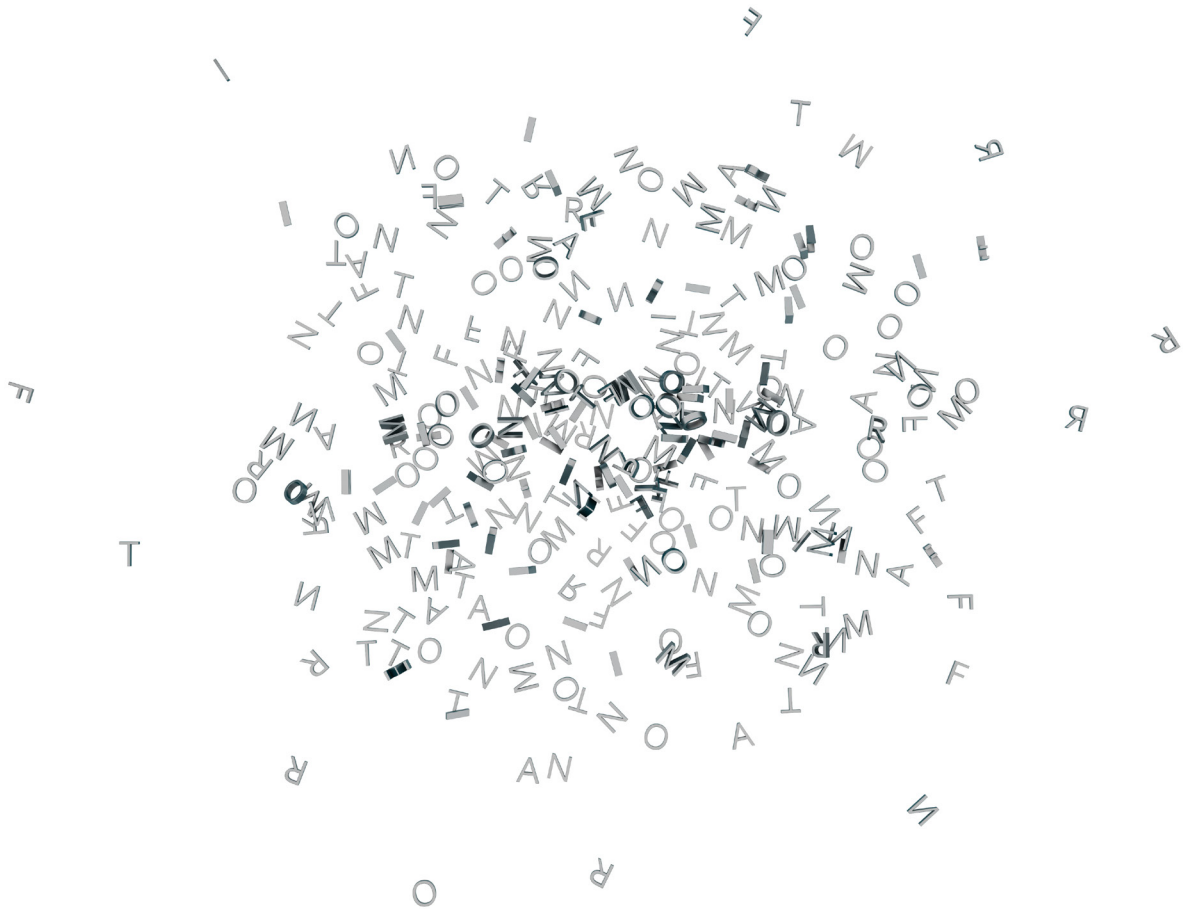


# Alphabet Soup: Types of Cities



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## **Introduction**

Cities are formed for the purpose of managing the needs of people who live and work in close quarters. Cities provide basic services, such as streets, law enforcement, and utilities, enact and enforce ordinances to protect its citizens and foster a better city environment. City government in Texas, as in most of the United States, was founded on, and continues to evolve from, the premise that local communities know best how to run their local affairs. The following is a brief introduction to the types of cities in Texas and the power granted to them by the state to enact ordinances. As this is a brief overview of the area, and not intended as legal advice, local counsel should always be consulted prior to adopting any ordinance.

### **A Brief History of Texas Cities<sup>1</sup>**

The evolution of the statutes that authorize the incorporation of a Texas city is somewhat convoluted. From 1836 (during the Republic of Texas period) through 1845 (when Texas was annexed into the United States), and continuing until 1858, the only way to incorporate a city was by a special act of the Congress of the Republic of Texas or the State Legislature.

After 1836, the Republic of Texas Congress began incorporating towns by special acts of legislation. Nacogdoches was the first town incorporated by virtue of a law approved June 5, 1837. In addition to incorporating Nacogdoches, the 1837 law incorporated San Augustine, Richmond, Columbus, San Antonio, and Houston, in addition to twelve others. The special act, which resembled a very basic city charter, contained only ten sections, and was less than two pages long. It expressly spelled out the duties and powers, including ordinance-making power, of the cities it governed. Under the special act, a city could only exercise those powers expressly granted in the text of the act, or those necessary or implied from the express powers. Over the next ten years, the Congress of the Republic of Texas incorporated more than fifty towns in this manner, each of which had only the powers granted to it in the special act that created it.

After Texas became a state in 1845, the State Legislature continued incorporating cities by special act until the passage of the Home Rule Amendment of 1912. Also, the Legislature frequently amended or repealed the acts that governed the cities it created.

In 1858, the first statute was passed allowing incorporation under the general laws of Texas. From 1858 to 1913, communities could incorporate either by special law or under the general laws. In 1874, the Legislature passed a short law allowing voters to amend the special acts passed by the legislature. In 1912, Texas voters passed the Home Rule Amendment, Article XI, Section 5, which prohibited the incorporation of a city by special act. The Home Rule Amendment gave cities with over 5,000 inhabitants the power to adopt their own charter after an election, thereby giving them the power of self-government. Presently, with very few exceptions, cities in Texas are classified as general law or home rule.

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<sup>1</sup> Most of the information presented in this introduction comes from D. Brooks, *Municipal Law and Practice*, 22 Texas Practice Ch. 1 & T. O'Quinn, *History, Status, and Function*, Introduction to Title 28 of the TEX. REV. CIV. STAT. (Vernon 1963).

The 1858 statute is the foundation for the Texas Local Government Code provisions relating to incorporation, powers, and duties of general law cities, and the present Local Government Code provisions are remarkably similar to the original language. The statute allowed for the inhabitants of an area to petition the “Chief Justice of the County” for incorporation as a town or village. If the petition met the prescribed requirements, the Justice ordered an election. If the results of the election were favorable, the Justice ordered a subsequent election for a mayor and aldermen. The 1858 statute was amended in 1873 to reduce the number of inhabitants necessary to incorporate a community. Today, towns or villages incorporated under the 1858 statute and the 1873 amendment are classified as Type B cities.

In 1875, the Legislature passed a second law that allowed for incorporation under the general laws. The 1875 statute allowed a city or town operating under a special law charter to adopt the general law form of government, setting the stage for what are now referred to as Type A general law cities. Another statute, passed in 1909, allowed a city to adopt the commission form of government consisting of a mayor and two commissioners, which is the precursor to a Type C city. In 1911, another statute was passed that allowed any city, town, or village to change to a “city” (what we now know as a Type A city) if it met certain requirements.

Finally, in 1925, the Legislature melded most of the laws relating to cities into Title 28 of the Texas Revised Civil Statutes. Title 28, entitled *Cities, Towns, and Villages*, evolved from the 1858 and 1875 statutes, as well as from various other statutes, including Title 17 (1879), Title 18 (1895), and Title 22 (1911). The Local Government Code, codified in 1987, did away with the distinction of city, town, or village and loosely replaced those terms with type A, B, or C cities. Many minor differences, such as the method of filling vacancies and quorum requirements, exist in the operation of the different types of general law cities.

Limits on the amount of ad valorem tax that may be levied, however, remains one of the most notable distinctions between the different types of cities. A Type B city is limited to twenty five cents per hundred dollar valuation, a Type A city is limited to \$1.50 per hundred, a Type C city is limited to twenty five cents or \$1.50 depending on population, and a home rule city is limited to \$2.50 per one hundred dollar valuation.<sup>2</sup> Another important distinction is the ordinance making authority of the different types of cities.

### **The Power to Enact and Enforce Ordinances**

The authority of a Texas city to enact and enforce ordinances is conditioned on the type of city. An ordinance is defined as “a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality.”<sup>3</sup> In other words, an ordinance is the equivalent of a

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<sup>2</sup> See TEX. TAX CODE § 302.001, TEX. LOC. GOV'T CODE § 51.051, TEX. CONST. Art. XI, §§ 4, 5. Tex. Atty. Gen. Op. KP-0028 (stating that a type C can levy a property tax).

