



DRIPPING SPRINGS
Texas

Recent State Cases of Interest to Cities

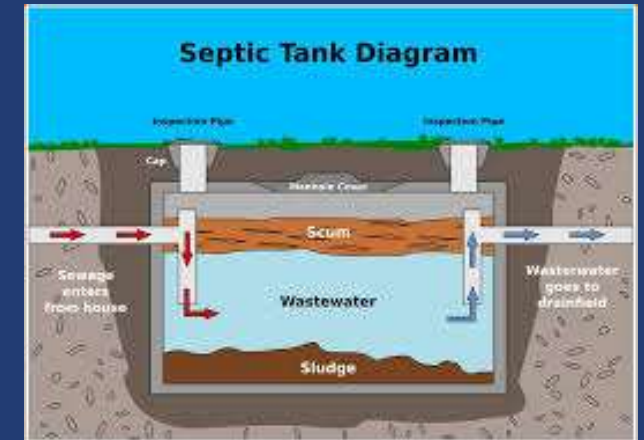
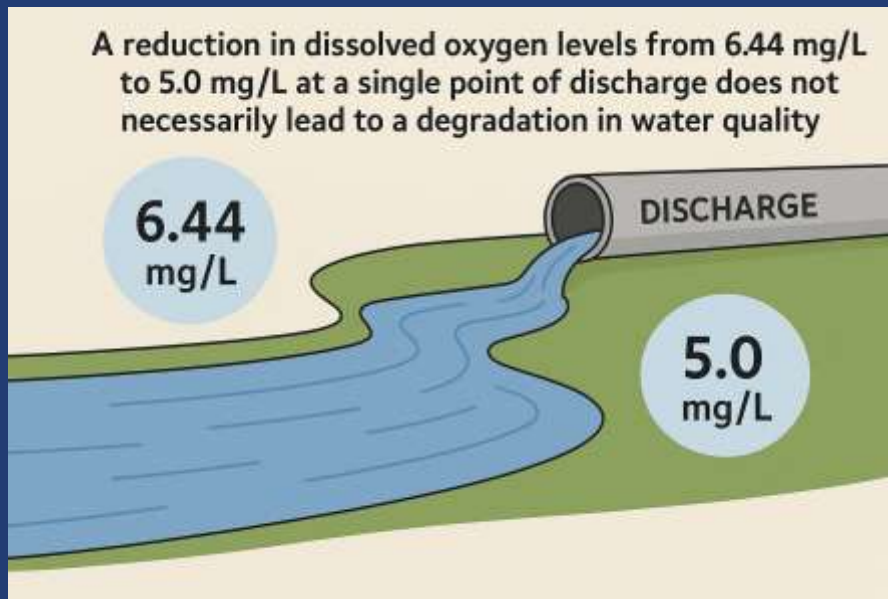
Laura Mueller

June 2025
Texas City Attorneys Association
2025 Summer Conference

Agency Deference

Save Our Springs Alliance, Inc. v. Tex. Comm'n on Environ. Qual. and the City of Dripping Springs, No. 23-0282, 2025 WL 1085176 (Tex. Apr. 11, 2025).

- Deference for TCEQ (state agencies) still exists
- Reasonable basis, not arbitrary
- Total quality of water, not individual constituents, is the correct analysis
– *13 years later*



TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Takings Claims- Flood Ordinance

Commons of Lake Houston, Ltd. v. City of Houston, No. 23-0474, 2025 WL 876710 (Tex. Mar. 21, 2025).

- Updated flood plain ordinances can lead to regulatory takings claims even if a valid exercise of police power (Hurricane Harvey)
- Changed from slabs being 1 foot above the 100-year floodplain to 2 feet above the 500-year floodplain
- Made the subdivision in question over 75% undevelopable
- City argued that since the ordinance was adopted under its police power, and for the National Flood Insurance Program, it could not cause a taking.
- Takings Analysis:
 - (1) Passed an ordinance
 - (2) That caused
 - (3) The property to become undevelopable
 - (4) for a public use of flood prevention
 - (5) without paying the owner adequate compensation
 - (6) and did so intentionally

Takings Claims- Flood Ordinance

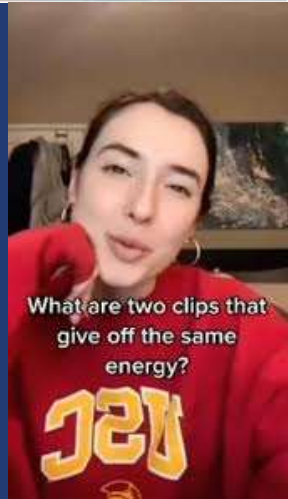
Commons of Lake Houston, Ltd. v. City of Houston, No. 23-0474, 2025 WL 876710 (Tex. Mar. 21, 2025).

