

# Types of City Government

**Riley Fletcher Basic Municipal Law Seminar**

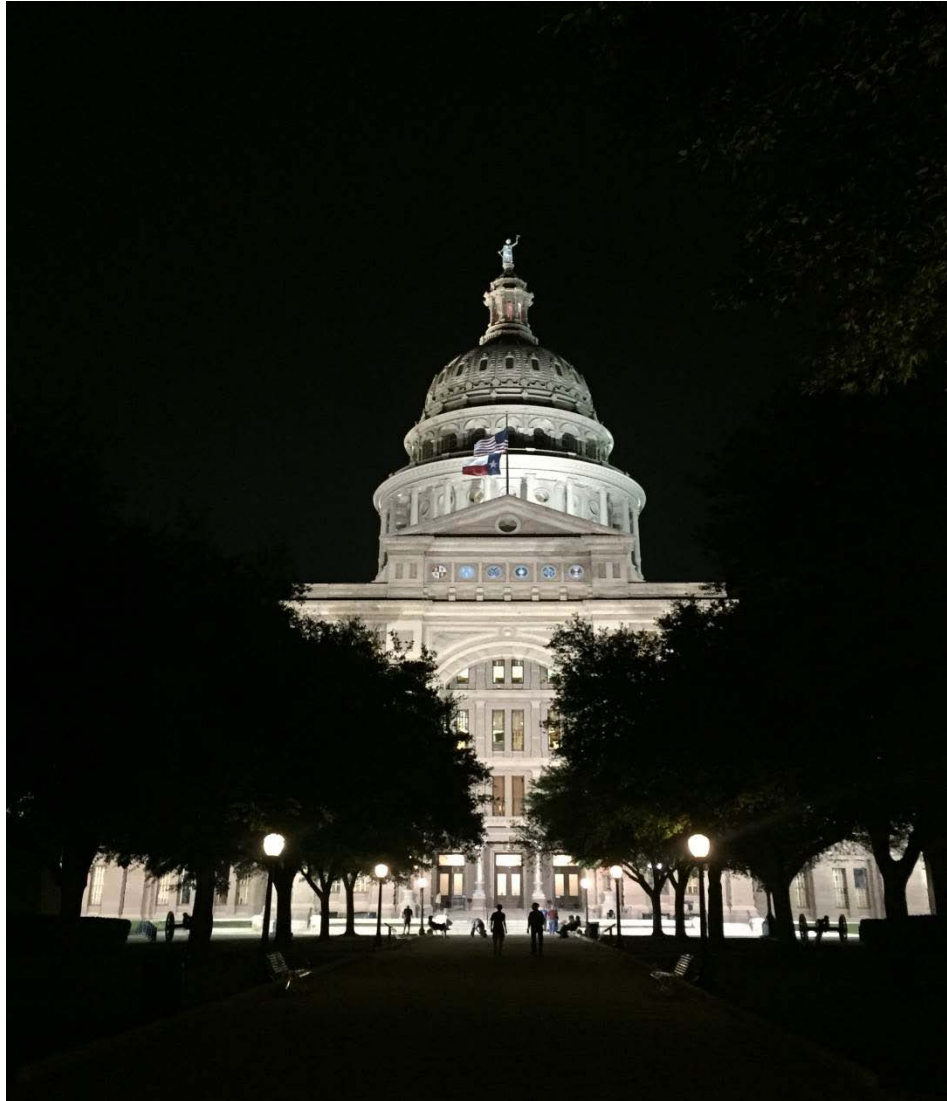
**February 8, 2018**

**Presented by Heather Lockhart, TML Asst. General Counsel**



- Introduction and Brief History
- Types of Cities and Authority
- Examples of Differences
- Preemption
- The TML Legal Department and Other Resources
- Questions

# Introduction & History



# General Law Cities



# 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



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



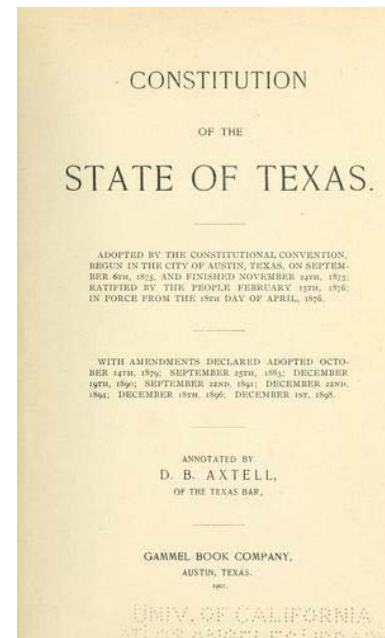
# What is an implied power?

