

Legislative Update

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Legislative Session Final Numbers

- ▶ 7,541 total bills introduced
- ▶ 1,437 bills passed
- ▶ 2,000+ city related bills introduced
- ▶ 330+ city related bills passed

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First the Good News

- ▶ A number of other detrimental bills deservedly died. Among them were:
 - ▶ the so-called “super-preemption” bills that would have prevented cities from regulating anything to do with business.
 - ▶ a tree protection preemption bill.
 - ▶ short term rental preemption bills.
 - ▶ a bill expanding firefighter civil service.
 - ▶ employee working conditions preemption legislation.
 - ▶ a costly disease notice by animal shelters bill.
 - ▶ confusing financial information on bond ballots bills.
 - ▶ state or district judge approval of city ballot proposition language bills.
 - ▶ entitlement to six chickens in every residential backyard bills.
 - ▶ a bill granting the attorney general authority to settle city environmental lawsuits without city approval.
 - ▶ a bill mandating eminent domain offers at 145 percent of market value.
 - ▶ bills limiting the issuance of certificates of obligation.

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Texas Open Meetings Act

Senate Bill 1640 in response to the decision in *Doyal v. State* which held the criminal conspiracy provisions of the TOMA unconstitutional

(1) redefines “deliberation” to include a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body;

(2) retitles the criminal conspiracy provision from “conspiracy to circumvent chapter” to “prohibited series of communications;” and

(3) provides that a member of a governmental body commits an offense if the member:

(a) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and

(b) knew at the time the member engaged in the communication that the series of communications: (i) involved or would involve a quorum; and (ii) would constitute a deliberation once a quorum of members engaged in the series of communications. (Effective Immediately.)

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Texas Open Meetings Act

- ▶ Right to Speak at Open Meeting
 - ▶ House Bill 2840 by Representative Terry Canales (D - Edinburg) is effective on September 1, 2019. The bill amends the Texas Open Meetings Act to provide that “a governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body’s consideration of the item.” Before the passage of the bill, the public had only the right to observe, rather than speak at, an open meeting of a governmental body.
 - ▶ governmental body may adopt reasonable rules
 - ▶ may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service, unless the public criticism is otherwise prohibited by law

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Texas Public Information Act

- ▶ Temporary Custodian
 - ▶ Defined to:
 - ▶ (a) mean an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer’s agent; and
 - ▶ (b) include a former officer or employee of a governmental body who created or received public information in their official capacity that has not been provided to the officer for public information of the governmental body or the officer’s agent

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Texas Public Information Act

- ▶ Temporary Custodian
- ▶ A current or former officer or employee of a governmental body who maintains public information on a privately owned device shall:
 - ▶ (a) forward or transfer the public information to the governmental body or a governmental body server to be preserved as other public information; or
 - ▶ (b) preserve the public information in its original form in a backup or archive and on the privately owned device for the time required by current law;
- ▶ Laws governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian;

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Texas Public Information Act

- ▶ Temporary Custodian
 - ▶ Each officer for public information shall, in addition to the requirements in current law, make reasonable efforts to obtain public information from a temporary custodian if:
 - ▶ (a) the information has been requested from the governmental body;
 - ▶ (b) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;
 - ▶ (c) the officer for public information is unable to comply with their duties in obtaining the information from the temporary custodian; and
 - ▶ (d) the temporary custodian has not provided the information to the officer for public information or the officer's agent;

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Texas Public Information Act

- ▶ Temporary Custodian
- ▶ A current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity;
- ▶ A temporary custodian with possession, custody, or control of public information shall surrender or return the information to the governmental body not later than the 10th day after the date the officer for public information of the governmental body or the officer's agent requests the temporary custodian to surrender or return the information;

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Texas Public Information Act

- ▶ Temporary Custodian

A temporary custodian's failure to surrender or return public information is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by the PIA or other law;

and for purposes of deadlines related to information surrendered or returned to a governmental body by a temporary custodian, the governmental body is considered to receive the request for that information on the date the information is surrendered or returned to the governmental body. (Effective September 1, 2019)

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Texas Public Information Act

- ▶ Animal Control/Welfare Enforcement
- ▶ Provides that:
 - ▶ (1) the name, address, telephone number, email address, driver's license number, social security number, or other personally identifying information of a person who obtains ownership or control of an animal from a city animal shelter is confidential;
 - ▶ (2) a governmental body may disclose the information in (1) to a governmental entity, or to a person who is under contract with a governmental entity and provides animal control services, animal registration services, or related services to the governmental entity, for a purpose related to the protection of public health and safety; and
 - ▶ (3) an entity or person in (2) must maintain the confidentiality of the information and not use it for any purpose that does not directly relate to the protection of public health and safety. (Effective immediately.)

