

Street Smart
An Everyday Guide & Update to Everything “City Street”
2020 TCAA Summer Conference
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What is a city street?

Texas Transportation Code Sec. 316.001 defines a municipal 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. The term does not include a designated state or federal highway or road or a designated county road, and a roadway is “the portion of a municipal street that is improved, designed, or ordinarily used for vehicular travel. The term does not include a curb, berm, or shoulder.”

Does the City Own the Street?

Dedicated Right of Way or Fee Simple Ownership¹ of the actual street?

“While a municipality may hold legal title in its streets, it does so not in its own right, but as trustee for the benefit of the state and the public. *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 645 (Tex. 2004); *Mission v. Popplewell*, 294 S.W.2d 712, 715 (Tex. 1956).” Op. Tex. Att'y Gen. No. GA-1084 (2014).

Cities acquire real property by purchase, eminent domain, or by gift, however for streets and easements predominantly by dedication. The purpose of dedication is to give the public the right to use a particular piece of land such as roads, but also for parks. *Greenway Parks Homeowners Assoc. v. City of Dallas*, 159 Tex. 46, 313 S.W.2d 235 (1958).

The owner of the land offers property for public use (a) expressly (words on the plat that grant use for a street) or (b) impliedly (affirmative act or use of the property and also a street shown on the plat but no specific words stating use as a street but the city used the property as a right-of-way or street), and the City accepts (by action).

¹ Texas Property Code §5.001 defines fee simple as an “estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law”.

“To constitute a dedication by implication without a formal instrument evidencing same, there must be a clear and unequivocal act or declaration of the owner evidencing an intention to set aside the property for public use, and the public must act upon such manifestation of intention.” *Eastex Wildlife Conservation Ass'n v. Jasper*, 450 S.W.2d 904, 911 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.).

Acceptance should be by ordinance, whether an ordinance or another act by the governing body of the municipality² regarding the specific property or acceptance evidenced by use of the property for the dedicated purpose. Acceptance can be evidenced by maintenance of the right-of-way despite lack of usage or even lack of street paving. A good example is; if the city public works department regularly or historically clears the easement of weeds and mows the grass yet as not paved street this this likely is adequate evidence of acceptance for public use.

If the street was created on the original plat for the municipality [absent an actual deed or any document evidencing conveyance (of real property)], the street is known as a dedicated right of way for usage as a street or byway. 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). The City owns a dedicated public right-of-way for an easement in the street. *Dykes v. City of Houston*, 406 S.W.2d 176, 182 (Tex. 1966). Simply recording a map or plat showing streets or roadways does not, standing alone, constitute a dedication as a matter of law. *Broussard v. Jablecki*, 792 S.W.2d 535, 537 (Tex. App.—Houston [1st Dist.] 1990, no writ). The recording however creates a rebuttable presumption.

Aside from a City's property interest, there is an entire class of persons in a city that own a special interest in the street; people that purchased property in the City with reference to a plat or map showing the dedicated street on a plat. These property owners own a private easement in the street and alleys shown in a plat or map by reference to which they purchased their property. *Oswald v. Grenet*, 22 Tex. 94, 100-01 (1858).

² For example, attachment of plat (evidencing a street) to an ordinance or resolution incorporating the municipality.

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).³

Also, the owners of the property abutting the street own a fee interest in the property underlying the right of way encumbered by the public's right of way easement. *Riley v. Davidson*, 196 S.W.2d 557, 559 (Tex. Civ. App.—Galveston 1946, writ ref'd n.r.e.).

So, if the right-of-way easement is removed the property owners on each side of the street then automatically own fee to the centerline of the street/right-of-way. This is particularly important when property is conveyed by quitclaim deed; the property conveyed should include a description adequate to describe to the centerline of the street. Average width of a vehicle is six feet; arguably many local streets are at least twelve feet wide so the conveyance would need to describe the extra six feet to the center line.

In the event municipal ownership is unclear (e.g. city versus county) in determining responsibility for a street or right-of-way; there are separate statutes regarding county roads found in Texas Transportation Code, Chapter 251. There are two key provisions that impact cities: (1) §251.012 County Authority in a Municipality with the Approval of the Governing Body of a Municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, and (2) §251.015 County Assisting other Governmental Entity which permits a county to allow a municipality to use county road equipment and county employees to assist with a road or bridge project that does not exceed \$15,000.00.

