



Legislative UPDATE

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The Texas Supreme Court Reverses Itself in Flooding Case

The Texas Supreme Court, in a rare move, reversed itself last week and issued a new opinion in [*Harris County Flood Control District v. Kerr*](#). The case began when over 400 landowners and former landowners whose properties were damaged by flooding sued Harris County, making inverse condemnation (taking) and nuisance claims. They argued that Harris County and the Harris County Flood Control District (Harris County) approved new upstream development without implementing appropriate flood-control measures, and did so even though they were substantially certain that flooding of the properties would result.

Harris County argued that there were no facts supporting the landowners' claims that it intended to flood their properties. ("Intent" to cause the taking is a required element for such a claim.) Both the trial and court of appeals disagreed. Harris County appealed, asking the Texas Supreme Court to consider whether or not the homeowners raised a fact question regarding the elements of a governmental taking.

The Texas Supreme Court issued its initial opinion on June 12, 2015, holding in a 5-4 decision that the homeowners had raised a fact issue by presenting evidence demonstrating that: (1) Harris County knew unmitigated development would lead to flooding; (2) Harris County approved development without appropriately mitigating it; and (3) the approval caused the flooding. Despite the majority's assurance that "We do not decide the merits of the dispute, nor do we mean to imply that the government entities have a duty to prevent all flooding," the opinion caused a wave of controversy and concern among counties and cities.

Harris County sought and the Court granted a rehearing on February 19. More than a dozen amicus (“friends of the court”) briefs, including one by the Conference of Urban Counties, Texas Association of Counties, and TML, were filed in conjunction with the motion for rehearing.

On June 17, the Court withdrew its original opinion and issued a substitute opinion. In an important win for cities, counties and other entities across the state, the Court dismissed the plaintiffs’ lawsuit, holding that Harris County was not responsible for damages suffered from the flooding. “[T]he record is clear that the County never harbored a desire to cause flooding anywhere. Its motive was the opposite: it desired to prevent flooding and undertook extensive efforts over many years to accomplish this goal,” the Court stated. The Court also agreed with arguments that, if the lawsuit was successful, it would significantly extend takings liability and “encourage governments to do nothing to prevent flooding [and other problems], instead of studying and addressing the problem.”

General Law Cities: Grass-Roots Support Needed to Clarify Authority over Sex Offender Residency

A number of legal challenges to the authority of general law cities to regulate where sex offenders can live are moving through the courts. But general law cities that wish to clarify their authority should act now to pave the way for legislative action next session. State Representative Drew Springer (R – Muenster) has asked interested general law cities to adopt a resolution in support of legislation to clarify their authority. (Any city adopting such a resolution should send it to Monty Wynn at monty@tml.org in the League’s legislative department for delivery to Rep. Springer’s office.)

For example, the City of Eustace adopted a [resolution](#) doing just that. In the meantime, the issue of legislative clarification will be considered by the TML Legislative Policy Committee on General Government in Austin on August 19. It is expected that the League’s current position to “support legislation that would clarify the authority of general law cities to enact sex offender residency restrictions” will be re-adopted for 2017.

The League will provide continued updates on the lawsuits and legislative efforts.

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, on June 16, the Texas Supreme Court denied a petition for review filed by ACE Cash Express. The denial essentially ends ACE’s lawsuit against the City of Denton, and does so in the city’s favor.

Oil and Gas Regulation Clearinghouse

As reported last December, the first post-H.B. 40 lawsuit was filed against the City of Rockdale. On June 13, a federal district court found in favor of the city and dismissed the case. To assist cities dealing with oil and gas drilling issues, the League has created the “Oil and Gas Regulation” webpage at www.tml.org (Go to the Legal tab and click on the Topics drop down menu). The page contains more information about the case, and the actual court order.

Resolutions for the 2016 TML Annual Conference

The TML Constitution states that resolutions for consideration at the Annual Conference must be submitted to the TML headquarters 45 calendar days prior to the first day of the Annual Conference. For 2016, this provision means that resolutions from any member city, TML region, or TML affiliate must arrive at the TML headquarters no later than 5:00 p.m. on **August 22, 2016**.

The TML Board of Directors has adopted several procedures governing the resolutions process. Please review the following items carefully and thoroughly.

1. No resolution may be considered by the TML Resolutions Committee unless it has prior approval of: (a) the governing body of a TML member city; (b) the governing body or membership of a TML affiliate, or (c) the membership of a TML region at a regional meeting.
2. TML member cities, regions, and affiliates that wish to submit a resolution **must** complete a resolution cover sheet. The cover sheet is available here. The [cover sheet](#) must be attached to the resolution throughout each step of the resolutions process.
3. It is recommended that any resolution state one of four categories to better direct League staff. Those categories are:
 - **Seek Introduction and Passage** means that the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as “TML bills.”
 - **Support** means the League will attempt to obtain passage of the initiative if it is introduced by a city or some other entity.
 - **Oppose.**
 - **Take No Position.**

Please see the [2015-2016 TML Legislative Policy Development Process](#) for more information.

4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. The Resolutions Committee is appointed by the TML President and is made up of city officials from TML member cities across the state.
5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the Resolutions Committee meeting to explain the resolution. The Resolutions Committee will meet at **2:00 p.m.** on **Tuesday, October 4, 2016**, at the **Austin Convention Center**.

If the procedures described above are not followed for any given resolution, that resolution is likely to be referred to some other TML committee for further study. In that case, the resolution would not be adopted during the 2016 conference.

Under the TML Constitution, resolutions received after the deadline of August 22, 2016, must not only have the attached cover sheet, but also must “state the reason precluding timely submission.” These late resolutions may be considered by the TML Resolutions Committee at the Annual Conference only if two-thirds of the Committee members present and voting agree to suspend the submission rule and consider the resolution.

Resolutions may be submitted by mail, fax, or by e-mail to Scott Houston, Deputy Executive Director and General Counsel, at:

1821 Rutherford Lane, Suite 400
Austin, Texas 78754
Fax: 512-231-7490
Email: shouston@tml.org

If you have any questions or would like any assistance, please call 512-231-7400 at any time.

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