- Texas Constitution requires compensation more often than the U.S. Constitution
 - Texas only requires “damage” to the property
 - And “damage” can now come from a regulatory taking

“Indeed, whether a regulation constitutes a valid exercise of the police power—or promotes any other important public policy, purpose, or interest—is simply irrelevant to whether the regulation causes a compensable taking.”

Ripeness: City cannot claim the item is unripe due to lack of applying for a permit when the developer tried for years and the City never told the developer it was applying for the wrong permit.

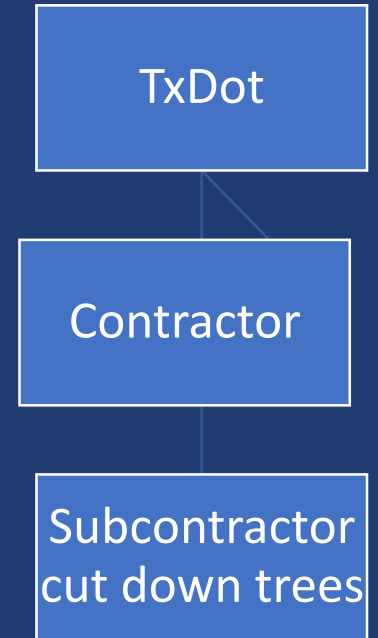
Not a merits decision.



Subcontractor – Immunity

Tex. Dep't of Transp. v. Self, No. 22-0585, 690 S.W.3d 12 (Tex. May 17, 2024).

- Removal of Trees outside TxDOT Right of Way/Easement – on private property
- Subcontractors can cause liability for governmental entity for inverse condemnation, but not for Texas Tort Claims Act:
 - TxDOT (eminent domain authority) ***intentionally*** performed certain acts;
 - that resulted in destroying trees; and
 - public use.



“We conclude that the government may not avoid paying compensation for intentionally taking, damaging, destroying, or appropriating private property for public use by showing that it acted under the incorrect impression that it had a legal right to do so.”

Employment Discrimination – Disability

Dallas Cnty. Hosp. Sys. v. Kowalski, No. 23-0341, 704 S.W.3d 550 (Tex. Dec. 31, 2024)(per curiam).

Facts:

- Working at a desk was causing discomfort to employee
- Plaintiff/Employee found out other employee received ergonomic keyboard
- Employee tried to get keyboard and it turned into a “rigamarole”
- Her position was eliminated during the process
- Disability Discrimination (Chapter 21 Texas Labor Code)
 - Employee must either: (1) have a disability; or (2) be regarded as having a disability
 - Retaliation claim was only valid if employee is disabled
- No evidence that the employee was disabled or that the employer treated her as disabled.

“It may have appeared unfair, inconsistent, wasteful, pointless, tedious, or irritating for Parkland to require Kowalski but not her colleague to complete the form.”



**Whistleblower
Act and City
Council
members**

City of Denton v. Grim, No. 22-1023, 694 S.W.3d 210 (Tex. May 3, 2024).

- Employees reported alleged violation of law by single councilmember who leaked confidential information to the newspaper
- Councilmember ≠ “Public Employee”
- Councilmember had no authority to act on behalf of the City - the alleged violation of law was not a violation of law “by the employing governmental entity”
- Employees were terminated because they allegedly accepted trips from vendors

“a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.” TEX. GOV'T CODE § 554.002(a)

Council Authority - Employment

City of Buffalo v. Moliere, No. 23-0933, 703 S.W.3d 350 (Tex. Dec. 13, 2024) (per curiam).

- Police Officer Employment

Facts:

1. Officer took civilian on high-speed chase in violation of development policy;
2. Written Reprimand issued by chief;
3. City Council (type A General Law) voted to dismiss two weeks after reprimand.
4. Ordinance provided City Council authority to hire all peace officers pursuant to Chapter 341 of the LGC.

Authority to Regulate includes Authority to Fire.

AG filed Amicus Brief filed in favor of the City!



Budget Season – Open Meetings Act

Webb County v. Mares, No. 14-23-00617-CV, 2024 WL 5130862 (Tex. App.—Houston [14th Dist.] Dec. 17, 2024).

Open Meetings Notice leading to employee's reduction in salary and position change:

49. Discussion and possible action to adopt the county budget for fiscal year 2016-2017 pursuant to Chapter 11 of the Texas Local Government Code. The Court may make any modifications to the proposed budget that it considers warranted by law and required by the interest of the taxpayers by majority vote.

Employee sued County under the Open Meetings Act and other actions related to employment.

She is fired within the year.

- Other changes to job descriptions were specifically listed on the agenda
- Notice was inadequate
- No monetary damages under TOMA – Just Attorneys Fees

Everyone lost this appeal.

