John Cyrier (R-Lockhart).

Representative Raney serves on the House Committee on Transportation and the House Committee on International Relations and Economic Development. Representative Cyrier serves on the House Committee on Culture, Recreation and Tourism, as well as the House Committee on Juvenile Justice and Family Issues.

We encourage city officials in Region 10 to join us for this important discussion on the 87th Legislative Session which will provide the opportunity to engage with state elected leaders. Your voices matter most in the legislative process so we hope you will join us.

Please be sure to register [here](#). If you have any questions about the event, contact JJ Rocha at [jj@tml.org](mailto:jj@tml.org).

We look forward to seeing Region 10 city officials virtually on September 14.

## **Act Soon: Choose Your City's 2020 TML Business Meeting Delegate!**

At the 2020 TML Annual Conference, the membership will consider [several resolutions](#) related to legislative issues and the League's constitution. Three of this year's resolutions, if passed, will form the basis of TML's 2021-2022 Legislative Program, and two relate to amending the [TML Constitution](#) to accurately reflect affiliate organization names. To learn more about the League's

policy development process, check out the introductory section of the resolutions packet linked above.

The resolutions will go directly to the membership at the [TML Business Meeting](#), which will meet using Zoom technology on October 14, 2020, at 3:30 p.m.

Each city is entitled to one delegate at the business meeting. Cities are encouraged to sign up their delegate early [here](#). The delegate isn't required to have any special expertise, and an elected official representative is encouraged but not required. The delegate must sign up electronically prior to 5:00 p.m. on October 9, 2020, for planning purposes.

## **House Ways and Means Committee: League Submits Comments**

On Friday, the League submitted [this letter](#) to the House Ways and Means committee in response to the committee's recent [Request for Information](#). The League's comments were made in response to the following three interim charges:

- **Interim Charge 1.3:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following: HB 4347, which relates to the use of hotel occupancy, sales, and mixed beverage tax revenue for qualified projects. Examine the effectiveness and efficiency of the hotel projects, qualified hotel projects, and uses of local hotel occupancy tax revenue. Examine the negative fiscal impact to the state resulting from the dedication of the state portion of those taxes.
- **Interim Charge 2:** Study and consider possible methods of providing property tax relief, including potential sources of revenue that may be used to reduce or eliminate school district maintenance and operations property tax rates.
- **Interim Charge 3:** Study the role of the local option sales and use tax, including: an analysis of the available uses for those taxes, specifically economic development agreements; the statewide distribution of local tax rates; the proportion of the local government budget supported by sales and use taxes; the application of consistent sales sourcing rules; and the impact of shifting from origin to destination sourcing.

Cities wishing to submit comments must do so no later than 5:00 p.m. on Monday, September 14. Submissions should be emailed, in Word format, to the committee clerk, Paige Higerd, at [Paige.Higerd\\_HC@house.texas.gov](mailto:Paige.Higerd_HC@house.texas.gov).

## **Austin Billboard Ordinance: Off-Premise/On-Premise Distinction Shot Down**

On August 25, the U.S. Court of Appeals for the Fifth Circuit held that the City of Austin sign code's distinction between "on-premises" and "off-premises" signs is unconstitutional. The holding in *Reagan National Advertising/Lamar Outdoor Advantage v. City of Austin*, while disappointing, isn't surprising.

The issue was simple: Austin's sign code allowed on-premises digital signs, but it prohibited off-premises digital signs. Two billboard companies applied to convert existing off-premises billboards to digital, and the city denied the applications. The city defines off-premises sign based, in part, on its content. Explained simply, the code provided that on-premises signs advertise a business located on those premises. By exclusion, the code defined an off-premises sign as any sign other than an on-premises one.

Why did that create a constitutional problem according to the court? Because, in 2015, the U.S. Supreme Court's sweeping holding in *Reed v. Town of Gilbert* essentially concluded that – if one has to read the sign to know how to regulate it – the sign implicates protected First Amendment speech.

That means the court applies its toughest standard, known as "strict scrutiny," when reviewing a regulation. Strict scrutiny review means that a city must show a compelling reason to limit First Amendment speech, and it almost always leads to the regulation being struck down. (Strict scrutiny review is in contrast to the "content-neutral" standard (e.g., reasonable "time, place, and manner" regulations not based on what is written upon a sign), under which regulations are usually held acceptable.