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Texas Public Information Act

- ▶ Third Party Contracting Information

Information is excepted from disclosure if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future;

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Texas Public Information Act

- ▶ Third Party Contracting Information
- ▶ The exception to disclosure provided for information the disclosure of which if released would give advantage to a competitor may be asserted only by a vendor, contractor, potential vendor, or potential contractor for the purpose of protecting the interests of the vendor, contractor, potential vendor, or potential contractor;
- ▶ a governmental body shall decline to release information related to privacy or property interests of a third party to the extent necessary to allow a vendor, contractor, potential vendor, or potential contractor to assert the exception to disclosure;

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Texas Public Information Act

- ▶ Third Party Contracting Information
- ▶ An economic development entity whose mission or purpose is to develop and promote the economic growth of a state agency or political subdivision with which the entity contracts may assert the economic development exception in current law with a third-party submission with respect to information that is in the economic development entity's custody or control;

(Effective January 1, 2020)

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Texas Public Information Act

- ▶ Public Information and Parades, Concerts, and Other Entertainment Events
- ▶ Provides that:
 - ▶ (1) information relating to the receipt or expenditure of public or other funds by a governmental body for a parade, concert, or other entertainment event paid for in whole or part with public funds is subject to the Public Information Act;
 - ▶ (2) a person, including a governmental body, may not include a provision in a contract related to an event described by (1) that prohibits or would otherwise prevent the disclosure of information; and
 - ▶ (3) a contract provision that violates the bill is void. (Effective immediately.)

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Texas Public Information Act

- ▶ Attorney's Fees

Public Information: provides that, in a suit by a governmental body to withhold information from a requestor, the court may assess costs of litigation or reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails only if the court finds the action or the defense of the action was groundless in fact or law. (Effective September 1, 2019).

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Annexation

- ▶ Ends most unilateral annexations by any city.
 - ▶ (1) eliminates the distinction between Tier 1 and Tier 2 cities and counties created by S.B. 6 (2017);
 - ▶ (2) eliminates existing annexation authority that applied to Tier 1 cities and makes most annexations subject to the three consent annexation procedures created by S.B. 6 (2017), which allow for annexation:
 - ▶ (a) on request of the each owner of the land;
 - ▶ (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and
 - ▶ (c) of an area with a population of at least 200 by election of voters and, if required, petition of landowners; and
 - ▶ (3) authorizes certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure. (Effective immediately.)

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Cybersecurity

- ▶ Cybersecurity Training...Provides that:
 - ▶ (1) the Department of Information Resources (DIR)...shall annually:
 - ▶ (a) certify at least five cybersecurity training programs for state and local government employees; and
 - ▶ (b) update standards for maintenance of certification by the cybersecurity training programs;
 - ▶ (2) a certified training program must:
 - ▶ (a) focus on forming information security habits and procedures that protect and procedures that protect information resources;
 - ▶ (b) teach best practices for detecting, assessing, reporting, and addressing information security threats;
 - ▶ (3) DIR may identify and certify training programs provided by state agencies and local governments that satisfy the above requirements;
 - ▶ (4) DIR shall annually publish on the its website the list of certified cybersecurity training programs;

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Cybersecurity

- ▶ Cybersecurity Training Continued
- ▶ (5) a local government that employs a dedicated information resources cybersecurity officer may offer to its employees a cybersecurity training program that satisfies the certified requirements described in (2);
- ▶ (6) at least once a year, a local government shall identify employees who have access to a local government computer system or database and require those employees and elected officials of the local government to complete a certified cybersecurity training program; and
- ▶ (7) the governing body of the local government may select the most appropriate certified cybersecurity training program for employees to complete and shall:
 - ▶ (a) verify and report on the completion of a cybersecurity training program by employees of the local government to DIR; and
 - ▶ (b) require periodic audits to ensure compliance. (Effective immediately.)

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Ballot Language - Bond Props

- ▶ Bond Propositions...SB 30
- ▶ This bill, among other things:
 - ▶ (1) requires each single specific purpose for which bonds requiring voter approval are to be issued to be printed on the ballot as a separate proposition;
 - ▶ (2) provides that a proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose; and
 - ▶ (3) requires a proposition seeking approval of the issuance of bonds to specifically include a plain language description of the single specific purpose for which the bonds are to be authorized. (Effective September 1, 2019.)

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Boycott Israel

- ▶ Boycotting Israel
- ▶ Modifies the provisions of H.B. 89 (2017) - which provides that neither a state agency nor a political subdivision may enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
 - ▶ Does not boycott Israel and will not boycott Israel during the term of the contract - by providing that:
 - ▶ (1) “company” does not include a sole proprietorship; and
 - ▶ (2) the law applies only to a contract that:
 - ▶ (a) is between a governmental entity and a company with 10 or more full-time employees; and
 - ▶ (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (Effective immediately.)

