

# TML LEGISLATIVE UPDATE



May 6, 2022  
Number 18

## **U.S. Supreme Court: City Flag Raising Program Violated the First Amendment**

On May 2, 2022, the Supreme Court of the United States decided [\*Shurtleff v. City of Boston\*](#), finding that the City of Boston (Boston) violated the First Amendment when it refused to allow a flag described as a “Christian flag” on one of its flagpoles outside city hall.

Boston has three 83-foot flagpoles outside of its city hall. Boston flies the American flag on one and the state flag on another. On the third flagpole, Boston usually flies the Boston flag, but it also allows third parties to hoist a flag of their choosing on the flagpole for the duration of flag-raising ceremonies that are held outside city hall. Most of the flags raised were of other countries, but also included flags commemorating groups or causes such as Pride Week and EMS workers. For years, Boston approved third-party flags and had never denied a single request until Harold Shurtleff, the director of Camp Constitution, asked to fly a Christian flag. Boston denied the request citing concerns that flying a religious flag would violate the Establishment Clause, which prohibits the government from endorsing a particular religion. Shurtleff sued.

Boston argued that flying flags from its third flagpole was government speech and Boston could deny Shurtleff’s request without violating the First Amendment. Shurtleff argued that because Boston had opened up its flagpole for citizens to express their own views, refusal to fly a religious flag was a violation of the First Amendment Free Speech Clause.

The Supreme Court found that Boston’s flag-raising program was not government speech and it violated the First Amendment when it denied Shurtleff’s request to fly a Christian flag. The Court acknowledged that there is a thin line between government speech and private speech when the government invites the people to participate in a program. In this instance, “Boston’s lack of meaningful involvement in the selection of flags or the crafting of their messages” led the court to “classify the third-party flag raisings as private, not government speech.”

## **Railroad Commission Proposes Emergency Prioritization Rules**

The Railroad Commission [adopted a rule](#) relating to the prioritization of natural gas distribution during a curtailment event (i.e. when a gas utility determines that its ability to deliver gas may become inadequate to support continuous service to its customers on its system and it reduces deliveries to one or more customers). The rule prioritizes the needs of individual customers and electric generation customers during a natural gas utility curtailment event.

## **TDHCA Announces Homeowner Assistance Fund**

The Texas Department of Housing and Community Affairs (TDHCA) has posted a [Notice of Funding Availability](#) (NOFA) of \$30,500,000 in Homeowner Assistance Funds (HAF) for cities, counties, private nonprofit organizations, and other eligible organizations, to provide the following services to income eligible households experiencing housing instability:

1. Intake center services to help households apply for and access HAF funding;
2. Housing counseling services to assist households with improving financial sustainability;  
and
3. Legal services to provide free legal counsel and advice, including limited civil action to assist households with retaining their homeownership.

Interested cities can apply to provide one, two, or all three of the possible service categories as further described in the NOFA. Applications will be reviewed and awarded on a first-come, first-serve basis and will continue to be accepted until August 31, 2022, or when all funds have been committed, whichever occurs first. Applications must be emailed, with all exhibits completed, to Felipe Romero at [felipe.romero@tdhca.state.tx.us](mailto:felipe.romero@tdhca.state.tx.us), and application questions may be submitted via email to Tanya Briks at [tanya.briks@tdhca.state.tx.us](mailto:tanya.briks@tdhca.state.tx.us) or Felipe Romero at [felipe.romera@tdhca.state.tx.us](mailto:felipe.romera@tdhca.state.tx.us).

## **House and Senate Committee Interim Hearings**

The Texas House and Senate Committees are underway studying interim charges outlined by Speaker Phelan and Lt. Governor Dan Patrick.

Below is a full list of upcoming committee hearings set to hear certain city-related charges. All hearings will be held at the Texas Capitol unless otherwise indicated. If a committee has newly posted notice and was not included in last week's edition of the *Legislative Update*, it is indicated as such.

### **Senate Water, Agriculture and Rural Affairs Committee**

The committee will meet on May 10 at 9:00 a.m. to hear invited and public testimony on the following charges:

**Water Utility Infrastructure:** Evaluate the state's water infrastructure. Study and make recommendations on options to upgrade and update water infrastructure to address deferred maintenance, disasters, and water loss.

**Water Supply:** Review and make recommendations to complete specific projects identified in the 2022 State Water Plan. In light of recent changes to the global economy, consider the current regulatory process regarding innovative technology solutions to water supply needs, such as marine desalinations, and make recommendations for their improvement.

Information on the hearing, including how to testify at the committee hearing, can be found [here](#).

### **\*NEW\* House Committee on Licensing and Administrative Procedures**

The committee will meet on May 10 at 10:30 a.m. to hear invited only testimony over the following interim charges:

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87<sup>th</sup> Legislature. Conduct active oversight of all the associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation including:

- [H.B. 636](#), relating to the continuation and functions of the Texas state Board of Plumbing Examiners; and
- [H.B. 1560](#), relating to the continuation and functions of the Texas Department of Licensing and Regulation.

Information on the hearing can be found [here](#).

### **Senate Finance Committee**

The committee will meet on May 17 at 10:00 a.m. to hear invited and public testimony on the following interim charges:

**Property Tax Relief:** Examine and recommend ways to reduce Texans' property tax burden. Review and report on proposals to use or dedicate state revenues in excess of the state spending limit to eliminate the school district maintenance and operations property tax.

**Tax Exemptions:** Examine Texans' current tax exemptions and report on whether adjustments are merited because of inflation or any other factors.

Information on the hearing, including how to register and testify at the committee hearing, can be found [here](#).

### **Senate Business and Commerce Committee**

The committee will meet on May 18 at 9:00 a.m. to hear invited and public testimony on the following interim charge:

**Cybersecurity:** Review current state and federal laws regarding cybersecurity protections and requirements for local governments, state agencies, and critical industries of our state. Make recommendations for legislation to improve resilience and protection against cybersecurity attacks and ensure the privacy protection of the citizens of Texas.

Information on the hearing, including how to register and testify at the committee hearing, can be found [here](#).

*TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.*