<sup>3</sup> BLACK'S LAW DICTIONARY 1097 (6<sup>th</sup> ed. 1990).

municipal statute, passed by the city council, governing matters not already covered by federal or state law.

The Tenth Amendment to the United States Constitution reserves to the states “The powers not delegated to the United States by the Constitution.” The powers reserved to the states include “police powers,” which are those powers necessary to protect the public health, safety, and welfare of the citizens. Most states, including Texas, delegate part of their police power to their cities.

In the past, specific police powers were delegated to individual cities through special acts of the Legislature. The acts exclusively dictated the ordinance making powers of cities they created. In 1858, many cities began operating under the general laws. A general law city has no specific act that governs it, nor does it have an individual charter. Rather, the duties and powers of a general law city are governed by statutes, otherwise known as “general laws.” A community that meets the population and area requirements of the Local Government Code submits a petition to the county judge, who orders an election on the question of incorporation. Once the city is incorporated, it must look to the general laws of the state for any authority to act and any grant of power from the state. Chapter 51 of the Local Government Code, as well as many other more specific statutes, gives general law cities their basic ordinance-making power. Section 51.012 states that a Type A general law city “may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic,” section 51.032 states that the “governing body of [a Type B] municipality may adopt an ordinance or bylaw, not inconsistent with state law, that the governing body considers proper for the government of the municipal corporation,” and Section 51.051 makes one or the other of those provisions applicable to Type C cities, depending on population.

Once a general law city reaches the 5,001 inhabitants mark, it is authorized by Article XI, section 5 of the Texas Constitution to hold an election to adopt a home rule charter. Once a home rule charter is adopted, a city thereafter has the full power of local self-government, the power to govern itself so long as charter provisions or ordinances are not inconsistent with state or federal law. TEX. LOC. GOV'T CODE § 51.072. Home rule cities derive their power from the Constitution and look to the Legislature only as a limit on that authority and may do anything that is not specifically prohibited by state law.

Both general law and home rule cities are granted implied powers under the Local Government Code. Section 51.001 states that “the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, or order of the municipality...and is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.”

Some complex topics are not included in this paper, but please contact the Texas Municipal League legal department if you need assistance with these or other issues.

## **Determining City Type**

To determine which state statutes apply to a certain city, it is necessary to know what type of city it is. The city's "order of incorporation" will determine what type the city is and it should be on file at the county clerk's office and is the only place to locate the information since there is no statewide database.

Differences in the types of cities include the manner of filling vacancies and the length of the term of an alderman appointed to fill a vacancy. However, the only reliable method for determining the difference is to examine the city's articles or order of incorporation. For a city incorporated between 1925 and 1987, an order stating that the city incorporated pursuant to Title 28, Chapters 1 through 10, is a Type A city, whereas a city that incorporated pursuant to Title 28, Chapter 11, is a Type B city. A city that incorporated after September 1, 1987, pursuant to Chapter 6, Local Government Code, is a Type A city, whereas a city that incorporated pursuant to Chapter 7, Local Government Code, is a Type B city. Having determined that a city incorporated as Type B, however, it is still necessary to ascertain whether the city council subsequently adopted Type A status, which was allowed by law if the city's number of inhabitants ever exceeded 600 or it had a manufacturing establishment. For a city incorporated before 1925, the determination of type requires more extensive research. Those cities may call the TML Legal Department at 512-231-7400 for assistance.

## **The Different Forms of Government in Texas Cities – General Law Cities**

### **Type A General Law Cities**

Type A general law cities operate under the aldermanic form of government. The term "alderman" is often used interchangeably with the term city council, and the modern name of the board of aldermen is the city council. The size of the council is determined by whether the city is divided into wards (e.g., special districts). *See* TEX. LOC. GOV'T CODE § 22.031. In cities where there are no wards (which includes most Type A cities), the council is made up of the mayor and five councilmembers. If the city has been divided into wards, the council is made up of a mayor and two councilmembers from each ward. In either case, the mayor does not vote except in the case that his vote is needed to break a tie. *Id.* § 22.037. A quorum consists of a majority of councilmembers for general business (e.g., three councilmembers if city does not have wards), and two-thirds of the council for a special or called meeting or a meeting concerning taxation (e.g., four councilmembers if the city does not have wards). *Id.* § 22.039. The mayor does not count toward a quorum in either case. Type A city councilmembers have a two-year term of office unless a longer term of office is adopted under the Constitution. *Id.* § 22.035; TEX. CONST. Art. XI, section 11. At each new governing body's first meeting or as soon as possible, the council must elect one of its members to be the mayor pro tem for a term of one year. TEX. LOC. GOV'T CODE § 22.037. The mayor pro tem continues to vote, but fills in for the mayor if the mayor refuses or is unable to act.

## **Type B General Law Cities**

Type B general law cities operate under the aldermanic form of government in which the “board of aldermen” is the governing body of a Type B general law city. The board contains a mayor and five aldermen, all of whom are elected at-large. *Id.* § 23.021. A quorum consists of either the mayor and three aldermen or, if the mayor is absent, four aldermen. *Id.* § 23.028. The governing body must elect one alderman to serve as mayor pro tem for a term of one year at the first meeting of each new governing body. The mayor is the president of the governing body. *Id.* § 23.027. The alderman, mayor, and marshal serve one year terms until the governing body passes an ordinance allowing for staggered two year terms. *Id.* § 23.026.

Can the mayor of a Type B city vote? There are two schools of thought: (1) that, because the mayor in a Type B city counts towards a quorum, he or she votes; and (2) that, because there is no specific provision governing the issue, Local Government Code Section 51.035 “borrows” the applicable Type A city provision, and the mayor does not vote. Because there is no definitive answer, our advice is to follow prior practice and/or to defer to your city attorney.

The election for the aldermen is held annually on uniform election dates and is ordered by the mayor or two aldermen. *Id.* § 23.023. To be an alderman or mayor, the candidate must be a qualified voter and must have resided within the city for at least six months prior to the election date. *Id.* § 23.024. Generally, the terms of office for the aldermen are one year, unless two-year staggered terms are provided for by ordinance. *Id.* § 23.026.

## **Type C General Law Cities**

Type C general law cities operate under the commission form of government and the governing body is known as the “commission.” The commission always consists of a mayor and two commissioners. TEX. LOC. GOV’T CODE § 24.021. The commissioners and the mayor have a two-year term of office unless a longer term of office of up to four years is adopted by election under the Texas Constitution. *Id.* § 24.023. The election for mayor and commissioners is held on an authorized uniform election date. The city commission shall hold at least one regular monthly meeting, but may call special meetings as necessary to attend to city business.

## **The Place System**

Any general law city that is not divided into wards and elects its aldermen at large may provide by ordinance for the election of aldermen under a place system, if the ordinance is adopted at least 60 days before the regular election. TEX. LOC. GOV’T CODE § 21.001. Once the place system is adopted, the city should assign place numbers to each alderman’s office and candidates for each office should file an application for a specific place on the governing body, such as “Alderman, Place No. 1.” *Id.* § 21.001.



## **The City Manager Form of Government - Chapter 25**

Any general law city with less than 5,000 in population may adopt the city manager form of government under Chapter 25 of the Local Government Code. Upon presentation of a petition signed by at least 20 percent of the number of voters for mayor in the last preceding city election, the mayor must call an election on the question of adopting the city manager plan. *Id.* §§ 25.022; 25.023; 25.025. If a majority of the votes cast at the election favor adoption of the city manager plan, the council must, within 60 days after the election, appoint a city manager and fix his or her salary by ordinance. *Id.* § 25.026. Procedures for repealing the city manager plan are essentially the same as for adopting it. *Id.* § 25.071.

If a general law city adopts the city manager form of government under the procedural requirements of Chapter 25, the administration of the city is to be placed in the hands of the city manager, who serves at the pleasure of the city council. *Id.* § 25.028. In any city where the city manager plan has been approved by a Chapter 25 election, all officers of the city, except members of the governing body, thereafter are appointed as provided by ordinance. *Id.* § 25.051. The city manager administers the city business and the governing body of the city ensures that the administration is efficient. *Id.* § 25.029. The city manager is the budget officer for the city. *Id.* § 102.001. The governing body by ordinance may delegate to the city manager any additional powers or duties the governing body considers proper for the efficient administration of city affairs. Adopting the city manager plan does not change the basic governmental framework of a city operating under the commission or aldermanic form of government. Rather, it is an administrative mechanism added to the basic structure. However, any city can appoint a city manager, city administrator, or other managerial employee, regardless of whether the city has adopted Chapter 25 of the Local Government Code. *Id.* § 25.051.

### **General Law Cities: The “Borrowing Provisions”**

While some differences currently exist in the authority of the different types of general law cities, most of the differences in power are largely of historical, academic interest today. The reason is that Texas law now allows general cities to “borrow” the power of a different type of city in many cases. Specifically, 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. TEX. LOC. GOV’T CODE § 51.035.