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Official Websites

- ▶ Applies only to a political subdivision with the authority to impose a tax that at any time on or after January 1, 2019, maintained a publicly accessible Internet website and provides that:
 - ▶ (1) a political subdivision to which the bill applies shall post on a publicly accessible Internet website the following information:
 - ▶ (a) the political subdivision’s contact information, including a mailing address, telephone number, and e-mail address;
 - ▶ (b) each elected officer of the political subdivision;
 - ▶ (c) the date and location of the next election for officers of the political subdivision;
 - ▶ (d) the requirements and deadline for filing for candidacy of each elected office of the political subdivision, which shall be continuously posted for at least one year before the election day for the office;
 - ▶ (e) each notice of a meeting of the political subdivision’s governing body under the Open Meetings Act; and
 - ▶ (f) the minutes of a meeting of the political subdivision’s governing body;
 - ▶ (2) Sections (1)(e) and (f) do not apply to a city with a population of less than 5,000 located in a county with a population of less than 25,000.

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Elections

- ▶ Candidate Residency....Provides, among other things, that:
 - ▶ (1) for purposes of satisfying the continuous residency eligibility requirement, a person who claims an intent to return to a residence after a temporary absence may establish that intent only if the person:
 - ▶ (a) has made a reasonable and substantive attempt to effectuate that intent; and
 - ▶ (b) has a legal right and the practical ability to return to the residence; and
 - ▶ (2) the criteria for establishing an intent to return after a temporary absence under (1), above, do not apply to a person displaced from the person's residence due to a declared local, state, or national disaster. (Effective January 1, 2020.)

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Elections

▶ Runoff Ballot

Provides that the order of the candidates' names on the ballot of any runoff election or election held to resolve a tie vote shall be in the relative order of names on the original election ballot. (Effective September 1, 2019.)

▶ Early Voting Polling Place

Provides that political subdivisions holding elections in November may not designate as an early voting polling place a location other than an eligible county polling place, unless each eligible county polling place located in the political subdivision is designated as an early voting polling place for the election. (Effective immediately.)

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Elections

- ▶ Publication of Voter Information...This bill:
- ▶ (1) requires the early voting clerk to provide, in a downloadable database format, a current copy of the branch daily register for posting on the website of the authority ordering the election, if the authority maintains a website, each day early voting is conducted;
- ▶ (2) provides that, at a minimum, the voter registration number for each voter listed in the branch daily register must be posted;
- ▶ (3) requires information on the roster for a person who votes an early voting ballot by personal appearance or mail to be made available;
 - ▶ (a) for an election in which the county clerk is the early voting clerk: (i) on the publicly accessible internet website of the county; or (ii) if the county does not maintain a website, on the bulletin board used for posting notice of meetings of the commissioners court; or
 - ▶ (b) for an election in which the county clerk is not the early voting clerk: (i) on the publicly accessible internet website of the authority ordering the election; or (ii) if the authority ordering the election does not maintain a website, on the bulletin board used for posting notice of meetings of the governing body of the authority. (Effective September 1, 2019.)

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BUILDING MATERIALS

- ▶ A city can't regulate building materials or methods beyond those in a nationally-recognized building code.
 - ▶ A city may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:
 - ▶ (1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or
 - ▶ (2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

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BUILDING MATERIALS

- ▶ This section does not apply to:
 - ▶ An ordinance regulating outdoor lighting adopted by a certified Dark Sky Community, or within five miles of an active military base, or that is adopted under LGC 229 or 240
 - ▶ Historic preservation ordinance adopted under LGC 211 if the City is a certified local government as determined by the THC
 - ▶ A building of historical, cultural or architectural significance designated before April 1, 2019
 - ▶ A building in a historic district designated on the National Registry, or as a Texas Landmark
 - ▶ A building designated under the Main Street Program
 - ▶ If none of the above applies, must have voluntary consent of the owner

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CITY MAPS

- ▶ Under existing law, every city is required to prepare a map that shows the boundaries of the city and its ETJ. Under S.B. 1303, every city must maintain a copy of the map in a location that is easily accessible to the public, including the city's website if it maintains one. Every city must also make a copy of its map publicly available without charge
- ▶ S.B. 1303 also imposes additional mapping mandates on home rule cities. A home rule city is required to create, or must contract for the creation of, a digital map that must be made publicly available without charge and in a format widely used by common geographic information system (GIS) software.
- ▶ The bill provides that, if a home rule city does not have common GIS software, the city must make the digital map available in any other widely used electronic format.
- ▶ Presumably, this provision authorizes a city without GIS technology to make its map available in a PDF format.

