



Legislative UPDATE

October 5, 2018
Number 31

Texas Supreme Court: “Can Ban” Ordinance Valid

The Texas Supreme Court recently denied a request to review [*Stop the Ordinances Please v. City of New Braunfels*](#), meaning the city’s regulations on certain disposable containers will stand.

Both the Guadalupe and Comal Rivers flow through the City of New Braunfels’ corporate limits. Years ago, the city passed a series of ordinances making it a crime for a person to use certain drink coolers and containers while they float down the rivers (sometimes called the “Can Ban”). A group known as Stop the Ordinances Please (STOP), primarily made up of business owners who sell coolers/containers or otherwise serve river tourists, sued the city to overturn the ordinances.

STOP argued the ordinances were unconstitutional and preempted by state law. (In fact, one of STOP’s arguments was that the ordinances were preempted by the same state law successfully used to [strike down the City of Laredo plastic bag regulations](#).)

After a loss for the city at the trial court, the case made its way to the [Third Court of Appeals](#). That court never reached the preemption issue. Instead, the court dismissed the case for a procedural reason: Texas courts will consider a civil lawsuit challenging a criminal ordinance only if the ordinance is: (1) unconstitutional; and (2) threatens “irreparable injury to vested property rights.” The court ultimately concluded that the STOP group could not prove that the ordinances’ enforcement against their customers had irreparably injured their businesses’ vested property rights. (That’s because a business has a right to use its property, but not in a particular way or in a particular location.)

By declining to review the case, the Texas Supreme Court allows the city’s ordinances to remain in effect.

Let's Get to Work: *Our Home, Our Decisions*

The Texas Municipal League's "Our Home, Our Decisions" campaign is ready to roll! The goal of the campaign is to raise awareness about the State of Texas eroding the ability of Texans to have a voice in developing local solutions to local problems that affect their neighborhoods and their communities.



The League has developed informational materials for city officials to use in meetings with local groups and organizations. While the materials are suitable for any public use, they will likely be of greater interest to city residents who are already actively engaged in civic affairs through membership in

business, professional, social, charitable, and neighborhood organizations and individuals who serve on city boards and commissions.

The first components of "Our Home, Our Decisions" are now available for download and use by TML member cities. They are: (1) a three-minute video production; (2) a PowerPoint Presentation that can be customized by cities for local presentations; and, (3) a two-sided handout in PDF format. The video production can be used as an introduction to the slide presentation, and the handout can be photocopied and distributed to attendees. The components, as well as a document with tips on how to use them, are available at www.tml.org/ourhomeourdecisions.

Please feel free to modify all or parts of the materials to suit your city's needs. If you have questions about the materials or want additional advice on how to use them, contact legislative@tml.org.

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.