Depending on its population, a Type C city has either the same powers as a Type B city or a Type A city. In a Type C general law city with a population of less than 500, the city commission has the same powers and duties as the board of aldermen in a Type B city, except where the law specifically provides otherwise. *Id.* § 51.051. Where the population is more than 500, the commissioners must follow the requirements of the governing body of a Type A city, except where specifically provided otherwise by statute. A Type C city that has \$500,000 or more of assessed valuation for tax purposes, may adopt the powers, privileges, immunities, and franchises of a Type A city regardless of any limitation prescribed by Section 51.051. *Id.* § 51.052.

## **The Different Forms of Government in Texas Cities – Home Rule Cities**

### **Form of Government**

A home rule city may adopt and operate under any form of government, including aldermanic or commission form. *Id.* § 26.021. The city may create officers, determine the method of selecting officers, and prescribe qualifications, duties, and tenure of office for officers. *Id.* § 26.041. Home rule cities can extend an officer's term from two to four years with a charter amendment. TEX. CONST. Art. XI, section 11.

A city charter may authorize nominations of partisan candidates for elected offices in the city. TEX. ELEC. CODE § 143.003. City charters in home rule cities supersede state statutory provisions for withdrawal, death, or ineligibility of city candidates. *Id.* § 145.097. A home rule city may prescribe its own age and residency requirements for city office, but the minimum age may not be more than 21 years and the minimum residency may not be more than 12 months preceding election day. *Id.* § 141.003. Home rule cities may charge filing fees for office, which must be refunded to a candidate or his family if the candidate dies, is declared ineligible, or his forms are incorrect. *Id.* § 141.038. Also, there must be an alternative procedure to paying the fee, and both the fee amount and alternative procedure must be in the city charter.

A home rule city may prescribe eligibility requirements or grounds of ineligibility for election officers by city charter. TEX. ELEC. CODE § 32.056. A city charter may prescribe requirements, additional to Section 141.031(4)(L), for a candidate's application for a place on the ballot. *Id.* § 143.005. The city charter can designate who may accept a candidate's application if it is not the city secretary. *Id.* § 143.006.

## **Changing City Type**

### **Changing to Type A**

A Type B or C city may change to a Type A city once it has reached 600 inhabitants or gains a manufacturing facility. TEX. LOC. GOV'T CODE § 6.011. To change to a Type A city, a city must follow Section 6.012 of the Local Government Code, which provides that: (1) there must be an affirmative vote of two-thirds of the city council; (2) a record taken and signed by the mayor; and (3) the record must be filed and recorded in the county clerk's office. A city can change its designation from "town" to "city" by ordinance once it becomes Type A. *Id.* § 5.902. Once a city changes to Type A it continues to retain its powers, rights, immunities, privileges and franchises, as well as any rights it had to impose fines, penalties or be involved in causes of action, it had before the change. *Id.* § 51.017. The boundaries of the city also remain the same after changing to Type A. *Id.* § 41.004.

## **Changing from General Law to Home Rule**

Once general law cities gain an inhabitants number of over 5,000, many change to the home rule form of government by adopting a charter through an election. *See* TEX. CONST. Art. XI, section 5. The city governing body, through a two-thirds vote, may order an election to create a charter commission to write a charter, or the governing body must create a charter commission if asked to do so by at least ten percent of the city's qualified voters. TEX. LOC. GOV'T CODE § 9.002. The city's residents can vote on whether to elect a charter commission of fifteen members to draft a charter or the mayor can select the members of the charter commission at a mass meeting. After the charter commission is selected and finishes the charter, the city's residents must vote on the proposed charter. *Id.* § 9.003. The election is on the next uniform election date. Thirty days before the election a copy of the proposed charter has to be mailed to each registered voter. A proposed charter is adopted if approved by a majority of the voters at the charter election and the city enters an order recognizing the adoption of the charter. *Id.* § 9.005. The new governing body under the charter may be elected at the same time as the election for the charter. *Id.* § 9.006. As soon as practicable after the charter is adopted the mayor of the city must certify and send an authenticated copy of the charter to the secretary of state. *Id.* § 9.007.

## **Case Studies – Differences Between Home Rule and General Law Powers**

### **Introduction – What's the Difference?**

By way of a very brief introduction, it is important to understand the fundamental difference between a general law city and a home rule city. Volumes have been written on the differences between the two. For purposes of brevity, and as a basic rule of thumb, the following statement will suffice:

*A home rule city may do anything authorized by its charter that is not specifically prohibited or preempted by the Texas Constitution or state or federal law; A general law city has no charter and may only exercise those powers that are specifically granted or implied by statute.*

The previous statement is *very* generalized, but it serves to illustrate the fundamental difference between the two types of cities for all purposes. Several examples follow.

### **Mandatory Fees on Utility Bills**

A general law city has no authority to add mandatory non-related fees to its utility or other bills. The authority of a home rule city is not clear, but many cities have nonetheless imposed such fees.

In Texas Attorney General Opinion No. JM-338 (1985), the Texas Attorney General was asked whether a *general law* city may assess a six dollar charge against all home owners and business owners in the city. The charge would appear on monthly utility bills, and the proceeds would be used to finance the city's police department. The facts made it clear that the six dollar charge was intended to raise revenue, not to cover the expenses of administering utility services. Concluding that the additional fee was unconstitutional, the Attorney General stated that:

any charge or fee imposed by a municipality for the purpose of raising revenue is considered a 'tax.' *Municipalities functioning under the general laws* have no inherent power to tax. They possess only those taxing powers that the legislature or the Constitution expressly grants them. We find no statutory authority...for the method of taxation that you describe in your letter. Thus, the \$6 charge against all home owners and business owners is not a proper method for raising revenue to support the police department.

Tex. Att'y Gen. Op. No. JM-338 at 1 (1985) (emphasis added). The above opinion is not controlling on home rule cities because home rule cities have full power of self-government, and may enact any ordinance that the legislature could have authorized. TEX. CONST. Art. XI, Sec. 5; TEX. LOC. GOV'T CODE § 51.072; *Forwood v. City of Taylor*, 214 S.W.2d 282, 286 (Tex. 1948). The issue for home rule cities is making sure each ordinance is not inconsistent, or in conflict, with State law.

A home rule city is given broad powers under the Texas Constitution and statutes. *Jones v. City of Houston*, 907 S.W.2d 871, 876 (Tex. App.—Houston [1st Dist.] 1995, writ denied). Under Article XI, § 5 of the Texas Constitution, a home rule city has the full power of local self-government:

It was the purpose of the Home-Rule Amendment [to the Texas Constitution] ... to bestow upon accepting cities and towns of more than 5000 population full power of self-government, that is, full authority to do anything the legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers.

*Lipscomb v. Randall*, 985 S.W.2d 601, 605 (Tex. App.—Fort Worth 1999, pet. dismiss'd)(citing *Forwood*, 214 S.W.2d at 286). In addition, Texas Local Government Code section 51.072 states that a home rule city has the "full power of local self-government." See also *City of Houston v. State ex. rel City of West University Place*, 176 S.W.2d 928, 929 (Tex. 1943). Pursuant to the full power of self-government, a home rule city may exercise any governmental power that the legislature has not withheld from it. *Proctor v. Andrews*, 972 S.W.2d 729, 733 (Tex. 1998).

Under the grant of authority from Article XI, section 5, “the power of the city to act is as general and broad as is the power of the Legislature to act.” *Le Gois v. State*, 190 S.W.2d 724, 725 (1916). In other words, “[state] legislation is not required for home rule cities to act.” D. Brooks, *Municipal Law and Practice*, 22 Texas Practice § 1.17. Under the theory of home rule, if the Constitution and the charter are both silent as to a particular action, a city may undertake a wide range of actions by ordinance. TERRELL BLODGETT, *TEXAS HOME RULE CHARTERS* 18 (2010). A home rule city may pass any ordinance so long as the ordinance does not “contain any provision inconsistent with...the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5; *MJR's Fare, Inc. v. City of Dallas*, 792 S.W.2d 569, 573 (Tex. App.—Dallas 1990, writ denied). Of course, an ordinance that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *Dallas Merchant's and Concessionaire's Association v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993). Otherwise, a city ordinance is presumed valid, and courts have no authority to interfere with the authority of a home rule city unless an ordinance is unreasonable and arbitrary, amounting to a clear abuse of discretion. *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982); *Barnett v. City of Plainview*, 848 S.W.2d 334, 338 (Tex. App.—Amarillo 1993, no writ). The test for determining whether the Legislature has intended to remove a field of regulation from a home rule city's authority is whether it has spoken with “unmistakable clarity” to that effect. See *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 490-91; *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Tex. 1927); *City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964). The Texas Constitution and statutes are silent as to utility bill fees. As such, many argue that the language of most charters allows an unrelated fee to be added to a utility bill. The authority to adopt a utility bill fee may be implied by some home rule charters, but the issue has never been definitively decided. See, e.g., *City of Arlington v. Scalf*, 117 S.W.3d 345 (Tex. App.—Fort Worth 2003, pet. denied).

