



TEXAS MUNICIPAL LEAGUE  
*Empowering Texas cities to serve their citizens*

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President **David Rutledge**, Mayor, Bridge City  
Executive Director **Bennett Sandlin**

February 28, 2023

The Honorable Briscoe Cain  
Chairman, House Agriculture and Livestock Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, TX 78768-2910

Dear Chairman Cain,

I am writing on behalf of the Texas Municipal League to provide comments on **H.B. 92 by Representative Landgraf**. The bill would, among other things, prohibit a city from adopting or enforcing an ordinance that prohibits on a residence homestead property: (1) the growing of fruits and vegetables; (2) raising or keeping six or fewer domestic fowl; (3) raising or keeping six or fewer rabbits; or (4) installing for on-site use a solar or wind-powered energy device, an underground shelter, a rainwater harvesting system, or a standby electric generator.

H.B. 92 takes what has traditionally been a local land use decision and addresses it through sweeping statewide policy. There are over 1,220 incorporated cities in the state of Texas. Some are among the biggest cities in the country with dense urban areas. Others are bedroom communities that have followed a more traditional residential development pattern. Many are small rural towns with large lots, some of which may have incorporated for the sole purpose of retaining their rural character. Even within the same city, there may be areas that are more appropriate for the placement of rainwater harvesting systems or the keeping of chickens than others. A decision made at the state level on uniquely local land use issues largely bypasses community-level input that helps inform good policy making.

Our primary concern with this bill, as filed, is the preemption of ordinances governing the installation of on-site solar or wind-powered energy devices, underground shelters, rainwater harvesting systems, and electric generators without any authority for reasonable local regulation. If the bill passed in its current form, a homeowner could place a wind turbine of any size on their property, regardless of the proximity to other homes, electric distribution lines, or the tree canopy. Additionally, a city would have to allow the construction of an underground shelter on any homeowner's property, presumably even if the shelter would be placed in certain environmentally sensitive areas or would interfere with underground utilities.

We believe the language allowing for these uses should be struck from the bill, given the potential impacts in neighborhoods across the state. Alternatively, the committee should consider a

framework for allowing the application of some local regulations governing these uses that provides a chance for city residents to retain their voice in neighborhood planning decisions. Giving a homeowner the unquestioned right to place a solar array, a wind turbine, or an underground bunker on their property by state law, without any community involvement, could dramatically impact the quality of life in communities small and large across Texas.

We appreciate the author's inclusion of language that authorizes reasonable local regulations related to gardening, chickens, and rabbits, and strongly support the continued inclusion of that language in the bill. However, even with this preserved authority there will be scenarios where city regulation is totally preempted by the bill. For instance, in a neighborhood of single-family garden homes on small lots, a city's reasonable regulation to keep rabbits a certain distance from a neighboring residential structure may have the effect of prohibiting the keeping of rabbits altogether on a property, in which case the bill would prohibit the city from adopting any ordinance whatsoever.

City governments are uniquely positioned to seek and receive neighborhood input about residential food production and other uses of residential property. We believe that H.B. 92, in its current form, would undermine the ability of city residents to work with their local leaders to promote land use polices that are appropriate for each unique community. We welcome the ability to work with the committee and the bill author to make changes that would retain the overall goal of the legislation while also supporting local decision-making.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Wynn". The signature is fluid and cursive, with a large initial "M" and a stylized "W".

Monty Wynn  
*Director, Grassroots and Legislative Services*  
*Texas Municipal League*