

TML LEGISLATIVE UPDATE



April 21, 2023
Number 16

Land Use Legislation Advances in the Senate

This week, the Senate Committee on Local Government approved several land use bills that could head to the Senate floor within the next week. Some of these bills could have lasting and potentially harmful impacts on Texas cities. If any of the following bills are concerning to you, we'd encourage you to reach out to your state senator as soon as possible:

- **S.B. 369 (Campbell)** – S.B. 369 would provide for the automatic disannexation on December 31, 2023, of an area in a city that is not receiving full municipal services. Although the Senate [bill analysis](#) indicates the bill functionally only applies in one city, League attorneys do not read the bill that way. The bill is not bracketed and would lead to the automatic disannexation of areas in cities across the state. Importantly, the automatic disannexation provision applies to *any area* not receiving full municipal services, not just annexed areas not receiving full municipal services pursuant to a previously adopted annexation service plan. This means that if certain areas of town are on septic instead of city sewer, if there are undedicated private roads, or if certain public safety services are not provided by the city because they are provided by another entity, then those areas would be considered disannexed by the end of this year. Further, the disannexation requirement

applies even if the property owner wishes to remain in the city. The League's opposition letter can be read [here](#).

- **[S.B. 1412 \(Hughes\)](#)** – S.B. 1412 would authorize a property owner to build, sell, or rent an accessory dwelling unit in any residential zoning district or unzoned lot in a city. Further, the bill would prohibit a city from imposing regulations on ADUs, including certain regulations on size, parking, or external feature requirements. This would effectively preempt local regulation of ADUs in city neighborhoods. The bill would authorize the attorney general to determine if a city has violated the bill, and if so, the city would be penalized by not being able to adopt a property tax rate exceeding the no-new-revenue rate in the following tax year. The League's opposition letter can be read [here](#).
- **[S.B. 2037 \(Bettencourt\)](#)** – S.B. 2037 would eliminate the application of any element of a city subdivision ordinance, an ordinance relating to access to public roads, or an ordinance relating to pumping, extraction, and use of groundwater in the city's extraterritorial jurisdiction (ETJ). Additionally, the bill would prohibit a city from "directly or indirectly" regulating use and density of buildings in the ETJ, including a new prohibition on regulating minimum lot sizes in the ETJ. The League testified against the bill in committee.
- **[S.B. 2038 \(Bettencourt\)](#)** – S.B. 2038 would require the removal of areas of less than 200 population from a city's ETJ upon the city's receipt of a petition, and removal of areas 200 and over in population from the ETJ by election. An "area" under the bill is undefined, meaning that the ability to petition for removal from the ETJ could be done on a residential block level or even on a lot-by-lot basis throughout the current ETJ. This would limit the application of city health and safety ordinances in those areas removed from the ETJ under the bill, even if the removed areas are interspersed throughout a city's ETJ or city limits. The League testified against the bill in committee.

Bills on the Move

Significant Committee Action

[H.B. 445 \(Schofield\)](#), requiring bond ballot language to include each project to be funded through the bond process and the amount of bond proceeds to be spent on each project. Prohibits a city from spending a greater amount than stated on the ballot and transferring proceeds from one project to another. Left pending after hearing in House Pensions, Investments, and Financial Services.

[H.B. 451 \(Schofield\)](#), prohibiting a city from issuing a public security to purchase or lease tangible personal property if the expected useful life ends before the maturity date of the public security. TML provided [written testimony](#). Left pending after hearing in House Pensions, Investments, and Financial Services.

[H.B. 622 \(Shaheen\)](#), allowing cities to satisfy any law that requires notice to be published in a newspaper by publishing notice in an alternate form of media, including social media, utility

billings, and direct mailings. TML [testified](#) in committee. Left pending after hearing in House County Affairs.

[H.B. 1132 \(Spiller\)](#), increasing the threshold at which competitive bidding is required for city purchases from \$50,000 to \$100,000. TML [testified](#) in committee. Left pending after hearing in House County Affairs.

[H.B. 2018 \(Muñoz\)](#), creating a new 30-day shot clock procedure related to land development applications. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

[H.B. 2023 \(Muñoz\)](#), requiring a city to pay attorney fees if the court determines an ordinance, regulatory decision, denial of an application, or similar measure is unenforceable because it is preempted by the state constitution or state statute. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

[H.B. 2409 \(Reynolds\)](#), requiring cities to adopt the International Residential and Building Code as they existed on May 1, 2021. Left pending after hearing in House Land & Resource Management.