Torts - High Speed Chase

City of Houston v. Rodriguez, No. 23-0094, 704 S.W.3d 462 (Tex. Dec. 31, 2024).

- Another Police Pursuit car accident
- Was officer acting in “good faith”?
- Court of Appeals Dissent was spicy
- Were the brakes working? Does it matter when the officer knew?

What did we learn:

- Stolen vehicle is sufficient for high-speed pursuit
- Driving recklessly also is sufficient for initiating a high-speed pursuit



Tort – High Speed Chase *City of Austin v. Powell*, No. 22-0662, 704 S.W.3d 437 (Tex. Dec. 31, 2024).

Tort Injury Caused by Officer's Use of Motor Vehicle:

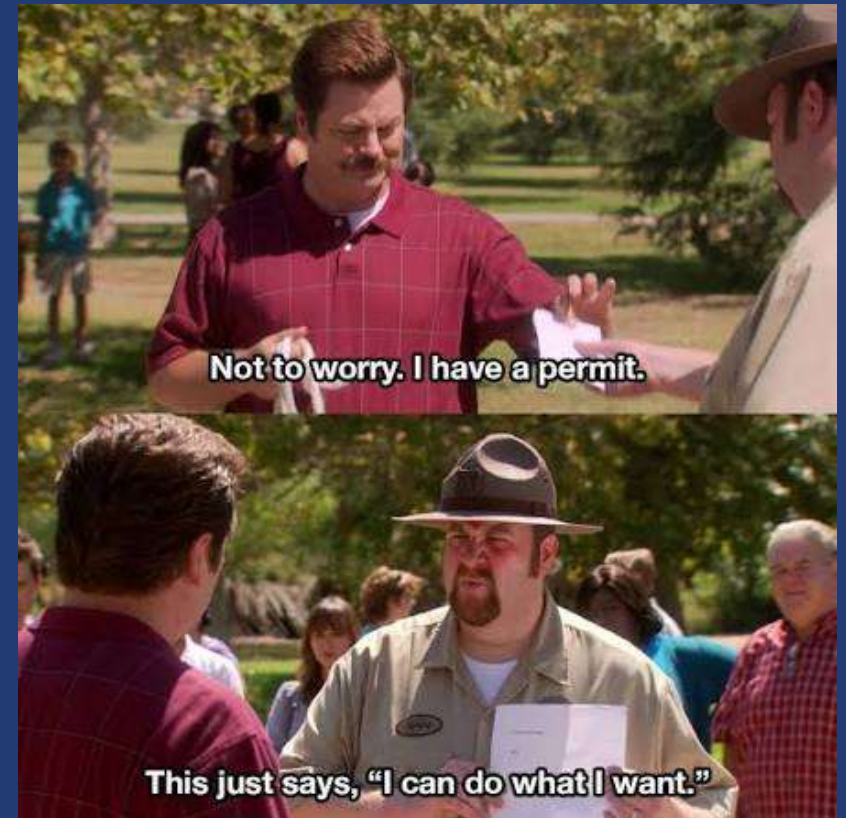
a. Was it an emergency? If so:

1. Was it in violation of laws applicable to emergency situations; or if no laws;
2. Was it in reckless disregard/conscious indifference to safety?

Person injured during high speed chase:
During an Emergency.

If an action was in compliance with all applicable laws, then no question of recklessness occurs.

General rules of the road do not rise to this level.



Not to worry. I have a permit.

This just says, "I can do what I want."

Recreational Use

City of San Antonio v. Nadine Realme, No. 04-23-00885-CV, 2024 WL 3954217 (Tex. App.—San Antonio Aug. 28, 2024) (mem. op.) (rev. granted).



Running is
dangerous.

- Recreational Use Statute limits waivers in Texas Tort Claims Act
- City Property
- Third Party running race
- Is running recreational?

No, because it's not specifically listed.

Headed to Supreme Court who will hopefully say:
"virtually any human activity that occurs outdoors would fall within the RUS's definition of "recreation."

"Realme's injury resulted from her attempt to go around a group of slower runners in an effort to move more quickly through the outdoors. Because taking time to "enjoy[] nature or the outdoors" is antithetical to the purpose of participating in a competitive footrace, the nature of that activity is inconsistent with the plain language of subsection (L)"

Torts – Motor Vehicle and Premises

City of Garland v. Pena, No. 05-24-00133-CV, 710 S.W.3d 345(Tex. App.—Dallas Jan. 15, 2025).

- Plaintiff hit by private dump truck as directed by city landfill worker
- Was the dump truck being “operated” by the city employee?
- Premises liability: high volume of traffic at landfill?
- Caused by an activity not a condition = negligence not premises liability

Landfills are
dangerous.



