

Fundamentals of City Regulation

Riley Fletcher Basic Municipal Law Seminar

Austin, Texas

February 10, 2022

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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



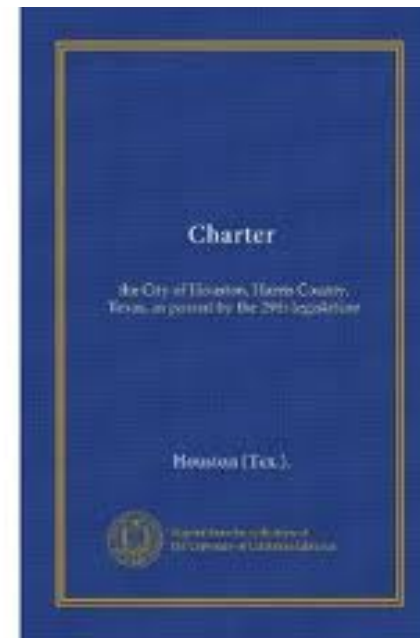
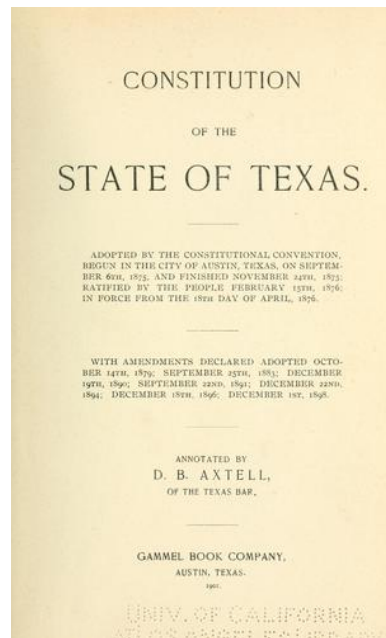
What is an implied power?

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

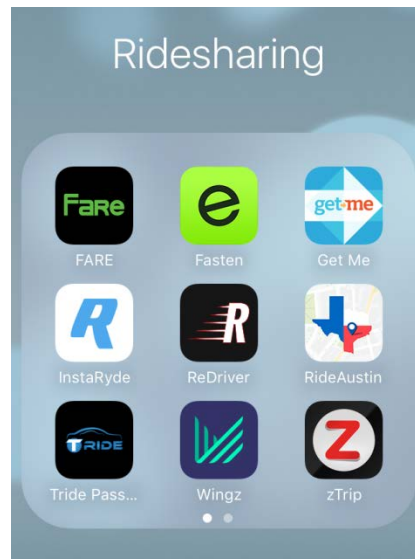


Texas Natural Resources
Code § 81.0523



Transportation Network Companies

Texas Occupations Code Chapter 2402



Building Materials

Texas Government Code Code Chapter 3000



Examples from 2021 Legislative Session

HB 957: Preemption of regulation of firearm suppressors (silencers)

HB 2622: Preemption of firearm regulation

HB 525/HB 1239/SJR 27: Governments can't interfere with religious activities, including during disaster



2021 Legislative Session

Cutting Room Floor...

- Chickens, rabbits, and bees
- Working conditions ordinance preemption
- Broad “super preemption” bill

Resources



www.tml.org



-  Legislative Update
-  Our Home, Our Decisions
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SPOTLIGHTS
Keep Up With What's Now

TEXAS MUNICIPAL LEAGUE
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?

[READ ON...](#)