[H.B. 2665 \(Gates\)](#), prohibiting a city from adopting or enforcing a local law applicable to short-term rentals. The committee substitute modified the bill to create a task force to study the impact of local short-term rental laws. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

[H.B. 3169 \(Landgraf\)](#), prohibiting one specific city in Texas from adopting or enforcing an ordinance that prohibits or limits short-term rentals. TML provided [written testimony](#). Committee substitute voted from House Urban Affairs.

[H.B. 3699 \(Wilson\)](#), requiring the platting of a subdivision only when the landowner intends to lay out certain areas for public use. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

[H.B. 3826 \(Toth\)](#), prohibiting a city from denying a building permit solely because the city is unable to comply with the 45-day period for granting or denying a building permit. Committee substitute voted from House Land & Resource Management.

[H.B. 4082 \(Goldman\)](#), allowing for the use of certificates of obligation for “public works” but prohibits their usage for stadiums, convention centers, civic centers, hotels, and arenas. Committee substitute voted from House Pensions, Investments and Financial Services.

[H.B. 4175 \(Cody Harris\)](#), requiring a city to provide full municipal services to certain areas in the ETJ. TML provided [written testimony](#). Committee substitute voted from House Land & Resource Management.

[H.B. 4285](#) (**Rogers**), prohibiting a city from enforcing its' outdoor sign ordinance in its' ETJ. Committee substitute voted from House Land & Resource Management.

[H.B. 5089](#) (**Meyer**), imposing destination sourcing of local sales taxes on all sales of taxable items. Committee substitute voted from House Ways & Means.

[H.B. 5217](#) (**C. Bell**), requiring a city to release an area from the ETJ if the population of an area is less than 200 and upon petition from more than 50 percent of qualified voters. Requires release of an area with a population of 200 or more from the ETJ after a petition and election. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

[S.B. 224](#) (**Alvarado**), increasing penalties and punishment for theft of a catalytic converter. Voted from House Homeland Security and Public Safety.

[S.B. 369](#) (**Campbell**), providing that any area not receiving full municipal services is automatically disannexed as of December 31, 2023, unless the city is not required to provide full municipal services under an annexation service plan or has entered a written agreement. TML provided [written testimony](#). Voted from Senate Local Government.

[S.B. 491](#) (**Hughes**), prohibits a city over 725,000 in population from adopting or enforcing a zoning regulation that limits the height of a building based on the lot's proximity to another lot that is more than 50 feet away. Committee substitute voted from Senate Local Government.

[S.B. 561](#) (**Sparks**), prohibiting a city from issuing debt to purchase or lease tangible personal property if the expected useful life of the property ends before the maturity date of the public security. TML provided [written testimony](#). Voted from Senate Local Government.

[S.B. 1412](#) (**Hughes**), allowing an accessory dwelling unit (ADU) in a single-family zoning or un-zoned areas by right, and prohibits much of a city's ability to regulate an ADU. TML provided [written testimony](#). Voted from Senate Local Government.

[S.B. 1999](#) (**Bettencourt**), defining "foregone revenue amount" as the voter-approval tax rate minus the actual tax rate multiplied by the preceding year's total value, and redefines "unused increment rate" as the sum of the preceding three years' foregone revenue amount divided by current value. Voted from Senate Local Government.

[S.B. 2035](#) (**Bettencourt**), prohibiting a city council from authorizing an anticipation note or certificate of obligation to pay a contractual obligation under certain circumstances, including if a bond proposition on the same project failed to be approved during the preceding five years. Voted from Senate Local Government.

[S.B. 2037](#) (**Bettencourt**), prohibits cities from applying subdivision regulations and certain road and groundwater regulations in the ETJ. TML [testified](#) in committee. Voted from Senate Local Government.

S.B. 2038 (Bettencourt), requiring a city to release an area from the ETJ if the population of an area is less than 200 and upon petition from more than 50 percent of qualified voters. Requires release of an area with a population of 200 or more from the ETJ after a petition and election. TML [testified](#) in committee. Voted from Senate Local Government.

S.B. 2350 (Bettencourt), defining “voter-approval tax rate” for the purpose of the unused increment rate calculation as a taxing unit’s voter-approval tax rate in the applicable preceding tax year, as adopted by the taxing unit during the applicable preceding tax year, less the unused increment rate for that preceding tax year. Voted from Senate Local Government.

Significant Floor Action

H.B. 92 (Landgraf), prohibiting cities from adopting or enforcing a regulation that would prohibit certain activities on resident homestead property, including fruits and vegetables, raising six or few chickens or rabbits, installing a solar device, rainwater harvesting, or electric generator. Passed the House.

H.B. 586 (E. Thompson), allowing a city to annex a road right-of-way to bring a voluntarily requested area into city limits. Passed the House.

