



Legislative UPDATE

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Number 32

Sales Tax Sourcing Rules Effective October 1

City budget season is upon us, and as city officials deliberate their 2021-2022 budgets, it is important not to lose sight of potential changes looming on the sales tax front.

In May 2020, the comptroller adopted [amendments to Rule 3.334](#), making several modifications to local sales and use tax regulations. Most of the changes made by the rules when into effect immediately upon adoption. However, and of particular importance to many cities, the comptroller delayed the implementation of provisions affecting the sourcing of sales taxes on internet orders until October 1, 2021. This was done to specifically to give the Texas Legislature the ability to pass a law addressing local sales tax sourcing. Though several bills were filed addressing the issue in various ways, nothing ultimately passed. The sourcing rule on internet orders, as well as a change impacting the sourcing of local sales taxes orders received by salespersons while working away from their office, is set to go into effect on October 1.

The pending rule change impacting internet orders provides that orders received via a shopping website or software application are received at a location that is not a place of business in the state. The ultimate impact of this change is that, under the provisions governing where a sale is consummated, online purchases may change from being sourced to a seller's place of business in Texas to the delivery location. The new rule provides that orders received by a shopping website

or shopping application are sourced to the location where the order is fulfilled or the delivery location, depending on the exact circumstances.

In addition to the provision affecting internet orders, the other pending rule adds a new paragraph dealing with “orders received by sales personnel...including orders received by mail, telephone, including voice over internet protocol and cellular phone calls, facsimile, and email.” This section provides some clarification for cities with concerns about traveling salespersons and the treatment of orders received via email or voice over internet protocol, but not using an internet shopping website. Under the new rule, orders received by salespersons while working away from their office will be sourced to the location from where the salesperson works if the location meets the definition of a “place of business”.

Complicating matters a bit in terms of implementation is the fact that some Texas cities have filed suit against the comptroller to prevent the rule changes from going into effect. The City of Round Rock is [seeking a declaratory judgment](#) that portions of the comptroller’s rule are invalid. Similar arguments are being made in [a separate lawsuit](#) brought by Coppell, Carrollton, DeSoto, and Humble. Although the ongoing legal challenges could potentially impact the effective date of the rule changes, at this point the League encourages all cities to move forward as if the rules will go into effect as planned on October 1.

What can city officials do to get a better picture of how the new rules might affect their cities? The nature of the changes made by the rule make prognostication very difficult. That being said, city officials are encouraged to reach out to the top sales tax remitters in their city—both retail and business-to-business—to gain a better understanding of the scope of the impact.

Also, as a reminder, cities are legally authorized to request certain sales tax information from the comptroller pursuant to [Texas Tax Code Sec. 321.3022](#). This includes information on the amount of tax paid to the city during the preceding or current calendar year by each person doing business in the city. Any information received under this provision is confidential, and can only be used by the city for economic forecasting, internal auditing of a tax paid to the city, or to assist in determining revenue sharing under a revenue sharing agreement.

For more information about local sales and use tax, including the new rules, please see the following comptroller publication: [Local Sales and Use Tax Collection – A Guide for Sellers \(PDF\)](#).

Post-Session Update: Grounds for Zoning Variances Expanded

In cities with zoning regulations, the Board of Adjustment (“BOA”) serves as the appellate body for certain zoning-related decisions. BOAs are authorized by [state law](#) to hear appeals of administrative decisions, decide whether or not to grant special exceptions to terms of the zoning ordinance, authorize variances from the zoning ordinance, and hear and decide “other matters” authorized under the city’s zoning ordinance. [H.B. 1475](#) changes BOA authority related to variances and gives additional objective grounds for which a variance from a municipal zoning ordinance may be granted.

Zoning Variances: Then and Now

A BOA is authorized to grant a variance if, among other things, enforcing the ordinance as written would result in “unnecessary hardship.” The term, “unnecessary hardship” is not defined in state law, so over time courts have grappled with the sorts of facts that can constitute an “unnecessary hardship” and justify granting a variance. Until the passage of H.B. 1475, an unnecessary hardship would be one that was not self-imposed, personal in nature, related to the property for which the variance is sought, and not a solely financial hardship. The hardship needed to be a condition unique, oppressive, and not common to other property.

