



THE TEXAS MUNICIPAL LAWYERTM

A newsletter published by the Bojorquez Law Firm, PLLC ★ May 28, 2009

FAIR HOUSING LAWSUIT

On March 30, 2009, the U.S. District Court (Austin) held in favor of the City of Kyle (“the City”) in a lawsuit challenging 2003 amendments to the City’s zoning and subdivision ordinances relating to single-family residences (“the amendments”). The amendments increased the minimum square footage of required living area for single-family residences by 20% (to 1200 square feet and 1600 square feet) in the only available single-family residential zones. Additionally, the amendments increased minimum sized lots in residential areas by 200 square feet and required a minimum 480 square foot garage for single-family residences.

The 2005 lawsuit was filed by the National Association for the Advancement of Colored People (“NAACP”), the Home Builders Association of Greater Austin (“HBA”), and the National Association of Home Builders (“NAHB”) (collectively “Plaintiffs”) alleging the amendments had a discriminatory effect against minorities in violation of the Fair Housing Act of 1968 (42 U.S.C. § 3604(a)) (“the FHA”). Plaintiffs attempted to present evidence of discrimination with statistics they claimed would show the amendments increased the cost of starter homes from \$100,000 to \$133,000, having the effect of denying housing to minorities.

The Judge denied Plaintiffs’ request for relief, stating that increased price alone would not be enough to show a discriminatory impact. Without evidence of supply and demand, or an analysis of other available affordable-housing alternatives, Plaintiffs were unable to prove the amendments made “dwellings” unavailable to minorities more often than to non-minorities.

On April 29th, Plaintiffs gave notice of a planned appeal to the Fifth Circuit Court of Appeals in New Orleans. If the parties do not resolve the appeal with a settlement, the appeal could be expected to take more than a year.

If upheld, this decision should give greater confidence in moving forward with square footage and lot size regulations that are such an integral part of helping many cities to reach their community goals.

INTEGRITY AT CITY HALL

Question: Can a City Hire a Councilmember’s Relative?

Answer: Generally, state law prohibits Nepotism. A city council may not hire an applicant if the applicant is related to a councilmember within the 2nd degree by affinity (marriage) or 3rd degree by consanguinity (blood or adoption). If a relative of a city employee is elected, the employee is automatically terminated. However, the nepotism statute has an exception for existing employees who have been working: (a) 30 days if the councilmember was appointed; (b) 6 months, if the councilmember was elected at an election other than the general for state and county officials, or (c) one year if the councilmember is elected at the general election for state and county officials. There are certain types of deliberations and votes in which the councilmember / relative must abstain, including any consideration of compensation or change in a relative’s employment status. The councilmember / relative can participate in action regarding employees, in general. Tex. Gov’t Code Ch. §573.

EDUCATIONAL OPPORTUNITIES

- **June 4:** Alan provides *Open Government Training* to the Certified Public Manager (CPM) Program at Texas State University-San Marcos from 9:00 am to 12:00 pm.
- **June 5-7:** The Bojorquez Law Firm co-sponsors the Texas City Management Associations’ Annual Conference in Austin.
- **August 20-21:** Alan coordinates and hosts the ‘09 *Legislative Update* for the Texas Municipal Clerks Association in Irving.

PRAYER AT CITY HALL

Some cities have established the routine of conducting a prayer or short moment of silence at the beginning of council meetings. Before continuing with that practice, consider the legality of prayer in city council meetings, legally known as “legislative prayer.”

Legislative prayer has been a practice in effect for many centuries, and has been widely embraced by cities, schools, and other governmental entities at the commencement of a meeting or celebration. However, state and federal law in the past 4-5 decades have expanded the rules and tests on religion and the separation of church and state to ensure that legislative prayer does not become an avenue to force one specific religion on a group of people. (*Lemon v. Kurtzman*, 403 U.S. 602 (1971)).

The important point to remember when thinking about using prayer at a city council meeting is to keep prayer non-sectarian (not affiliated with any specific religious denomination), (i.e. avoid having only a Catholic priest at every council meeting saying the prayer, or a Methodist pastor). The U.S. Supreme Court in *Marsh v. Chambers*, 463 U.S. 783 (1983), held that governmental entities should avoid too much involvement or control over how the prayer is conducted, or what the prayer consists of. Rather, the governing body should consider inviting various religious and non-religious denominations to say an invocation before a meeting or a benediction after the meeting. While nothing can guarantee a governing body immunity from a legal challenge, the city can take extra steps to minimize the occurrence of a legal challenge by ensuring that all religious and non-religious members of the community are given equal opportunity to represent their faiths.

We recommend creating a rotating list of community members from various religious denominations who have expressed interest in leading the council and audience in prayer. In addition, we recommend cities use the term “*invocation*” on the agenda instead of the term “*prayer*”, as not all religious denominations use the term prayer. Finally, it is important to allow for open dialogue among members of the council regarding the imposition of a prayer or invocation at a coun-

cil meeting. Each member represents a unique set of constituents, and should be provided the opportunity to express concern, support, or offer suggestions on the role of religion in local government.

FLYIN’ SOLO

After over 6 years, Cary L. Bovey is leaving the firm to resume a solo law practice. He has moved his office to Round Rock where he will continue to take personal care of his municipal clients. Please join us in wishing Cary the very best. He is a dear friend, and we’ll miss him greatly. *Good luck, Cary!*



FIRM CONTINUES

Our team will continue to be the best Municipal Law Firm in Central Texas, offering strong legal representation in Municipal, Ethics, Elections, Employment, Litigation, and Environmental law. We have a new name and a modified logo, but clients receive the same quality and customer service. Our lawyers share the same desire to remain on the cutting-edge. *Onward and Upward!*



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