Texas Municipal League
Legislative UPDATE

November 13, 2015
Number 39

Revenue Caps Front and Center for New Senate Property Tax Committee

Last week, Lt. Governor Dan Patrick announced his appointment of seven senators to serve on a new Select Committee on Property Tax Reform and Relief. The select committee will hold public hearings across the state to determine how to "improve the property tax process as well as reduce the burden on property owners." The public hearings will take place over the next year, and the select committee will report its findings to the Senate Finance Committee leading into the 2017 legislative session.

Though the select committee was established to receive public feedback about how to best improve our property tax system and make recommendations accordingly, there is little doubt that revenue caps will be a focal point of the hearings and almost certainly will be recommended to the Senate Finance Committee. In an *Austin American-Statesman* article published this week, Lt. Governor Patrick suggested caps will be the primary focus of the select committee's hearings: "We need to reduce property taxes. The way you do that is by keeping the growth of local governments — city, county and schools — below population and inflation (rates). They have to learn to live with less. And if they believe they need more money, they'll have to go to voters and make their case."

What hopefully will not be lost on the select committee is that cities are not the cause of high property taxes in Texas. According to the comptroller, cities collect just 16 percent of the property taxes levied in the state. Most of the property taxes paid by Texans (55 percent) go to school districts. The latest property tax report by the comptroller shows that the total amount of property taxes collected by cities rose by 3.61 percent between 2012 and 2013, while school district tax collections rose by more than twice that rate or 7.72 percent. School property taxes have been rising because the legislature continues to reduce the state's share of funding for schools which forces districts to get more revenue from property taxes.

The League will closely monitor the select committee, and will notify our member cities when public hearings are scheduled in their region.

Group in Texas Challenging Cities' Sex Offender Residency Ordinances

Many general law cities in Texas received a letter this week from Texas Voices for Reason and Justice, a statewide criminal-justice advocacy group, asking those cities to repeal their sex offender residency restriction ordinance.

Under current law, Texas has no statewide residency restriction for registered sex offenders. Instead, county probation and state parole rules prohibit sex offenders from living within specified distances from schools, parks, day care centers and other sites considered "child safety zones." In the absence of a specific state statute, many general law cities have chosen to enact their residency restrictions based on provisions in the Local Government Code that permit general law cities to enact basic health and safety rules. (Home rule cities are authorized to enact residency restrictions that are consistent with their city charters.)

Texas is not the only state facing a challenge to sex offender residency restriction ordinances. In August, the Massachusetts Supreme Court struck down a local sex offender residency ordinance in *Doe v. City of Lynn*. In that case, the Court deemed the restrictions in the ordinance unlawful, unsafe and ineffective, and the ruling had the effect of invalidating roughly 40 similar ordinances in communities across Massachusetts.

The League is analyzing the letter and will take appropriate action. In the meantime, if your city has received such a letter, you should contact your city attorney and liability carrier to discuss the city's options. Please contact Heather Mahurin, TML Legal Counsel, at heather@tml.org with specific questions or concerns.

Fort Worth Court of Appeals Correctly Applies the Law on Demolition of Substandard Structures

The Fort Worth Court of Appeals recently held, in *1701 New York Ave., LLC v. City of Arlington*, that apartment owners who failed to appeal a demolition order from a municipal court were prohibited from bringing a takings claim against the city. This is a favorable case for cities in that it properly applies the case law handed down by the Texas Supreme Court in 2012.

On January 27, 2012, the Texas Supreme Court issued the *City of Dallas v. Stewart* and *Patel v. City of Everman* opinions. As reported at the time, the impact of the opinions on cities was not totally clear. There were questions, for instance, about whether an appeal from the decision of an administrative body (e.g., the city council, a building and standards commission, or a municipal court acting in a civil capacity) must be raised by a property owner within 30 days in order for the property owner to assert a takings claims. This timeframe comes from Texas Local Government Code Section 214.0012.

The facts in the *1701 New York Ave, LLC* case are straightforward—the apartment owners did not appeal the municipal court's nuisance finding and demolition order within the 30 day

timeframe. Because the apartment owners did not appeal the demolition order, the court held they could not institute a separate proceeding to assert a takings claim. The Fort Worth Court of Appeals explains that "[a] party asserting a taking based on an allegedly improper administrative nuisance determination must appeal that determination and assert any takings claim in that proceeding."

TML has urged the courts to adopt a clear rule that a takings claim must be brought when proceedings are instituted—that is, in the same thirty-day window as the appeal to the administrative nuisance determination. Unfortunately, this approach was rejected in *Wu v. City of San Antonio*, a factually complex case in which the San Antonio Court of Appeals broadly interpreted what it means to bring a takings claim in the same "proceeding."

Although there still isn't a clear-cut rule that a takings claim must be raised in 30 days, the bottom line is that cities have continued to use administrative bodies to make nuisance findings and order the demolition of substandard structures. So long as the property owners do not appeal those findings within 30 days, cities are likely safe from takings claims if they proceed with demolition.

Judge Dismisses Legal Challenge to Property Tax System

Last week, a Travis County district judge dismissed the City of Austin's lawsuit challenging the property tax appraisal system. The suit sought to declare the current property tax system unconstitutional due to a state statute allowing property to be valued in accordance with the median level of appraisal of comparable properties, which has ultimately led to the undervaluation of commercial property. A previous *Legislative Update* article detailing the city's arguments can be read here.

It is unclear whether the city plans to appeal the judge's ruling. League staff will continue to monitor and report on any future developments.

Payday Lending Clearinghouse Updates

The League's "Payday Lending Clearinghouse" webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that the state's Office of Consumer Credit Commissioner has proposed new rules related to payday and auto title lenders. For more information, visit the clearinghouse page.