This changes the above analysis in a couple ways. It adds more objective criteria which a BOA can consider to determine whether compliance with a city’s zoning ordinance as applied to a structure would result in an unnecessary hardship. For the first time, purely financial considerations can qualify an applicant for a variance. Additionally, if the proposed structure would be considered a nonconforming structure, that could be grounds to grant a variance. Those are two significant shifts in variance analysis, which allow an applicant to get over the “unnecessary hardship” hurdle a little more easily. Under the new law, there might be an unnecessary hardship if:

1. the cost of compliance with the zoning ordinance is greater than 50 percent of the appraised value of the structure as shown on the most recent certified appraisal roll; or
2. compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur; or
3. compliance would result in the structure not in compliance with a requirement of another city ordinance, building code, or other requirement; or
4. compliance would result in the unreasonable encroachment on an adjacent property or easement; or
5. the city considers the structure to be a nonconforming structure.

Keep in mind that to grant a variance, the variance must not be contrary to the public interest, and the spirit of the zoning ordinance must be observed. So even if a proposed structure fits an “unnecessary hardship” category above, granting the variance is not automatic. The facts surrounding each variance request still have to be analyzed by the BOA, but starting September 1, 2021, H.B. 1475 changes part of the analysis. Cities and their BOAs should look at their zoning rules, policies, documentation, and electronic or printed materials to make sure they are updated to reflect this change in state law and be ready for new arguments from zoning applicants in the fall.

Post-Session Update: Eminent Domain Reporting

Legislation passed in 2015 requires cities to annually fill out a [web-based form](#) with the comptroller relating to each city’s statutory eminent domain authority. The three-month reporting period begins November 1 and ends February 1 the following year. (The failure to fill out the form could result in a \$1,000 per day penalty against a city.)

For most cities the report should simply be an update of previously-filed information, including whether the city exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.

[S.B. 157](#), which will be in effect for the upcoming reporting period, amended the reporting requirements for cities with populations under 25,000. For those cities, an annual report must be filed only if the city’s eminent domain authority information has changed from the previous year.

If the city’s eminent domain authority information has not changed from a previous year’s filing, the city must only confirm the accuracy of the previously-filed information by the February 1st deadline.

A city that never filled out the required form should do so now. City officials with questions about the new requirements can also contact the comptroller’s transparency team by email at transparency@cpa.texas.gov or (844) 519-5676.

General Land Office Opens Applications for Local Hazard Mitigation Plans

As a part of the state action plan for [Community Development Block Grant Mitigation](#) (CDBG-MIT) funding, applications for the Local Hazard Mitigation Plans Program (LHMPP) opened on July 28, 2021. [Eligible entities](#) can now apply for grants to develop or update local hazard mitigation plans, or to provide cost share for hazard mitigation planning activities funded through other federal sources. These CDBG-MIT funds are administered by the U.S. Department of Housing and Urban Development and implemented through the Texas General Land Office. Grant awards will range from \$20,000 to \$100,000. Applications will be processed for eligibility on a first come, first served basis until July 2027 or until funding is exhausted, whichever is first.

More information on the program can be found [here](#).

ARPA and Cybersecurity Challenges: Government Technology Hosts Webinar

[Government Technology](#) will host a free webinar titled “ARPA for Texas Counties & Cities: Your Community’s Future” on August 26. The webinar will focus on using the American Recovery Plan Act funds to tackle critical connectivity needs, cybersecurity challenges, and the digital divide. The conversation will provide insight on how to use stimulus funds to expand broadband programs and reduce barriers to access and to strengthen cybersecurity protections for local government infrastructure and information. Registration and more information can be found [here](#).

COVID-19 Update (No. 199)

All pandemic-related updates, including information about the American Rescue Plan's city-related provisions, will be in the [Legislative Update Newsletter](#) from now on.

- **Mask Mandate Update: Legal Battles Over Local Control**

- Texas Supreme Court Action: In last week's COVID-19 Update, we reported that district court judges in Dallas and Bexar counties issued temporary restraining orders ("TROs") temporarily blocking enforcement of mask mandates in [Governor Abbott's most recent Executive Order](#). On Friday, the attorney general filed petitions for writs of mandamus with the Texas Supreme Court requesting that the Court block the effect of the two TROs. You can find those petitions [here](#) and [here](#). On Saturday, the Supreme Court ordered all proceedings in both cases [stayed](#), which blocks the effect of the TROs, pending full hearings on the merits of the cases in the trial courts.