Can the City convey the street to someone else?

Yes, the city may abandon the street and convey or sell it. The city may not sell or convey a street dedicated to the public, unless and, until the city abandons the street. In fact, the issue of abandonment is the first matter to be resolved in determining if a street can be conveyed to abutting property owners. However, if the city never accepted the dedicated right-of-

³ A person buying a lot by reference to a plat or map showing an abutting easement acquires a private easement regardless of whether the way is opened or dedicated to the public or the plat is recorded. *Ford v. Moren*, 592 S.W.2d 385, 392 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Dallas Cotton Mills v. Industrial Co.*, 296 S.W. 503, 505 (Tex. Comm'n App. 1927, opinion adopted); *Sherman Slaughtering & Rendering Co. v. Tex. Nursery Co.*, 224 S.W. 478, 480 (Tex. Civ. App.—Amarillo 1920, writ dism'd w.o.j.); *Horne v. Ross*, 777 S.W.2d 755, 756 (Tex. App.—San Antonio 1989, no writ).

way/easement by ordinance after dedication for public use then no action is needed. Arguably a right-of-way and an easement are the same thing. “An easement granted for a particular purpose terminates when its purpose ceases to exist or is completed or when the easement is abandoned or rendered impossible of performance.” *Jones v. Fuller*, 856 S.W.2d 597, 603 (Tex. App.—Waco 1993, writ denied).

A City likely obtained the street by dedication or plat, however it is possible the city owns fee-title and a deed evidencing conveyance of the property/street was filed in the real property records. (If you are really lucky an ordinance reflecting the transaction will be in the real property records too.) If the city owns the fee and holds title to the property/street no need to abandon (or take action to formally abandon) prior to conveying title by quitclaim deed. If the city received a specific dedication of right of way by separate instrument without a plat, then the city merely abandons the easement and any interest in the property. Council action and an ordinance are both required, and both should be filed in the real property records.

Article III, section 52(a) and article XI, section 3 of the Texas Constitution 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. Op. Tex. Att’y Gen. No. GA-1084 (2014).

If the street is dedicated to the public and by plat; abandonment should be evidenced by city council approval and an ordinance; the ordinance should be filed in the county real property records. The property will be added back on the tax rolls as non-exempt property. Then the ordinance or resolution that authorizes the conveyance or sale of the property should also be filed in the county real property records. In a home rule city consent of abutting property owners is not required. Texas Transportation Code §311.007. However, if the abandonment and conveyance of the right of way “materially and substantially impairs” access to an abutting property owner the owner is entitled to compensation for a taking. *City of Austin v. Ave. Corp.*, 704 S.W.2d 11, 13 (Tex. 1986).⁴

If the city has a dead-end street historically unused, and the property owners on that street approach the city to abandon, and the city owns the street by deed, the city can sell to abutting owners without notice and bidding requirements and without requiring payment of fair market

⁴ See also *DuPuy v. City of Waco*, 396 S.W.2d 103 (Tex. 1965), but municipal taking and inverse condemnation is the topic of an entirely different TCAA presentation; not this one.

value. Texas Local Government Code §272.001(b).⁵ This Local Government Code provision applies to streets or alleys owned in fee or by easement and property originally acquired for streets or right of way or easements that the city chooses to exchange for other land for the same use and includes transactions partly for cash. Tex. Loc. Gov Code §§272.001(b)(2) and (b)(3).

If a portion of the street (dead-end) has never been used or fully open for public use does the City still own the street and can an abutting property owner acquire it by adverse possession?

The City retains its right-of-way easement in the unused portion of the street, and adverse possession of municipal property dedicated for public use is prohibited by the Texas Civil Practices & Remedies Code.⁶

Let's go one step further. If the abutting property owner fences off the unused portion of the street to effectively enlarge their parcel (or lot) what steps should the city take? First and foremost, remove the fence, however, removal of the fence will likely fail to deter a property owner that believes he can adversely possess city property. A home-rule city has "exclusive control over its streets and a municipality may remove an encroachment or obstruction on a public street or alleyway. Texas Transportation Code §311.01(b).

Is the remedy a trespass to try title suit? No, a trespass to try title requires *competing claims* for the same parcel. Fencing municipal property to attempt to lay a possessory claim to the property does not create a competing claim but a boundary dispute.