## **Annexation**

Annexation has always been, and will probably always be, one of the most contentious issues in municipal law. The annexation laws are very complicated because there has been so much piecemeal, compromise legislation throughout the years. The bottom line is this: (1) for a general law city, the general rule is that annexation can only be accomplished at the request of area landowners or voters, depending on the population of the area; and (2) a home rule city may annex without consent, but only if the charter provides for it. In other words, a general law city must, in almost every case, have a request before it can annex (there are a handful of exceptions).

S.B. 89 was a 1999 bill that was enacted to restrict perceived abuses of the annexation process by certain cities. The end result of the S.B. 89 negotiations is a complex, disjointed, rewrite of Chapter 43 of the Texas Local Government Code. The bill added several new provisions that require, only in certain circumstances, a three-year waiting period and negotiations and arbitration regarding provision of services to the area proposed for annexation.

S.B. 89 centers on the concept of an “annexation plan.” The bill required every city in Texas to adopt a plan on or before December 1, 1999. The plan must identify annexations that will occur beginning three years after the date the plan is adopted. However, only areas that contain 100 or more residential dwellings are required to be in the annexation plan. As a result,

most of the new, onerous provisions only apply to large, residential areas. And those annexations are generally undertaken only by home rule cities.

Other cities may continue to annex in a very similar manner as before 1999, which basically requires: (1) the preparation of a “service plan” detailing the services to be provided to the area; and (2) notice of and two public hearings within certain time periods before the annexation ordinance is adopted.

Bills again passed during the 84<sup>th</sup> Legislative Session that affected the annexation authority of cities. H.B. 1277 limited the annexation authority of a general law city, and H.B. 1949 was a mixed bag. That bill requires a city that annexes up to a county road to bring in the road and adjacent right-of-way. But it also allows a general law city to annex by petition a noncontiguous area in its extraterritorial jurisdiction and to annex a road leading to the area to make it contiguous.

For a much more detailed explanation of annexation in Texas, including sample forms and calendars, please go to the Texas Municipal League’s website at [www.tml.org](http://www.tml.org).

### **Initiative and Referendum**

Citizen referendum and initiative are powers that only home rule cities possess, and then only if the city’s charter provides for it. Thus, a city council of a home rule city would have the authority to call a referendum on an issue, including an ordinance, if the city’s charter allowed for such an election. See *Quick v. City of Austin*, 7 S.W. 3d 109, 123 (Tex. 1998); *Glass v. Smith*, 244 S.W. 2d 645, 648-49 (Tex. 1951); Tex. Att’y Gen. Op. No. GA-0222 (2004).

For general law cities, the answer is different because the calling of an election is something that must be authorized by a particular state statute. See *Countz v. Mitchell*, 38 S.W.2d 770, 774 (Tex. 1931) (stating that “[t]he right to hold an election cannot exist or be lawfully exercised without express grant of power by the Constitution or Legislature”); *Ellis v. Hanks*, 478 S.W.2d 172, 176 (Tex. Civ. App.—Dallas 1972, writ ref’d n.r.e.) (stating that the right to hold an election “must be derived from the law”); Tex. Att’y Gen. Op. No. GA-0001 (2002) at 3 (stating that “generally the right to hold an election depends upon statutory authorization”).

Because there is no state statute or Election Code provision that authorizes general law city councils to submit general ordinances to the electorate through a referendum election, a general law city may not do so.

A general law city is free to conduct a poll or hold a public hearing to gauge the preferences of the voters. The results of such a poll or hearing are not binding on the council, nor could the council make it binding on itself.

Cities sometimes ask whether a non-binding election referenda may be placed on an official election ballot. The Secretary of State believes the answer is no, and cites attorney

general opinions LO-94-091 and H-425 (1974) for that conclusion. In fact, placing an unauthorized proposition on a ballot may be considered a misappropriation of public funds.

In 2015, the Texas Legislature considered legislation that would have taken away a city's authority to have these types of elections on certain topics. These bills, H.B. 540, H.B. 2762, and H.B. 2595, did not pass.

### **Removal of Councilmembers**

A home rule city's charter may provide for a "recall" provision under which citizens can petition the city council to order an election to recall members of the council. Each home rule city's recall procedure is unique, and is governed by its charter.

As with initiative and referendum, Texas law does not provide for recall in most general law cities. In other words, a citizen's petition is not binding on the city council, regardless of how many signatures it contains. If a general law city resident wants to remove an officer, he must do so through Chapter 21 of the Local Government Code by filing a petition in district court. TEX. LOC. GOV'T CODE § 21.023. An officer of a city may be removed through a petition process in the district court for: (1) incompetency; (2) official misconduct; or (3) intoxication on or off duty caused by drinking an alcoholic beverage. *Id.* §§ 21.025; 21.026. Any resident who has lived in the city for at least six months may file a petition in district court to have the officer removed. *Id.* § 21.026. The officer who is the subject of the petition must be given notice of the petition and has a right to a jury trial.

A bill passed in 2013, H.B. 3015 (Moody) allows recall of general law city councilmembers, but only in certain border cities. These include any city that has 5,000 or less in population, that is on the Mexican border, where the county it is located in has more than 800,000 in population. TEX. LOC. GOV'T CODE § 21.101.

### **Term Limits**

No state law provision exists that authorizes a general law city to impose term limits, but a home rule charter may provide for them.

### **Sex Offender Residency Restrictions**

One attorney general opinion states that, while state law does not prevent home rule regulations, general law cities do not have the authority to adopt distance restrictions for registered sex offenders. Tex. Att'y Gen. Op. GA-0526. Two bills were filed in 2015, in the 84<sup>th</sup> Legislative Session, that would have specifically given general law cities the authority to enact sex offender residency restrictions, H.B. 384 and H.B. 1872. These bills did not pass and so this is still an uncertain area of regulation for general law cities.

### **Breed Specific Ban**

Pit Bulls are also a common topic of preemption. In the 1980s, the City of Richardson enacted an ordinance regulating certain breeds. A dog owner group sued the city, and the case went all the way to the Texas Supreme Court. The court ultimately upheld the city's ordinance in the case of *City of Richardson v. Responsible Dog Owners of Tex.*, 794 S.W.2d 17, 19 (Tex.1990). The very next year, the dog owners sought legislation to overturn the court's ruling, and that is what happened. The Texas Legislature passed a comprehensive dangerous dog statute that included Texas Health and Safety Code Section 822.047, which provides that:

§ 822.047. LOCAL REGULATION OF DANGEROUS DOGS. A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions:

- (1) are not specific to one breed or several breeds of dogs; and
- (2) are more stringent than restrictions provided by this subchapter.

This is specific statutory preemption that makes it clear that neither home rule, nor general law cities, can pass these types of ordinances.

### **Oil and Gas Regulation**

Many cities have oil and gas regulations, usually in the form of buffer zone ordinances. A buffer zone is where a city has prohibited oil or gas wells within so many feet of certain uses, such as residential or schools. In 2015, there were 322 cities that regulated oil and gas drilling within the city. In one such city, the City of Denton, the city regulated aspects of oil and gas drilling and fracking, which is a particular type of oil and gas drilling that some consider hazardous to surface property owners. In Denton, the citizens called for an initiative election to completely prohibit fracking in the city. The election was a success for the citizens who voted to ban fracking. This ban drew the attention of the oil and gas industry and numerous bills were filed in the 84<sup>th</sup> Legislative Session in 2015. Many of these bills would have completely preempted all city authority to regulate oil and gas uses, even so far as preempting the basic safety and zoning regulations all other businesses have to comply with. In the end, House Bill 40 passed with input from the Texas Municipal League. This law makes various findings related to the benefits of oil and gas operations in the state and provides that:

1. An “oil and gas operation” means an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.
2. An oil and gas operation is subject to the exclusive jurisdiction of this state.
3. Except as provided by (4), below, a city may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the city.
4. The authority of a city to regulate an oil and gas operation is expressly preempted, except



that a city may enact, amend, or enforce an ordinance or other measure that: (a) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements; (b) is commercially reasonable; (c) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and (d) is not otherwise preempted by state or federal law.

5. “Commercially reasonable” for purposes of (4)(b), above, means a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act.
6. An ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

Thus, city ordinances related to oil and gas regulation need to be reviewed for preemption, but the authority to have setbacks, buffer zones, and other safety regulations appears to have been retained. If you have a question about oil and gas regulation please contact the TML legal department at [legalinfo@tml.org](mailto:legalinfo@tml.org) or call at 512-231-7400.