According to the Fifth Circuit Court of Appeals:

Austin's Sign Code permits on-premises sign owners to install digital sign faces that allow the copy to be changed electronically, while off-premises sign owners are forbidden from using this technology. To determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise "a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site?"

The answer, according to the court, was yes, which means the court struck down the city's ban on off-premises digital billboards. However, the court – in an unusual move – also provided a "roadmap" to define off-premise signs in a way that could be constitutional:

[I]t is possible for a restriction that distinguishes between off-and on-premises signs to be content-neutral...For example, a regulation that defines an off-premise[s] sign as any sign within 500 feet of a building is content-neutral. But if the off-premises/on-premises distinction hinges on the content of the message, it is not a content-neutral restriction....

The City of Austin hasn't decided whether to appeal the case. We'll report on future developments.

## **Legislative Committees Request Information** **on Interim Charges**

Due to the ongoing pandemic and the uncertainty as to scheduling interim hearings, several legislative committees have issued notices of formal “requests for information” (“RFIs”) to which the public, including cities, may respond. The following is a non-exhaustive list of RFIs on city-relevant interim charges, sorted by the deadline for submitting comments. Interested city officials may follow the links associated with each committee for more details about the procedure to submit comments:

### **September 14, 2020 – [House Ways and Means Committee](#):**

- **Interim Charge 1.3:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following: HB 4347, which relates to the use of hotel occupancy, sales, and mixed beverage tax revenue for qualified projects. Examine the effectiveness and efficiency of the hotel projects, qualified hotel projects, and uses of local hotel occupancy tax revenue. Examine the negative fiscal impact to the state resulting from the dedication of the state portion of those taxes.
- **Interim Charge 2:** Study and consider possible methods of providing property tax relief, including potential sources of revenue that may be used to reduce or eliminate school district maintenance and operations property tax rates.
- **Interim Charge 3:** Study the role of the local option sales and use tax, including: an analysis of the available uses for those taxes, specifically economic development agreements; the statewide distribution of local tax rates; the proportion of the local government budget supported by sales and use taxes; the application of consistent sales sourcing rules; and the impact of shifting from origin to destination sourcing.

### **September 18, 2020 – [House Elections Committee](#):**

- **Interim Charge 1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following: HB 933, which requires election information to be posted on the Secretary of State's (SOS) and each county's internet website. Monitor the costs associated with implementing the legislation. Work with the SOS to determine which office elections should be included in the website postings based on costs and popularity of the office.
- **Interim Charge 2:** Make recommendations for establishing best practices for conducting an election during a declared disaster. Examine model legislation and statutes from other states pertaining to voting during a declared disaster when polls are inaccessible.

- **Interim Charge 3:** Evaluate election laws with the purpose of strengthening voter integrity and fair elections. Perform an in-depth study of the voter registration processes and explore whether centralizing voter registration would be more effective than today's processes. Consider ways to improve voter list maintenance and study the volunteer deputy registrar process and voter registration procedures in other states. Include in the evaluation a review of the state's curbside voting protocols and identify processes to improve the efficiency, privacy, and security of curbside voting.

**September 18, 2020** – [House Transportation Committee](#):

- **Interim Charge 1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:
  - SB 282 and SB 962, which relate to the funding for the State Highway Fund. Study the current mix of user fee-based funding for the state highway system, including registration fees, tolls, and fuel tax, and determine if current funding generated is sufficient to maintain cost demands. Examine whether current legislative appropriations, including projections for Proposition 1 (severance tax) and Proposition 7 (sales tax) funds, are keeping pace with Texas' highway funding needs to accommodate population and economic development growth. Make recommendations for additional methods of funding or innovative tools that the state could utilize to deliver road infrastructure projects.
  - SB 357, which relates to outdoor advertising signs. Monitor the Texas Department of Transportation's implementation of the new statutory requirements set forth in the legislation, including any related rulemaking.
- **Interim Charge 2:** Study the state's transportation and road safety efforts in support of the Texas Transportation Commission's goal of ending traffic deaths in the state by 2050. Identify the most dangerous roads and transportation corridors in the state and determine opportunities to reduce high rates of traffic accidents and fatalities in these areas. Make recommendations to improve policies, funding strategies, program development, and agency coordination to ensure continuous improvements to road safety.
- **Interim Charge 3:** Study the technology and safety aspects of autonomous and semi-autonomous vehicles, including predictive capabilities and the potential for dedicated freeway and surface lanes for public transportation, autonomous vehicles, and semi-autonomous vehicles. Make recommendations for optimizing state policy to prepare for varying vehicle technologies to ensure safety and traffic reliability on Texas roadways.
- **Interim Charge 4:** Study the state's seaport infrastructure and the infrastructure at land ports of entry to facilitate international trade and economic growth. Examine seaport

