

# Municipal Liability Overview

*This paper is intended to complement the presentation: “Chill Bro, I have Immunity.”*

## I. Foundations of Municipal Immunity

Municipal liability analysis begins with a presumption of immunity. As municipal practitioners quickly learn, the rules are different when liability is asserted against a governmental entity. In Texas, sovereign immunity is the default rule, protecting the State and its political subdivisions from suit and liability unless the Legislature has clearly and unambiguously waived that protection. In that sense, sovereign immunity is remarkably consistent—“a lotta livin,” may happen around it, but the rule itself stays the same.<sup>1</sup>

The Texas Supreme Court has long recognized that “no State can be sued in her own courts without her consent, and then only in the manner indicated by that consent.” *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 (Tex. 2003) (quoting *Hosner v. De Young*, 1 Tex. 764, 769 (1847)). This foundational principle continues to anchor immunity jurisprudence. Cities derive their immunity from the State. “While the State of Texas has what is called ‘sovereign immunity,’ cities have immunity derived from the state’s immunity because cities are political subdivisions created by the state.” *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006). This derivative protection is commonly referred to as governmental immunity.

Governmental immunity encompasses both immunity from suit and immunity from liability. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). Immunity from suit is jurisdictional and deprives the trial court of subject-matter jurisdiction. *Tex. Dep’t of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

Accordingly, immunity should be addressed at the outset of any municipal liability analysis. If immunity from suit applies, the case should not proceed beyond jurisdictional challenges—“you don’t have to like it; you just have to accept it.” *Greenlights* Author Matthew McConaughy, written in 2020”

## II. Governmental vs. Proprietary Functions

The next analytical step is determining whether the complained-of conduct arises from a governmental or proprietary function. Governmental functions are those that a city is required to perform by law and that are carried out in the interest of the general public. *Tex. Civ. Prac. & Rem.*

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<sup>1</sup> *Dazed and Confused*, (1993), David Wooderson

*Code § 101.0215*. The statute provides a non-exclusive list of governmental functions, including police and fire protection, street maintenance, zoning, and code enforcement.

Proprietary functions, by contrast, are those a city performs in its discretion and primarily for the benefit of its own inhabitants. *Tex. Civ. Prac. & Rem. Code § 101.0215(b)*. The Texas Supreme Court has explained that proprietary functions are activities performed “not as an arm of the government” and that “can be, and often are, provided by private persons.” *Wasson Interests, Ltd. v. City of Jacksonville*, 559 S.W.3d 142, 147 (Tex. 2018).

Immunity generally applies to governmental functions but not to proprietary ones. The distinction is frequently outcome-determinative, making careful classification essential—“just keep livin’” but make sure you are living on the correct side of § 101.0215.<sup>2</sup>

### **III. Texas Tort Claims Act: Waivers and Limits**

#### **A. Purpose and Scope of the TTCA**

The Texas Tort Claims Act (TTCA), *Tex. Civ. Prac. & Rem. Code §§ 101.001 et seq.*, is the Legislature’s primary, though limited, waiver of governmental immunity for tort claims. The Act is strictly construed, and any ambiguity is resolved in favor of retaining immunity. Plaintiffs bear the burden of pleading facts that affirmatively demonstrate the trial court’s jurisdiction. *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

#### **B. Three Categories of Waiver**

The TTCA waives immunity only for:

- A city employee’s negligent operation or use of a motor-driven vehicle or motor-driven equipment;
- Personal injury or death caused by a condition or use of tangible personal property; and
- Personal injury or death caused by a condition or use of real property. *Tex. Civ. Prac. & Rem. Code § 101.021*. Negligence is defined as “[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.” *Negligence, Black’s Law Dictionary (11th ed. 2019)*.

