

TML LEGISLATIVE UPDATE



July 7, 2023
Number 27

Special Session Update

On Wednesday, the House met briefly to refer [House bills](#) that deal with reducing school district maintenance and operations taxes through the use of state surplus revenue to the House Committee on Ways and Means. The House and Senate will reconvene on the morning of Friday, July 7.

City of Houston Files Lawsuit to Declare Preemption Legislation Unconstitutional

On July 3, the City of Houston [filed a lawsuit](#) in Travis County to have H.B. 2127, the so-called “Super Preemption” bill, declared unconstitutional. H.B. 2127, effective September 1, would prevent cities and counties from adopting or enforcing local regulations related to an activity located in a field of regulation occupied by state law in certain state codes. The League’s post-session summary of H.B. 2127 can be read [here](#).

Among other things, the City of Houston argues that H.B. 2127 violates the home rule amendment of the Texas Constitution, is unconstitutionally vague, and impermissibly delegates the Texas

Legislature’s policy-making authority to the courts. The city’s press release on the lawsuit can be accessed [here](#).

If joining this litigation might make sense for your community, you may contact Darah Eckert with the City of Houston Legal Department at Darah.Eckert@houstontx.gov or (832) 393-6251.

The League will monitor the litigation closely and provide updates as they become available.

Post-Session Update: Changes in Zoning Law

The Texas Legislature made a few important changes to zoning law during the 2023 legislative session relevant to nonconforming uses and zoning changes.

S.B. 929 – Nonconforming Uses

The legislature passed [S.B. 929](#), effective immediately, to require: (1) certain notice to property owners whose property’s use will be a nonconforming use after a zoning change; and (2) payment if the city terminates the nonconforming use according to a specific formula.

First, the bill requires a planning and zoning commission (P&Z commission) or city council (if council serves as the P&Z commission) to provide notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary when the current conforming use of the property will be a nonconforming use once the regulation or boundary is adopted or changed. The notice must go to an owner of real or business property where a proposed nonconforming use is located as indicated by the most recently approved tax roll and each occupant of the property. The notice must: (1) be mailed by U.S. mail by the 10th day before the hearing date; (2) contain the time and place of the hearing; and (3) include certain text required by statute in bold font that is 14-point type or larger.

Second, the bill provides that a person who is using a property in a manner considered to be a nonconforming use because of the adoption of or a change to a zoning regulation or boundary may continue to use the property as a nonconforming use unless the city requires the person to stop the use.

If a city requires an owner or lessee to stop the nonconforming use, the city must give written notice to each owner or lessee of property that is required to stop the nonconforming use not later than the 10th day after the city imposes the requirement. The notice must include the remedies and calculations for payment from the city that the owner or lessee may exercise. The remedies are: (1) payment for costs directly related to stopping the nonconforming use and payment for loss of market value of the property; or (2) continued nonconforming use of the property until the owner or lessee recovers the amount that would otherwise be payable under (1) through the continued business activities. The owner or lessee of the nonconforming use has 30 days after receiving the notice to choose a remedy and the bill provides for a hierarchy of which selection takes precedence between owners and lessees. If the owner or lessee elects to receive payment from the city to discontinue the nonconforming use, the person must stop the nonconforming use not later than the

10th day after the date of payment. If the owner or lessee elects to continue the nonconforming use of the property until costs are recovered, then the person must stop the nonconforming use immediately upon recovery of the required amount.

A person may appeal the city's decision on the market value of the loss of the nonconforming use to the board of adjustment. If a person or the city is dissatisfied with the board of adjustment's decision, the person or city may seek judicial review.

A city requiring an owner or lessee to stop a nonconforming use will want to consult with its city attorney to ensure it follows each of the steps required by the bill.

