

# Know Your Rights: New Limits on City Government

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Cities have enormous inherent and statutory powers to regulate land development.

Zoning regulations, economic development regulations, general police powers to regulate for the health, safety, and welfare of the residents of the City, and many other sources of authority all greatly impact property owners. Every two years, the Texas Legislature is presented with numerous bills designed to change what cities can and can't do. The 2015 Legislative Session prevented cities from instituting fracking bans. The most recent legislative session continued the trend of reigning in municipal power by enacting several bills specifically limiting a city's authority over land development. I'll mention a few developments in the law:

## Cities are limited from forcing you to preserve your trees:

Many cities regulate the removal of trees on private property, primarily in the building setback area, the area between the public right-of-way and where you are allowed to build on your property. New construction often requires that these trees are removed and replanted after construction is complete. Ordinarily, removing a tree requires that the property owner must pay a fee, replace the tree, or a combination of both. House Bill 7, effective December 1st, 2017, relates to municipal regulation of the removal of trees on private property, and entitles property owners to receive some credit for planting certain replacement trees.

The bill treats homeowners differently from developers. For a single-family home that is a person's residence, a city may no longer require a person to pay a fee at all to remove a tree that is narrower than ten inches in diameter, measured 4.5 feet from the ground. For larger trees, the city can charge a fee, but must allow the property owner removing the tree to get credit for planting new, smaller trees to offset up to 100% of the fee. For developers constructing or renovating a residential property that is not their residence, including multi-family, single-family, or manufactured homes, only half the fee can be credited back to the developer for planting new



trees. The bill does not contain any provisions stopping you from simply having your resident client, if there is one, take care of tree removal permits in order to take advantage of the 100% credit for planting new trees. For developers renovating or constructing non-residential property, only a 40% credit is available for planting new trees. Fees may no longer be assessed by a city for the removal of dead, diseased, or dangerous trees.

The bill does not prevent cities from setting their own tree removal fees, regulating the types of trees that are required to be planted to receive credits, the methods of planting, preservation, or removal.

## Cities are limited from driving out mobile homes:

In recent years, cities have undertaken an increasing amount of zoning enforcement actions against manufactured home communities that often involve the adoption of new zoning regulations followed by attempts to enforce them against existing communities. Senate Bill 1248, effective on September 1st, 2017, relates to a city's regulation of manufactured home communities, and amends Texas' zoning laws by requiring cities to recognize that certain manufactured home communities that don't conform to a city's zoning codes are grandfathered against complying with those new zoning regulations.

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Specifically, cities are prevented from requiring manufactured home communities to decrease the number of lots or finding that the lots have been abandoned unless they have been continually abandoned for 12 months or more. Generally, manufactured home owners are allowed to continue to install manufactured homes, even if the installation

does not comply with current zoning regulations, as long as the installation complies with the zoning regulations that were in place at the time the then-lawful manufactured home community was first developed. Current state and federal regulations still apply to the installation of the home, but new zoning regulations do not. One exception: cities that prohibit new construction of single-family homes in a floodplain can also prohibit new installations of manufactured homes in the floodplain, even if that regulation was not on the books when the manufactured home community was developed.

## Cities are limited from annexing your property:

Annexation is big business in Texas. Our cities do not collect as much money from our legislature as cities in many other states. In order to fund infrastructure redevelopment in older areas, as well as make up for other budget shortfalls, Texas cities have often looked outside of their boundaries for areas to annex and tax. Generally, a property owner has a limited say in whether a city proceeds with annexation, and is sometimes only limited to making sure municipal services are delivered as promised. It's not a very good

deal for areas that need the city far less than the city needs their taxes. For the time being, that has changed. Senate Bill 6, passed in the recent Special Legislative Session, effective December 1st, 2017, changes how and what cities may annex.

Annexation law is incredibly technical, complicated, and does not apply universally to all cities. Many rules only apply to cities of a certain type and size. The most significant change to annexation law for people in the Greater Houston area is that for property that is not fully annexed as of December 1st, 2017, a city that is wholly or partly in a county with a population of 500,000 or more (Harris, Montgomery, and Fort Bend) must obtain the consent of the property owners of the majority of the land the city wishes to annex, either by petition or election, depending on the area. Practically speaking, areas that would consent to annexation are usually not areas that cities want to annex. In response to the signing of this bill, several Texas cities immediately initiated accelerated annexation proceedings hoping to secure one last round of annexations before the new bill goes into effect. There are far too many details regarding annexation law and the new legislative changes to list them here, but the good news is that if you managed to escape the recent attempts to annex your property, it will likely be much more difficult to be forcibly annexed going forward until this issue is revisited by the Legislature. If you were unfortunate and annexed against your will, your main options for getting out of it are (1) lobby your state representatives for help, and (2) comb through your new city's annexation proceedings to make sure they properly followed all necessary rules and procedures for the annexation. Just recently, on November 14th, 2017, the Court of Appeals in Dallas upheld a temporary restraining order against the City of Mesquite for irregularities in their annexation proceedings. All cities that were interested in annexation were given a very narrow window by the bill to initiate and complete a round of annexations before the new bill went into effect, and as a result, cities were rushed to complete the process on an accelerated timeline.