

Legal Q & A

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How are speed limits on city streets determined?

The Texas Transportation Code sets prima facie speed limits on Texas roads, including city streets. The speed limit on a street in an urban district is 30 miles per hour. TEX. TRANSP. CODE § 545.352. An "Urban district" is defined as the territory adjacent to and including a highway, if the territory is improved with structures that are used for business, industry, or dwelling houses and are located at intervals of less than 100 feet for a distance of at least one-quarter mile on either side of the highway. *Id.* The speed limit is 70 miles per hour on a highway numbered by the state or the United States outside an urban district. A highway that is not numbered by the state outside an urban district has a speed limit of 60 miles per hour.

Can a city lower the state-mandated speed limit?

A city council may lower the state-mandated speed limit on a city street by performing an engineering and traffic investigation and determining that the prima facie speed limit is unreasonable or unsafe for that street. TEX. TRANSP. CODE § 545.353.

Can a city lower the speed limit in a school zone?

A city can establish a "school crossing zone." A school crossing zone is a reduced-speed zone designated on a street to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies. TEX. TRANSP. CODE § 541.302(13).

The Texas Department of Transportation requires that an engineering and traffic investigation be conducted to determine the need for a reduced school speed limit, as well as all appropriate traffic control devices to provide maximum safety.

If requested, the city council must hold a public hearing at least once each calendar year to consider prima facie speed limits on a highway in the city near a school or institution of higher education. TEX. TRANSP. CODE § 545.357. The council, on request, may hold one public hearing for all of the public and private elementary and secondary schools and institutions of higher education in its jurisdiction. *Id.* Typically, a city will declare a school crossing zone in the same ordinance as the reduction of speed limit.

May the county maintain and repair streets within the city?

Yes. A county may enter into an interlocal contract with a city to finance the construction, improvement, maintenance, or repair of streets or alleys in a city. TEX. GOV'T CODE § 791.032. This can include portions of city streets that are not a connecting link to other roads or highways. *Id.*

When does a private roadway become a public street?

There are several ways a private roadway can become a public street. Plats may be prepared, approved, and filed by private developers expressly dedicating streets to the public. 23 David B. Brooks, *Texas Practice: Municipal Law and Practice* § 20.05 (2014). Streets may be acquired for public use by prescriptive easement, in which the public has acquired the right to use a roadway as a consequence of continued use over a period of time in a manner adverse to the property owner. *Id.* A city can also acquire streets by purchase or condemnation. A city rarely acquires the outright title of property for street purposes. Generally, a city is given or acquires a surface right-of-way easement with the property owner retaining their ownership interest and the city enjoying the use of the property as a city street. *Id.*

May a city install “speed bumps” in city streets?

A city has authority to install traffic calming devices under Sections 311.002 and 544.002 of the Texas Transportation Code. However, the Transportation Code requires that a city obtain the Texas Department of Transportation's permission to place or maintain a traffic-control device on a highway under the department's jurisdiction. TEX. TRANSP. CODE § 544.002. In addition, a traffic study is required prior to the installation of speed bumps. Tex. Att'y Gen. Op No. JC-0175.

The bigger issue that arises with speed bumps is the argument that they are “obstructions” in the road. Cities have a duty to keep public streets free from obstructions, and erecting or placing any object on a public street that interferes with the full and free use thereof might be considered an obstruction. This duty was originally found in Texas Revised Civil Statute Article 1016, and is now based on Transportation Code § 311.002 and *Dozier v. Austin*, 253 S.W.2d 554 (Tex. Civ. App.--Austin, 1923, writ dismissed w.o.j.). Several cases have been decided in which a city was held liable for damages for failure to remove an obstruction from a city street, from piles of gravel to ropes to wet paint stripes. See e.g., *City of Austin v. Daniels*, 335 S.W.2d 753 (Tex. 1960); *Crow v. City of San Antonio*, 301 S.W.2d 628 (Tex. 1957); *City of Texarkana v. Williams*, 146 S.W. 333 (Tex. Civ. App. 1912, writ refused). The risk involved with the use of speed bumps is that a city might be held liable for any injury or damage that can be attributed to their use and that a court would find that other traffic control devices, such as signs, flashing lights or reduced speed limits are a more reasonable method to control speeding.

Who has control over the public roadways in a city?

Home rule cities have exclusive control over the public highways, streets, and alleys of the city. This authority includes the ability to control, regulate, or remove an encroachment or obstruction on a street, open or change a public street, and make improvements to streets. TEX. TRANSP. CODE § 311.001.

A general law city has exclusive control over the highways, streets, and alleys of the city. The municipality may abate or remove an encroachment or obstruction on a highway, street, or alley; open, change, regulate, or improve a street; or put a drain or sewer in a street, prevent the

obstruction of the drain or sewer, or protect the drain or sewer from encroachment or damage. TEX. TRANSP. CODE § 311.002.

May a city regulate parades or marches on city streets?

A city has the authority to regulate the use of its streets and to impose reasonable restraints by ordinance to protect the safety and welfare of the public. *Id.*; TEX. LOC. GOV'T CODE § 51.001. In addition, a home rule city may regulate the movement of a structure on a city street. TEX. TRANSP. CODE § 311.005.

The Supreme Court of the United States has stated that parades are a form of expression entitled to constitutional first amendment protection. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 568 (1995). As such, city regulation of parades can cause numerous issues for a city if the permit process is not carefully drawn to provide reasonable time, place, and manner restrictions. Impermissible restrictions include conditioning use of city streets upon a city official's opinion as to the harmful consequence a parade may cause. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1968). A city cannot consider the threat of a hostile audience in issuing a parade permit. *Iranian Muslim Organization v. City of San Antonio*, 615 S.W. 2d 202 (1981). Likewise, a city cannot tie the cost of a permit to estimating the response of others to the speech content and judging the number of police officers necessary to meet the response. *Forsyth County, Ga. V. Nationalist Movement*, 505 U.S. 123, 134 (1992).

Parades may be subject to some reasonable restrictions that protect the public health, safety, and welfare. Any parade regulation should meet the following requirements:

1. The regulation must bear some substantial relation to a "weighty governmental interest" and must advance that interest. *Police Department of Chicago v. Mosely*, 408 U.S. 92 (1972).
2. The regulation must be the least drastic means available of protecting the governmental interest involved. *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980).
3. The regulation must be narrowly drawn to prevent discretionary action by licensing officials. *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976).
4. The regulation must not be based upon the content or subject matter of speech. *Heffron v. ISKCON*, 42 U.S. 640 (1981).

Ordinances drafted pursuant to these four principles should withstand legal challenge. You will want to work with local legal counsel if you are considering drafting a parade permit ordinance.

Can a city abandon a street?

A general law city may vacate, abandon, or close a street by ordinance, if a petition signed by all of the owners of the property abutting the street is presented to the city council. TEX. TRANSP. CODE § 311.008. Unlike in a general law city, a petition to close a street is not required in a home rule city. TEX. TRANSP. CODE § 311.007. In the absence of a charter provision providing a

method for closing city streets, a home rule city's council has the authority to create a procedure for closing or vacating city streets.