H.B. 1381 – Zoning Change Hearings

[H.B. 1381](#) represents a positive change to current zoning law for cities. Effective September 1, cities' P&Z commissions will no longer need to hold more than one hearing on a preliminary report for a proposed change in zoning classification before submitting the report to the city council. The statute previously required "hearings," meaning at least two P&Z commission hearings were required before submitting the report to council. Now state law will specifically require only one public hearing.

BDO to Host Series of Public Meetings to Discuss Local Broadband Needs

The Texas Broadband Development Office (BDO) will hold over 20 regional public meetings to hear directly from communities statewide about their broadband needs. These conversations will help the BDO develop a statewide broadband plan to provide Texans with affordable, reliable internet access.

The meetings will occur across the state between July 10th and August 16th and are open to all. Public attendance and participation are encouraged. Meeting dates, times, and locations are subject to change. Please visit the [Texas BDO Public Meeting registration page](#) to sign up.

- **Sherman** - July 10, 2023, 4:00 PM (Gallagher Professional Building, 1117 Gallagher Dr.)
- **Bastrop** - July 11, 2023, 5:00 PM (American Legion Post 533, 3003 Texas 150 Loop)
- **Sugar Land** - July 12, 2023, 5:00 PM (Univ. of Houston at Sugar Land, Brazos Hall Room 103, 14004 University Blvd.)
- **Bay City** - July 13, 2023, 9:00 AM (Bay City Civic Center, 201 7th St.)
- **Kingsville** - July 17, 2023, 2:00 PM (Texas A & M – Kingsville, Memorial Student Union, 700 University Blvd.)
- **Weslaco** - July 18, 2023, 9:00 AM (301 West Railroad Street Board Room, Bldg. B)
- **San Antonio** - July 19, 2023, 4:00 PM (Alamo Area Council of Governments, 2700 Northeast Interstate 410 Loop, Ste 101)
- **Burnet** - July 21, 2023, 10:00 AM (Burnet Community Center, 401 East Jackson St.)

- **Bryan** - July 24, 2023, 4:00 PM (Brazos Valley Council of Governments, 3991 East 29th St.)
- **Lufkin** - July 25, 2023, 1:00 PM (Lufkin City Hall, 300 East Shepherd Ave.)
- **Jasper** - July 26, 2023, 9:00 AM (Jasper County Courthouse Annex, 271 East Lamar St., Ste 101)
- **Belton** - July 28, 2023, 3:00 PM (Central Texas Council of Governments, 2180 North Main St.)
- **Texarkana** - July 31, 2023, 2:00 PM (Southwest Center, 3222 West 7th St.)
- **Lewisville** - August 2, 2023, 2:00 PM (Lewisville Grand Theater, 100 North Charles St.)
- **Wichita Falls** - August 3, 2023, 5:30 PM (Martin Luther King Center, 1100 Smith St.)
- **Clyde** - August 4, 2023, 9:00 AM (Clyde High School, 500 North Hays Rd.)
- **El Paso** - August 7, 2023, 5:00 PM (El Paso Community Foundation, 333 North Oregon St.)
- **Alpine** - August 8, 2023, 5:00 PM (Alpine Civic Center, 801 West Holland Ave.)
- **Lubbock** - August 9, 2023, 1:00 PM (Citizens Tower, 1208 14th St.)
- **Borger** - August 10, 2023, 9:00 AM (The Dome Civic and Convention Center, 1113 Bulldog Blvd.)
- **Mertzon** - August 15, 2023, 5:00 PM (Irion County Community Center, 110 West Duncan Ave.)
- **Midland** - August 16, 2023, 2:00 PM (Region 18 Education Service Center, 2811 La Force Blvd.)
- **Longview** - *Date/Time/Location to be determined*
- **Cuero** - *Date/Time/Location to be determined*

Texas Supreme Court Declines to Hear Grapevine Short-Term Rental Case

The Texas Supreme Court recently denied the petition for review in the [Grapevine short-term rental \(STR\) case](#), meaning the [decision in the lower appellate court](#) in favor of STR owners on largely procedural grounds governs the case.