"This court expressly has rejected the argument that an action seeking a declaration that a disputed roadway had been impliedly dedicated to the public involved "classic trespass to try title material" and was not appropriate under the UDJA. *Supak v. Zboril*, 56 S.W.3d 785, 792 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (no error in awarding attorney's fees under UDJA). Texas courts often adjudicate declaratory judgment actions to determine dedicated status of a disputed road. *Shelton v. Kalbow*, 489 S.W.3d 32 (Tex. App.—Houston 2016 [14th Dist.]).

⁵ Tex. Loc. Gov. Code §272.001(b) states that land may not be "conveyed, sold, or exchanged for less than the fair market value" . . . unless "conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple."

⁶ 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).

The remedy of trespass to try title actions has not generally been applied to nonpossessory property interests such as easements. *Roberson* at 130. “The Legislature has since amended the ***Declaratory Judgments Act*** to expressly provide that, notwithstanding the trespass-to-try-title statute, a claimant may sue for declaratory relief “when the sole issue concerning title to real property is the determination of the proper boundary line between adjoining properties.” Tex. Civ. Prac. & Rem. Code § 37.004(c).” *Lance v. Robinson*, 543 S.W.3d 723, 2018 Tex. LEXIS 246; 61 Tex. Sup. J. 547; 2018 WL 1440476. The *Lance* case is relatively new and opens the door to seek a declaratory judgment and thus recover attorney fees.

The *Declaratory Judgments Act* provides that a “person interested under a deed . . . or whose rights, status, or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Tex. Civ. Prac. & Rem. Code §37.004(a). This action “provides an efficient vehicle for parties to seek a declaration of rights under certain instruments.” *Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004). Even prior to the adoption of Chapter 37 of the Texas Civil Practices and Remedies Code, the Texas Supreme Court ruled in *Mission v. Popplewell*, 294 S.W.2d 712 (Tex. 1956), a trespass to try title suit for the wrongful placement of a fence on a City alley is not the exclusive remedy.

Conversely, where a claim for declaratory relief is “merely incidental to title issues,” the Declaratory Judgment Act will not support an award of attorney’s fees. *See Sani v. Powell*, 153 S.W.3d 736, 745–46 (Tex. App.—Dallas 2005, pet. denied) (quoting *John G. & Marie Stella Kenedy Mem’l Found. v. Dewhurst*, 90 S.W.3d 268, 269 (Tex. 2002)).

The Uniform Declaratory Judgment Act (“UDJA”) “entrusts attorney fee awards to the trial court’s sound discretion, subject to the requirements that any fees awarded be reasonable and necessary, which are matters of fact, and to the additional requirements that fees be equitable and just, which are matters of law.” *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998); *Indian Beach Prop. Owners’ Ass’n v. Linden*, 222 S.W.3d 682, 706 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009 (“In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.”).

Does the City have full control over city streets and also have responsibility for maintenance of the street?

Yes, home rule cities have exclusive control over and under public highways, streets, and alleys of the municipality. Chapter 311 Transportation Code, §311.001(a). General law cities also have exclusive control with the ability to act as the statute sets forth in §311.002(b) and (c). “[B]oth general-law municipalities [§311.008] and home rule cities [§311.007] have the express authority to “vacate, abandon, or close” streets and alleys. The significant difference of this power is the latter requires a petition signed by property owners abutting the street or alley before it may be closed. There is no such requirement for home rule cities, although this may be a requirement of a home rule charter.” §20.07. Closing and Changing, 23 Tex. Prac., Municipal Law and Practice §20.07 (2d ed.).

Texas Courts have decided in several court opinions; home-rule cities have the power to control their streets. The legislature has generally delegated to **home rule cities exclusive control over** and under the public highways, **streets**, and alleys of the municipality. *Tex. Transp. Code Ann. § 311.001(a)*. *City of Euless v. Dall./Fort Worth Int'l Airport Bd.*, 936 S.W.2d 699 (Tex. App.—Dallas 1996); *Sipes v. City of Longview*, 925 S.W.2d 764 (Tex. App.—Texarkana 1996); *San Antonio v. United Gas Pipe Line Co.*, 354 S.W.2d 217 (Tex. Civ. App. 1962).

