



ZONING & BUILDING CODES

Municipal Zoning Ordinances & Preemption

As a general rule, city ordinances do not apply to federal or state property unless otherwise provided by statute. For example, zoning ordinances cannot apply to a state or federal agency and are usually preempted by statute.

Cities typically cannot apply zoning authority to schools and counties because these entities have express statutory authority to provide certain facilities. The Texas Supreme Court has held that school districts are allowed to choose their building location. The legislature has delegated to counties the power to provide county facilities, provide and maintain a court house and offices at the county seat, facilities for the justice of the peace, branch courthouses, county hospitals, fire and EMS facilities, libraries, museums, and jails. Cities cannot use zoning authority to prevent holders of delegated state power from carrying out their delegated functions. There is however, one case we know of in which the city prevented the county from locating a solid waste site within the city limits.

In accordance with Chapter 211 of the Texas Local Government Code, zoning ordinances generally regulate:

1. The height, stories, and size of buildings and other structures;
2. The percentage of a lot that may be occupied;
3. The size of yards, courts, and other open spaces;
4. Population density; and
5. The location and use of buildings, other structures, and land for business, industrial, residential or other purposes.

In the case of designated places and areas of historical, cultural, or architectural importance and signifi-

cance, the city council *can* regulate the construction, reconstruction, alteration or razing of the buildings or other structures. Home-rule cities can regulate the bulk of buildings.

Effective June 18, 1999, Chapter 211 was amended to apply municipal zoning ordinances to a privately owned building (or other structure and privately owned land) even when leased to a state agency.

Preemption by Specific Legislation

The authority of a city to adopt zoning regulations may be preempted by express statutory enactment of the legislation. The most common areas for this preemption are the sale of alcoholic beverages, sign regulation on highway billboards, pawnshop regulation, and sexually-oriented businesses.

Municipal Building Codes

In contrast to zoning ordinances, the Texas Supreme Court has long held that reasonable and valid building regulations established by a city's ordinances are applicable to building and construction by a school district. More recently, the Texas Attorney General has concluded that a home-rule city may enforce its reasonable land development regulations and ordinances against an independent school district for the purposes of aesthetics and the maintenance of property values. As applied to a county, the A.G. has opined that the county must comply with the city's building and fire codes.

There are no reported cases or attorney general opinions on the preemption of a city's subdivision ordinance and it may be questionable to apply these regulations to property owned by federal and state agencies. However, based on the reasoning of the Texas Supreme Court and Texas Attorney General, many cities apply their subdivision ordinances to federal and state agencies, contending that doing so is a proper exercise of the police powers of the city and the ordinances are not arbitrary or unreasonable.

EDUCATIONAL OPPORTUNITIES

- April 3, 2009: Alan will speak on the **Public Information Act: Privacy and Personnel Records**, at the Texas Municipal Human Resources Association Seminar in Austin, TX.

U.S. SUPREME COURT RULING ON REDISTRICTING

On March 9, 2009, the U.S. Supreme Court ruled that governments are not required by the federal Voting Rights Act to draw electoral districts that increase the number of minority candidates in districts that contain less than fifty percent of a minority population. However, the Court did affirm that race and ethnicity must be considered in single-member districts that have fifty percent of a minority population or more.

The Supreme Court reached this decision in *Bartlett v. Strickland*, No. 07-689, a case stemming from North Carolina in which the state legislature attempted to create a single-member district that contained a thirty-nine percent minority population. In question was the applicability of Section 2 of the Voting Rights Act.

According to the U.S. Department of Justice, “Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color or membership in one of the language minority groups” of single member districts. However, by a 5-4 vote, the Court ruled that Section 2 cannot be interpreted to include “crossover districts.” A crossover district is the grouping together of minority voters to elect candidates from the minority population, thus preventing the majority population from determining the outcome of the election.

New voting districts will likely be drawn in many areas after the results of the 2010 U.S. Census have been released. The Court’s ruling is expected to provide guidance to local governments in determining how to redraw single member districts. Bovey & Bojorquez is available to assist you with your city’s redistricting efforts resulting from the 2010 Census.

NEWS ON THE 2010 CENSUS

On March 2nd associate Roger Gordon participated in a community forum, organized by the United States Census Bureau and hosted by the City of Austin, designed to introduce the Bureau’s new American Community Survey (ACS) to local elected officials, administrators, and city attorneys. The ACS is a nationwide survey designed to provide communities a fresh look at how they are changing. It is a critical element in the Census Bureau’s re-engineered decennial census program. The ACS collects

and produces population and housing information every year instead of every ten years. The Bureau’s most significant program change in decades will provide communities with demographic information on a more regular basis, rather than being forced to rely on information collected only once every ten years.

This development within the bureau (nearly half a decade in planning) will provide communities of 20,000 or less some of the most current and up-to-date demographic information that has ever been made available. The ability of a small community to track demographic trends – such as age, ethnicity, income, number of residents, and educational background – will of no doubt be valuable to growing cities as policy decisions are considered regarding infrastructure, schools, and community grant programs. Bovey & Bojorquez will continue to assist our clients in managing the growth and development of their communities through the collection, analysis and interpretation of the data provided by the new American Community Survey.

CLIENT NEWS

On March 11, 2009, the City of West Lake Hills unveiled its first hybrid police vehicle. The 2009 Toyota Highlander is reputed to be the only one of its kind, and is serving as a model for law enforcement agencies throughout Texas.



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