### **Cell Phone Bans**

Over the last decade, a handful of cities have enacted ordinances that prohibit the use of a cell phone while driving in a school zone. During the 2009 legislative session, many bills were filed that would have made the use of a cell phone while driving a misdemeanor in various locations. Ultimately, H.B. 55 became law. That bill makes it a state-level misdemeanor to drive in a school zone while talking on a cell phone, unless the vehicle is stopped or the device is being used in a hands-free mode. TEX. TRANSP. CODE § 545.425. Of course, some cities already had such a prohibition, and some cities may not have wanted it. The bill is a good example of preemption by the state legislature of local authority. Same result, but with additional strings attached. For example, the bill requires a city that enforces the prohibition to post a sign that complies with standards adopted by the Texas Department of Transportation at each school crossing zone in the city in order to inform an operator of a motor vehicle of the prohibition (the standards must provide that the sign can be attached to an existing sign). A bill was filed in 2015 that would have made texting while driving illegal. House Bill 80 would have prohibited drivers from using wireless communication devices while driving, but would have not preempted any ordinance that was stricter than the bill. This bill did not pass.

### **Fire Sprinklers**

Another example of preemption of local control came in the form of S.B. 1410 in 2009. That bill provides that, after September 1, 2009, a city may not require the installation of a sprinkler system in a new or existing one-or two-family dwelling. Again, a handful of cities had enacted such ordinances to protect the safety of citizens and emergency responders. The

legislature, in a last minute amendment, wiped clean the research and debate that had led those cities to act.

### **Knives**

The Texas Legislature took another stab at limiting city authority in the 2015 legislative session regarding municipal regulation of knives. This time, they cut right down to the bone: House Bill 905 expressly preempts a city's authority to regulate knives. The preemption language in this bill is part of the statute, Chapter 229 of the Local Government Code, that also preempts a city's authority to regulate most aspects of firearms and air guns. A few larger cities had begun regulating knives, and certain legislators felt their regulation to be too burdensome.

### **Streets**

All cities are given exclusive control over the streets and alleys owned by the city and may remove obstructions, regulate streets, and protect drains and sewers on the streets. TEX. TRANSP. CODE § 311.002. However, one difference between general law and home rule cities is the ability to close (abandon) a street. A general law city may close a street or alley only if the city receives a petition from all abutting property owners. *Id.* § 311.008. A home rule city may vacate, abandon, or close a street or alley with or without a petition signed by all the owners of real property abutting the street or alley. *Id.* § 311.007.

A good example of preemption of city authority comes in the regulation of speed limits on city streets. Speed limits on state highways and city streets are generally set by state law under Transportation Code section 545.352, but cities have some authority to regulate speed on highways. But the state requires that a city perform a traffic study before it alters a speed limit on a street under Section 545.356 of the Transportation Code. There are some streets that are exempt from this preemption under Section 545.356:

The governing body of a municipality, for a highway or a part of a highway in the municipality that is not an officially designated or marked highway or road of the state highway system, may declare a lower speed limit of not less than 25 miles per hour, if the governing body determines that the prima facie speed limit on the highway is unreasonable or unsafe.

TEX. TRANSP. CODE § 545.356(b-1). But the state added some limitation on this grant of authority by also requiring:

(d) The governing body of a municipality that declares a lower speed limit on a highway or part of a highway under Subsection (b-1), not later than February 1 of each year, shall publish on its Internet website and submit to the department a report that compares for each of the two previous calendar years:

(1) the number of traffic citations issued by peace officers of the municipality and the alleged speed of the vehicles, for speed limit violations on the highway or part of the highway;

(2) the number of warning citations issued by peace officers of the municipality on the highway or part of the highway; and

(3) the number of vehicular accidents that resulted in injury or death and were attributable to speed limit violations on the highway or part of the highway.

TEX. TRANSP. CODE § 545.356(d). Regulation of streets is ripe with state preemption, including the state regulation of towing, red light cameras, and the example of cell phone bans given above.

### **Conclusion & Other Resources**

This paper is meant to provide an introduction to the types of cities in Texas and their powers. Remember that there are a multitude of tools available to Texas cities to protect, preserve, and revitalize their communities. There are numerous city, federal, state, and private organizations that are excited and willing to share their knowledge and experience. Any city wishing to implement or enforce ordinances should take full advantage of the wide range of resources that are available, including the Texas Municipal League Legal Department.

## TYPES OF CITIES CHART

### Form of Government and Governing Body

Issues	Home Rule	Type A	Type B	Type C
General Authority	Self-government; LGC <sup>4</sup> 5.004; ch. 9; ch. 26	LGC 5.001; ch. 6; ch. 22	LGC 5.002; ch. 7; ch. 23	LGC 5.003; ch. 8; ch 24
Charter	Const. <sup>5</sup> Art. XI, sec. 5	Chartered by general law Const. Art. XI, sec. 4	Chartered by general law Const. Art. XI, sec. 4	Chartered by general law Const. Art. XI, sec. 4
Removal of Officers	Charter; recall election	LGC ch. 21(judicial removal); 22.009; 22.021; 22.041; 21.101(recall)	LGC ch. 21(judicial removal); 21.101(recall)	LGC ch. 21 (judicial removal); 21.101(recall)
Form of Government	Any form including commission or aldermanic LGC 26.021	Mayor, 5 aldermen, place system or wards LGC 22.031; 21.001	Mayor, 5 aldermen elected at large LGC 23.021	Mayor, 2 commissioners LGC 24.021
Mayor Pro Tem	Charter	LGC 22.037; elected by body for one year	LGC 23.027; elected by body for one year	No statutory authority
Quorum	Majority of members of governing body or determined by charter	General business quorum is majority of councilmembers; special or budget is 2/3rds of members LGC 22.039	The mayor and three aldermen, or four aldermen LGC 23.028	Two members
Mayor's Powers	Determined by Charter	Right of reconsideration LGC 52.003; call special meetings, can only vote in tie 22.037; required to call special meetings on request of 3 councilmembers 22.038(b)	President of governing body LGC 23.027	No specific powers listed
Resignation	Effective when adopted or when eight days passes Election 201.023	Effective when adopted or when eight days passes Election 201.023	Effective when adopted or when eight days passes Election 201.023	Effective when adopted or when eight days passes Election 201.023
Council Pay	Set by charter	must set any fees paid to elected officials by January 1 preceding election where elected LGC 141.001	No statutory provisions; same as Type A	Mayor and commissioners receive \$5 for regular meetings and \$3 for special meetings; if more than 2,000

<sup>4</sup> Local Government Code.

<sup>5</sup> Texas Constitution

				population then the salaries can be raised to a max of \$1200 per year for mayor and \$600 per year for commissioners LGC 141.003
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### Election of Officers

<b>Issue</b>	<b>Home Rule</b>	<b>Type A</b>	<b>Type B</b>	<b>Type C</b>
Term Limits	Allowed; not specifically prohibited	no statutory authority	no statutory authority	no statutory authority
Election Ordered	Determined by charter	To fill vacancies 22.010	By mayor or two aldermen LGC 23.023	No specific provision
Candidate Filing Fee	Election 143.005	no statutory authority	no statutory authority	no statutory authority
Partisan Candidates	Election 143.003	No; Election 143.002	No; Election 143.002	No; Election 143.002
Application	Application determined by Election 141.031 but may be supplemented by charter; Determined by charter or city ordinance; Election 143.006	Application must follow Election 141.031; Must be filed with city secretary; Election 143.006	Application must follow Election 141.031; Must be filed with city secretary; Election 143.006	Application must follow Election 141.031; Must be filed with city secretary; Election 143.006
Extend Terms	By charter; Const. Art. XI, sec. 11	By special election; Const. Art. XI, sec. 11	One year terms can be extended to two years by ordinance LGC 23.026; extending beyond two years by special election; Const. Art. XI, sec. 11	By special election; Const. Art. XI, sec. 11
Place System	No specific statutory authority	LGC 21.001	LGC 21.001	LGC 21.001
Recall Election	may be authorized by charter	In certain border cities LGC 21.101; otherwise not authorized	In certain border cities LGC 21.101; otherwise not authorized	In certain border cities LGC 21.101; otherwise not authorized
Eligible	Determined by charter Election 145.097; minimum age may not be higher than 21 years old and residency requirement cannot be more than twelve months Election	Determined by council LGC 22.033; Mayor 12 month residency in city LGC 22.032; councilmember live within city limits LGC 22.033; registered voter	Mayor or alderman six months residency; registered voter 141.001; cannot limit employees from running 150.041	General candidacy 141.001; 141.003; cannot limit employees from running 150.041