Further Proceedings: Bexar County

On Monday, ruling again in favor of local control, the trial court in Bexar County granted Bexar County and the City of San Antonio a temporary injunction against the governor's executive order. That decision has been appealed, and a trial of the case has been set for December 13, 2021.

Further Proceedings: Dallas County

The case in Dallas County is open and set for a hearing on the temporary injunction on August 24.

- Travis County: On the same day the Supreme Court issued stays of the Dallas and Bexar County TROs, a district court in Travis County issued three additional TROs blocking the governor's anti-masking order. On Tuesday, the attorney general filed a [petition for a writ of mandamus](#) in the Texas Supreme Court seeking to stay these additional TROs. As of the printing of this article, the Supreme Court had not taken any action.
 - School Districts: Additionally, a number of large school districts ("ISDs") across the state, including [Dallas ISD](#), [Houston ISD](#), [Austin ISD](#), [Fort Worth ISD](#), and [San Antonio ISD](#), are requiring masks on school property. The Paris Independent School District has taken the approach of [modifying the district dress code](#) to require masks rather than adopting a stand-alone policy. The list of ISDs across the state implementing masking requirements changes almost daily, but there are news outlets attempting to [compile the information](#).
- **Counties Across Texas Seeing Rise in COVID-19 Threat Levels**: Over the last few weeks, we have reported on the rise in COVID-19 threat levels in counties and cities across the state. Data indicates that the current surge of cases across the state could surpass previous records. As this rise continues, Travis, Harris, Dallas, and Williamson counties,

among others, are back at the highest threat levels as the Delta variant spreads across the state and [ICU bed availability drops](#). Please stay safe out there.

- **American Rescue Plan Act Funds ACT NOW!**: The state of Texas received the first tranche of ARPA funds from the U.S. Treasury this week. “Non-entitlement units of local government” (NEUs are generally cities under 50,000 population) must register with the [Texas Division of Emergency Management](#) (“TDEM”) to receive ARPA funds. TDEM recently updated its [Coronavirus Local Fiscal Recovery Fund FAQ](#). NEUs should pay special attention to *Question 13: How does my NEU receive funding?* The answer includes a link to the [CLFRF Timeline Check-in document](#) with step-by-step instructions on registering your city with the [TDEM Grant Management System](#), which is a critical step to receiving funds.

TDEM has reported that approximately 2/3 of eligible entities have completed certification, leaving nearly one third of NEUs unregistered. If your city does not register, your city risks losing this funding. Even though TDEM indicated that August 2, 2021 was a deadline to register with the GMS system, if your city missed that deadline but still wants to participate in the funding, register with GMS ASAP.

- **ARPA FAQs**: The U.S. Treasury Department’s Coronavirus State and Local Fiscal Recovery Funds FAQ contains a number of questions and answers related to eligibility for recovery funds and eligible uses of recovery funds. The entire FAQ can be accessed [here](#).

The National League of Cities also maintains an ARPA-related FAQ which can be found [here](#).

- **Rental Assistance Call to Action**: The federal Consumer Finance Protection Bureau (CFPB) has put out a Call to Action to raise awareness about federal rental assistance programs. Among other things, the CFPB has developed a new [Rental Assistance Look Up Tool](#) that allows renters to find information on rental assistance in their area as well as [sample messages and graphics](#) that could be used by interested entities looking to spread the word. Please visit the [CFPB’s housing assistance page](#) for more information.
- **Open Meetings Act Reminder**: In March 2020, as Texans worked to mitigate the spread of COVID-19, Governor Abbott’s office granted the attorney general’s request to suspend certain open-meeting statutes. The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

On June 30, 2021, [the governor’s office approved a request by the attorney general to lift those suspensions](#). The suspensions will lift at 12:01 a.m. on September 1, 2021. Thus, as of September 1, 2021, all provisions of the Open Meetings Act will be effective and all Texas governmental bodies subject to the Open Meetings Act must conduct their meetings in full compliance with the Open Meetings Act as written in state law.

This could change, given the rising numbers of COVID-19 cases across the state, but as of now, plan for the September 1 expiration.

