

Legal Q&A

By Will Trevino, TML Legal Counsel

Q Who has control over the public streets in a city?

A Texas cities generally have exclusive control over their streets.

Transportation Code Section 311.001(a) provides that a home rule city has “exclusive control over and under the public highways, streets, and alleys” of the city. This authority includes the ability to control, regulate, or remove an encroachment or obstruction on a street, open or change a public street, and make improvements to streets. TEX. TRANSP. CODE § 311.001.

Transportation Code Section 311.002 provides that a general law city “has exclusive control over the highways, streets, and alleys of the” city. The city may abate or remove an encroachment or obstruction on a highway, street, or alley; open, change, regulate, or improve a street; or put a drain or sewer in a street, prevent the obstruction of the drain or sewer, or protect the drain or sewer from encroachment or damage. *Id.* § 311.002.

Q Can a city vacate, abandon, or close a street?

A Yes, but the process differs depending on whether it is a general law city or a home rule city. A general law city may vacate, abandon, or close a street by ordinance, if a petition signed by all of the owners of the property abutting the street is presented to the city council. TEX. TRANSP. CODE § 311.008. Unlike in a general law city, a petition to vacate, abandon, or close a street is not required in a home rule city. *Id.* § 311.007. In the absence of a charter provision providing a method, a home rule city’s governing body has the authority to create a procedure for vacating, abandoning, or closing city streets. Nevertheless, the abandonment or vacation must be in the form of an ordinance. *Texas Co. v. Texarkana Machine Shops*, 1 S.W.2d 928 (Tex. Civ. App.—Texarkana 1928, no writ); TEX. LOC. GOV’T CODE § 253.001(c).

Q What happens to a city street when it is vacated, abandoned, or closed?

A City streets may come into existence by varied means. Thus, it depends on the type of interest the city has in the street as to what happens to the street when it is vacated, abandoned or closed. For instance:

- When the city owns an easement interest in the street, the underlying fee interest to the center line of the street is owned by abutting owners. This fee is subject to the public’s easement in the street. The abutting owners own a private easement in the portion of the street abutting his/her property where such owner purchased with reference to a plat or map showing such street. *Dykes v. City of Houston*, 406 S.W.2d 176 (Tex. 1966). When the public’s right-of-way easement is removed (by vacating, abandoning, or closing the street) the abutting property owner automatically owns the unencumbered fee to the centerline.
- If the city owns a fee simple estate in the street, state law provides that the city may sell the property to the abutting property owner without notice or bidding and no appraisal is

required. TEX. LOC. GOV'T CODE § 272.001(b), (c). Any funds obtained from the sale should be deposited into the city's street maintenance fund. *Id.* § 253.001(d).

Note: While the exception to the fair-market value rule is provided by state law, a city may require by city charter or ordinance that it nevertheless receive appraised value for the sale of these interests. *See, e.g.*, Code of Ordinances, City of Houston, Texas § 2-237.

Q Does a city have authority to maintain roads in the city's extraterritorial jurisdiction (ETJ)?

A The public roads in the city's ETJ are generally the county's responsibility. TEX. TRANSP. CODE § 251.003; *see also id.* § 251.002 (providing that a public road or highway that has been laid out and established according to law, and that has not been discontinued, is a public road). However, there may be specific factual circumstances under which a city could maintain a road in the ETJ.

Q Can a city rename streets in the city's corporate limits or ETJ?

A The Texas Department of Transportation (TxDOT) *Sign Guidelines and Applications Manual*, February 2020, acknowledges that Chapter 311 of the Transportation Code grants cities control over its streets, which includes assigning street names. *See also* TEX. TRANSP. CODE §§ 311.001; 311.002. There is no set statutory procedure for changing a street name. However, it is recommended that street names, or any changes thereto, be adopted by ordinance and include an exhibit with a depiction of the street with beginning and ending markings or block numbers.

Absent any charter or ordinance provisions, a potential procedure for the renaming process includes the following:

1. Contact 9-1-1 and the U.S. Post Office to see if they have objections, and why.
2. Find out how much it will cost the city to have street signs changed.
3. Contact residents and businesses on the street with the proposed name change to give them information about the change and notice of a public hearing regarding the renaming.
4. Hold a public hearing.
5. Adopt an ordinance renaming the street.
6. Send a letter to the regional TxDOT district office notifying them of the change and give them a copy of the ordinance. Provide a copy to 9-1-1, the United States Post Office, common carriers such as FedEx, UPS and DHL, the county appraisal district, the school district, the police department, the sheriff's office, the Texas Department of Public Safety, and emergency medical service providers.