In seeking to close a driveway that provided access to a business park from a residential street, a city did not have to show that there had been a violation of an ordinance before it could exercise its authority under Tex. Transp. Code Ann. §311.001, Tex. Transp. Code Ann. §311.007, Tex., City Charter art. I, §3, para. 7, to regulate traffic on city streets. *City of San Antonio v. TPLP Office Park Props.*, 218 S.W.3d 60, 2007 Tex. LEXIS 133 (Tex. 2007), reh'g denied, No. 04-1130, 2007 Tex. LEXIS 375 (Tex. Apr. 27, 2007).

In addition, the Texas Transportation Code defines “highway” as including a tolled bridge, therefore a home-rule city’s “exclusive control” under Tex. Transp. Code Ann. §311.001(a) is interpreted as extending to toll bridges within its borders. *City of Laredo v. Webb County*, 220 S.W.3d 571, 2007 Tex. App. LEXIS 2690 (Tex. App. Austin Apr. 4, 2007, no pet.). The Austin Court of Appeals decided the trial court erred in declaring that Transportation Code

§364.001(a) authorized the county to construct an international toll bridge within the home-rule city's municipal limits as the county was only authorized to construct such a bridge inside the city's municipal limits if the city consented or approved. *City of Laredo v. Webb County*, No. 03-05-00168-CV, 2005 Tex. App. LEXIS 10032 (Tex. App. Austin Dec. 1, 2005).

In a case that got the immediate attention of municipal attorneys and TML legal in 2018; the Texas Supreme Court decided cities have “exclusive control over the public rights-of-way and have authority to manage the terms of use of these rights-of-way.” This case affirmed a city's authority to require electric utilities to pay for certain facility locations, where the city was widening their alleys and asked the power company to move their poles at the companies' expense. *City of Richardson v. Onco Elec. Delivery Co. LLC*, 539 S.W. 3d 252 (Tex. 2018). If you have not used the muscle this case provides yet, I highly encourage you to do so.

Tax & Assessments: This is entirely another subject but important to know when discussing municipal control of streets. Sales tax for street maintenance is an optional, dedicated city sales tax, the revenues of which may be spent to repair and maintain existing city streets and sidewalks. Texas Tax Code §327.004. This tax is adopted by an election of the citizens, and the election is called by an ordinance adopted by the city council. The election may not be triggered by petition. Tax Code §327.006. But, sales tax for street maintenance may be used only to maintain and repair city streets and sidewalks existing on the date of the election to adopt the tax. Street assessments for home-rule cities are set forth in Chapter 321 of the Tax Code, Chapter 311 for General Law cities; but check the TML Revenue Manual.

Can a city build a road for a private use?

Not likely unless there is “public purpose”. Texas Constitution, Article XI, Section 3 forbids a city “to make any appropriation or donation to [any private corporation or association], or in anywise loan its credit.” The Texas Attorney General has stated that “the principal end of the section is to prevent the use of public funds or credit for a private purpose. ”When a city undertakes a project such as building a road, the critical question is whether the project is for the benefit of the public or for the benefit of a private entity. “The clear purpose of this constitutional provision is to prevent the gratuitous application of funds to private use.” *Byrd v. City of Dallas*, 118 Tex. 28, 6 S.W.2d 738, 740 (1928); *Harris County v. Dowlearn*, 489 *91 S.W.2d 140, 144 (Tex.Civ.App.Houston [14th] 1972, writ ref'd n.r.e.). “The Constitution does not,

however, invalidate an expenditure which incidentally benefits a private interest if it is made for the direct accomplishment of a legitimate public purpose.” *Byrd v. City of Dallas, supra; Barrington v. Cokinos*, 161 Tex. 136, 338 S.W.2d 133, 140 (1960) writ). The determination that a public purpose is being served by an expenditure of funds rests within the governmental entity’s discretion, however such a decision is subject to judicial review. Attorney General Opinion JM-1229 at 6-7.⁷ The attorney General previously held that city may not pave private streets merely because the public streets were paved. In other words, keeping private streets in a similar condition to public streets is not a legitimate public interest. Attorney General Opinion DM-13 (1991).⁸

Speed Limits & Stop Signs

A municipality can alter speed limits by ordinance from the results of an engineering and traffic investigation, the city may not raise the speed limit above 75 mph. Texas Transp. Code § 545.356.

