

LEGISLATIVE UPDATE: NEW LAWS RELEVANT TO CITY OF ALPINE

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ALPINETX



S.B. 3 – UTILITY PREPAREDNESS

- Municipally owned water utilities must:
 - (1) ensure emergency operation of water system during an extended power outage at a minimum water pressure of 20 psi, or a water pressure level approved by TCEQ, as soon as safe/practicable after natural disaster;
 - (2) by March 1, 2022, adopt/submit to TCEQ for approval:
 - (a) an emergency preparedness plan demonstrating above;
 - (b) a timeline for implementing the plan.



H.B. 872 – CUSTOMER INFORMATION HELD BY MOU

- A municipally owned utility (MOU) may not disclose customer information (including address) under the Public Information Act (PIA) unless customer elects to make the info public or certain exceptions apply
- Specifically excluded from disclosure is information:
 - (1) that reveals whether an account is delinquent or eligible for disconnection; and
 - (2) collected as part of an advanced metering system
- Previously, utility customers had to fill out form to request their information remain confidential; now, customer info is protected unless the customer opts to make it public.



H.B. 872 – CUSTOMER INFORMATION HELD BY MOU, CONT.

- MOU customers may elect to make their info public by filling out form requesting disclosure of their personal information in response to PIA requests.
- To give option, MOU *must* include with a bill sent to each customer or post on its Internet website:
 - (1) a notice of the customer's right to request disclosure; and
 - (2) a form the customer may use to request disclosure by marking the appropriate box and returning it by mail or electronically.



S.B. 6 – PANDEMIC-RELATED LIABILITY PROTECTIONS

- City not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic state of disaster declared by the governor
 - applies to a city official or city, unless claimant establishes that “reliable scientific evidence shows that the failure to warn the individual of the condition, remediate the condition, or implement or comply with the government-promulgated standards, guidance, or protocols was the cause in fact of the individual contracting the disease.”
- S.B. 6 has additional very high bars for a claim against city
- Conclusion: follow best practices, stay home if sick, inform others of positive test, etc., and city cannot be sued



S.B. 24 – PRE-EMPLOYMENT SCREENING PROCEDURES FOR LAW ENFORCEMENT AGENCIES

- For new L.E.O. hires, starting Jan 1, 2022, APD must request from TX Com. on Law Enforcement (TCOLE)/other applicable person(s):
 - (1) personnel files/employee records from each previous law enforcement agency employer, including the employment application submitted to the previous employer;
 - (2) employment termination reports maintained by TCOLE;
 - (3) service records maintained by TCOLE;
 - (4) proof that the person meets the minimum qualifications for enrollment in a TCOLE training program;
 - (5) a military veteran's United States Department of Defense Form DD-214 or other military discharge record;



S.B. 24 – PRE-EMPLOYMENT SCREENING PROCEDURES FOR LAW ENFORCEMENT AGENCIES, CONT.

- New L.E.O. hire info required, cont.:
 - (6) criminal history record information available in state/fed databases;
 - (7) pending warrants, as available through Crime Information Centers;
 - (8) proof of vehicle insurance;
 - (9) DPS driving record;
 - (10) proof of U.S. citizenship; and
 - (11) min. of three personal references & two professional references.
- APD must submit confirmation to TCOLE, that, to the best of its ability, contacted each entity or individual necessary to obtain above info
- Police Chief or designee must review/sign each confirmation form
 - Failure = grounds for suspension of chief TCOLE license



S.B. 1359 – L.E.O. MENTAL HEALTH LEAVE POLICIES

- Law enforcement agencies must develop/adopt mental health leave policy for police officers who experience a traumatic event in scope of employment; policy must:
 - (1) have clear/objective guidelines for when officer may be granted leave;
 - (2) grant leave without deduction in salary or compensation;
 - (3) list the number of leave days available; and
 - (4) detail how much anonymity the officer has when leave taken
- Agency may further provide a list of mental health services available in area that officer may use.
- Deadline to implement “as soon as practicable after the effective date of September 1, 2021”



S.B. 157 – EMINENT DOMAIN REPORTING

- A 2015 law required cities to annually fill out a web-based form with comptroller re: whether city exercised eminent domain authority in preceding year by filing condemnation petition
 - failure to submit form could result in a \$1,000 per day
- S.B. 157, in effect for upcoming reporting period (Nov 1 –Feb 1), amended reporting for cities with pop. under 25,000:
 - Now, annual report must be filed only if the city's eminent domain authority information has changed from the previous year (i.e., only if filed condemnation petition, obtained new eminent domain power)
 - City now need only confirm the accuracy of the previously-filed information before each February 1st deadline



S.B. 877 – BUILDING INSPECTIONS

- Individuals permitted to perform building inspections during declared disasters for compliance with building codes now include: (1) certified inspectors; (2) city building inspectors; (3) government building inspectors who have been approved by the city to perform inspections during a disaster; and (4) licensed engineers
- Texas still operating under a statewide disaster declaration – at least for now – so city can receive inspection reports from these people
- These “inspectors” must comply with city’s building regulations/policies and give city notice of inspection within 30 days of inspection.
- City may prescribe format of the inspection notice but cannot collect an additional inspection fee based on the inspection being conducted by a person pursuant to these provisions



S.B. 968 – LOCAL PANDEMIC DISASTER RESPONSE LIMITATIONS

- Mayor cannot issue order that prohibits:
 - (1) housing/commercial construction activities,
 - (2) services for title searches, notary services, and recording services in support of mortgages/real estate services/transactions;
 - (3) residential and commercial real estate services, including settlement services; or
 - (4) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts.
- Further prohibits city, other than for health care purposes, from:
 - (1) issuing to a third party a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status; or
 - (2) otherwise publishing or sharing any individual's COVID-19 immunization record or similar health information.



