

Fundamentals of City Regulation

Newly Elected City Officials Orientation

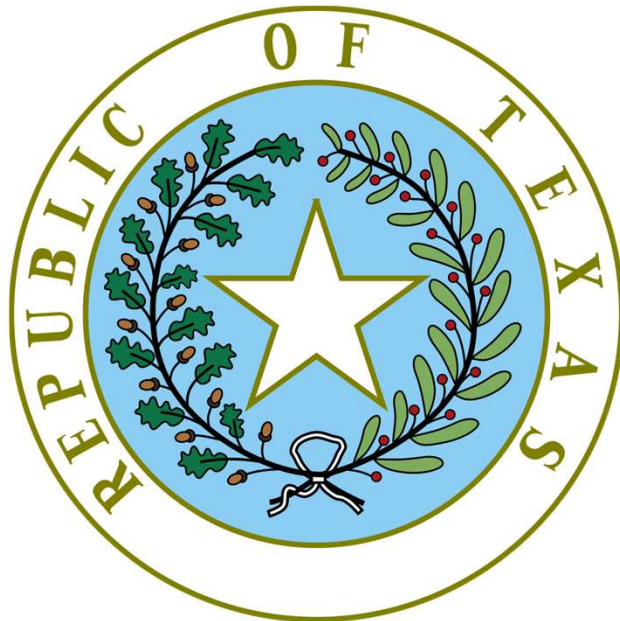
Presented by Stephanie Huser, TML Legal Counsel



Outline

- Brief History of Texas Cities
- Determining City Type
- General Law Cities
- Home Rule Cities
- Differences
- Preemption
- Resources

Brief History



"The Republic of Texas is no more"—President Austin Jones, Annexation Ceremony, February 19, 1846.

Determining City Type



General Law

- Type A
- Type B
- Type C

Home Rule

General Law Cities



A general law city may *only* exercise those powers that are specifically granted or necessarily implied in state law.



City Authority

The governing body of a municipality may adopt ... an ordinance, rule or police regulation that ... is for the good government, peace, or order of the municipality ...

- *Tex. Local Gov't Code Sec. 51.001*

A Type A general law city “may adopt an ordinance ... not inconsistent with state law that is necessary for the government, interest, welfare, or good order of the municipality ...

- *Tex. Local Gov't Code Sec. 51.012*

The governing body of a Type B municipality may adopt an ordinance ... not inconsistent with state law, that the governing body considers proper for the government of the municipal corporation ...

- *Texas. Local Gov't Code Sec. 51.051*



Examples

- Building Code Standards – Local Gov't Code Ch. 214
- Weeds/Rubbish/Nuisance Abatement – Health & Safety Code Ch. 342
- Street Regulation – Transportation Code Ch. 311
- Zoning – Local Gov't Code Ch. 211
- Platting and Subdivision Regulations – Local Gov't Code Ch. 212
- Sales Tax – Tax Code Ch. 321
- Hotel Occupancy Tax – Tax Code Ch. 351

Type A General Law Cities

Aldermanic Form of Government

Council = Mayor + 5 aldermen (if no wards)

Mayor doesn't vote except to break a tie

Quorum consists of 3 aldermen, except:

- Special meeting or meeting concerning taxation
- 2/3 requirement
- Mayor doesn't count toward quorum requirements

Two-year terms (unless diff term adopted)

Mayor pro tem elected to fill in for mayor

Taxation:

- Limited to \$1.50 or \$2.50 per hundred-dollar valuation, depending on pop.



