

RECENT STATE
CASES OF
INTEREST



- Laura Mueller, City Attorney, City of Dripping Springs

- June 15, 2022

DRIPPING SPRINGS
Texas

ELECTIONS

- ***In re Anthony***, No. 22-0193, 2022 WL 817826 (Tex. Mar. 18, 2022) (per curiam).
 - *Candidate form: no occupation then section of form can be left blank.*
 - *City Secretary had no discretion to reject.*
- ***Hotze v. Turner***, No. 14-19-00959-CV, 2021 WL 4738876 (Tex.App. – Houston [14th Dist.] Oct. 12, 2021).
 - *Ballot preparation issue should be in election contest.*
 - *Primacy clause*



EMERGENCY MANAGEMENT – WHO WON?

- ***Abbott v. City of San Antonio et al.***, No. 04-21-00342-CV, 2021 WL 5217636 (Tex.App. – San Antonio Nov. 10, 2021) (mem. op.).- City/County Won
- ***Abbott v. Jenkins***, No. 05-21-00733-CV, 2021 WL 5445813 (Tex.App. – Dallas Nov. 22, 2021) (mem. op.).—County Won.
- ***Brown v. Daniels***, No. 05-20-00579-CV, 2021 WL 1997060 (Tex.App. – Dallas May 19, 2021) (mem. op.).—Sheriff Wins.

These [public health] powers are granted to local municipalities at all times and are especially relevant during times of disaster.—Abbott v. City of San Antonio





EMPLOYMENT LAW VERSUS OTHER STATUTES

- **City of Dallas v. Ahrens, et. al.**, No. 10-19-00137-CV, 2022 WL 554350 (Tex.App. – Waco Feb. 23, 2022) (mem. op.).
 - TCPA v. Whistleblower Retaliation
 - TCPA– Comments about problems with Ahrens employment covered by TCPA?
 - Whistleblower evidence prevails over TCPA
 - *But See CPRC §27.003*
- **O’Neill v. City of Fort Worth**, No. 02-21-00214-CV, 2022 WL 325386 (Tex.App. – Fort Worth Feb. 3, 2022) (mem. op.).
 - Overturned biased hearing examiner assigned to rehearing is not allowed.
 - Use Texas Arbitration Act to interpret arbitration provisions in Chapter 143 (Civil Service)
 - *“The statute’s purpose of seeking “efficient” departments and “capable personnel” is not served by having a hearing examiner who is biased against the City preside over the rehearing of a fire fighter’s indefinite suspension, thus permitting a potentially unfit fire fighter to return to the department without an independent determination of the substance of the complaint against him.”*



EMPLOYMENT

Goodlett v. NE. Indep. Sch. Dist., No. 04-20-00203-CV, 2021 WL 2117927 (Tex.App. – San Antonio May 26, 2021) (mem. op.).

- *Run, don't walk to termination.*
- *Disability does not prevent termination for threats or physical violence.*
- *Failure to accommodate claim fails where no accommodation is requested.*

“As the Supreme Court explained in Flores, “Texas law prohibits employers from taking adverse employment actions against employees because they are older [or disabled], but it doesn't [sic] prohibit them from taking such actions against employees who are older [or disabled].” Flores, 612 S.W.3d at 302.



GOVERNMENTAL IMMUNITY-CONTRACTS: WHAT'S A SERVICE?



Hunnicut v. City of Webster, No. 14-20-00222-CV, 2022 WL 481795 (Tex.App. – Houston [14th Dist.] Feb. 17, 2022).

“However, the fact that the City could have used a different piece of property on which to build the roads or designed the roads differently does not convert the City's governmental function of designing and building roads into a proprietary function.” - Hunnicut

City of Crawford v. DCDH Dev., LLC, No. 13-20-00281-CV, 2022 WL 868056 (Tex.App. – Corpus Christi Mar. 24, 2022) (mem. op.).

