



TEXAS MUNICIPAL LAW BULLETIN™

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Texas Tree Law Update

Last session, the Texas Legislature proposed two bills restricting municipalities' power to pass tree preservation ordinances, on the grounds that they infringe upon private landowners' property rights. Both bills (S.B. 744 and H.B. 7) required cities with such ordinances to allow property owners who remove protected trees to apply for a planting credit and recoup at least 50 percent of their fee. H.B. 7 allows the regulation of the removal of trees with trunks not less than 10-inches in diameter, rather than the original proposed restriction of 24-inches.

In the end, only H.B. 7 was enacted. Governor Abbott vetoed S.B. 744 for not going far enough to limit cities' authority. According to the Governor, the bill put the state's stamp of approval on the idea that a city could "micromanage" private property – something he and some members of the Legislature stated is unconstitutional. Specifically, they argued the ordinances violate the takings clause of the Texas Constitution: "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made..." Tex. Const. Art. I, § 17.

The constitutional case against tree ordinances is weak. Tree ordinances do not usually rise to the level of a regulatory taking, because the presence of trees "doesn't render a property valueless or unreasonably interfere with the use of property." (TML: Tree Preservation Ordinances Part II: H.B. 1377 and Pay or Waive). Given the important functions trees serve – among them the absorption of pollution, creating billions of dollars in health value, enhancing scenic vistas and boosting property values – cities should be empowered to preserve them.



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