Speed limits on Texas highways are set by the 85th percentile method, which represents the speed the majority of drivers will be traveling at or below. The Texas Department of Transportation says this is a sound engineering principle (*I have my doubts*) used to set speed limits on highways nationwide for the past 60 years.⁹

A traffic impact analysis normally makes no findings about the safety of posted speed limits and what speed is safe even if the analysis determines what the 85th percentile speed is. Further, Texas Department of Transportation (TXDOT) emphasizes to contact them regarding any performed speed study. The determination of whether the speed limit is a safe speed limit depends on the following: Curves, width, type of surface, crash history, cross streets, school crossing and sites that generate traffic. According to TXDOT once an actual TXDOT speed study is finished the posted speed limit may be lowered up to 10 mph if:

- Road is less than 20 feet wide
- Curves and hills
- Hidden driveways and other developments

⁷ Might be worth making a call to the County because Transportation Code Chapter 253, §253.003 authorizes a procedure for improving private subdivision roads “to comply with county standards for roads” where the “condition of the roads impacts the public’s health, safety or welfare”.

⁸ Thank you Brandon Morris of Randle Law Office for writing this.

⁹ According to TXDOT “The observed free-flowing speed for vehicles is tallied and the 85th percentile speed is calculated”. Everything you need to know is here: <https://www.txdot.gov/driver/laws/speed-limits.html>

High number of driveways
Crash history
Rural residential or developed area
Lack of striped improved shoulders.

Stop or Yield Signs in a through highway. Texas Transportation Code §544.003. Authority to Designate Through Highway and Stop and Yield Intersections, Section (b) provides in part that a local authority may: (1) designate a highway under its jurisdiction as a through highway and place a stop or yield sign at a specified entrance; or (2) designate an intersection on a highway under its jurisdiction as a stop intersection or a yield intersection and place a sign at one or more entrances to the intersection.¹⁰ This provision may also be familiar to the city prosecutors because it is often raised in traffic matters as it references the preferential right-of-way at an intersection is indicated by a stop sign or yield sign.

Does that control include above and below the street?

Yes, above, and below. A grant of a road to a municipality includes laying sewers and gas and water pipelines. Tunneling under streets for electric lines is a use for a street. An easement for city streets includes the right for the 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.). An easement for a state highway includes the right for a municipality to lay a gas pipeline within it. *Grimes v. Corpus Christi Transmission Co.*, 829 S.W.2d 335, 337 (Tex. App.—Corpus Christi 1992, writ denied).¹¹

Regarding space above the street, as of 2017, Texas Local Government Code Chapter 284, mandates that wireless infrastructure providers and wireless service providers have access to public right of way to locate their facilities. Texas Local Government Code §283,001(b)(1) states “it is also the policy of this state that municipalities: retain the authority to manage a public right-of-way within the municipality to ensure the health, safety, and welfare of the public”.

Texas Local Government Code Section 283 sets forth a mechanism to increase competition in the telecommunications industry by establishing a uniform method for certified

¹⁰ Conformity with Texas Manual on Uniform Traffic Control Devices is required.
<https://www.txdot.gov/government/enforcement/signage/tmutcd.html>

¹¹ Texas Tax Code §182.025 (a) and (b) cities charge for the use of rights-of-way by gas and water utilities.

telecommunications providers (CTPs) to compensate municipalities for the use of public rights-of-way.

What can a City do to protect the integrity of the street itself?

“Carry-Out” or “mudding” ordinances to protect municipal streets and other vehicles from blowing and spilling of construction debris, mud, and dirt. This is permitted by Chapter 311 for home rule cities; General Law cities can abate. Tarping laws are found in Texas Transportation Code §725.002 and §725.003 which provides a penalty for motor vehicles, trailers or semi-trailers operating on a public highway that fail to tarp when transporting loose materials; e.g. dump trucks, and these provisions apply to private and commercial vehicles. Commercial vehicles must have their load completely covered and enclosed and secured. §725.021(e). I have yet to see a dump truck that complies with the following: A vehicle bed carrying a load (1) may not have a hole, crack, or other opening through which loose material can escape; and (2) shall be enclosed: (A) on both sides by side panels; (B) on the front by a panel or the vehicle cab; and (C) on the rear by a tailgate or panel. §725.021(b).