Two Supreme Court Justices issued a [concurring opinion](#) agreeing with the denial of the petition for review. They acknowledged the issue of STR regulation is important to both cities and STR owners, citing the League’s amicus brief and others. Nevertheless, they thought refusing to hear the case was proper because of the issues presented, the need to interpret city ordinances, and the fact that the city can adopt new regulatory measures. The justices took no position on the constitutionality of the homeowners’ claims. They said they believe there will be a better case for them to decide the constitutional issues presented by cities’ STR regulations in the future.

The decision of the Second Court of Appeals now governs Grapevine's case and cities within the Second Court of Appeals' jurisdiction. Much of the decision hinges on Grapevine's individualized ordinances, including its STR ordinance, which expressly prohibits STRs in the city. More generally, the appellate court found that the trial court correctly denied the city's jurisdictional plea on the STR owners' regulatory takings claim because there were fact issues regarding the Grapevine STR ordinance's economic impact on the STR owners' properties and the reasonableness of the owners' investment-backed expectations. The appellate court also: (1) allowed the STR owners' retroactive constitutional claims to go forward; (2) determined that the STR homeowners had pleaded a viable due-course-of-law claim; and (3) allowed the STR homeowners' request for the court to enjoin the city from enforcing the STR ordinance to go forward.

Texas cities are left with no statewide guidance on the constitutionality of STR ordinances or cities' allowable regulatory authority. The legislature has yet to preempt city authority to regulate STRs. Instead, state courts and federal courts have issued decisions on specific STR regulations as STR owners sue cities. The League previously reported on STR decisions from [the federal Fifth Circuit](#), the [Third Court of Appeals](#), and the [Texas Supreme Court](#) regarding homeowner's associations. Until the legislature passes legislation addressing the scope of city regulation or the Texas Supreme Court issues an opinion on the issue, cities and their attorneys will need to keep up with the lower appellate decisions regarding STRs.

Cities with STR ordinances should consult with legal counsel about what changes, if any, the city may need to make in light of the Second Court of Appeals' opinion. Cities desiring to adopt an STR ordinance should work with their local legal counsel to draft the ordinance in light of these opinions.

Resolutions for the 2023 TML Annual Conference

Resolutions for consideration at the Annual Conference are due no later than **5:00 p.m. on August 21, 2023**. The TML Constitution provides that resolutions must be submitted by any member city, TML region, or TML affiliate to the TML headquarters at least 45 calendar days prior to the first day of the Annual Conference.

The TML Board of Directors has adopted several procedures governing the resolutions process. Please review the following items carefully and thoroughly.

1. No resolution may be considered at the annual TML business meeting unless it has prior approval of: (a) the governing body of a TML member city; (b) the governing body or membership of a TML affiliate, or (c) the membership of a TML region at a regional meeting.
2. TML member cities, regions, and affiliates that wish to submit a resolution **must** complete a resolution cover sheet. The cover sheet is available [here](#).

3. It is recommended that any resolution state one of four categories to better direct League staff. Those categories are:
 - **Seek Introduction and Passage** means that the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as “TML bills.”
 - **Support** means the League will attempt to obtain passage of the initiative if it is introduced by a city or some other entity.
 - **Oppose.**
 - **Take No Position.**
4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. Each city is asked to provide one delegate to serve as its liaison at the annual business meeting at which resolutions will be considered. 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 [here](#) prior to the meeting or can sign up in person at a table outside of the meeting room. Cities are encouraged to sign up their delegate early.
5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the business meeting to explain the resolution. The business meeting will meet at 3:30 p.m. on Thursday, October 5, 2023, at the Kay Bailey Hutchison Convention Center in Dallas.

If your city is interested in submitting a resolution, details can be found [here](#). Resolutions can be emailed to JJ Rocha, TML Grassroots and Legislative Services Manager at jj@tml.org.

Interested city officials can learn how the resolutions process fits within the League’s Legislative Policy Process [here](#).

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