

BETWEEN A GAS ROCK AND A HARD PLACE

UT Law Land Use Conference
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Chapter 81, Natural Resources Code (HB 40 - 2015)

- Cities can regulate:
Fire and emergency response, traffic, lights, noise, notice, and reasonable setbacks and aboveground activity that is “related” to oil and gas operations. Otherwise **preempted from regulating** oil and gas operations.
- Commercially reasonable:
A condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the **objective standard of a reasonably prudent operator** and not on an individualized assessment of an actual operator's capacity to act.
- Five Year Rule:
An ordinance or other measure is considered **prima facie** to be commercially reasonable if the ordinance or other measure has been **in effect for at least five years** and has allowed the oil and gas operations at issue to continue during that period.

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Chapter 245, Local Government Code

- Sec. 245.002. UNIFORMITY OF REQUIREMENTS.
 - (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted **requirements in effect at the time:**
 - (1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or
 - (2) a plan for development of real property or plat application is filed with a regulatory agency.

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Pesky Constitutional Provisions

- The Constitutions of both the United States and Texas guarantee that no person should be deprived of life, liberty *or property* without due process of the law.
- The Fifth Amendment of the United States Constitution and Article I, Section 17, of the Texas Constitution states that private property cannot be taken for public use without **“just” or “adequate” compensation.**

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Constitutional Takings

- Over-regulation of a property such that it cannot be fairly used.
- Government can go too far with its restrictions, denial of permits or variances.
 - even though the property owner still owns the property, the government's actions have reduced or eliminated its value and/or usefulness to the extent that there may be an entitlement to compensation.

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Post HB 40 Case

- Filed in federal court against the **City of Rockdale** on November 19, 2015.
- Claims Against the City:
 - (1) taking of his property under the Texas Constitution;
 - (2) due process violation under the Texas and U.S. Constitutions;
 - (3) permit vesting under Chapter 245, Local Government Code; and
 - (4) prior continuous use under Section 43.002, Local Government Code.
- **Dismissed** on June 13, 2016.

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