infrastructure and the auxiliary rail and roadway needs connected to each port as well as the port's ability to keep pace with oil and gas production. Make recommendations to maximize the economic flow of goods and products to and from seaports and study the feasibility and economic impact of dredging and widening Texas ports in order to remain competitive in international trade. Examine the infrastructure at international border ports of entry in Texas and identify transportation-related impediments to international trade that negatively impact the state. Make recommendations to reduce border wait times, facilitate economic growth, and expedite trade. (Joint charge with the House Committee on International Relations & Economic Development)

- The Committee also seeks the following information related to the COVID-19 pandemic:
  - Inquiry 1: How has the COVID-19 pandemic affected state agencies, interested parties, and the public as it relates to transportation matters?
  - Inquiry 2: What transportation issues are anticipated to arise in the future as a result of the COVID-19 pandemic?
  - Inquiry 3: How has the COVID-19 pandemic impacted the ability of the transportation state agencies to accomplish their mission and to serve the public in an effective and efficient manner?

#### September 25, 2020 – [House Natural Resources Committee](#)

- **Interim Charge 1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:
  - HJR 4, SB 7, and SB 8, which relate to statewide and regional flood planning and mitigation. Monitor the progress of the Texas Water Development Board (TWDB) and other entities to provide for the planning, development, and financing of drainage, flood mitigation, and flood control projects statewide to strengthen the state's infrastructure and resiliency to future floods.
  - HB 722, which relates to the development of brackish groundwater. Monitor the designation of Brackish Groundwater Production Zones by the TWDB and the adoption of rules by groundwater conservation districts for the production of brackish groundwater from those Zones.
  - HB 807, which relates to the state and regional water planning process. Monitor the appointment of the Interregional Planning Council by the TWDB and the Council's progress toward increasing coordination among Regional Water Planning Groups.
- **Interim Charge 2:** Study the efforts of the TCEQ, the TWDB, and the Public Utility Commission of Texas to incentivize, promote, and preserve regional projects to meet water

supply needs and encourage public and private investment in water infrastructure. Identify impediments or threats to regionalization with special emphasis on:

- Prioritization in planning and implementing the State Water Plan, Regional Water Plan, and other recommended water supply projects;
  - Barriers to private investment and the development of public-private partnerships to implement needed water supply projects, including the retail water and wastewater industry, to address the state's growth challenges;
  - Public water and wastewater systems that are unable to meet federal and state standards due to inadequate operational capacity and factors that prevent such systems from being integrated into larger systems and processes that more easily facilitate the sale, transfer, or merger of systems;
  - State agency authority to regulate regional water supply pricing.
- The committee also seeks written submissions on the following topics:
    - Emerging issues in groundwater and surface water interaction, in particular in areas of increasing competition for scarce resources.
    - The status of water markets in Texas and the potential benefits of and challenges to expanded markets for water.

**October 30, 2020** – [House Licensing and Administrative Procedures Committee](#)

- **Interim Charge 1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:
  - HB 892, which relates to county regulation of game rooms. Monitor the status of counties statewide who have chosen to regulate game rooms and implement their own regulatory structure to combat illegal gambling activity via registration and permitting requirements, fees, disclosure of ownership, inspection schemes, and civil and criminal penalties.
  - HB 1545, which is the sunset legislation for the Texas Alcoholic Beverage Commission. Monitor the implementation of the legislation and the agency's progress in the consolidation, repeal, and creation of certain licenses and permits and the adoption of new fees.

**November 13, 2020** – [House Ways and Means Committee](#)

- **Interim Charge 1.1:** Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:
  - S.B. 2, which is the Texas Property Tax Reform and Transparency Act of 2019. Monitor the implementation of the legislation, including a review of the tax rates adopted by taxing units in 2019 and 2020, the appraisal review board survey system, and progress in onboarding the tax rate notices and websites. Make recommendations for modifications as necessary and appropriate.

## **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](mailto:SHouston@tml.org); Rachael Pitts for membership support at [RPitts@tml.org](mailto:RPitts@tml.org); and the training team for questions about conferences and workshops at [training@tml.org](mailto: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](#).

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