S.B. 968, CONT. – CITY ROLE FOR TDEM WELLNESS CHECKS

- During disaster or other emergency as determined by the Texas Division of Emergency Management (TDEM), TDEM shall collaborate with first responders, local governments/health departments, to conduct wellness checks on medically fragile individuals (as defined by TDEM) within 24 hours of such events
- Checks must include automated phone call, a personalized call, and if person is unresponsive to calls, an in-person check
- City must adopt procedure to conduct wellness checks in compliance with minimum standards adopted by TDEM
 - However, TDEM has not published min. standards yet



S.B. 1090 – BUILDING MATERIALS

- In 2019 legislature passed H.B. 2439 creating a new chapter of Gov Code restricting city's ability to adopt rules limiting the use of building materials in construction if those materials were approved for use by a national model code (exceptions only made for dark sky ordinance communities)
- Other exceptions now added related to plumbing products if city implementing water conservation plan or program that requires a standard for a plumbing product, or if the Texas Water Development Board requires the use of a standard for a plumbing product as a condition for a TWDB program



H.B. 692 – PUBLIC WORKS PROJECTS & RETAINAGE

- “Retainage” is defined to mean the part of a public works contract payment withheld by a city to secure performance of the contract.
- Bill limits the amount of retainage for certain public works projects and governs when retainage may be withheld and how it must be handled in case of a dispute
- City Attorney to factor in on case-by-case basis when drafting city contracts as applicable



H.B. 1082 – CONFIDENTIALITY OF ELECTED OFFICIALS' INFORMATION

- If the city holds an elected public officer's home address, home telephone number, emergency contact information, date of birth, social security number, or family member information from officers' previous employment with city, that info is excepted from PIA disclosure automatically
- Unclear whether H.B. 1082's protections extend to information on an application for a place on the ballot given that the Texas Election Code provides that the application is public immediately upon filing; rulings from the Attorney General's Open Records Division regarding that question are pending but none has yet been issued.



H.B. 1475 – ZONING VARIANCES

- Board of Adjustment (BOA) given greater authority related to variances and additional objective grounds to grant under “unnecessary hardship” reasoning.
- “Unnecessary hardship” not defined in state law, and had court-defined meaning:
 - something not self-imposed, personal in nature, related to the property for which the variance is sought, and not a solely financial hardship. The hardship needed to be a condition unique, oppressive, and not common to other property.
- Purely financial considerations can now qualify an applicant for a variance. Additionally, if the proposed structure would be considered a nonconforming structure, that could be grounds to grant a variance.



H.B. 1475 – ZONING VARIANCES, CONT.

- Under the new law, there might be an unnecessary hardship if compliance:
 - costs greater than 50 percent of the appraised structure value;
 - result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
 - result in the structure not being in compliance with a requirement of another city ordinance, building code, or other requirement;
 - results in the unreasonable encroachment on an adjacent property or easement; or
 - the city considers the structure to be a nonconforming structure.
- Variance still must not be contrary to the public interest, and the spirit of the zoning ordinance must be observed. So even if a proposed structure fits an “unnecessary hardship” category above, granting the variance is not automatic.
- The facts surrounding each variance request still have to be analyzed by the BOA; City should review their zoning rules, policies, documentation, and electronic or printed materials to make sure they are updated to reflect the changes



H.B. 1925 – CAMPING ON PUBLIC CITY PROPERTY BANNED

- Class C misdemeanor for a person to camp on public city property without first obtaining effective consent from the city.
- Under the bill, to “camp” is “to reside temporarily in a place, with shelter.”
- “shelter” includes the following: a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets or any form of temporary or permanent shelter designed to protect a person from bad weather, other than clothing or handheld devices, i.e., items like raincoats and umbrellas.



H.B. 1925 – CAMPING ON PUBLIC CITY PROPERTY BANNED, CONT.

- City may only give effective consent for a homeless person to camp on public property for the purpose of shelter, if the Texas Department of Housing and Community Affairs (TDHCA) approves a plan covering a defined area identified for camping by the city. For a plan to be approved, it must include information related to the following five areas:
 - Local Health Care: The availability of local health care for the homeless campers, including access to Medicaid and mental health services.
 - Indigent Services: The availability of indigent services for proposed homeless campers.
 - Public Transportation: The availability of reasonably affordable public transportation.
 - Law Enforcement: Local law enforcement in the area.
 - Mental Health Authority Coordination: Steps the city has taken in coordination with local mental health authority related to homeless campers.
- No Homeless Camping in Parks: Under no circumstances, can TDHCA approve a plan that would allow a park to be used for camping by homeless individuals.



H.B. 1925 – CAMPING ON PUBLIC CITY PROPERTY BANNED, CONT.

- Bill allows cities to consent to a person camping on public property for an array of purposes, including:
 - Recreational purposes
 - Providing emergency shelter during a declared disaster
 - Sheltering homeless individuals, as previously described
- Definition of “consent” as to recreation and emergency shelter not provided; City should come up with policy/procedure for consent



FEDERAL UPDATES COMING SOON

- Infrastructure Investment and Jobs Act (IIJA) signed into law
 - IIJA is altogether a \$1.2 trillion bill that invests in the nation's infrastructure priorities including roads, bridges, rail, transit, airports, ports, energy transmission, water systems, and broadband.
 - Of that amount, \$550 billion is new spending, and will mostly take the form of formula grants to states and competitive grants over the next five years.
 - The IIJA sets aside roughly \$35 billion for infrastructure projects in Texas.
- City should be on look out for grant opportunities on all fronts!



ADDITIONAL LEGISLATIVE UPDATES

- Additional changes to tax increase authority and other related matters will require additional in-depth future presentation.
- Looking forward to presenting more as these changes are implemented and interpreted!