Reminder: TML Coronavirus materials are archived by date [here](#) and by subject [here](#).

City-Related Bills Filed

Property Tax

2H.B. 157 (Allison) – Appraisal Cap and Homestead Exemption: would, among other things: (1) establish a five percent appraisal cap on all residential real property; (2) generally provide that if an individual qualifies property as the individual's residence homestead for at least 25 consecutive tax years, a taxing unit may not impose taxes on that residence homestead in a subsequent tax year in an amount that exceeds the lesser of: (a) the amount of taxes calculated for the taxing unit for the current tax year; or (b) the amount of taxes imposed by the taxing unit for the 25th tax year; and (3) provide that an individual who purchases property and qualifies the property as the individual's residence homestead is entitled to a property tax exemption of the total appraised value of the property for the first tax year the individual qualifies the property as the individual's residence homestead if the property: (a) is the first property the individual has ever qualified as the individual's residence homestead; and (b) has an appraised value of less than \$300,000 for the first tax year. (See **2H.J.R. 20**, below.)

2H.B. 158 (Allison) – Property Tax Commission: would: (1) create the Commission to Study Measures to Limit or Reduce Ad Valorem Taxes; and (2) provide that the commission shall conduct a study of the desirability, feasibility, and effects of various measures to limit or reduce the burden of property taxes on property owners, including: (a) limiting the appraised value of real property for property tax purposes to the value when the owner acquired the property and determining that value on the basis of the purchase price of the property, if applicable; (b) lowering the limitation in current law on annual increases in the appraised value of residence homesteads or expanding the applicability of the limitation to include a broader class of real property, such as residential real property generally; (c) providing for additional exemptions from property taxation of all or part of the appraised value of certain classes of property, including homes purchased by first-time homebuyers; (d) limiting the total amount of property taxes that a taxing unit may impose on property that an individual has owned for a specified period; and (e) increasing the state's share of the cost of funding public education.

2H.B. 160 (P. King) – Property Tax Appraisal: would repeal the additional property taxes imposed as a result of the sale or change in the use of land appraised as agricultural land, timber land, recreational, park, and scenic land, and public access airport property. (See **2H.J.R. 21**, below.)

2H.B. 161 (Cook) – Property Tax Appraisal: would provide that: (1) if the appraised value of a residence homestead in a tax year is lowered as a result of an agreement between the property owner and the appraisal district or as a result of a protest or appeal, the appraised value of the property as specified in the agreement or as finally determined in the protest or appeal is considered

to be the appraised value of the property for that tax year; and (2) if the appraised value of property in a tax year is lowered under the circumstances described in (1), above, the chief appraiser generally may not increase the appraised value of the property in the next tax year in which the property is appraised by an amount that exceeds the lesser of: (a) the market value of the property for the tax year; or (b) the sum of the appraised value of the property in the tax year in which the appraised value of the property is lowered and the market value of all new improvements to the property.

2H.B. 162 (Capriglione) – **Appraisal Cap**: would: (1) would reduce the property tax appraisal cap on residence homesteads from ten to five percent; and (2) impose a ten percent appraisal cap on the appraised value of a single-family residence other than a residence homestead. (See **2H.J.R. 22**, below.)

2H.J.R. 20 (Allison) – **Appraisal Cap and Homestead Exemption**: would amend the Texas Constitution to, among other things: (1) establish a five percent appraisal cap on all residential real property; (2) generally provide that if an individual qualifies property as the individual's residence homestead for at least 25 consecutive tax years, a taxing unit may not impose taxes on that residence homestead in a subsequent tax year in an amount that exceeds the lesser of: (a) the amount of taxes calculated for the taxing unit for the current tax year; or (b) the amount of taxes imposed by the taxing unit for the 25th tax year; and (3) provide that an individual who purchases property and qualifies the property as the individual's residence homestead is entitled to a property tax exemption of the total appraised value of the property for the first tax year the individual qualifies the property as the individual's residence homestead if the property: (a) is the first property the individual has ever qualified as the individual's residence homestead; and (b) has an appraised value of less than \$300,000 for the first tax year. (See **2H.B. 157**, above.)