H.B. 1389 (Guillen), prohibiting a city requirement relating to height and maintenance of vegetation from applying to vegetation growing within the boundaries of an agricultural operation. Passed the House.

H.B. 1922 (Dutton), requiring a review of building permit fees every ten years. Passed the House.

H.B. 2127 (Burrows), preempts city regulation in a field occupied by the Agriculture, Business and Commerce, Finance, Insurance, Labor, Natural Resources, Occupations, and Property Code unless expressly authorized by statute. Passed the House.

H.B. 2224 (Hernandez), authorizing cities to lower the speed limit without a traffic study if the street is located in a residence district. Passed the House.

S.B. 929 (Parker), requiring a city to provide written notice containing certain information regarding any proposed zoning change that could result in the creation of a nonconforming use. If a nonconforming use is required by a city to cease operation, the owner or lessee of the property is entitled to receive either payment for costs associated with closing the operation or additional time to engage in the nonconforming use. TML provided [written testimony](#). Passed the Senate.

S.B. 990 (Hall), eliminating countywide polling place program. Passed the Senate.

S.B. 1016 (King), presumption that employee compensation and benefits are reasonable and necessary when establishing the rates of electric utilities. Passed the House.

S.B. 1252 (Bettencourt), requiring certain language indicating a tax increase on ballot propositions. Passed the Senate.

S.B. 1663 (Alvarado), allowing a city to declare a lower speed limit of not less than 20 miles per hour on certain residential roadways without a traffic study. Passed the Senate.

S.B. 2018 (Flores), requiring a city to create a public camping complaint system and investigate every complaint. TML provided [written testimony](#). Passed the Senate.

TML Participates in Comptroller's Connect Texas Working Group

On April 17, TML attended a meeting convened by Comptroller Hegar to discuss the state's broadband development program. The meeting was part of his office's Connect Texas Broadband Working Group (Connect Texas). Connect Texas is a group of over 20 state agencies and non-profit organizations across the state.

Comptroller Hegar told the group that millions of Texans lack access to broadband service. He explained that the state has appropriated \$10 billion in state and federal funds over the past two legislative sessions to help address this problem. To implement this plan, the comptroller's office created the Broadband Development Office (BDO) to develop a statewide broadband plan, create a map showing current broadband service across the state, and establish a broadband access development program.

The group discussed major broadband issues facing Texas communities, including broadband access, reliability, affordability, equitable service deployment, internet literacy and skills, and telehealth resources. At the end of the call, the BDO tasked the group with four main tasks:

1. to provide the BDO with accurate information about the current state of broadband access across Texas;
2. to encourage and facilitate local input about the BDO's development plan;
3. to educate their members and networks about the BDO's development plan and funding availability; and
4. to provide feedback and comments on the BDO's grant program.

City officials are encouraged to contact Michael Martin, TML legislative counsel, at mike@tml.org, to discuss their broadband service needs and issues facing their communities.

TCEQ Seeking Public Comment on Air Quality Standard Permit for Concrete Batch Plants

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for the public to comment on [a proposed amendment](#) to the Air Quality Standard Permit for Concrete

Batch Plants (CBPSP). Copies of the standard permit can be obtained from the [2023 Amendment to the Concrete Batch Plant Standard Permit](#) webpage.

The proposed amendment will include an updated Air Quality Analysis (AQA) and corresponding revisions to certain provisions of the standard permit. The AQA is a report containing information that demonstrates that emissions at a concrete batch plant authorized by this standard permit would not cause or contribute to a violation of the National Ambient Air Quality Standards, exceed a state property line standard, or adversely affect human health and the environment. The proposed amendments to the standard permit include revised operational requirements, additional setback limitations, production limitations, and updated best management practices.

Interested persons may file comments electronically via the agency's [public comments webpage](#), or via mail to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Comments must be filed by **June 14, 2023**. All comments should reference Non-Rule Project No. 2022-033-OTH-NR.

Additionally, TCEQ will hold meetings to discuss the proposal. The first public meeting will be virtual and in-person in Austin on Thursday, May 18, 2023, at 10:00 a.m. in Building E, Room 201S, at the TCEQ's central office located at 12100 Park 35 Circle. Open discussion will not be permitted during the meeting, however TCEQ staff members will be available to discuss the proposal 30 minutes prior to the meeting. Individuals who plan to attend the meeting virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, May 16, 2023. To register for the meeting, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether you plan to provide oral comments during the meeting.

