State Law in Texas affecting Local Codes & Ordinances

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INTRODUCTION

State law changes in Texas impact many provisions in the ordinance codes of Texas municipalities. This pamphlet is intended to assist municipal attorneys in the identification of provisions in ordinance codes that may require revision in light of state law. The information in this pamphlet is based upon the experience of the legal staff of Municipal Code Corporation in working with the ordinances and codes of Texas municipalities.

This pamphlet is current through the 2011 Regular Session and First Called Session of the 82nd Legislature.

Not all provisions of this pamphlet will apply to your Code, nor does this pamphlet purport to include all state laws that may somehow affect the language of your Code.

The provisions of this pamphlet are intended to assist municipal attorneys and are not intended to be a substitute for the advice of counsel.

It is not the intent of Municipal Code Corporation in publishing this pamphlet to provide legal advice. An attorney admitted to practice in Texas must be consulted as to the applicability of a given statute or case to a particular situation.

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GENERAL PROVISIONS

1. **Definitions.** Penal Code definitions apparently apply to offenses under municipal ordinances. See V.T.C.A., Penal Code § 1.03.

2. **Penalty for ordinance violations.** V.T.C.A., Local Government Code § 54.001 provides that the maximum penalty for violation of a municipal ordinance, rule or police regulation:
   a. Except as provided in subsection 2.b., is $500.00.
   b. Governing fire safety, zoning or public health and sanitation, including dumping of refuse, is $2,000.00.
ADMINISTRATION

1. **Election of commissioners in Type C general law municipalities.** Type C general law municipalities may adopt an ordinance to determine if commissioners may be elected in alternate years or in the same election years. See V.T.C.A., Local Government Code § 24.023.

2. **Investments.** New restrictions have been placed on local government investment policies. See V.T.C.A., Government Code § 2256.001 et seq.

3. **Procurement.**
   a. **Local resident preference in competitive bidding.** The dollar amount of contracts for which certain municipalities procuring goods and services may give preferences to local residents in competitive bidding has been restricted. See V.T.C.A., Local Government Code § 271.9051.
   b. **Change orders.** Municipalities may, subject to maximum dollar amount stated in the statute, determine the dollar amount of change orders that can be delegated to an administrative official. See V.T.C.A., Local Government Code § 252.048(c).
   c. **Competitive bids--Consideration of location of bidder's principal place of business.** The authority to award competitive bids to residents of the municipality who are not the low bidder under certain circumstances has been expanded to all municipalities. See V.T.C.A., Local Government Code § 271.905.
   d. **Contracts with private entities for civil works projects or improvements to real property.** Municipalities may under certain circumstances contract with a private entity to act as the local governmental entity's agent in the design, development, financing, maintenance, operation, or construction, including oversight and inspection of civil works projects or improvements to real property. See V.T.C.A., Local Government Code § 271.908.

4. **Fire extinguishers in municipal motor vehicles.** If a municipal ordinance requires vehicles owned by the municipality to be equipped with portable fire extinguishers, the municipality must require annual maintenance on the portable fire extinguishers in accordance with certain standards. See V.T.C.A., Local Government Code § 370.005.
ALCOHOLIC BEVERAGES

1. **Municipal regulation restricted.** The authority of municipalities to regulate the manufacture, sale, distribution, transportation and possession of alcoholic beverages is restricted. See V.T.C.A., Alcoholic Beverage Code §§ 1.06, 109.57.

2. **Permissible municipal regulation.** Municipalities are authorized to:
   b. Impose location, hours of sale and consumption, and open container and public consumption restrictions. See V.T.C.A., Alcoholic Beverage Code §§ 105.01 et seq. and 109.31 et seq.
   c. Regulate billboards, electric signs and outdoor advertising. See V.T.C.A., Alcoholic Beverage Code § 108.55.
ANIMALS

1. *Dogs and cats and rabies control.* Municipal ordinances regulating dogs and cats or providing for rabies control should be reviewed carefully in light of the mandatory provisions of V.T.C.A., Health and Safety Code § 826.001 et seq.

2. *Dogs at large.* The power to require restraint of dogs running at large used to protect livestock has been restricted. See V.T.C.A., Agriculture Code § 251.005.
BUILDINGS AND BUILDING REGULATIONS

1. **Building codes.** Certain minimum building codes must be adopted and minimum requirements are established for ordinances of municipalities that adopt codes other than the state-mandated codes. See V.T.C.A., Local Government Code § 214.211 et seq.

2. **Substandard buildings.** There are minimum requirements for municipal ordinances providing for vacation, demolition, etc., and relocation of occupants of substandard buildings at the expense of the owners. See V.T.C.A., Local Government Code § 214.001 et seq.


4. **Manufactured housing.**
   a. Local governmental units are prohibited from adopting standards for the construction or installation of manufactured housing that are different from those adopted by the Manufactured Housing Board within the Texas Department of Housing and Community Affairs without the express approval of the board. See V.T.C.A., Occupations Code § 1201.252.
   b. Location and installation restrictions are limited. See V.T.C.A., Occupations Code § 1201.008.