Dogs are Dangerous *Jaramillo v. City of Odessa Animal Control*, No. 11-23-00117-CV, 2024 WL 3362927 (Tex. App.—Eastland July 11, 2024) (mem. op.).

- Dogs attack teenage victims
- Dog Owner v. City related to euthanasia order under Chapter 822 of the Health & Safety Code
 - Court ordered Dog Owner (Jaramillo) to comply with 822.042 requirements:
 - Register the dog as a dangerous dog with the city
 - Restrain the dog at all times
 - Obtain insurance coverage
 - Comply with all city regulations
 - If not comply, dogs can be euthanized
- City did not receive actual notice from City that her dogs were dangerous but she saw the aftermath of the attack and filled out owner surrender forms
- Owner received actual notice of the case and the municipal court moved the date the first time she complained of not receiving notice
- She tried to revoke her signature from the owner-surrender forms
- Does not matter which of her dogs bit the victims if they were afraid of all of the dogs



Contractual Immunity – Adjudication Procedures

San Jacinto River Auth. v. City of Conroe, No. 22-0649, 688 S.W.3d 124 (Tex. Apr. 12, 2024).

- Contracts – Political Subdivision Immunity
- Pre-suit mediation procedures in contract
- Statement of essential terms – Common Law Standards
- *If waiver of immunity (271.152) then adjudication procedure terms are enforceable (271.154).*
- *Adjudication procedures are not prerequisites to suit*

Payment v. Performance Default



Contractual Immunity – Services

Campbellton Rd., Ltd. v. City of San Antonio by & through San Antonio Water Sys., No. 22-0481, 688 S.W.3d 105 (Tex. Apr. 12, 2024).

- 585 Acre development agreement to fund part of the City's Sewer System in exchange for Sewer Capacity—1500 LUEs
 - Developer paid but did not construct within Agreement's 10-year term
 - Court of Appeals found no waiver of immunity—not goods/services
 - Supreme Court held Sewer Contract was enforceable against the City because:
 - In Writing
 - Essential Terms were listed including payment of Collection Credits towards Impact Fees
 - Services were funding construction even if done by a third party:
Kirby Lake Dev. v. Clear Lake City Water Auth.
- *Broad Expansion of the definition of Services under Chapter 271*

Contractual Waiver of Immunity Exists.

Contract Immunity – Bidding

City of Houston v. 4 Families of Hobby, LLC, No. 01-23-00436-CV, 702 S.W.3d 698 (Tex. App.—Houston [1st Dist.] Aug. 6, 2024).

- Revenue contract does not require bidding
- Breach of Contract:

Unilateral Procurement Contract

- Argument is that general statements about acting in good faith in the procurement process and evaluating under certain criteria created a contract under *City of Houston v. Williams* but . . .
 - General agreement to negotiate an agreement is not enforceable
 - Nothing specific enough to create a unilateral contract

Revenue Contract

- Revenue contracts are enforceable under Chapter 271 - services

Contract Immunity – Bidding

City of Houston v. 4 Families of Hobby, LLC, No. 01-23-00436-CV, 702 S.W.3d 698 (Tex. App.—Houston [1st Dist.] Aug. 6, 2024).

- Open Meetings Act
 - Sufficient notice:
“ORDINANCE approving and authorizing Revenue Agreement between City of Houston and AREAS HOU JV, LLC for Food and Beverage Concession at William P. Hobby Airport (HOU) for the Houston Airport System – 10 Years – Revenue.”
- Equal Protection Clause:
 - Bidder had been at the Airport for 20 years and city needed “fresh blood” – not a stated criteria in the RFP
 - Sufficient to move the Equal Protection argument forward



In re Rogers, No. 23-0595, 690 S.W.3d 296 (Tex. May 24, 2024) (per curiam).

- ESD Board – waiver of immunity for required election duties
- Enough Signatures, but
 - (1) combines two separate propositions into one, which would contradict the statutory mandatory ballot language; and
 - (2) misleads voters by calling for a “decrease” to a zero percent tax rate instead of an “abolishment” of the tax.

Court held: Board has a ministerial, non-discretionary duty to determine whether the petition contains the required number of signatures for placement on the ballot – challenge other legal deficiencies later

Courts in favor of holding the election . . .

Election Petitions

Bonus Cases

City of Mesquite v. Wagner, No. 23-0562, 2025 WL 1271294 (Tex. May 2, 2025).

PDT Holdings, Inc. v. City of Dallas, No. 23-0842, 2025 WL 1271688 (Tex. May 2, 2025).

Elliott v. City of Coll. Station, No. 23-0767, 2025 WL 1350002 (Tex. May 9, 2025).

Seward v. Santander, No. 23-0704, 2025 WL 1350133 (Tex. May 9, 2025).

City of Houston v. Manning, No. 24-0428, 2025 WL 1478506 (Tex. May 23, 2025).