- Contracts and Tortious Interference
- Governmental--DA-Water Service, but not goods or services
- Tortious Interference is intentional not negligent.

Town Park Ctr., LLC v. City of Sealy et al., No. 01-19-00768-CV, 2021 WL 4994785 (Tex.App. – Houston [1st Dist.] Oct. 28, 2021).

- Economic Development Agreement – contract for goods and services
- Agreement was to develop parcel

GOVERNMENTAL IMMUNITY-TORT

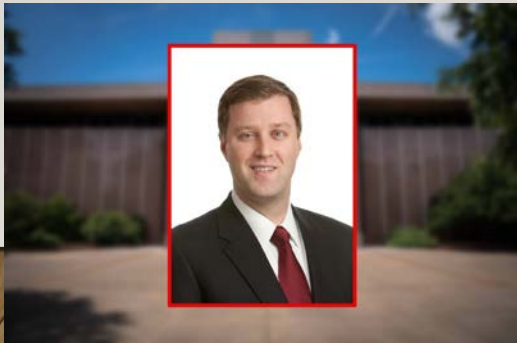
- ***Dohlen v. City of San Antonio***, No. 20-0725, 2022 WL 983764 (Tex. Apr. 1, 2022).
 - No proof of ongoing violation – Chapter 2400
- ***City of San Antonio v. Riojas***, No. 20-0293, 2022 WL 495473 (Tex. Feb. 18, 2022).
 - Standard prudent officer case-car crash.
- ***City of San Antonio v. Maspero***, No. 19-1144, 2022 WL 495190 (Tex. Feb. 18, 2022).
 - Another high-speed chase . . .

TAKINGS

City of Baytown v. Schrock, No. 20-0309, 2022 WL 1510310 (Tex. May 13, 2022).

- *Not reconnecting water service is not a taking even though he was unable to rent his property.*
- *Operation of utility service in an unauthorized manner did not equal a taking.*

“In this case, Schrock could have reversed the City's lien and disruption of utility service through the appeal process or payment.”





LAND USE

“ . . . we conclude that the ordinary meaning of zoning is the district-based regulation of the uses to which land can be put and of the height, bulk, and placement of buildings on land, with the regulations being uniform within each district and implementing a comprehensive plan. Zoning regulations also tend to be comprehensive geographically by dividing an entire city into districts, though this need not always be the case.”—Powell v. City of Houston

- **Powell v. City of Houston**, No. 19-0689, 2021 WL 2273976 (Tex. June 4, 2021).

Is Historical Preservation zoning?

Under Charter?

Under LGC 211?

LAND USE



City of Austin v. Acuna, No. 14-20-00356-CV, 2022 WL 805953 (Tex. App. – Houston [14th Dist.] Mar. 17, 2022).

- Mailed Notice is required for zoning changes.
- This includes zoning changes that affect the uses in the entire city.

When in doubt, mail it out.

Farahnak v. City of Southlake Bd. of Adjustment, et al., No. 02-21-00202-CV, 2022 WL 405899 (Tex.App. – Fort Worth Feb. 10, 2022) (mem. op.).

- Neighbor filed against the BOA when they granted a variance.

“An adjacent property owner's view is not mentioned in the ordinances relating to special exceptions or accessory buildings other than an implicit inclusion in the compatible-use requirement, which we have concluded was supported by the evidence,”

MISCELLANEOUS

- ***Builder Recovery Services, LLC v. Town of Westlake***, No. 21-0173, 2022 WL 1591976 (Tex. May 20, 2022).
- ***Paxton v. City of Austin***, No. 03-19-00501-CV, 2021 WL 3085845 (Tex.App. – Austin July 22, 2021) (mem. op.).
- ***City of Fort Worth v. Rylie***, No. 02-17-00185-CV, 2022 WL 803842 (Tex.App. Mar. 17, 2022).





**MORE CASES AND
QUESTIONS**