Type B General Law Cities

Aldermanic Form of Government

Council = Mayor + 5 aldermen

Quorum =

- Mayor + 3 aldermen, or
- 4 aldermen, if mayor absent

One-year terms

- (unless staggered 2-year terms are adopted)

Mayor pro tem elected to fill in for mayor

Mayor vote unclear

Taxation:

- Limited to \$0.25 per hundred-dollar valuation



Type C General Law Cities

Commission Form of Government

Council = Mayor + 2 Commissioners

Two-year terms (unless longer term adopted)

Taxation:

- Limited to \$0.25 or \$1.50 per hundred-dollar valuation, depending on population



Borrowing Provisions

(Local Gov't Code Chapter 51)

- Type B cities have the same authority, duties, and privileges as a Type A city, unless there is a conflicting state provision regarding only Type B cities
- Type C cities have the same powers as a Type B or Type A city (depending on population), unless the law specifically provides otherwise

City Manager Form of Government

- Tex. Local Gov't Code Chapter 25
- Cities < 5,000 population
- Election
- Similar to private corporation
- City Administrator Option
- “Weak Mayor” vs. “Strong Mayor” form of government



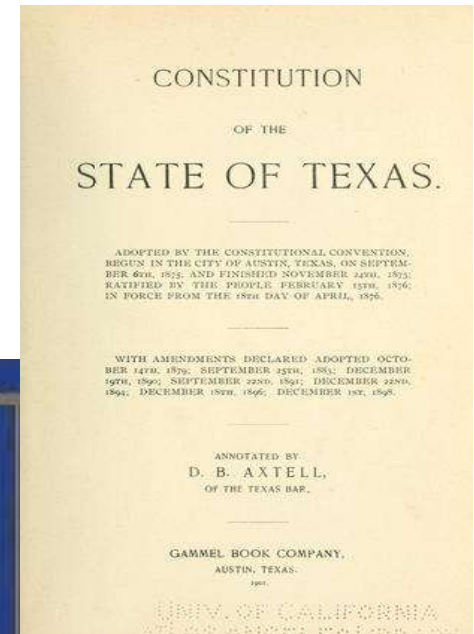
Home Rule Cities



Home Rule Authority

“Home-rule municipalities derive their powers from the Texas Constitution and possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power.”

- Texas Supreme Court, May 2016



Home Rule Charter

austintx.gov

Search or jump to

Austin, Texas - Code of Ordinances / CHARTER

VERSION: JUN 26, 2024 (CURRENT)

- THE CODE OF THE CITY OF AUSTIN, TEXAS
 - SUPPLEMENT HISTORY TABLE **modified**
 - CHARTER**
 - ARTICLE I. - INCORPORATION, FORM OF GOVERNMENT, POWERS.
 - ARTICLE II. - THE COUNCIL.
 - ARTICLE III. - ELECTIONS.
 - ARTICLE IV. - INITIATIVE, REFERENDUM, AND RECALL.
 - ARTICLE V. - ADMINISTRATIVE ORGANIZATION.
 - ARTICLE VI. - MUNICIPAL COURT.
 - ARTICLE VII. - FINANCE.
 - ARTICLE VIII. - TAXATION.
 - ARTICLE IX. - PERSONNEL.
 - ARTICLE X. - PLANNING.
 - ARTICLE XI. - FRANCHISES AND PUBLIC UTILITIES.
 - ARTICLE XII. - GENERAL PROVISIONS.

§ 1. - INCORPORATION.

The inhabitants of the City of Austin, Texas, within its corporate limits, as established by Chapter 90, page 634, Special Laws of Texas, Austin enacted subsequent thereto, shall continue to be and are hereby constituted a body politic and corporate, in perpetuity, under powers, privileges, rights, duties, and immunities as are herein provided.

Source: Ord. No. [20180809-113](#), Pt. 7, 8-20-18/election of 11-6-18.

§ 2. - FORM OF GOVERNMENT.

The municipal government provided by this Charter shall be, and shall be known as, "council-manager government." Pursuant to the constitution, the state laws, and this Charter, all powers of the city shall be vested in and exercised by an elective council, hereinafter referred to as the council, which shall determine policies, and appoint the city manager who shall execute the laws and administer the government of the city.

§ 3. - GENERAL POWERS.

