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City Regulation of Land Use By City Type

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Introduction

Cities are formed for the purpose of managing the needs of people who live and work in close quarters. Cities provide basic services, such as streets, law enforcement, and utilities. They also enact and enforce ordinances to protect their citizens and foster a better city environment. City government in Texas, as in most of the United States, was founded on, and continues to evolve from, the premise that local communities know best how to run their local affairs. The following is a brief introduction to the types of cities in Texas and the power granted to them by the state to enact ordinances. As this is a brief overview of the area, and not intended as legal advice, local counsel should always be consulted prior to adopting any ordinance.

A Brief History of Texas Cities¹

The evolution of the statutes that authorize the incorporation of a Texas city is somewhat convoluted. From 1836 (during the Republic of Texas period) through 1845 (when Texas was annexed into the United States) and continuing until 1858, the only way to incorporate a city was by a special act of the Congress of the Republic of Texas or the State Legislature.

After 1836, the Republic of Texas Congress began incorporating towns by special acts of legislation. Nacogdoches was the first town incorporated, by virtue of a law approved June 5, 1837. In addition to incorporating Nacogdoches, the 1837 law incorporated San Augustine, Richmond, Columbus, San Antonio, and Houston, in addition to twelve others. The special act, which resembled a very basic city charter, contained only ten sections and was less than two pages long. It expressly spelled out the duties and powers, including ordinance-making power, of the cities it governed. Under the special act, a city could only exercise those powers expressly granted in the text of the act or those necessary or implied from the express powers. Over the next ten years, the Congress of the Republic of Texas incorporated more than fifty towns in this manner, each of which had only the powers granted to it in the special act that created it.

After Texas became a state in 1845, the State Legislature continued incorporating cities by special act until the passage of the Home Rule Amendment of 1912. Also, the Legislature frequently amended or repealed the acts that governed the cities it created.

In 1858, the first statute allowing incorporation under the general laws of Texas was passed. From 1858 to 1913, communities could incorporate either by special law or under the general laws. In 1874, the Legislature passed a short law allowing voters to amend the special acts passed by the legislature. In 1912, Texas voters passed the Home Rule Amendment, Article XI, Section 5, which prohibited the incorporation of a city by special act. The Home Rule Amendment gave cities with over 5,000 inhabitants the power to adopt their own charter after an election, thereby giving them the power of self-government. Presently, with very few exceptions, cities in Texas are classified as general law or home rule.

¹ Most of the information presented in this introduction comes from D. Brooks, *Municipal Law and Practice*, 22 Texas Practice Ch. 1 & T. O'Quinn, *History, Status, and Function*, Introduction to Title 28 of the TEX. REV. CIV. STAT. (Vernon 1963).

The 1858 statute is the foundation for the Texas Local Government Code provisions relating to incorporation, powers, and duties of general law cities, and the present Local Government Code provisions are remarkably similar to the original language. The statute allowed for the inhabitants of an area to petition the “Chief Justice of the County” for incorporation as a town or village. If the petition met the prescribed requirements, the Justice ordered an election. If the results of the election were favorable, the Justice ordered a subsequent election for a mayor and aldermen. The 1858 statute was amended in 1873 to reduce the number of inhabitants necessary to incorporate a community. Today, towns or villages incorporated under the 1858 statute and the 1873 amendment are classified as Type B cities.

In 1875, the Legislature passed a second law that allowed for incorporation under the general laws. The 1875 statute allowed a city or town operating under a special law charter to adopt the general law form of government, setting the stage for what are now referred to as Type A general law cities. Another statute, passed in 1909, allowed a city to adopt the commission form of government consisting of a mayor and two commissioners, which is the precursor to a Type C city. In 1911, another statute was passed that allowed any city, town, or village to change to a “city” (what we now know as a Type A city) if it met certain requirements.

Finally, in 1925, the Legislature melded most of the laws relating to cities into Title 28 of the Texas Revised Civil Statutes. Title 28, entitled *Cities, Towns, and Villages*, evolved from the 1858 and 1875 statutes, as well as from various other statutes, including Title 17 (1879), Title 18 (1895), and Title 22 (1911). The Local Government Code, codified in 1987, did away with the distinction of city, town, or village and loosely replaced those terms with type A, B, or C cities. Many minor differences, such as the method of filling vacancies and quorum requirements, exist in the operation of the different types of general law cities.

Limits on the amount of ad valorem tax that may be levied, however, remains one of the most notable distinctions between the different types of cities. A Type B city is limited to twenty-five cents per hundred dollar valuation, a Type A city is limited to \$1.50 per hundred, a Type C city is limited to twenty-five cents or \$1.50 depending on population, and a home rule city is limited to \$2.50 per one hundred dollar valuation.² Another important distinction is the ordinance making authority of the different types of cities.

The Power to Enact and Enforce Ordinances

The authority of a Texas city to enact and enforce ordinances is conditioned on the type of city. An ordinance is defined as “a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating the corporate affairs of the municipality.”³ In other words, an ordinance is the equivalent of a municipal statute, passed by the city council, governing matters not already covered by federal or state law.

The Tenth Amendment to the United States Constitution reserves to the states “The powers not delegated to the United States by the Constitution.” The powers reserved to the

² See TEX. TAX CODE § 302.001, TEX. LOC. GOV'T CODE § 51.051, TEX. CONST. Art. XI, §§ 4, 5.

³ BLACK'S LAW DICTIONARY 1097 (6th ed. 1990).

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