Texas Supreme Court May 2016:

“[G]eneral-law municipalities have ‘only such implied powers as are **reasonably necessary to make effective the powers expressly granted**. That is to say, such as are **indispensable** to the declared objects of the [municipalities] and the accomplishment of the purposes of [their] creation.’ *Tri-City Fresh Water Supply Dist. No. 2 of Harris Cty. v. Mann*, 135 Tex. 280, 142 S.W.2d 945, 947 (1940) (emphasis added); *see also Foster v. City of Waco*, 113 Tex. 352, 255 S.W. 1104, 1106 (1923) (“A municipal power will be implied **only when without its exercise the expressed duty or authority would be rendered nugatory**.”). Thus, we strictly construe general-law municipal authority and ‘[a]ny fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the [municipality], and the power is denied.’”



# Home Rule Cities





Texas Supreme Court May 2016:

“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.’”



# 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

# Differences in General Law & Home Rule Cities



# 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: .25 per \$100 valuation
- Type C: Same as Type A if 501-4,999 population, or same as B if 201-500 population



# Citizen Initiative, Referendum, & Recall

- Only home rule cities possess the power for initiative and referendum (*via* city charter)
- With the exception of a few general law cities located on the border, only home rule cities may order a recall election *if* the city's charter provides for recall

# Term Limits

Only home rule cities may impose *if* the city's charter provides for term limits



# Preemption

# Alcoholic Beverages



Texas Alcoholic Beverage  
Code §§ 1.06 and 109.57



# Dangerous Dogs



Health & Safety Code  
§ 822.047

# Oil & Gas Regulation



Natural Resources Code  
§ 81.0523



## Abbott wants "broad-based law" that pre-empts local regulations

As local control battles rage at the Texas Capitol, Gov. Greg Abbott is voicing support for a much more sweeping approach to the issues that have captured headlines.

BY PATRICK SVITEK MARCH 21, 2017 12 PM



"As opposed to the state having to take multiple rifle-shot approaches at overriding local regulations, I think a broad-based law by the state of Texas that says across the board, the state is going to pre-empt local regulations, is a superior approach," Abbott said Tuesday during a Q&A session hosted by the Texas Conservative Coalition Research Institute, an Austin-based think tank.

Such an approach, Abbott added, "makes it more simple, more elegant, but more importantly, provides greater advance notice to businesses and to individuals that you're going to have the certainty to run your lives."

# 2017 Regular Legislative Session

**H.B. 100 (Paddie/Schwertner)** – Preempts a city’s authority to regulate transportation network companies (Uber and Lyft, for instance)

**S.B. 2205 (Hancock/Geren)** – Preempts a city’s authority to impose a fee, registration, franchise, or regulation related to the operation of an automated motor vehicle or driving system

# Plastic Bag Ordinances

*City of Laredo v. Laredo Merchant's Association*, No. 16-0748,  
Texas Supreme Court

- (a) A local government . . . may not adopt an ordinance, . . . to:
- (1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law; . . . TEX. HEALTH & SAFETY CODE § 361.0961

Oral argument: 1/11/18



# Resources?

www.tml.org → “Legal Research”

The screenshot shows the TML Texas Municipal League website. The header includes the TML logo, a search bar, and navigation links: Home, Member Log In, Career Center, Directories, Connect News, and Contact Us. A left sidebar contains a navigation menu with categories like Training, Legislative Information, Legal Research (with sub-items: Top Legal Questions, Example Documents, Legal Q & A), Topics (with sub-items: City Types, Elections, Environmental, Ethics, Finance/Economic Development, Land Use and Building Regulations, Liability, Municipal Court, Oil and Gas Clearinghouse, Open Meetings Act, Payday Lending Clearinghouse, Personnel, Public Information Act, Public Safety, Purchasing, Streets and Transportation, Utilities and Rights of Way, Amicus Brief Update, Ask a TML Attorney), and TML Affiliates. The main content area features a banner for training in Alice and Andrews, Texas, with a photo of a brick building. Below the banner are six icons representing different services: Training Calendar, Legislative Update, SolutionsNet, TML, Excellence Awards, and Buyer's Guide. The 'News and Member Announcements' section includes a 'New Member' announcement for the City of Cushing, a 'Texas Supreme Court: No Building Permits in the ETJ' article, and a 'Membership Update' notice. The 'Facebook Activity Feed' section shows a tweet from @TML\_Texas about Mayor Joyce Pockrus, with an embedded Instagram post from the same account.

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512-231-7400



# Charters and Ordinances

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# State Statutes

## www.capitol.state.tx.us

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The statutes available on this website are current through the Regular Session of the 84th Legislature, June 2015. The Texas Constitution is current through the amendments approved by voters in November 2015.

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  - ☐ INSURANCE CODE
  - ☐ INSURANCE CODE - NOT CODIFIED
  - ☐ LABOR CODE
  - ☐ LOCAL GOVERNMENT CODE
  - ☐ NATURAL RESOURCES CODE
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  - ☐ PENAL CODE
  - ☐ PROBATE CODE



# Questions?

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