The city shall have all the powers granted to cities by the constitution and laws of the State of Texas, together with all the implied powers, and shall use a corporate seal; may sue and be sued; may contract and be contracted with; may cooperate with the government of the State of Texas or any agency thereof, to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, and property within or without its corporate limits for any municipal purposes in fee simple, or in any lesser interest or estate, by purchase or otherwise; may sell, lease, mortgage, hold, manage, and control such property as may now or hereafter be owned by it; may pass ordinances, subject to the approval of the council, for the promotion of the good government, order, and peace of the city and the welfare, health, morals, comfort, safety, and convenience of its inhabitants; and, without the limitations imposed by the state constitution, the state laws, and this Charter, the city shall have, without the necessity of its express exercise, all the powers, authority, and jurisdiction that the people of the State of Texas, by Article XI, Section 5, of the Constitution of Texas, the people of the city are empowered by election to grant to or confer upon the city by express or implied powers.

Source: Ord. No. [20180809-113](#), Pt. 7, 8-20-18/election of 11-6-18.

§ 4. - STREETS AND PUBLIC PROPERTY.

The city shall have exclusive dominion, control, and jurisdiction in, upon, over, and under the public streets, sidewalks, alleys, highways, and in, upon, over, and under all public property of the city. With respect to each and every public street, sidewalk, alley, highway, or other public property, the city shall have the power to establish, maintain, alter, abandon, or vacate the same; to regulate, establish, or change the grade thereof; to

Differences

- Citizen Initiative & Referendum (HR)
- Recall Election (HR)
- Removal (GL)
- Term Limits (HR)
- Maximum Property Tax Rates

Maximum Property Tax Rate

- Home Rule: \$2.50 per \$100 valuation
- Type A with <5,000 population: \$1.50 per \$100 valuation
- Type A with >5,000 population: \$2.50 per \$100 valuation
- Type B: \$ 0.25 per \$100 valuation
- Type C: Same as Type A if 501-4,999 population, or same as B if 201-500 population



Changing City Type

Changing to a Type A City

1. Affirmative vote of 2/3 of city council;
2. Record taken and signed by mayor; and
3. Record filed and recorded in county clerk's office.

Changing to Home Rule

1. City council may order an election to create a charter commission, with 2/3 vote of council; or
2. Council must order an election if presented with a petition signed by at least 10 percent of the qualified voters



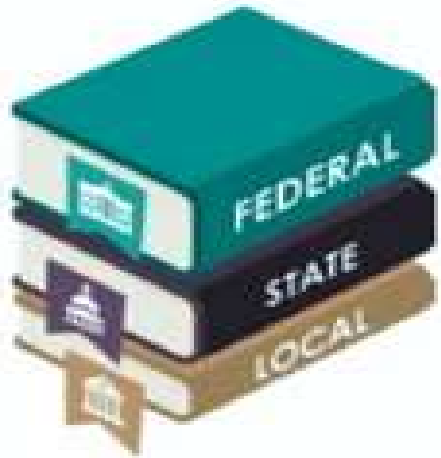
Let's Summarize

	General Law Cities	Home Rule Cities
Does the city have a charter?	No	Yes
Where does the city get its authority?	Express grant of power (or necessarily implied) from the Legislature	Full power of self government and look to the Legislature only for limitations on its power
Can the city have citizen initiative and referendum?	No	Yes, only if the charter allows for it
Can the city have a recall election or set term limits?	No	Yes, only if the charter allows for it

Preemption



Preemption



- Action of one government to limit or prohibit the actions of another
 - Floor preemption
 - Ceiling preemption
 - Express preemption
 - Field preemption