5. **Industrialized buildings.** Municipal regulation of industrialized housing and buildings is restricted. See V.T.C.A., Occupations Code § 1202.251 et seq.

6. **Smoke alarms in dwelling units.** Local regulation of smoke alarms in dwelling units is restricted. See V.T.C.A., Property Code § 92.252.
BUSINESSES

1. **Authority to deny, suspend or revoke business licenses.** The right of a municipality to deny, suspend or revoke a business license due to a criminal conviction is regulated and restricted. See V.T.C.A., Occupations Code § 53.001 et seq.

2. **Air conditioning and refrigeration contractors.** A person licensed by the state as an air conditioning and refrigeration contractor is not required to hold a municipal license. See V.T.C.A., Occupations Code § 1302.251.

3. **Auctioneers.** Municipalities may not license or tax auctioneers who are licensed under V.T.C.A., Occupations Code ch. 1802. See V.T.C.A., Occupations Code § 1802.003.

4. **Metal recyclers.** Municipal license fees are restricted. See V.T.C.A., Occupations Code § 1956.003.

5. **Liquefied petroleum gas industry.** Municipalities may not adopt ordinances relating to any aspect of the liquefied petroleum gas industry without state permission. See V.T.C.A., Natural Resources Code § 113.054.


7. **Pest control.**
   b. The sale and use of pesticides may be regulated and restricted. See V.T.C.A., Occupations Code § 1951.005(b), (c).

8. **Public safety organizations.** Municipal ordinances applicable to solicitations by public safety organizations, publications and independent promoters are preempted and superseded as to persons registered under V.T.C.A., Occupations Code ch. 1803. See V.T.C.A., Occupations Code § 1803.002.

9. **Tow trucks.** Local regulation of tow trucks is restricted. See V.T.C.A., Occupations Code § 2308.201 et seq.
EMERGENCY SERVICES


ENVIRONMENT

1. *Junked vehicles.* Municipal ordinances that provide for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance must contain specified provisions. See V.T.C.A., Transportation Code § 683.074.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. **Penal Code preemption.** V.T.C.A., Penal Code § 1.08 prohibits governmental subdivisions from enacting or enforcing ordinances covering conduct regulated by the Penal Code.

2. **Firearms.**
   a. Subject to certain exceptions, municipal regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, ammunition, or firearm supplies are preempted. See V.T.C.A., Local Government Code § 229.001.
   b. Municipalities may not prohibit the discharge of a firearm at a sport shooting range.

3. **Age of majority.**
   a. The age of majority is 18 years. See V.T.C.A., Civil Practice and Remedies Code § 129.001.

4. **Curfew for minors.** A municipality must review, conduct public hearing on, and readopt a juvenile curfew ordinance every three years. Failure to do so causes the ordinance to expire. See V.T.C.A., Local Government Code § 370.002.

5. **Glue and paints.** Municipal requirements relative to display of an abusable volatile chemical in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business are generally prohibited. See V.T.C.A., Health and Safety Code § 485.018.
SIGNS

SOLID WASTE

1. Containers. A local government may not adopt an ordinance, rule or regulation to: (1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law, (2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a facility owned by the local government, permitted by the state for that purpose in a manner not authorized by state law, or (3) assess a fee or deposit on the sale or use of a container or package. Exceptions include compliance with state or federal requirements and zoning ordinances. See V.T.C.A., Health and Safety Code § 361.0961.
TAXATION

1. *Property Tax Code.* Subject to certain exceptions, the Property Tax Code, V.T.C.A., Tax Code title 1, supersedes most municipal ordinances and charters insofar as they deal with property taxation. See V.T.C.A., Tax Code § 1.02.

2. *Property tax discounts.* Discounts for early payments of property taxes may be rescinded. See V.T.C.A., Tax Code § 31.05.

3. *Occupation taxes.*
TELECOMMUNICATIONS

TRAFFIC AND VEHICLES

1. *Alteration of speed limits.* Municipal authority to alter certain speed limits has been altered. See V.T.C.A., Transportation Code § 545.356 et seq.

2. *Photographic traffic signal enforcement system.* Local ordinances providing for a photographic traffic signal enforcement system are restricted and must contain certain provisions. See V.T.C.A., Transportation Code § 707.001 et seq.

3. *Use of wireless communication device while operating motor vehicle.* Certain signs must be posted if a municipality prohibits the use of a wireless communication device while operating a motor vehicle. V.T.C.A., Transportation Code § 545.425 et seq.
UTILITIES

1. *Liens.* Municipal authority relative to liens for delinquent utility bills is restricted. See V.T.C.A., Local Government Code § 552.003.
ZONING

1. **Alcoholic beverages.** Zoning ordinances restricting alcoholic beverage establishments are restricted. See V.T.C.A., Alcoholic Beverage Code § 109.57.

2. **Community homes for disabled persons.** A community home for disabled persons is a use by right that is authorized in any district zoned as residential. See V.T.C.A., Human Resources Code § 123.003.

3. **Pawnshops.** A municipality must designate pawnshops licensed by the state as a permitted use in one or more zoning districts and may not require a specific use or similar permit for such use. See V.T.C.A., Local Government Code § 211.0035.