In addition, tarping there is the “weight” factor. Federal law limits weight on trucks to 80,000 pounds and Texas Department of Motor Vehicles has established motor carrier laws that establish size and weight limits for vehicles and loads moving with or without an oversize or overweight permit on roads and bridges.¹² Many cities have ordinances regarding heavy loads, dump trucks, concrete trucks, trucks towing drilling equipment and pipe in order to maintain their streets but to keep their residents safe. Most counties also have additional rules for stormwater prevention for construction trucks and construction sites.¹³

Other Municipal Street Issues

Golf Carts: The Texas Transportation Code limits golf carts on streets in §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

¹² <https://www.txdmv.gov/motor-carriers/oversize-overweight-permits/texas-size-weight-limits>

¹³ Example <http://www.txms4.com/brazoria/Construction.html>

the interest of safety.” But there is this provision §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. Master planned communities (that likely have golf courses) are permitted limited use.

Criminal Liability: Texas Penal Code §442.03(a)(1); A person may be guilty of a Class B misdemeanor if he “intentionally, knowingly, or recklessly ... obstructs a highway, street, sidewalk ... or any other place used for the passage of persons, vehicles, or conveyances.”

A person commits disorderly conduct if she discharges a firearm on or across a public road but not so in the public road. Texas Penal Code §§ 42.07 and 42.09.

Interlocal Agreements: Texas Government Code §791.003(3). Cities may enter interlocal contracts in the following areas: police protection and detention services; fire protection; **streets**, roads, and drainage; public health and welfare; parks and recreation; library and museum services; records center services; waste disposal; planning; engineering; administrative functions; public funds investment; comprehensive health care and hospital services; or other governmental functions in which the contracting parties are mutually interested

Panhandlers & Collections in Street Medians: Texas Local Government Code §217. Municipal Regulation of Nuisances and Disorderly Conduct, all cities want to regulate by ordinance, however, the 1st Amendment concerns need to be addressed. *Houston Chronicle Pub. Co. v. City of Houston*, 620 S.W.2d 833 (Tex. Civ. App.—Houston [14th Dist.] 1981, no writ) (ordinance banning newspaper sales to people in motor vehicles on street is unconstitutional), but there is *Dominguez v. State*, 902 S.W.2d 5 (Tex. App.—El Paso 1995, no pet.) (ordinance prohibiting soliciting, selling, or distributing any materials to occupants of motor vehicles on roadway is constitutional).

Animals on streets: Home-rule municipalities may control animals pursuant to charter provisions. The regulation of animals on streets in general-law municipalities is governed under Tex. Transp. Code Ann. §311.901, which provides that the municipality may prohibit or suppress horse racing, or other immoderate riding or driving of an animal, on a street. It also allows municipalities to require a person to “fasten in place the person’s horse or other animal remaining in a street.” Dead animal removal on freeways and feeder roads are handled by the

Texas Department of Transportation, and Chapter 822 Texas Health & Safety Code addresses dangerous dogs, dogs running at large and the criminal penalties. §822.011-013 and §822.041-047. Texas Parks & Wildlife Code §62.0031 provides “a person may not hunt a wild animal or bird when on a public road or right-of-way”, and §62.015 provides no person on a public road or on the right of way may hunt an exotic animal.

Walking your Dog to Dinner: Just checking to see if you are paying attention: if you are walking down the **street** and a restaurant with an outdoor patio permits dogs the city cannot adopt, or enforce an ordinance, rule or similar measure imposing a rule more stringent. Your city authority is *preempted* by state law on the dog accompanying you to eat dinner. Texas Health & Safety Code Sec. §437.025.

Bicycles: Bikes are entitled to all rights and obligated to all duties of the road that apply to a motor vehicle. Texas Transportation Code §551.101. See also Tex. Transp. Code Title 7, Subtitle C. Rules of the Road, Chapters 541-600. The Transportation Code definition of a bicycle includes an electric bicycle, and keep in mind Covid-19 has had a serious impact on bicycle sales and usage. No, a pedestrian cannot walk in the bicycle lane, however, this is subject to local bicycle ordinance. A pedestrian may not walk along or on a roadway if an adjacent sidewalk is provided and accessible. If no sidewalk a pedestrian should walk along the highway on the left side or the shoulder facing traffic. Texas Transportation Code §552.006.

Maintenance (Surety) Bond: Newly constructed Streets, repaved streets, or streets subject to a development agreement should be protected by a Maintenance Bond. A Maintenance Surety Bond is a warranty or guarantee, and it protects the owner of a payment and performance contract or construction project that either is complete or about to be completed. The bond provides a warranty for defective labor or workmanship, faulty materials, and design if the project was done improperly or incorrectly, and ensures the contractor will perform required repair, replacement or correction of the defect or financially compensate the city.