Alcoholic Beverages



Texas Alcoholic Beverage
Code §§ 1.06 and 109.57

Oil & Gas Regulation

Texas Natural Resources
Code § 81.0523



Transportation Network Companies

Texas Occupations Code

Chapter 2402



Building Materials

Texas Government Code
Chapter 3000



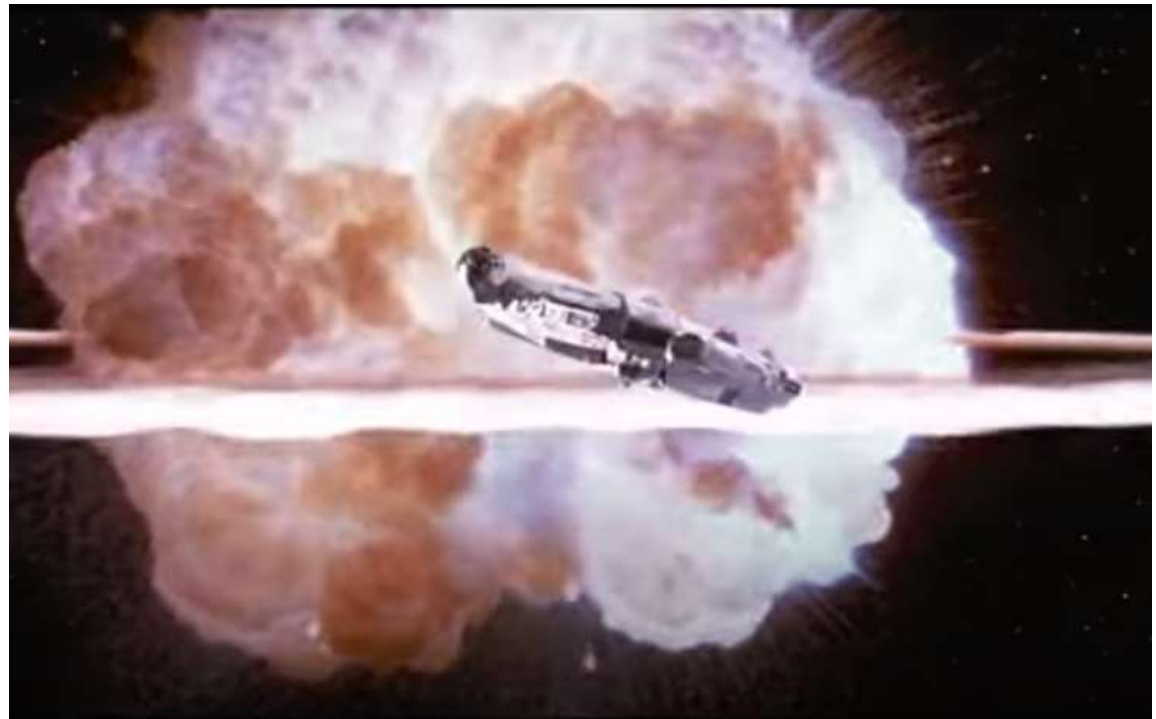
Juvenile Curfew Ordinances



Texas Local Government
Code § 370.007
(H.B. 1819)

Texas Regulatory Consistency Act

H.B. 2127 – “Super Preemption Bill” / “Death Star Bill”



Texas Regulatory Consistency Act

- Expressly prohibits cities from adopting or enforcing the following regulations:
 1. Employment related regulations that exceed or conflict with federal or state law. (e.g., employee breaks, hiring practices, scheduling practices, and employment leave.) ***Does not apply to city employee policies.
 2. New or amended predatory lending regulations (payday loan establishments).
 3. Regulations impeding a business involving animal breeding, care, treatment or sales or animal products – including veterinary practices in certain instances.
 4. New or amended regulations relating to the retail sale of dogs or cats.
 5. Regulations involving evictions.
- “Field of Regulation Occupied by State Law” in eight statutory codes:

Agriculture Code	Labor Code
Business & Commerce Code	Natural Resources Code
Finance Code	Occupations Code
Insurance Code	Property Code