The second in-person meeting will be held in Houston, on Monday, May 22, 2023, at 7 p.m. at the East Aldine District located at 2909 E, Aldine Amphitheatre Dr. This meeting will be structured as an informal informational meeting where the public can ask questions and get additional information about the proposal. Formal comments will not be accepted at this meeting.

TWDB to Hold Webinars on Lead Service Line Replacement Program

The Texas Water Development Board (TWDB) is hosting a series of webinars on funding assistance for lead service line replacement projects and associated activities related to the identification, planning, design, and replacement of lead service lines. The Infrastructure Investment and Jobs Act (IIJA) appropriated supplemental funds through the Drinking Water State Revolving Fund for lead service line replacement projects. Eligible applicants must submit a completed [Project Information Form](#) by email to DWSRF@twdb.texas.gov by **May 23, 2023**. To learn more about the Lead Service Line Replacement Program, visit the [TWDB website](#).

The TWDB webinars will cover program eligibility, timelines, types of eligible projects, and more. They will be held on the following dates:

- Thursday, April 27, 1:30-2:30 p.m.
- Wednesday, May 3, 1:30-2:30 p.m.
- Thursday, May 11, 1:30-2:30 p.m.

To register, complete the [registration form](#) to receive a webinar link.

Reminder: SLFRF Project and Expenditure Report Due April 30

The State and Local Fiscal Recovery Funds (SLFRF) Project and Expenditure Report is due for SLFRF receipts on April 30, 2023.

The U.S. Department of Treasury has provided the following resources for cities:

- [SLFRF Self Service](#): includes questions on reporting, technical issues, and eligible uses of funds.
- [Compliance and Reporting Guidance](#)
- [Project and Expenditure User Guide](#)
- Simplified [video](#) on how to report for smaller communities.
- Contact the SLFRF help center by email at SLFRF@treasury.gov or by phone at (844) 529-9527. When reaching out to the help center, it is encouraged to include the city's name, state, unique entity identifier (UEI) number, and federal tax identification number.

The National League of Cities has provided [information](#) on best practices; and a step-by-step video and PowerPoint on the Treasury portal.

Get Involved at the Legislature: Grassroots Involvement Program

During the 88th Legislative Session, Texas cities are facing many challenges and opportunities. TML will need to mobilize our membership at key points during session. The Grassroots Involvement Program (GRIP) is one way to do so. Our GRIP survey focuses on a variety of items including your areas of expertise and involvement with other professional organizations. Most importantly, the GRIP survey asks how well you know various state legislators and if you are willing to communicate with those legislators during the session. TML's grassroots approach is crucial to our efforts.

If you have a relationship with your legislator(s) or want to be more involved during session, please take the time to complete the [GRIP survey](#). Past efforts have proven that such participation is a highly effective tool.

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take the time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during this session. If we missed your testimony let us know by an email to alyssa@tml.org, and we'll recognize you in next week's edition.

- Jeff Achée, Director of Parks and Recreation, City of Harker Heights
- Sally Bakko, Director of Policy and Governmental Relations, City of Galveston
- Adam Bazaldua, Councilmember, City of Dallas
- David Billings, Mayor, City of Fate
- David Bristol, Mayor, City of Prosper
- Kevin Cole, Mayor, City of Pearland
- Kent Collins, Deputy City Manager, City of Coppell
- Jeff Coyle, Assistant City Manager, City of San Antonio
- Caleb Garcia, Deputy City Attorney, City of Denton
- TJ Gilmore, Mayor, City of Lewisville
- Terry Henley, Board of Adjustments, City of Meadows Place
- Wendy Herman, Intergovernmental Relations, City of Corpus Christi
- Joel Hicks, Councilmember, City of Cibolo
- Patrick Kelly, Councilmember, City of Lewisville
- Jenny Kerzman, Assistant Director of Treasury, City of Dallas
- Wes Mays, Mayor, City of Coppell
- Rolin McPhee, City Manager, City of Longview
- Cara Mendelsohn, Councilmember, City of Dallas
- Christopher Monestier, Deputy Fire Chief, City of San Antonio
- Brynn Myers, City Manager, City of Temple
- Omar Narvaez, Councilmember, City of Dallas
- Chris Nettles, Councilmember, City of Fort Worth
- TJ Patterson, Manager of Legislative Affairs, City of Fort Worth
- Kevin Pitts, Councilmember, City of Georgetown
- Dalton Rice, City Manager, City of Morgan's Point Resort
- James Smith, Sergeant, San Antonio Police Department
- Karl Stundins, Research & Business Development Manager, City of Lancaster
- Kelli Tudyk, Mayor, City of Llano
- Mark A. Vega, General Manager, McAllen Public Utility
- Jeffrey Yarbrough, Chief of Police, City of Hutto

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