

Land Use Update

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I. CONFLICT & PREEMPTION (state and federal laws)

City of Houston v. Southern Crushed Concrete



I. CONFLICT & PREEMPTION (state and federal laws)

City of Houston v. Southern Crushed Conc.,
398 S.W.3d 676 (Tex. 2013)

- **City ordinance:** Restricted locations for concrete crushing



- **State law:** City ***could not make unlawful*** a condition or act approved or authorized under the Texas Clean Air Act . . . or by TCEQ

I. CONFLICT & PREEMPTION (state and federal laws)

- **Executive:** Governor calls for specific preemptions and even ***categorical preemptions***

Attorney General opinions

- **Legislative:** 2015 bill preempted local regulation of oil and gas exploration, production, processing, transporting, etc., including, e.g. “fracking”

2017 preemptive bills: Uber-Lyft regs, “bathroom” bill, tax levy bill, vested-rights, tree ordinances, manufactured housing, cellular facilities in public ROW (etc.)

I. CONFLICT & PREEMPTION (state and federal laws)

- **SB 1004:** Curtails municipal regulation of wireless “network nodes,” poles, cables, etc. in public ROW.

Extensive, prescriptive rules; caps on fees and compensation to cities.

Overrides ordinance and restrictions
- **Court challenge:** *City of Austin v. Texas*, 2017 U.S. Dist. LEXIS 141140 (W.D., No. 1:17-CV-806-RP)

City argued SB 1004 preempted by federal Telecommunications Act: 47 U.S.C. § 253 [fair compensation] and §332 [must act within a reasonable time].

II. FIRST AMENDMENT (signs, content neutrality)

Auspro Enterprises v. TxDOT



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