A city has no *general* authority to regulate street names in the ETJ. A county has authority under Chapter 251 to adopt uniform standards for naming roads that are located wholly or partially in the unincorporated areas of the county. TEX. TRANSP. CODE § 251.013. That said, a city should consult with its local legal counsel to review the city's subdivision regulations and agreements with individual landowners, developers, and counties that may give the city authority over naming the streets in the ETJ.

Q May the county maintain and repair streets within the city?

A Yes. There are various state laws that address this issue.

- Texas Transportation Code section 251.012 provides that, with approval of the governing body of the city, a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located within the city. Indeed, the attorney general opined that a county may use road bonds issued under article III, section 52(b) and (c), to construct, maintain, or operate a city street that forms a connecting link or an integral part of a county road or state highway. Op. Tex. Att'y Gen. No. GA-0576 (2007); *see also* Op. Tex. Att'y Gen. No. KP-0311 (2020); Tex. Att'y Gen. LO-98-116 (discussing the interplay of Transportation Code sections 251.012 and 251.015).
- Texas Transportation Code section 253.012 provides that, if a particular street in a subdivision or an access road to a subdivision is located in a city, the county may improve the road only if the city council and the commissioners court agree that the county may improve the street and in the agreement indicate whether the improved street will become the county's or the city's street.
- Texas Transportation Code section 311.006 provides that, in a Type B general law city, the commissioners' court of a county may construct a bridge for or otherwise improve the street to facilitate travel on a street in the city if the street is a continuation of a public street of the county and the city council consents.
- Texas Government Code section 791.032 allows a county to enter into an interlocal contract with a city to finance the construction, improvement, maintenance, or repair of streets or alleys in a city.

Q What are the rules when a city proposes to annex any portion of a county road?

A House Bill 958, passed in 2001, added section 43.106 to the Local Government Code that required a city that proposed to annex any portion of a paved county road to also annex the entire width of the county road and the adjacent right-of-way. Acts 2001, 77th Leg., ch. 393, Sec. 1, eff. Sept. 1, 2001. The Texas Legislature then amended section 43.106, by the adoption of House Bill 1949 in 2015, requiring annexation of the entire width of the county road and the adjacent right-of-way on both sides of the county road when a city proposes to annex any portion of a county road or territory that abuts a county road. TEX. LOC. GOV'T CODE § 43.106(a). However, if the road annexed is a gravel road, the county then retains control of granting access to the road and its right-of-way property that is not located in the boundaries of the city and is adjacent to the road and right-of-way. TEX. LOC. GOV'T CODE § 43.106(b).

Note that section 3 of House Bill 958 had various applicability dates and House Bill 1949 further amended section 43.106. Therefore, if a question arises as to whether a particular road should have been annexed, a city should consult with local legal counsel to review the facts and law associated with the annexation in question.

It is also important to note that a city may only annex a street or the right-of-way of a street on the request of the owner of the street or right-of-way or the governing body of the political subdivision that maintains the street or right-of-way. *Id.* § 43.1055. Therefore, a city must receive the county's request for annexation of the street prior to doing so. *Id.* At the time of this writing, the League is actively pursuing legislation regarding this issue and the issue of receiving a request for annexation of highways maintained by the Texas Department of Public Safety.

Q Can a city repair or maintain private streets?

A No, it is a violation of article III, section 52, of the Texas Constitution to spend public funds to benefit a private person. TEX. CONST. art. III, § 52.

If residents who have a property interest in a private street want the street to be public, and thus be repairable with city funds, the residents may dedicate it to the city if the governing body is willing to accept it. Alternatively, a city could use eminent domain to acquire the streets and make them public. TEX. LOC. GOV'T CODE § 251.001; TEX. TRANSP. CODE §§ 311.092, 317.007. Once streets become public, either through dedication or eminent domain, residents may no longer prohibit the public from driving or parking on the streets.

Q Where can I find information about the rules a city must follow to purchase labor, equipment, and material for city streets?

A The rules a city must follow to purchase labor, equipment, and material for city streets are discussed in detail in a document published by the Texas Municipal League titled "Texas Procurement Laws Made Easy" and available here: <https://www.tml.org/351/Purchasing>.

Q Where can I find information about funding city infrastructure, such as streets?

A Tools available to fund city infrastructure are discussed in a comprehensive document published by the League titled "TML Revenue Manual for Texas Cities" and available here: <https://www.tml.org/183/Publications>.

Some of the most common tools to fund streets include: the city's general revenue fund, issuance of public debt, street maintenance sales tax, street assessments, roadway impact fees, developer exactions, tax incremental financing, economic development corporation sales tax, and other improvement district and community development programs.