	141.003; registered voter 141.001; cannot limit employees from running 150.041	141.001; cannot limit employees from running 150.041		
Election Precincts	Election 42.061; 42.0621	Election 42.061; 42.0621	Election 42.061; 42.0621	Election 42.061; 42.0621
Elections	Uniform Election Dates Election 41.001	Uniform Election Dates Election 41.001	Uniform Election Dates Election 41.001	Uniform Election Dates Election 41.001
Change Election Date	Change May Election Date to November Elec. 41.0052	Change May Election Date to November Elec. 41.0052	Change May Election Date to November Elec. 41.0052	Change May Election Date to November Elec. 41.0052
Election to Fill Vacancy where term is more than 2 years	must be filled by majority vote at a special election (120) days after such vacancy occurs unless there is a charter procedure to fill such a vacancy if the remaining term is 12 months or less Const. Art. XI, sec. 11; Election 41.004	must be filled by majority vote at a special election (120) days after such vacancy occurs Const. Art. XI, sec. 11; Election 41.004	must be filled by majority vote at a special election (120) days after such vacancy occurs Const. Art. XI, sec. 11; Election 41.004	must be filled by majority vote at a special election (120) days after such vacancy occurs Const. Art. XI, sec. 11; Election 41.004
Appointment of Governing Body Vacancy	Determined by charter; <i>see</i> Const. Art. XI, sec. 11 for appointment when terms are greater than 2 years but vacancy is for 12 months or less	If one vacancy, then filled by appointment or election unless extended terms under the constitution require special election LGC 22.010; Const. Art. XI, sec. 11; councilmember may be appointed to mayor's office LGC 22.010(a-1)	Fill vacancies by appointment by governing body unless terms longer than 2 years LGC 23.002; current alderman can be appointed mayor but cannot vote on own appointment 23.002	If one vacancy, appointed by other two members, if more than one then county judge orders special election LGC 24.026
Elected officer placed in office	Determined by charter	After fifth day must be sworn in as soon as possible LGC 22.036; must qualify within thirty days or office is vacant LGC 22.007	No specific provision	No specific provision
Election Clerks-Students	Elec. 32.0511	Elec. 32.0511	Elec. 32.0511	Elec. 32.0511
Cancellation of Election	Elec. 2.081; 2.051-.054	Elec. 2.081; 2.051-.054	Elec. 2.081; 2.051-.054	Elec. 2.081; 2.051-.054

#### Other City Officers

<b>Issue</b>	<b>Home Rule</b>	<b>Type A</b>	<b>Type B</b>	<b>Type C</b>
City Secretary/clerk	No specific provisions	Duties listed LGC 22.073	No specific provisions	Must be appointed and also acts as tax assessor-collector LGC 24.052
Appointment or election of officers	LGC 26.041 and charter	Determined by city ordinance 22.077	Determined by city ordinance LGC 23.051	Determined by ordinance LGC 24.051
Vacancy	LGC 26.041 and charter	Filled by mayor subject to council approval LGC 22.010	Filled by board of aldermen LGC 23.002	Filled by commission LGC 24.051
Removed	LGC 26.041 and charter	For specific issues by city council LGC 22.077	Remove at any time by board of aldermen LGC 23.053	Remove at any time by commission LGC 24.053
Code Enforcement Officers	Occupations Code 1952	Occupations Code 1952	Occupations Code 1952	Occupations Code 1952

#### **Finances and Taxes**

<b>Issue</b>	<b>Home Rule</b>	<b>Type A</b>	<b>Type B</b>	<b>Type C</b>
Property Taxes	2.50 per \$100 valuation Const. Art. XI, sec. 5	1.50 per \$100 valuation Const. Art. XI, sec. 4; for city improvements Tax 302.001	.25 per \$100 valuation Tax Code § 302.001	Same as Type A if 501-4,999 Population Same as Type B if 201-500 Population Tex. Atty. Gen. Op. No. KP-0028
Other Taxes	May levy special or general property taxes for general purposes Tax Code 302.001; other taxes authorized by city charter Tax Code 302.102	Must be specific statutory authority	Must be specific statutory authority	Must be specific statutory authority
Financial Authority	control and manage the finances of the city and prescribe its fiscal year LGC 101.022	May pay debts, appropriate money, special funds LGC 101.003; 101.004; May prescribe fiscal year LGC 101.042	May prescribe fiscal year LGC 101.042	May prescribe fiscal year LGC 101.042
General Sales Taxes	Tax 321.101	Tax 321.101	Tax 321.101	Tax 321.101
Annual Budget	LGC 102.002; budget issues	LGC 102.002	LGC 102.002	LGC 102.002

	can be controlled by charter LGC 102.006			
Budget Officer	Mayor. LGC 102.001	Mayor. LGC 102.001 City manager if Ch. 25 adopted LGC 102.001	Mayor. LGC 102.001 City manager if Ch. 25 adopted LGC 102.001	Mayor. LGC 102.001 City manager if Ch. 25 adopted LGC 102.001
City Cemetery Property Tax	Health & Safety 713.006	Health & Safety 713.006	Health & Safety 713.006	Health & Safety 713.006
Occupation Taxes	Tax Code 302.101	Pop more than 200 Tax Code 302.101	Pop more than 200 Tax Code 302.101	Pop more than 200 Tax Code 302.101
Add additional fees to utility bills	Must be authorized by charter; <i>Anderson v. City of San Antonio</i> , 67 S.W.2d 1036 (Tex. 1934); <i>Tex. R. Barges v. City of San Antonio</i> , 21 S.W.3d 347 (Tex. App.—San Antonio 2000, pet. denied); other taxes authorized by city charter Tax Code 302.102.	Must have statutory authority to tax, and none exists; Tex. Att’y Gen. Op. JM-338 (1978)	Must have statutory authority to tax, and none exists; Tex. Att’y Gen. Op. JM-338 (1978)	Must have statutory authority to tax, and none exists; Tex. Att’y Gen. Op. JM-338 (1978)
Maintenance	other taxes authorized by city charter Tax Code 302.102	may impose tax on land abutting street to improve street Transportation 311.095	See Type A	See Type A
Certificates of Obligation	LGC 271.041, et al.	LGC 271.041; 271.044	Not authorized	Same as Type A if 501-4,999 Population Same as Type B if 201-500 Population

#### Annexation and Extraterritorial Jurisdiction

Issue	Home Rule	Type A	Type B	Type C
Extraterritorial Jurisdiction	Cities with 5,001-24,999 has an ETJ of one mile from city limits; 25,000-49,999 is two miles; 50,000 to 99,999 is three and one-half miles; over 100,000 is five miles. LGC 42.021.	City with less than 5,000 population includes one-half mile from city limits. LGC 42.021	City with less than 5,000 population includes one-half mile from city limits. LGC 42.021	City with less than 5,000 population includes one-half mile from city limits. LGC 42.021
General Authority to Annex	LGC 43.021	No general statutory authority	No general statutory authority	No general statutory authority



Specific Authority to Annex by Voluntary Petition of Area Voters	no specific statutory authority	5,000 pop or over LGC 43.023; on petition of three voters representing majority of qualified voters LGC 43.024	5,000 pop or over LGC 43.023; on petition of three voters representing majority of qualified voters LGC 43.025	5,000 pop or over LGC 43.023;
Involuntary Annexation	no specific statutory authority	Pop of 1,000 to 4,999 LGC 43.033	Pop of 1,000 to 4,999 LGC 43.033	Pop of 1,000 to 4,999 LGC 43.033
Specific Authority to Annex by Voluntary Petition of Sparsely Populated Area	LGC 43.028	LGC 43.028	LGC 43.028	LGC 43.028
Annexation Plan	LGC 43.052	LGC 43.052	LGC 43.052	LGC 43.052
Annexation of City Land	no specific statutory authority	LGC 43.026	Same as Type A	Same as Type A
Annexation of City Reservoir	no specific statutory authority	LGC 43.101	LGC 43.101	LGC 43.101
Annexation of Navigable Streams	no specific statutory authority	LGC 43.027	LGC 43.027	LGC 43.027
Annexation of contiguous roads	LGC 43.028	LGC 43.028; 500 pop or over LGC 43.103	LGC 43.028; 500 pop or over LGC 43.103	LGC 43.028; 500 pop or over LGC 43.103
Annexation of City Airport	LGC 43.102	LGC 43.102	LGC 43.102	LGC 43.102
Limited Purpose Annexation	If allowed by charter and specific provisions of LGC ch. 212	No statutory authority	No statutory authority	No statutory authority

#### City Property

Issue	Home Rule	Type A	Type B	Type C
Own and sell property	LGC 51.076	LGC 51.015	LGC 51.034	See Type A or B
Eminent domain for public purpose	LGC 251.001	LGC 251.001	LGC 251.001	LGC 251.001
Eminent domain to extend water system	LGC 402.013	If over 1,000 pop. LGC 402.013	If over 1,000 pop. LGC 402.013	If over 1,000 pop. LGC 402.013
Eminent domain for streets	May acquire land to widen, extend, or open street and assess cost to landowners Transportation 311.092	No specific authority see general eminent domain authority	No specific authority see general eminent domain authority	No specific authority see general eminent domain authority
Eminent domain reporting	Gov't Code 2206	Gov't Code 2206	Gov't Code 2206	Gov't Code 2206
Parks	LGC 331.001	LGC 331.001	LGC 331.001	LGC 331.001

