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Fifth Circuit Opinion Strikes Down STR Residency Restrictions

On August 22, 2022, the U.S. Court of Appeals for the Fifth Circuit issued an opinion in the case of [*Hignell-Stark v. City of New Orleans*](#), striking down the city’s short term rental (STR) ordinance as unconstitutionally restricting interstate commerce. Because Texas is one of three states included in the Fifth Circuit’s jurisdiction, the Court’s opinion is binding on Texas cities.

In 2019, the City of New Orleans city council significantly revised its STR licensing scheme. These revisions included, among other things, a residency requirement for STRs in residential neighborhoods. Under the ordinance, a person could only receive an STR license if the STR is located on the same lot as the owner’s primary residence for which they claim a Louisiana homestead property tax exemption. Following the ordinance revisions, a group of property owners sued the city, claiming that the STR residency requirement violated their constitutional rights.

One of the property owners’ claims was that the city’s residency requirement violated the “dormant” Commerce Clause by discriminating against interstate commerce. The Court agreed with the property owners’ argument, holding that the ordinance precluded out-of-state property owners from participating in the STR market in New Orleans altogether. Further, the Court held that there are other nondiscriminatory alternatives the city could have used to achieve its policy

goals of preventing nuisances, promoting affordable housing, and protecting neighborhoods' residential character. According to the Court, the same goals could be achieved by increased enforcement, increased local taxes on STRs, a requirement that STR owners have a non-resident operator stay on the property during the night, or by capping the number of STR licenses available for any given neighborhood. In the Court's words: "The City has many options to address the problems caused by STRs in residential neighborhoods. But it chose the one the Constitution forbids."

What does this opinion mean for Texas cities? It likely prevents the enforcement of any city STR ordinance provisions that contain a similar prohibition on non-owner occupied STRs, and further calls into question any STR ordinance provision that treats residents and non-residents differently. City officials in cities with STR ordinances are encouraged to consult with their city attorney in light of this opinion.

Texas Opioid Abatement Fund Council Begins Outreach on Disbursement of Statewide Opioid Settlement Funds

The Texas Opioid Abatement Fund Council (O AFC), operated through the comptroller's office, has begun outreach to Texas cities regarding opioid settlement funds.

In response to the millions of dollars in costs incurred by the state and local governments due to the opioid epidemic in Texas, the Texas Legislature passed [Senate Bill 1827](#) in 2021. S.B. 1827 requires the state to maintain an account and a fund related to opioid abatement settlements. The account and fund are used to manage payments received by the state from settlements against opioid manufacturers, distributors, or other parties subject to violation of state or federal laws on the manufacture, marketing, distribution, or sale of opioids.

To date, Texas has participated in settlement agreements with different companies to resolve legal claims against them for their role in the opioid crisis. Funding is dependent on the number of subdivisions or local governments that join the settlement agreements. The companies include opioid manufacturer Johnson and Johnson ("Janssen"); pharmaceutical distributors AmerisourceBergen, Cardinal Health, and McKesson; opioid marketing consultant McKinsey; and pharmaceutical companies Endo and Teva.

S.B. 1827 requires the Texas Treasury Safekeeping Trust Company (Trust Company) to distribute the settlement proceeds of the statewide opioid settlement agreement to the political subdivisions listed in Article IX, Section 17.18 of the 2022-2023 General Appropriations Act (GAA) from the Opioid Abatement Trust Fund.

Over the next 18 years, the state of Texas anticipates receiving approximately \$1.6 billion from opioid settlement agreements. Of this amount, \$1.3 billion will be deposited into the Opioid Abatement Trust Fund for allocation by the O AFC, established by S.B. 1827. Under SB 1827, \$239.2 million of these funds are allocated to cities and counties based on the list in Article IX, Section 17.18 of the GAA.

Outreach efforts are underway by the Trust Company to cities and counties in preparation to disburse settlement funds related to the opioid crisis. You can ensure your city receives important information, including any settlement dollars for which it is eligible, by providing contact information for your entity to oa.fc.public@cpa.texas.gov. Please include your full name, your entity's name, email, position/title, phone number, and email address in your message to OAFc.

To learn more about OAFc and view settlement agreement records and related documents, please visit the Texas Comptroller's Statewide Opioid Settlement Initiatives webpage at <https://comptroller.texas.gov/programs/opioid-council>.

Texas Comptroller Releases List of Ten Financial Companies that Boycott the Energy Sector

Last week, the comptroller's office released its initial [list](#) of ten financial companies that "boycott" the energy sector. This is significant because during the 2021 regular legislative session, the Texas Legislature passed S.B. 13, adding Chapters 809 and 2274 to the Texas Government Code, which took effect September 1, 2021.

[Chapter 809](#) did not create any new direct obligations for cities; rather, it directs certain state retirement systems to divest from investments that "boycott" energy companies, as defined in that chapter. This chapter also tasks the comptroller with preparing a list of financial companies that boycott energy companies.

