

Fundamentals of City Regulation

Riley Fletcher Basic Municipal Law Seminar

Austin, Texas

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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



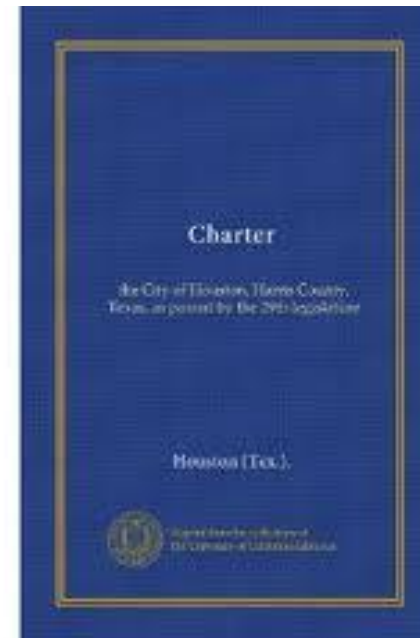
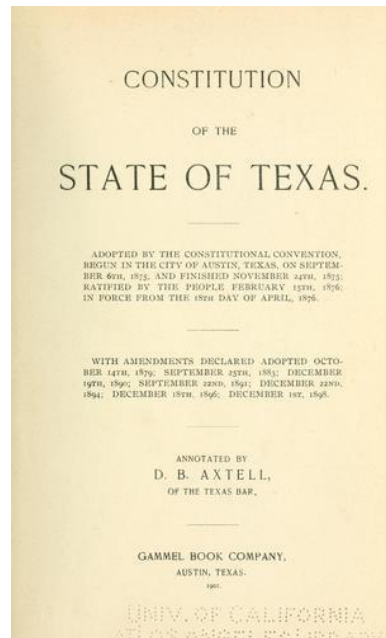
What is an implied power?

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

Other differences in general law and 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: \$0.25 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 Election
- Term Limits

Let's Summarize

	General Law Cities	Home Rule Cities
Does the city have a charter?	No	Yes
Where does the city get its authority?	Express grant of power (or necessarily implied) from the Legislature	Full power of self government and look to the Legislature only for limitations on its power
Can the city have citizen initiative and referendum?	No	Yes, only if the charter allows for it
Can the city have a recall election or set term limits?	No	Yes, only if the charter allows for it

Everyone gets preempted.

Oil & Gas Regulation

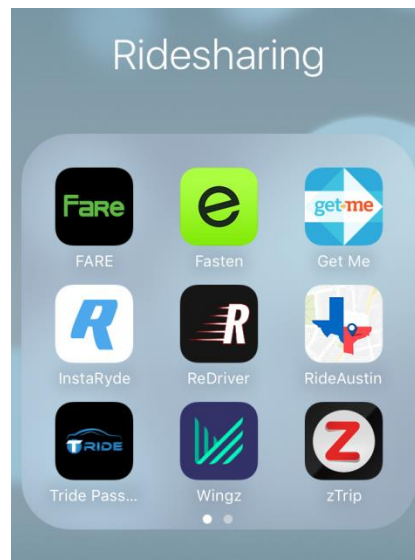


Texas Natural Resources
Code § 81.0523



Transportation Network Companies

Texas Occupations Code Chapter 2402



Examples from 2019 Legislative Session

HB 234: No lemonade stand ordinances, probably preempts regulation of raw milk sales as well

HB 2439: Building materials

SB 476: City can't prohibit dogs in outdoor portions of restaurants



2019 Legislative Session

- Cutting Room Floor...
- Short-term rental regulation preemption
- Working conditions ordinance preemption
- Broad “super preemption” bills

Resources




www.tml.org



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-  Our Home, Our Decisions
-  Job Search
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SPOTLIGHTS

Keep Up With What's New




TEXAS MUNICIPAL LEAGUE

ANNUAL CONFERENCE AND EXHIBITION
October 3-4, 2019
San Antonio

TML ANNUAL CONFERENCE REGISTRATION AND HOUSING OPEN ON JULY 23.

Join us in San Antonio for the 2019 TML Annual Conference and Exhibition.

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TML Newly Elected City Officials' Orientation

YOU'VE GOT QUESTIONS...WE'VE GOT ANSWERS

Congratulations...you won the election! But NOW what?

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TML HOMETOWN

YOUR LEGAL AND ETHICAL ROLE AS A COMMUNITY LEADER

You were elected to serve the public good and represent the interests of your residents, but your role as a community leader encompasses so much more.

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Charters and Ordinances

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A B C D

Addison

Alice

Amarillo

Aransas Pass

Anahuac

Baird

Balcones Heights

Big Sandy

Center

Andrews

Athens

Harker Heights

Heath

Ivanhoe

Keene

Kermit

Angleton

Aubrey

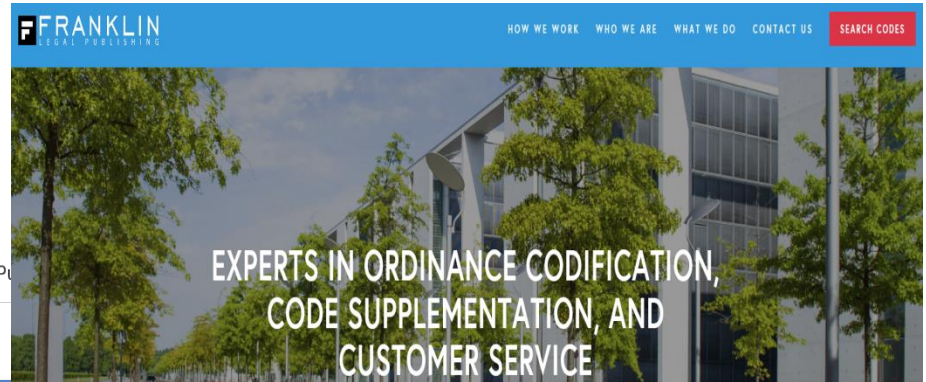
Pleasanton

Port Isabel

Sour Lake

Stephenville

Sunset Valley




Texas



State Statutes

www.capitol.state.tx.us

 Texas Constitution and Statutes
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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 - NOT CODIFIED
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Questions?

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