



Legislative UPDATE

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Harvey Recovery Continues: More Information

The Texas governor's disaster management staff has done an excellent job of assisting cities and citizens with hurricane recovery. Two websites serve as clearinghouses for assistance:

- <http://www.rebuildtexas.today/>
- <https://gov.texas.gov/hurricane>

[Texas Municipal League](#) and [TML Intergovernmental Risk Pool](#) staff remain available to assist as well.

City-Related Constitutional Amendment Propositions

Three out of seven proposed amendments to the Texas Constitution on the November 5 ballot directly affect Texas cities. The following information about the propositions is taken directly from the Texas secretary of state's website:

- **Proposition Number 1** (H.J.R. 21) proposes a constitutional amendment that would permit the Texas legislature to expand the circumstances under which a partially disabled veteran or their spouse may qualify for an exemption from ad valorem taxation of part of the market value of the veteran's residence homestead. Currently, the Texas legislature may provide that a partially disabled veteran or their spouse is entitled to an exemption from ad valorem taxation of a percentage of the market value of the disabled veteran's residence homestead only if the residence homestead was donated to the disabled veteran by a charitable organization at no cost to the veteran. The amendment would allow the Texas legislature to provide that the exemption also may be taken when the residence homestead was donated, sold, or transferred to the disabled veteran by a charitable

organization for less than the market value of the residence homestead. The amendment also harmonizes certain related provisions of the Texas Constitution.

The proposed amendment will appear on the ballot as follows: “The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization for less than the market value of the residence homestead and harmonizing certain related provisions of the Texas Constitution.”

- **Proposition Number 4** (S.J.R 6) proposes a constitutional amendment that would allow the Texas legislature to require any court that is hearing a challenge to the constitutionality of a state statute to notify the attorney general of that challenge, if the party raising the challenge notifies the court that the party is challenging the constitutionality of such statute. Additionally, the amendment would allow the Texas legislature to set a period of not more than 45 days following the notification to the attorney general that the court must wait before rendering a judgment that a state statute is unconstitutional.

The proposed amendment will appear on the ballot as follows: “The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.”

- **Proposition Number 6** (S.J.R. 1) proposes a constitutional amendment that would allow the Texas legislature by general law to provide that a surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to receive an exemption from ad valorem taxation from all or part of the market value on the surviving spouse’s residence homestead, as long as the surviving spouse has not remarried since the death of the first responder. It would also allow the Texas legislature to provide that the surviving spouse, who qualifies and receives the exemption and then qualifies a different property as the surviving spouse’s residence homestead, receive an exemption from ad valorem taxation of the different homestead in an amount equal to the dollar amount of the exemption of the first homestead for which the exemption was received in the last year in which the surviving spouse received the exemption for that first homestead. Like the initial exemption, this benefit will only remain available if the surviving spouse has not remarried since the death of the first responder. The proposed amendment would apply only to ad valorem taxes imposed for a tax year beginning on or after January 1, 2018.

The proposed amendment would appear on the ballot as follows: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty."

Additional information about all of the propositions is available in the constitutional amendment “[Focus Report](#)” prepared by the House Research Organization.

Cities Can’t Adopt Resolutions in Support of State Constitutional Amendments

At the November 7, 2017, general election, Texas voters will be asked to approve or reject three amendments to the Texas Constitution that will directly affect cities. City officials may personally support or oppose the amendments, but remember that a city council is prohibited by Election Code section 255.003 from adopting a resolution either way. Doing so could subject city officials to criminal penalties and civil fines.

Section 255.003 provides that “[a]n officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.” “Spending” of public funds is interpreted by the Texas Ethics Commission to include the use of political subdivision employees’ work time, the use of existing political subdivision equipment, and the use of facilities maintained by a political subdivision. “Political advertising” is defined as a communication supporting or opposing a measure that “appears...in a...written communication.”

The Texas Ethics Commission has also indicated that, in certain situations, *comments* by city council members at a recorded public meeting that is broadcast over a public access channel could give rise to a violation of section 255.003. According to Ethics Advisory Opinion No. 456 (2004), “we can imagine a situation in which one or more city council members might arrange a discussion of a matter not pending before the city council with the hope that broadcasts of the discussion would influence the outcome of an election [and thus, rise to a violation of Section 255.003].”

At a minimum, the adoption of a resolution by a city council would require an employee to document the subject of and final vote on the resolution in the official minutes or recording of the meeting at which the resolution is considered. In this way the adoption of either an oral or written resolution would require a city employee’s work time and equipment, and thus constitutes a spending of public funds. Moreover, such resolutions are often posted on a city’s website either as stand alone documents or as part of the minutes.

While there appears to be no opinion or case directly on point, a written resolution supporting or opposing a constitutional amendment proposition likely constitutes prohibited political advertising. The city officials who are responsible for adopting such a resolution could be committing a Class A misdemeanor. In addition, the Ethics Commission has authority to impose fines for violations of section 255.003. Finally, the Ethics Commission has also indicated that action taken in violation of section 255.003 may constitute a violation of Penal Code section 39.02, which prohibits government resources from being used for campaign purposes.

Of course, nothing prohibits an elected official – on his or her own time and not using public funds – from advocating for or against passage.

Post Session Update: Vexatious PIA Requestors

Dozens of detrimental Public Information Act (PIA) bills were filed during the regular legislative session, but only one major bill relating to the PIA passed. [House Bill 3107](#) by Trent Ashby (R – Lufkin) improves on an existing law meant to help cities deal with PIA requestors who use frequent and voluminous requests as a tool to disrupt the operation of city business.

You can find more details about the bill [here](#). Please contact Zindia Thomas, TML assistant general counsel, with questions at 512-231-7400 or zthomas@tml.org.

Last Call for Feedback on DOL Overtime Exemption

Last month, the U.S. Department of Labor (DOL) released a highly-anticipated request for information (RFI) on the overtime regulations put forward by the Obama Administration. The regulations would increase the overtime salary level to \$47,476, which is double the current level, and call for automatic adjustments every three years.

The rule was originally scheduled to go into effect on December 1, 2016. However, it was delayed due to the issuance of a nationwide preliminary injunction blocking the rule by the U.S. District Court for the Eastern District of Texas. The Trump Administration dropped its appeal of the preliminary injunction in light of another recent ruling. That means the rules as proposed by the Obama Administration are probably dead.

In the [RFI published in the Federal Register](#), the DOL is seeking input on the role the “duties test” plays with respect to the salary threshold, what is the proper methodology, and whether there should be multiple salary levels to reflect different regional economies, sizes of employers, and exemptions.

The National League of Cities plans to issue comments on the RFI, which are due on September 25. If you are interested in sharing the impact of this rule on your city (e.g., the cost implications on your municipal payroll both in the first year of implementation and beyond; any changes you have made to the number of exempt employees on your payroll; and any thoughts you may have on the duties test applied to determine the status of employees), please submit comments (Instructions can be found in the RFI linked above).

**The article above was reprinted from the National League of Cities.*

Extension of Budget and Tax Deadlines Possible

Yesterday Governor Abbott honored a [request](#) by the City of Corpus Christi to extend its tax rate setting deadline from September 30, 2017, to October 27, 2017. TML has [requested](#) that the Governor extend the deadline for all cities affected by Hurricane Harvey. However, we have not received a response to that request at this time.

If your city has been affected by the recent storm and you need additional time to set your tax rate, we urge you to make a similar request to the Governor on behalf of your individual city.

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