

# RECENT STATE CASES OF INTEREST TO CITIES 2009

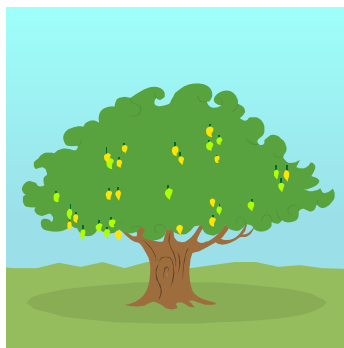


Presented by:  
Laura Mueller, Legal Counsel  
Texas Municipal League

## TML Legal Department



*Milestone Potranco Dev., LTD v.  
City of San Antonio*



*Milestone Potranco Dev., LTD v. City of San Antonio*, 2009 WL 1471881, No. 04-08-00479-CV (Tex. App.—San Antonio May 27, 2009)

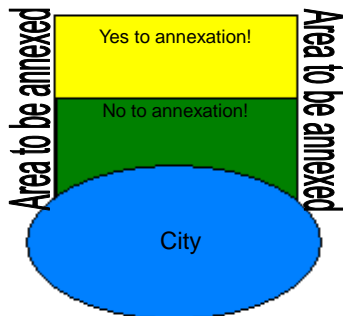
*Milestone Potranco Dev., LTD v.  
City of San Antonio*

- (a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 and other municipal ordinances relating to access to public roads or the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of prevents the use or contact with groundwater that presents an actual or potential threat to human health. However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:
- (1) the use of any building or property for business, industrial, residential, or other purposes;...

*Milestone Potranco Development, LTD v.  
City of San Antonio*

A tree preservation ordinance is a “rule[ ]  
governing plants and subdivisions of land”  
that can be extended into the city’s ETJ.

*Village of Salado v.  
Lone Star Storage Trailer, II Ltd*



*Village of Salado v. Lone State Storage Trailer, II Ltd., et al*, 2009 WL  
961570, No. 03-06-00572-CV (Tex. App.– Austin April 10, 2009) (mem. op.)

*Village of Salado v.  
Lone Star Storage Trailer, II Ltd*

**LGC 43.025: Authority of Type B General-Law Municipality to Annex Area on Request of Area Voters**

- (a) If a majority of the qualified voters of an area contiguous to a Type B general-law municipality vote in favor of becoming a part of the municipal, any three of those voters may prepare and affidavit to the fact of the vote and file the affidavit with the mayor of the municipality.
- (b) The mayor shall certify the filed affidavit to the governing body of the municipality. On receipt of the certified affidavit, the governing body by ordinance may annex the area.
- (c) On the effective date of the ordinance, the area becomes a part of the municipality and the inhabitants of the area are entitles to the rights and privileges of the other cities of the municipality and are bound by the acts and ordinances adopted by the municipality.
- (d) The municipality may not be enlarged under this section to exceed the area requirements established by Section 5.901.

*Village of Salado v.  
Lone Star Storage Trailer, II Ltd*

In a voluntary annexation under Local Government Code Section 43.025, all of the landowners do not have to agree to the annexation, only a majority. This is true even if the landowner who technically borders the city objects.

*City of Elgin v. John William Reagan*



*City of Elgin v. John William Reagan*, 2009 WL 483344, No. 03-06-00504-CV (Tex. App.—Austin Feb. 26, 2009) (mem. op.)

*City of Elgin v. John William Reagan*

“...that this case is similar to those holding that the provision of tangible property lacking an ‘integral safety component’ constitutes a waiver of immunity...Reagan asserts that the dog’s lack of an appropriate disposition to be a family dog is equivalent to a lack of an integral safety component such as a life preserver or knee brace.”

*City of Elgin v. John William Reagan*

Providing adoption services through an animal shelter is a governmental function, and therefore the city is protected by the Texas Tort Claims Act for injuries resulting from animal adoption.

*AVM-HOU, Ltd. v.  
Capital Metro. Transp. Auth.*



*AVM-HOU, Ltd. v. Capital Metro. Transp. Auth.*, 262 S.W.3d 274 (Tex. App.—Austin 2008)

*AVM-HOU, Ltd. v.  
Capital Metro. Transp. Auth.*

“When real property is acquired by eminent domain, in fee simple and in its entirety, there is not cause of action in Texas, as a matter of law, for inverse condemnation to recover for the loss of a business located upon the realty taken.”

*AVM-HOU, Ltd. v.  
Capital Metro. Transp. Auth.*

No cause of action exists for inverse condemnation when the entire piece of property is acquired through eminent domain.

*City of Dallas v. The Dallas Morning News*



*City of Dallas v. The Dallas Morning News, LP*, 2009 WL 783361 No. 05-07-01736-CV (Tex. App.—Dallas April 9, 2009)

*City of Dallas v. The Dallas Morning News*

TEX. GOV'T CODE § 552.001(a)

“Public information,” as defined by the Act, means “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; of (2) for a governmental body and the governmental body owns the information or has a right of access to it.



*City of Dallas v. The Dallas Morning News*

It is still an open fact question whether emails or other documents that are not collected, assembled, maintained or accessible to a city, but are transactions of city business, are public information under the Act.

