

Street Smart

An Everyday Guide and Update to Everything
“City Street”

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What is a city street?

- Texas Transportation Code § 316.001 defines a street as “the entire width of a way held by a municipality in fee or by easement or dedication that has a part open for public use for vehicular travel.”

Does the City Own the Street?

- Dedicated Right of Way or Fee Simple Ownership of the actual street?



Dedication by Plat

- Dedicated right of way for use as a street
- Property owners own a private easement in streets and ally's shown on plat or map referenced at time of purchase
- The citizens own a public easement in the streets
- A butting property owner's own a fee interest under the right of way encumbered by easement

Dedication by Plat for the use and benefit of the Public does not constitute a conveyance of the title in the street (or public parks) but only creates an easement for the benefit of the public. *Humble Oil & Ref. Co. v. Blankenburg*, 235 S.W.2d 891, 893 (Tex. 1951).

Additionally, the public, all citizens in general own a public easement in the streets, subject to exercise of police power by the city. *Town of Refugio v. Strauch*, 29 S.W.2d 1041, 1043 (Tex. Comm'n App. 1930).



Can the city convey the street to someone else?

- Abandonment
- Terminate easement
- Texas Constitution, Art. III Sec. 52(a) and Art. XI, Sec. 3 do not prohibit a municipality from selling a public property to a private entity provided the transaction serves a public purpose and the municipality receives a public benefit in return.
- City council approval & ordinance



Can a resident claim a city street by adverse possession?

A person may not acquire through adverse possession any right or title to real property dedicated to public use. Tex. Civ. Prac. & Rem. Code §16.030(b).

Trespass to Try Title or
Declaratory Judgment action to
Quiet Title.



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Declaratory Judgments Act

- Tex. Civ. Prac. & Rem. Code §37.004(c)
- *Lance v. Robinson*, 543 S.W. 3d 723 (Tex. 2018)
- Dispute over Boundary Lines not Title
- Quiet Title
- Recover Attorney's Fees



City Control, Responsibility, and Maintenance of Streets

- Texas Transportation Code §311.001(a) General Authority of Home-Rule Municipalities over city highways, streets, alleys; control, regulate, remove, open, improve
- §311.002 General Authority of General-Law Municipality; abate or remove obstructions, open, regulate, improve
- Exclusive control over public right-of-ways; reimbursement for requiring pole relocation due to widening (*City of Richardson v. Onco Elec. Delivery Co. LLC*, 539 S.W.3d 252 (Tex. 2018))

Speed Limits

- Texas Transportation Code §545.356, Authority to Alter Speed Limits by Ordinance Prima Facie Speed Limits by Engineering & Traffic Investigation
- Texas Department of Transportation Speed Study
- 85th Percentile Method
- Texas Transportation Code §544.003(b) Local Authority may designate through highway or intersection and place a stop or yield sign



Control Above and Below



- An easement for city streets includes the right for municipality to lay sewer, gas and water lines. *W. Tex. Utilities Co. v. City of Baird*, 286 S.W.2d 185 (Tex. Civ. App.—Eastland 1956, writ ref'd n.r.e.).
- Air space above the street Texas Local Government Code Chapter 284, wireless infrastructure providers
- §283.001(b)(1) state policy municipality retains authority to manage public right-of-way

What can a city do to protect street integrity?

- Transportation code §725.002; §725.003
“Tarping” laws
- “Carry-Out” Ordinance or
“Mudding” Ordinance,
Tex. Transp. Code 311



Other Municipal Street Issues

- Tex. Transp. Code §551.403 “municipality may prohibit the operation of a golf cart on a public highway if the department or the governing body of the county or municipality determines that the prohibition is necessary in the interest of safety.”
- §551.405: A golf cart may cross intersections, including a road or street that has a posted speed limit of more than 35 miles per hour.
- Criminal Liability, Texas Penal Code §442.03(a)(1)
- Interlocal Agreements, Texas Government Code §791.003(3)
- Panhandlers & Collections in Medians, Texas Local Gov. Code §217.002
- Animals, Texas Transp. Code §311.901; Chapter 822 Health & Safety Code; Texas Parks & Wildlife Code §62.0031; §62.015(b)
- Bicycles, Tex. Transp. Code §551.101; Rules of Road Chapters 541-600