City Airport	Transportation 22.011	Transportation 22.011	Transportation 22.011	Transportation 22.011
Sell or Convey City Land	LGC 253.001; 253.014 by broker	LGC 253.001	LGC 253.001	LGC 253.001
Sell or Convey City island or submerged land	LGC 253.002	LGC 253.002	LGC 253.002	LGC 253.002
Economic Development	LGC 380.001	LGC 380.001	LGC 380.001	LGC 380.001
City Cemetery	Health & Safety 713.001	Health & Safety 713.001	Health & Safety 713.001	Health & Safety 713.001
City Hospital	No specific authority	Health & Safety 261.001	No specific authority; See Type A	No specific authority; See Type A
City Library	No specific authority	LGC 315.005	No specific authority; See Type A	No specific authority; See Type A
City Utilities	Water system LGC 552.017; gas, electric, or sewage utility LGC 552.002	Any utility LGC 552.001; water system LGC 552.015	Any utility LGC 552.001	Any utility LGC 552.001

#### Purchasing

Issue	Home Rule	Type A	Type B	Type C
Competitive Bidding	LGC 252.021	LGC 252.021	LGC 252.021	LGC 252.021
Competitive Procurement on Public Works	Gov't Code ch. 2267	Gov't Code ch. 2267	Gov't Code ch. 2267	Gov't Code ch. 2267
Purchasing	LGC 252.002 Charter controls in case of conflict	Only requirements under state law	Only requirements under state law	Only requirements under state law
Change Orders	LGC 252.048	LGC 252.048	LGC 252.048	LGC 252.048
Exemptions to Competitive Bidding	LGC 252.022	LGC 252.022	LGC 252.022	LGC 252.022

#### General Ordinance and Charter Authority

Issue	Home Rule	Type A	Type B	Type C
Ordinance Adoption	LGC 51.001; 51.072; Const. Art. XI, sec. 5.	LGC 51.001; 51.012; ch. 52, subch. A; mayor must sign and approve LGC 52.003	LGC 51.001; 51.032; 51.035(same as Type A generally)	LGC 51.001; 51.051 (same as Type B or A dependent on pop)
Official Newspaper	LGC 52.013	LGC 52.004	LGC 52.012	No specific provision
Ordinance Publishing	Determined by charter or the caption may be published LGC 52.013	An ordinance imposing a fine must be published LGC 52.011	All ordinances must be published LGC 52.012	No specific provision

Ordinance effective date	No specific provision	Takes effect when ordinance indicates; takes effect after publication, if req'd under LGC 52.011	No specific provision see Type A	No specific provision see Type A
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### Municipal Courts

Issue	Home Rule	Type A	Type B	Type C
Municipal Court	Gov't Code <sup>6</sup> 29.002	Gov't Code 29.002	Gov't Code 29.002	Gov't Code 29.002
Municipal Court authority	Gov't Code 29.003 Exclusive authority within city limits of criminal cases based on city ordinances; concurrent on crimes punishable only by fine	Gov't Code 29.003 Exclusive authority within city limits of criminal cases based on city ordinances; concurrent on crimes punishable only by fine	Gov't Code 29.003 Exclusive authority within city limits of criminal cases based on city ordinances; concurrent on crimes punishable only by fine	Gov't Code 29.003 Exclusive authority within city limits of criminal cases based on city ordinances; concurrent on crimes punishable only by fine
Municipal Court Precincts	Allowed under Gov't Code 29.007.	No statutory authority	No statutory authority	No statutory authority
Municipal Court of Record	Can be created by ordinance Gov't Code 30.00003	Can be created by ordinance Gov't Code 30.00003	Can be created by ordinance Gov't Code 30.00003	Can be created by ordinance Gov't Code 30.00003
Municipal Court Judge Removal	Charter Gov't Code 29.004	LGC ch. 21	LGC ch. 21	LGC ch. 21
Municipal Judge	Appointed or Elected through Charter Provisions. Gov't Code 29.004; can be presiding judges and alternate judges Gov't Code 29.007; can prescribe qualifications Gov't Code 29.007	Mayor is ex officio judge until one appointed. Gov't Code 29.004	Mayor is ex officio judge until one appointed. Gov't Code 29.004	Mayor is ex officio judge until one appointed. Gov't Code 29.004
Municipal Judge Term of Office	Two years unless changed under Const. Art. 11, sec. 11 Gov't Code 29.005	Two years unless changed under Const. Art. 11, sec. 11 Gov't Code 29.005	Two years unless changed under Const. Art. 11, sec. 11 Gov't Code 29.005	Two years unless changed under Const. Art. 11, sec. 11 Gov't Code 29.005
Ordinance providing for fine	No specific provisions	Must be published LGC 52.011	Must provide for jury trial LGC 54.002	No specific provision; see Type A or B
Maximum Fine for Ordinance Violation				

<sup>6</sup> Government Code

Maximum Fine for Traffic Violation				
Municipal Court Costs				

**Police, Fire, and Personnel Issues**

<b>Issue</b>	<b>Home Rule</b>	<b>Type A</b>	<b>Type B</b>	<b>Type C</b>
Marshal	No specific provision	Ex officio chief of police LGC 341.021	Same as police chief; also acts as tax assessor-collector for the city LGC 341.022	No specific provisions
Police	LGC 341.003	LGC 341.001	No specific provision see Type A	LGC 341.002
Jails	No specific provisions	LGC 341.902	No specific provision; see Type A	No specific provision; see Type A
Fire Department	LGC 342.011	LGC 342.004	No specific provision; see Type A	No specific provision; see Type A
Fire Regulations	LGC 342.012	LGC 342.002	No specific provision; see Type A	No specific provision; see Type A
Fire Authority	LGC 342.012	Prohibit or repair wooden buildings or require fireproof construction LGC 342.002; fire department may destroy a burning building if it poses a danger 342.005		
Fire Inspection	Government 419.908	Government 419.908	Government 419.908	Government 419.908
Public Health	Health & Safety 121.003	Health & Safety 121.003	Health & Safety 121.003	Health & Safety 121.003
Longevity Pay	No specific provisions	LGC 141.010	LGC 141.010	No specific provision; see Type A or Type B
Health Insurance for Employees and Councilmembers	Charter; LGC ch. 172	LGC ch. 172	LGC ch. 172	LGC ch. 172
Civil Service	Only for cities over 10,000; LGC ch. 143	Only for cities over 10,000; LGC ch. 143	Only for cities over 10,000; LGC ch. 143	Only for cities over 10,000; LGC ch. 143
Collective Bargaining	LGC ch. 174	LGC ch. 174	LGC ch. 174	LGC ch. 174
Meet and Confer	LGC ch. 142 if over 50,000	LGC ch. 142 if over 50,000	LGC ch. 142 if over 50,000	LGC ch. 142 if over 50,000

	or have civil service	or have civil service	or have civil service	or have civil service
Complaints	Gov't ch. 614	Gov't ch. 614	Gov't ch. 614	Gov't ch. 614

### Nuisance

Issue	Home Rule	Type A	Type B	Type C
General Nuisance Authority	May define and abate in city limits and up to 5,000 feet outside city limits--ETJ LGC 217.042	May regulate and abate nuisances LGC 217.002	May regulate and prevent nuisances and charge expense to landowner LGC 217.022	See powers of Type A or Type B depending on population
Disorderly Conduct; Noise	LGC 217.003	LGC 217.003	LGC 217.003	LGC 217.003
Dangerous Buildings	LGC 214.001	LGC 214.001	LGC 214.001	LGC 214.001
Dangerous Buildings: Assess Costs	LGC 214.0015	LGC 214.0015	LGC 214.0015	LGC 214.0015
Rendering Plants	LGC 215.003	LGC 215.003	LGC 215.003	LGC 215.003
Sewers	Health & Safety 342.002	Health & Safety 342.002	Health & Safety 342.002	Health & Safety 342.002
Weeds	Health & Safety 342.004; abate without notice 342.008	Health & Safety 342.004; abate without notice 342.008	Health & Safety 342.004; abate without notice 342.008	Health & Safety 342.004; abate without notice 342.008
Stagnant Water	Health & Safety 342.001	Health & Safety 342.001	Health & Safety 342.001	Health & Safety 342.001
Dumping Trash, dead animals	LGC 54	Health & Safety 342.021; LGC 54	Same as Type A	Same as Type A if population over 200
Dangerous Dogs	Health & Safety 822.047	Health & Safety 822.047	Health & Safety 822.047	Health & Safety 822.047
Junked Vehicles	Transportation 683.0711	Transportation 683.0711	Transportation 683.0711	Transportation 683.0711
Animals		LGC 215.025; 215.026; 215.027		
Disease; Quarantine	Health & Safety 122.006	Health & Safety 122.005		
Cost of Cleaning Nuisance Charged to Property Owner	Health & Safety 342.006; obtain lien 342.007	Health & Safety 342.006; obtain lien 342.007	Health & Safety 342.006; obtain lien 342.007	Health & Safety 342.006; obtain lien 342.007
Graffiti				
Juvenile Curfew		LGC 341.905; 351.903	LGC 341.905; 351.903	LGC 341.905; 351.903