*Southwestern Bell Tel. L.P. v.  
Harris County Toll Road Auth.*



*Southwestern Bell Tel. L.P. v. Harris County Toll Road Auth.*, 2009  
WL 886157 No. 06-0933 (Tex. Jan. 15, 2009)

*Southwestern Bell Tel. L.P. v.  
Harris County Toll Road Auth.*

“The main purposes of roads and streets are for travel and transportation, and while public utilities may use such roads and streets for the laying of their telegraph, telephone and water lines, and for other purposes, such uses are subservient to the main uses and purposes of such roads and streets.” *City of San Antonio v. Bexar Metro. Water Dist.*, 309 S.W.2d 491, 492 (Tex. Civ. App.—San Antonio 1958, writ ref’d).

*Southwestern Bell Tel. L.P. v.  
Harris County Toll Road Auth.*

Private utilities do not have a vested property interest in the public right of way and so can be forced to pay for relocation of their facilities.

*Lamar Co. v. City of Longview*



*Lamar Co. v. City of Longview*, 270 S.W.3d 609 (Tex. App.—  
Texarkana 2008)

*Lamar Co. v. City of Longview*

“To prevent the indefinite existence of nonconforming signs, it is reasonable to require a nonconforming sign’s termination if it is rebuilt or dismantled for purposes other than maintenance.”

*Lamar Co. v. City of Longview*

Whether an ordinance is proper or constitutes a taking under the Constitution is a question of law, but an ordinance is presumed to be valid. The party attacking the ordinance must prove it is not a valid police power regulation to move forward with a takings claim.

*City of Corpus Christi v. Joe O'Brien*



*City of Corpus Christi v. Joe O'Brien, et al.*, 2009 WL 265281, No. 13-08-00267-CV (Tex. App.—Corpus Christi-Edinburg Feb. 5, 2009) (mem. op.)

*City of Corpus Christi v. Joe O'Brien*

Sec. 39-309. Coverage under the City's group health plan for eligible employees and members of the City Council.

\* \* \*

(c) Members of the City Council are eligible for the City's group health plan coverage, and shall contribute at the same rate as full-time employees for the cost of such coverage.

*City of Corpus Christi v. Joe O'Brien*

- (a) Each member of the city council, with the exception of the mayor, shall receive as compensation the sum of six thousand dollars (\$6,000) during each year of service on the council, such sum to be paid in equal installments throughout the year.
- (b) The mayor shall receive as compensation the sum of nine thousand dollars (\$9,000) during each year of service on the council, such sum to be paid in equal installments throughout the year.

*City of Corpus Christi v. Joe O'Brien*

Chapter 172 of the Local Government Code authorizes a city to provide health insurance for its councilmembers, and the Corpus Christi Charter does not prohibit health insurance for its councilmembers.

*City of Granite Shoals v. Ted Winder*



*City of Granite Shoals v. Ted Winder*, 2009 WL 722290, No. 03-08-00323-CV (Tex. App.—Austin March 19, 2009)

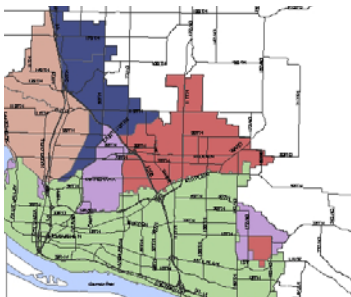
*City of Granite Shoals v. Ted Winder*

“When asked why she decided to use 3.00 as the persons-per-household multiplier, Crochet answered that she had simply asked other municipalities what multiplier they used and selected one ‘in the middle.’ Crochet did not recall how many municipalities she contacted, or which others she spoke to apart from the city of Marble Falls.”

*City of Granite Shoals v. Ted Winder*

Use demographics, census data, or some other verifiable method of determining the number of inhabitants in the city before becoming home rule. In this case, the city arguably did not use a verifiable method of determining 5,000 inhabitants and therefore their unilateral annexation could be deemed void in a declaratory judgment action.

*Town of Fairview v. City of McKinney*



*Town of Fairview v. City of McKinney*, 271 S.W.3d 461 (Tex. App.—Dallas 2008)

*Town of Fairview v. City of McKinney*

“Based on the supreme court’s holding in *West Lake Hills*, we conclude that if a portion of a municipality’s boundary is invalid, the remainder of the boundary may be upheld if the facts warrant it and if the court can do so without usurping the legislative authority of a home-rule city to draw its boundaries.”



*Town of Fairview v. City of McKinney*

Even if a portion of an annexed area was improperly annexed, the entire annexation may not be void.

*City of El Paso v. Lilli Heinrich*



*City of El Paso v. Lilli Heinrich*, 2009 WL 1165306, No. 06-0778 (Tex. May 1, 2009)

*City of El Paso v. Lilli Heinrich*

“A person... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the... statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” Tex. Civ. Prac. & Rem. Code § 37.004(a)

*City of El Paso v. Lilli Heinrich*

Governmental immunity generally bars suits for retrospective monetary relief, but it does not preclude prospective injunctive remedies in official-capacity suits against government actors who violate statutory or constitutional provisions.

## Resources

- <http://www.tml.org/legal.html>
- [www.courts.state.tx.us](http://www.courts.state.tx.us)
- TCAA Newsletter