#### **C. Premises Defects and Duties Owed**

For ordinary premises defects, a city generally owes the same duty owed to a licensee. *Tex. Civ. Prac. & Rem. Code § 101.022*. Texas courts have articulated duties based on the injured

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<sup>2</sup> *Dazed and Confused*, (1993), David Wooderson

party’s legal status. *See State v. Shumake*, 199 S.W.3d 279, 288 (Tex. 2006); *Stephen F. Austin State Univ. v. Flynn*, 228 S.W.3d 653, 659 (Tex. 2007); *State Dep’t of Highways v. Payne*, 838 S.W.2d 235, 237 (Tex. 1992); *Austin v. Kroger Tex., L.P.*, 465 S.W.3d 193, 203 (Tex. 2015).

Special defects—“excavations or obstructions on highways, roads, or streets which present unexpected and unusual dangers”—trigger a higher duty. *Tex. Civ. Prac. & Rem. Code* § 101.022(b); *Payne*, 838 S.W.2d at 238. Whether a condition constitutes a special defect is a fact-intensive inquiry. *Fraley v. Tex. A&M Univ. Sys.*, 664 S.W.3d 91, 98 (Tex. 2023).

#### **D. Damages Caps and Notice**

The TTCA caps damages at \$250,000 per person and \$500,000 per occurrence for bodily injury or death, and \$100,000 per occurrence for property damage. *Tex. Civ. Prac. & Rem. Code* § 101.023(c). Punitive damages are barred. *Tex. Civ. Prac. & Rem. Code* § 101.024.

Claimants must also provide notice within six months unless the city has actual notice. *Tex. Civ. Prac. & Rem. Code* § 101.101. Actual notice requires subjective awareness of fault. *City of San Antonio v. Tenorio*, 543 S.W.3d 772, 776 (Tex. 2018). “Alright, alright, alright,” does not satisfy the notice requirement.<sup>3</sup>

### **IV. TTCA Exceptions Preserving Immunity**

Even when a claim fits within a TTCA waiver, statutory exceptions may restore immunity. One frequently litigated exception is the emergency response exception. *Tex. Civ. Prac. & Rem. Code* § 101.055(2). Courts examine whether the employee acted with recklessness or conscious indifference. Recklessness requires “subjective awareness of an extreme risk.” *Tarrant County v. Bonner*, 574 S.W.3d 893, 902 (Tex. 2019).

Another significant exception is the intentional tort exception. *Tex. Civ. Prac. & Rem. Code* § 101.057(1); *see Tex. Dep’t of Pub. Safety v. Petta*, 44 S.W.3d 575, 580 (Tex. 2001).

### **V. Employee Immunity and Vicarious Liability**

Individual municipal employees may be protected by official immunity when performing discretionary duties in good faith and within the scope of their authority. *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994). Under the TTCA, a governmental unit is liable only

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<sup>3</sup> *Dazed and Confused*, (1993), David Wooderson

if the employee would be liable; if the employee is immune, the city is likewise immune. *K.D.F. v. Rex*, 878 S.W.2d 589, 597 (Tex. 1994).

Employee immunity and entity liability should therefore be evaluated together—“you gotta walk the line.”<sup>4</sup>

## **VI. Federal Constitutional Claims and § 1983**

State-law immunity does not bar federal civil rights claims under 42 U.S.C. § 1983. Municipalities, however, are not vicariously liable for constitutional violations. Liability exists only where an official policy, custom, or practice caused the alleged violation. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978).

Violations of the Texas Constitution generally allow only equitable relief, not damages. *City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995).

## **Conclusion**

Municipal liability law demands a disciplined, immunity-first approach. Immunity is the rule; liability is the exception. Effective analysis begins with properly classifying the challenged conduct as governmental or proprietary and confirming the existence of a clear statutory waiver before engaging in factual evaluation. Counsel must also assert immunity early—often through a plea to the jurisdiction—while analyzing employee immunity in tandem with potential TTCA waivers and exceptions. Finally, municipal attorneys must distinguish carefully between state-law tort claims and federal constitutional claims, as different standards of liability and immunity apply. Mastery of these principles allows municipal lawyers to manage risk, defend claims, and advise their clients within the framework established by the Legislature and the courts—“less impressed, more involved,”<sup>5</sup>

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<sup>4</sup> Matthew McConaughey, a paraphrase of his broader life philosophy.

<sup>5</sup> Matthew McConaughey, interview with Entrepreneur.