TML Legislative Program

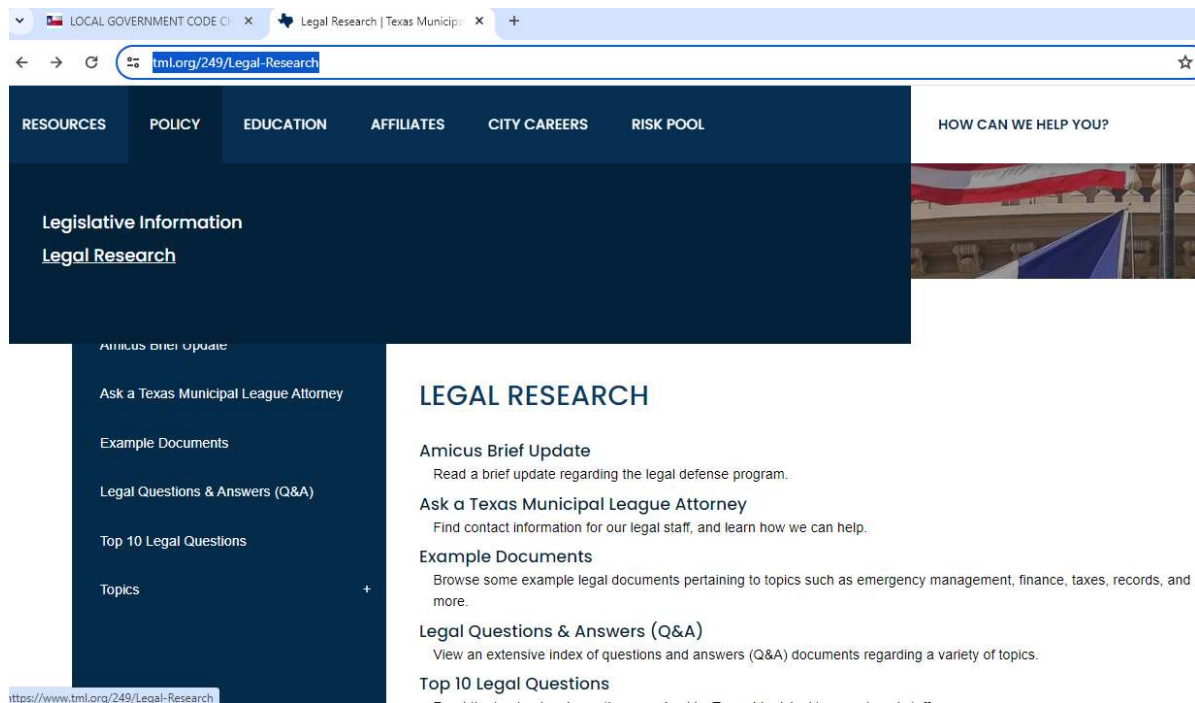
- TML Municipal Policy Summit
 - 2-day workshop to develop legislative policy recommendations
 - Participants are city officials appointed by TML President
- Cities, TML Regions, or TML affiliates submit resolutions for consideration
- TML Board discusses and votes on Legislative Program
- More information:
<https://www.tml.org/DocumentCenter/View/3848/Policy-Process-for-website>



Resources



www.tml.org



legalinfo@tml.org

512-231-7400

Legal Q&As:

<https://www.tml.org/254/Legal-Questions-Answers-QA>

Legislative Information:

<https://www.tml.org/319/Legislative-Information>



Charters and Ordinances

<https://www.generalcode.com/library/>

<https://library.municode.com/tx>

<https://codelibrary.amlegal.com/regions/tx>

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Athens

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GENERAL CODE

Search for Municipality

When seen in the listing, indicates a MapLink site and indicates a collection of Custom Building Codes

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MapLink Sites

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State Statutes

www.capitol.state.tx.us



Texas Constitution and Statutes
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 - ☐ HEALTH AND SAFETY CODE
 - ☐ HUMAN RESOURCES CODE
 - ☐ INSURANCE CODE
 - ☐ INSURANCE CODE - NOT CODIFIED
 - ☐ LABOR CODE
 - ☐ LOCAL GOVERNMENT CODE
 - ☐ NATURAL RESOURCES CODE
 - ☐ OCCUPATIONS CODE
 - ☐ PARKS AND WILDLIFE CODE
 - ☐ PENAL CODE
 - ☐ PROBATE CODE



Questions?

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