[Chapter 2274](#), on the other hand, directly prohibits a city from entering certain contracts with a value of \$100,000 or more unless the contract contains a written verification from the company that it: (1) does not boycott energy companies (as defined in Chapter 809); and (2) will not boycott energy companies during the term of the contract. Chapter 2274 does not contain explicit enforcement provisions or penalties for a city's failure to obtain the required verification, nor does it explicitly prohibit a city from contracting with companies on the comptroller's list.

The comptroller's office also released its [methodology for determining](#) which financial entities boycott energy companies. The release of the list triggers certain deadlines applicable to state government retirement systems and does not have a similar direct effect on cities. That said, because Chapters 809 and 2274 operate under the same definition of "boycott," the list can help cities remain compliant with their Chapter 2274 obligations when contemplating contracts with financial services companies. With these laws being so new, open questions remain regarding the effect of entering a contract that triggers the Chapter 2274 requirements with a vendor on the comptroller's list who is willing to make the written verification to the city. Some risk remains that the contract would be voidable if challenged, since the comptroller's list is evidence that the verification was false when the contract was entered. Keep in mind that for contracts with a value of under \$100,000, Chapter 2274 does not require a city to obtain the boycott verification, even if the vendor appears on the comptroller's list.

Please discuss any potential impact these laws and the comptroller's list may have on your city with your city attorney. The League will continue to monitor the comptroller's website for updates.

Federal Infrastructure Bill Update

In November 2021, the federal Infrastructure Investment and Jobs Act (IIJA) was signed into law. The IIJA is altogether a \$1.2 trillion bill that will invest in the nation's core infrastructure priorities including roads, bridges, rail, transit, airports, ports, energy transmission, water systems, and broadband.

The League will monitor state and federal agencies and work with the National League of Cities (NLC) to access the latest information relating to the IIJA. We will be providing periodic updates in the Legislative Update on resources for Texas cities on how to access IIJA funding for local infrastructure projects.

U.S. Department of Agriculture (USDA)

Earlier this month, the USDA [announced](#) it is accepting applications for the second round of 2022 funding for the Rural eConnectivity Program, also called the ReConnect Program. The program is designed to facilitate broadband deployment in rural areas. Local governments are eligible applicants, among many others. Beginning on September 6, applications can be submitted through the Rural Utilities Service on-line application portal until 10:59 CST on November 2. More on the program can be found [here](#).

Federal Communications Commission (FCC)

Earlier this month, the FCC announced the establishment of the [Affordable Connectivity Outreach Grant Program](#). The program is designed to provide grant funding to entities, including cities, to support those entities' outreach efforts in raising awareness of the Affordable Connectivity Program. As previously reported in this column, the Affordable Connectivity Program is designed to help low-income households pay for broadband internet service and connected devices. More information on the outreach grant program can be accessed in [this article](#) from the National League of Cities.

National League of Cities (NLC)

The [Local Infrastructure Hub](#), sponsored by NLC and the U.S. Conference of Mayors, among others, is now live. The Hub is designed to help city officials navigate the funding programs made available by the IIJA. Interested city officials can sign up for the mailing list, attend virtual learning events, and access articles and other resources on some of the key IIJA funding opportunities.

[Upcoming events](#) on the Local Infrastructure Hub include:

- September 13, 2022 – Advancing Energy Efficiency: The Energy Efficiency and Conservation Block Grant Program (EECBG)
- September 27, 2022 – Delivering Results: Building Resilient Infrastructure and Communities

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 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.

House Committee on Ways and Means

The committee will meet on Thursday, September 8 at 11:00 a.m. to hear the following interim charges:

Actively oversee associated rulemaking and agency actions to ensure the intended legislative outcome of:

- [H.B. 2404](#), relating to creating and maintaining a database of information regarding certain local economic development agreements; and
- [S.B. 2](#) (86R – The Property Tax Reform and Transparency Act of 2019) and related tax reform legislation passed by the 87th Legislature, including [H.B. 1869](#), [H.B. 2429](#), [H.B. 2723](#), [S.B. 1438](#).

The committee has invited TML staff to testify on the charges above.

Study Texas' property tax appraisal system and make appropriate recommendations to improve the appraisal system. The study should include:

- Assessing the accuracy of appraised values and operational effectiveness of appraisal districts;
- Evaluating methods of selected chief appraisers, appraisal review boards, and appraisal district directors;
- Evaluating existing appraisal protections for taxpayers and ease of taxpayer participation in the appraisal process; and
- Conduct a comprehensive review of not renewing Chapter 313, Tax Code. Evaluate tax incentives offered by other states and make recommendations for incentivizing manufacturers and other capital-intensive businesses to locate to Texas.

Information on the hearing, including how to register and submit electronic comment, can be found [here](#).

House Committee on State Affairs and Committee on Energy Resources

The two committees will meet jointly on Tuesday, September 13 at 10:00 a.m. to hear the following joint interim charge:

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

- [S.B. 3](#), relating to preparing for, preventing, and responding to weather emergencies and power outages.

Information on the hearing, including how to register and submit electronic comment, can be found [here](#).

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