

HISTORIC PRESERVATION

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Zoning Authority

- Chapter 211 Zoning Authority
- 211.003(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

Home Rule Authority

- No Preemption under 211 – height, size, location, use, etc.
- City of Brookside v. Comeau
 - Locational ordinances that “have the effect of zoning”
- City of Houston v. Johnny Frank’s Auto Parks
 - police power land use regs not zoning because no comprehensive plan

- MJR’s Fare of Dallas, Inc. v. City of Dallas
- N.W. Enterprises Inc. v. City of Houston
- Location of sexually-oriented business is not zoning.

Section 106 NHPA

- 36 CFR Part 800 regs
- Federal agencies and local actors with federal money
- Applies to Federal “undertaking”
- American Council on Historic Preservation oversees implementation with Texas Historical Commission

Section 106 cont.

- Local actors are “Responsible Entities” when using federal funds
- Federal Agency (or RE) must negotiate with:
 - State Historic Preservation Officer
 - Tribal Historic Preservation Officer
 - Local Govt units affected by project

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First appeared as part of the conference materials for the

20th Annual Land Use Conference session

"Regulation of Historic Preservation"