2H.J.R. 21 (P. King) – **Property Tax Appraisal**: would amend the Texas Constitution to repeal the additional property taxes imposed as a result of the sale or change in the use of land appraised as agricultural land, timber land, recreational, park, and scenic land, and public access airport property. (See **2H.B. 160**, above.)

2H.J.R. 22 (Capriglione) – **Appraisal Cap**: would amend the Texas Constitution to authorize the legislature to: (1) reduce the property tax appraisal cap on residence homesteads from ten to five percent; and (2) impose a ten percent appraisal cap on the appraised value of a single-family residence other than a residence homestead. (See **2H.B. 162**, above.)

Public Safety

2H.B. 180 (White) – **Law Enforcement Grants**: would require the governor's criminal justice division to establish and administer a grant program to provide financial assistance to law enforcement agencies for purposes of equipping all motor vehicles used by officers of the agency in discharging the officers' official duties with bullet-resistant windshields.

Elections

2H.B. 156 (Patterson) – **Polling Place**: would provide that the prohibition against carrying a handgun at a polling place does not apply to a person who carries a handgun if the person is: (1) licensed to carry a handgun; and (2) engaged in the performance of the person’s duties as a presiding judge or alternate judge while early voting is in progress or on election day.

Open Government

2S.B. 79 (Hall) – **Anonymized Ballots**: would: (1) provide that a cast ballot that contains no specific individual voter identifying information is public information under the Public Information Act; (2) authorize the redaction of any individual voter identifying information contained on a cast ballot prior to a cast ballot being made available for inspection or copying; and (3) authorize a governmental body, in responding to a request under the Public Information Act, for portions of a ballot cast in a precinct containing five or fewer registered voters as of the date of the election, to take reasonable measures to ensure the release of the records does not have the effect of disclosing the votes taken by the voters in that precinct, including redacting precinct identifying information, modifying the request to include portions of ballots from additional precincts and aggregating responsive records from multiple precincts. (Companion bill is **2H.B. 131** by Swanson.)

Personnel

2H.B. 182 (Noble) – **Vaccination Discrimination**: would, among other things: (1) require an employer, labor organization, or employment agency to allow an individual to claim an exemption from a required COVID-19 vaccination based on a medical condition or reasons of conscience, including a religious belief; (2) provide that an employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to the compensation or the terms, conditions, or privileges of employment because the individual claims an exemption described by (1), above; and (3) provide that an employee claiming an exemption from a required COVID-19 vaccination must complete and provide the employee’s employer an affidavit on a form developed by the Texas Workforce Commission stating the reason for the exemption. (Companion bill is **2S.B. 80** by Paxton.)

2S.B. 80 (Paxton) – **Vaccination Discrimination**: would, among other things: (1) require an employer, labor organization, or employment agency to allow an individual to claim an exemption from a required COVID-19 vaccination based on a medical condition or reasons of conscience, including a religious belief; (2) provide that an employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to the compensation or the terms, conditions, or privileges of employment because the individual claims an exemption described by (1), above; and (3) provide that an employee claiming an exemption from a required COVID-19 vaccination must complete and provide the employee’s employer an affidavit on a form developed by the Texas Workforce Commission stating the reason for the exemption. (Companion bill is **2H.B. 182** by Noble.)

Utilities and Environment

2H.B. 181 (Huberty) – **Utility Reliability Funding:** would, among other things: (1) require the comptroller and State Energy Conservation Office to establish and administer a program that issues or guarantees loans to be used for improvements that increase the energy efficiency of an promote conservation of natural gas and water by residences and businesses that are not newly constructed; (2) establish the state utilities reliability fund in the state treasury to be used by the Texas Water Development Board (TWDB) to: (a) enhance the reliability and resiliency of water, electric, and natural gas utilities, broadband providers, and power generation companies by supporting projects, including projects to weatherize facilities and reduce demand, in order to provide resilience and continuous service during periods of high demand; (b) pay the necessary and reasonable expenses of TWDB in administering the fund; and (c) transfer funds to other TWDB programs or funds; and (3) establish the state utilities reliability revenue fund in the state treasury to be used by TWDB to provide financial assistance for projects that enhance the reliability and resiliency of water, electric, natural gas, broadband, and power generation facilities, including: (a) projects that enhance the ability of facilities to withstand periods of high demand; (b) projects that reduce demand during periods of high demand; and (c) projects to weatherize facilities.

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