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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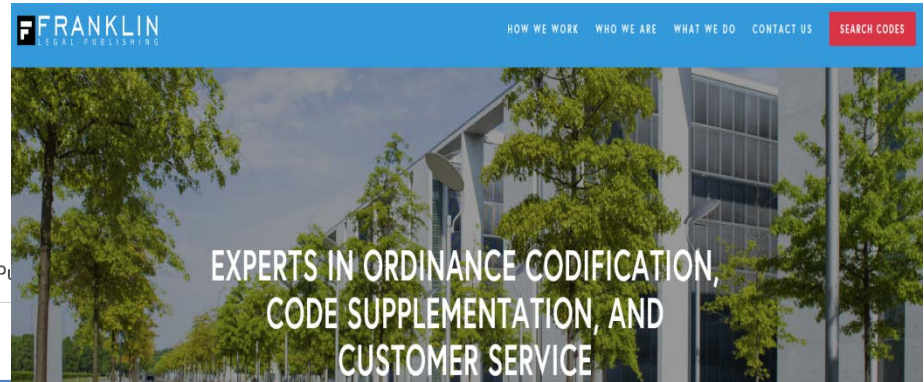
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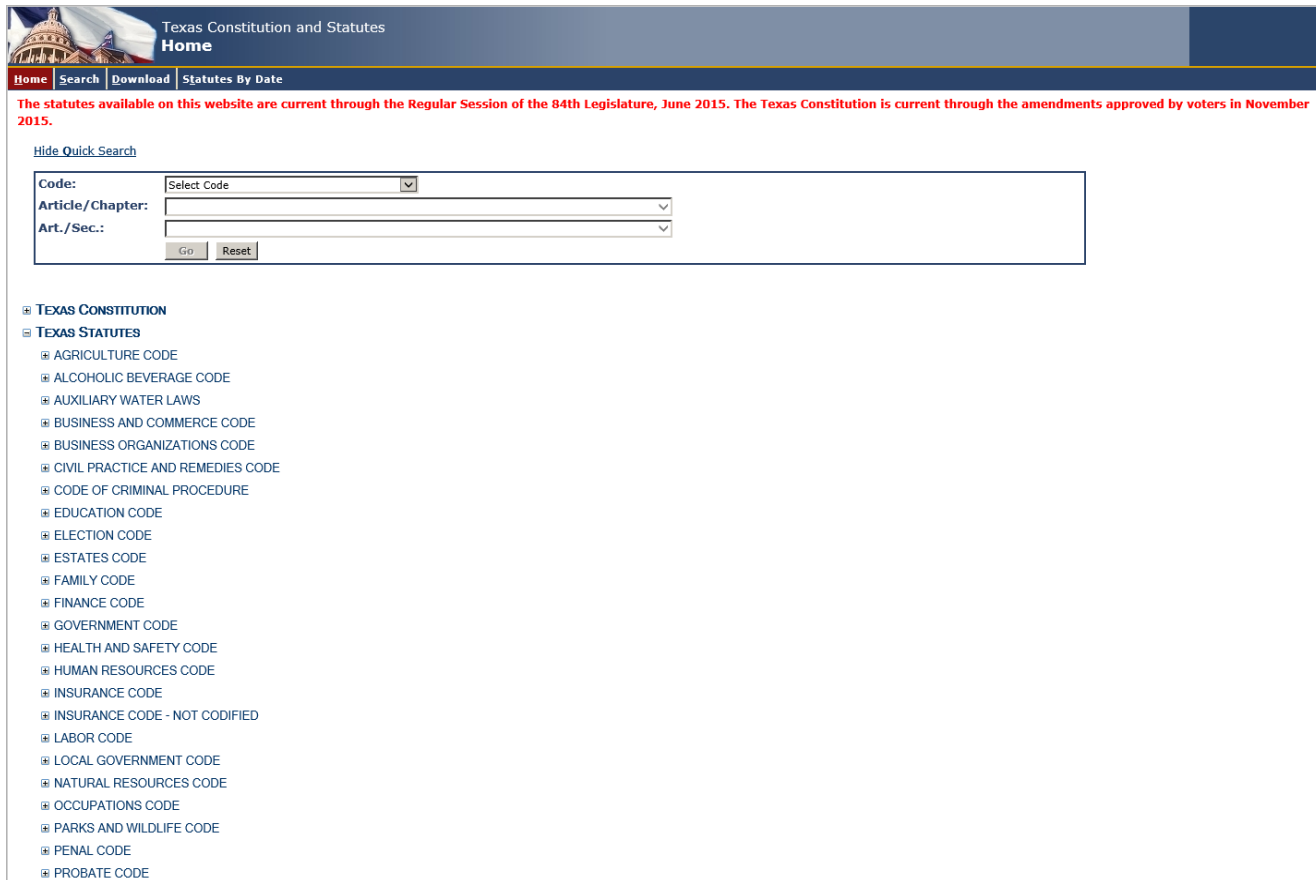
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State Statutes

www.capitol.state.tx.us



The screenshot shows the website's header with a navigation menu (Home, Search, Download, Statutes By Date) and a search form. The search form includes a 'Code' dropdown menu, 'Article/Chapter' and 'Art./Sec.' text input fields, and 'Go' and 'Reset' buttons. Below the search form is a list of Texas statutes, each preceded by a small square icon.

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Texas Constitution and Statutes
Home

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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Questions?

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