### Zoning

Issue	Home Rule	Type A	Type B	Type C
Building Size	LGC 211.003	LGC 211.003	LGC 211.003	LGC 211.003

Use and Location	LGC 211.003	LGC 211.003	LGC 211.003	LGC 211.003
Districts	LGC 211.005	LGC 211.005	LGC 211.005	LGC 211.005
Zoning Commission	LGC 211.007; Must have a zoning commission	LGC 211.007; May provide for a zoning commission	LGC 211.007; May provide for a zoning commission	LGC 211.007; May provide for a zoning commission
Board of Adjustment	LGC 211.008	LGC 211.008	LGC 211.008	LGC 211.008
Subdivision	LGC 212.002	LGC 212.002	LGC 212.002	LGC 212.002
Subdivision/Platting ETJ	LGC 212.0025	LGC 212.0025	LGC 212.0025	LGC 212.0025
Comprehensive Planning	LGC 213.002	LGC 213.002	LGC 213.002	LGC 213.002
Mobile Homes (built before 1976)	Occup. Code <sup>7</sup> 1201.008	Occup. Code 1201.008	Occup. Code 1201.008	Occup. Code 1201.008
Manufactured Housing	Occup. Code 1201.008	Occup. Code 1201.008	Occup. Code 1201.008	Occup. Code 1201.008
Voters repeal of zoning ordinances	LGC 211.015; may repeal at original or later election	No statutory authority	No statutory authority	No statutory authority
Building Bulk	LGC 211.003	No statutory authority	No statutory authority	No statutory authority
Enforcement	Prevention of erection of buildings and abatement LGC 211.012	Prevention of erection of buildings and abatement LGC 211.012	Prevention of erection of buildings and abatement LGC 211.012	Prevention of erection of buildings and abatement LGC 211.012-
Liquor in Residential Areas	Alc. Bev. Code <sup>8</sup> 109.31; by charter only	No authority; by charter only	No authority; by charter only	No authority; by charter only
Beer sales near churches, hospitals, and schools	Alc. Bev. Code 109.33	Alc. Bev. Code 109.33	Alc. Bev. Code 109.33	Alc. Bev. Code 109.33
Beer Sales in Residential areas	Alc. Bev. Code 109.32	Alc. Bev. Code 109.32	Alc. Bev. Code 109.32	Alc. Bev. Code 109.32
Hours of Beer Sales	Alc. Bev. Code 109.32	Alc. Bev. Code 109.32	Alc. Bev. Code 109.32	Alc. Bev. Code 109.32
Sex Offender Residency	Yes; Tex. Att’y Gen. Op. GA-0526	No; Tex. Att’y Gen. Op. GA-0526	No; Tex. Att’y Gen. Op. GA-0526	No; Tex. Att’y Gen. Op. GA-0526

#### Business Regulations

Issue	Home Rule	Type A	Type B	Type C
Signs and Billboards	LGC 216.003; In ETJ LGC 216.902	LGC 216.003; In ETJ LGC 216.902	LGC 216.003; In ETJ LGC 216.902	LGC 216.003; In ETJ LGC 216.902
Political Signs	Limited regulatory authority LGC 216.903	Limited regulatory authority LGC 216.903	Limited regulatory authority LGC 216.903	Limited regulatory authority LGC 216.903

<sup>7</sup> Occupation Code

<sup>8</sup> Alcoholic Beverage Code

Building Codes	LGC 214.0011	LGC 214.0011	LGC 214.0011	LGC 214.0011
Signs on Vehicles for Hire	Alc. Bev. Code 108.52	Alc. Bev. Code 108.52	Alc. Bev. Code 108.52	Alc. Bev. Code 108.52
Cemetery	Health & Safety 713.009	Health & Safety 713.009	Health & Safety 713.009	Health & Safety 713.009
Car Dealerships	LGC 215.002	LGC 215.002	LGC 215.002	LGC 215.002
Auto Parts Dealers	LGC 215.002	LGC 215.002	LGC 215.002	LGC 215.002
Taxis	LGC 215.004;	LGC 215.004	LGC 215.004	LGC 215.004
Nonconsent Tows	Transportation 643.203	Transportation 643.203	Transportation 643.203	Transportation 643.203
Lighting Equipment on Tow Trucks	Specifically prohibited Transportation 643.201	Specifically prohibited Transportation 643.201	Specifically prohibited Transportation 643.201	Specifically prohibited Transportation 643.201
Vehicle Booting	Occupations 2308.2085	Occupations 2308.2085	Occupations 2308.2085	Occupations 2308.2085
Taxis	See general street authority; Transportation 311.001; 311.005	LGC 215.029; 215.030	No specific authority; See Type A	No specific authority; See Type A
Peddlers	No specific authority	LGC 215.031; 215.032	No specific authority; See Type A	No specific authority; See Type A
Slaughterhouse	Health & Safety 215.072	Health & Safety 215.024		
Pay day lenders	Home rule authority			

### Streets

Issue	Home Rule	Type A	Type B	Type C
Exclusive Control over Streets	Transportation 311.001; grant franchise Transportation 311.005; 311.072	Transportation 311.002	Transportation 311.002	Transportation 311.002
Close a Street	By charter Transportation 311.007	By Special Election Transportation 311.008	By Special Election Transportation 311.008	By Special Election Transportation 311.008
Street/Highway Improvement	Transportation 311.004; Transportation 312.003 <sup>9</sup> ; over 1,000 pop 313.003	Transportation 312.003; over 1,000 pop 313.003	Transportation 312.003; over 1,000 pop 313.003	Transportation 312.003; over 1,000 pop 313.003
Highway Improvement Assessment	Transportation 312.021; 312.022; 313.023; 313.042	Transportation 312.021; 312.022; 313.023; 313.042	Transportation 312.021; 312.022; 313.023; 313.042	Transportation 312.021; 312.022; 313.023; 313.042
Interlocal to Improve Highway	Transportation 313.022	Transportation 313.022	Transportation 313.022	Transportation 313.022
Highway Speed Limits	Transportation 545.356	Transportation 545.356	Transportation 545.356	Transportation 545.356

<sup>9</sup> A city must adopt Ch. 312 of the Transportation Code before using its procedures. Tex. Transp. Code § 312.002.

with traffic study				
Highway Speed Limits near school	Transportation 545.356(b-1); (d)	Transportation 545.356(b-1); (d)	Transportation 545.356(b-1); (d)	Transportation 545.356(b-1); (d)
Neighborhood Electric Vehicles	Transportation 551.303	Transportation 551.303	Transportation 551.303	Transportation 551.303
Assess costs for repair and construction of streets	Transportation 311.091; sidewalks 311.093	Transportation 311.095	No specific provision see Type A	No specific provision see Type A
Golf Carts	Transportation 551.404	Transportation 551.404	Transportation 551.404	Transportation 551.404
ATVs	Transportation Code ch. 663	Transportation Code ch. 663	Transportation Code ch. 663	Transportation Code ch. 663
Towing	Transportation 545.305	Transportation 545.305	Transportation 545.305	Transportation 545.305
Red Light Cameras	Transportation Code ch. 707	Transportation Code ch. 707	Transportation Code ch. 707	Transportation Code ch. 707
Vehicle Storage Facilities	Occupations Code 2303	Occupations Code 2303	Occupations Code 2303	Occupations Code 2303
Vehicles for Hire; Drivers	LGC 215.073	LGC 215.029		

#### Incorporation and Changing City Type

<b>Issue</b>	<b>Home Rule</b>	<b>Type A</b>	<b>Type B</b>	<b>Type C</b>
Where to Incorporate	not in another city's jurisdiction w/o permission LGC 42.041	not in another city's jurisdiction w/o permission LGC 42.041	not in another city's jurisdiction w/o permission LGC 42.041	not in another city's jurisdiction w/o permission LGC 42.041
Incorporation Procedure	LGC ch. 9; Const. Art. XI; sec. 5	LGC ch. 6	LGC ch. 7	LGC ch. 8
Change to Type A	LGC ch. 6	N/A	LGC ch. 6	LGC ch. 6
Change to Type C	LGC ch. 8	LGC ch. 8	LGC ch. 8	N/A
Change from General Law to Home Rule	N/A	LGC ch. 9	LGC ch. 9	LGC ch. 9