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CITY MAPS

- ▶ In addition, S.B. 1303 makes changes to the annexation process that are not directly related to the new mapping requirements, a home rule city must publish notice of annexation hearings in any area that would be newly included in the city's ETJ by the expansion of the city's ETJ resulting from the proposed annexation. The required notice for each hearing must include:
 - ▶ a statement that the completed annexation of the area will expand the city's ETJ;
 - ▶ a description of the area that would be newly included in the city's ETJ;
 - ▶ a statement of the purpose of ETJ designation under Local Government Code Sec. 42.001; and
 - ▶ a brief description of each city ordinance that would be applicable in the area proposed to be included in the city's ETJ.

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PROPOSED BUDGET LOBBY EXPENDITURE REPORTING

- ▶ HB 1495, which is effective now, provides, among other things, that the proposed budget of a political subdivision must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in the state's lobby law.
- ▶ TML member service fees are not spent to influence legislation. As such, they need not be included in the budget comparison

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Development Approval Process

- ▶ HB 3167 applies to plans and plats. It defines a “plan” to mean a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan. TEX. LOC. GOV’T CODE § 212.001(2). It defines “plat” to include a preliminary plat, general plan, final plat, and replat. Id. § 212.001(3).
- ▶ The bill amends Local Government Code Chapter 212, which relates to subdivision platting. It seems to insert a “site plan” and “site development plan” into the subdivision plat approval process, but those are traditionally based on the zoning authority in Chapter 211. As such, most attorneys argue that a zoning site plan isn’t subject to the bill’s requirements.

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Development Approval Process

- ▶ The bill requires the municipal authority responsible for approving plats to take the following action with regard to the “initial approval” of a plan or plat within 30 days after the date the plan or plat is filed: (1) approve, (2) approve with conditions, or (3) disapprove with explanation. Id. § 212.009(a).
- ▶ Current law defines “the municipal authority responsible for approving plats” as the municipal planning commission or, if the city has no planning commission, the governing body of the city. Also under current law, the governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission. Id. § 212.006(a).
- ▶ If an ordinance requires that a plan or plat be approved by the governing body of the city in addition to the planning commission, the governing body shall approve, approve with conditions, or disapprove the plan or plat within 30 days after the date the plan or plat is approved by the planning commission or is approved by the inaction of the commission, and a plan or plat is approved by the governing body unless it is approved with conditions or disapproved within that period.

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Revenue Caps

- ▶ renames the “rollback” tax rate the “voter-approval” tax rate
- ▶ provide for a voter-approval rate of 3.5 percent;
- ▶ for a taxing unit other than a special taxing unit, authorizes the taxing unit to carry forward any unused increment between the adopted maintenance and operations tax rate and the voter-approval tax rate for up to three years
- ▶ authorizes a city with a population of less than 30,000 to calculate a “de minimis rate,” which is a rate that, when applied to a taxing unit’s current total value, will impose an amount of taxes equal to \$500,000, plus the taxing unit’s no-new-revenue maintenance and operations rate and the taxing unit’s current debt rate
- ▶ provides that, in a city with a population of less than 30,000, if the de minimis rate exceeds the city’s voter-approval tax rate and the adopted tax rate is equal to or lower than the city’s de minimis rate but greater than eight percent, three percent of the registered voters of the city may petition for an election to reduce the city’s tax rate to the voter-approval tax rate

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Revenue Caps

- ▶ requires a mandatory election on the November uniform election date for all taxing units other than a special taxing unit or a city with a population of less than 30,000 that adopts a tax rate that exceeds the greater of the taxing unit’s voter-approval tax rate or de minimis rate (**Note: the key feature of the de minimus tax rate is that cities under 30,000 population are guaranteed a \$500,000 levy increase without triggering a rollback election**)
- ▶ renames the “effective tax rate” and “effective maintenance and operations rate” the “no-new-revenue tax rate” and “no-new-revenue maintenance and operations rate,”
- ▶ prohibits the governing body of a taxing unit from adopting a budget or taking any other action in the fiscal year beginning in 2020 that has the effect of decreasing the total compensation to which a first responder employed by the taxing unit was entitled in the preceding fiscal year of the taxing unit

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Telecommunications/Cable Right-of-Way Rental Fees

- ▶ the bill provides that a certificated telecommunications provider is not required to pay any compensation for a given calendar year if the provider determines that the sum of the compensation due from the provider and any member of the provider's affiliated group to all cities in this state is less than the sum of the fees due from the provider and any member of the provider's affiliated group to all cities in this state under the state cable franchise law
- ▶ Providers don't have to pay both cable and telecom franchise fees—can drop the lowest statewide

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Miscellaneous

- ▶ Brewpub Reporting

Subjects brewpubs to the sales tax reporting standards applicable to other entities involved in the manufacture and distribution of alcoholic beverages. (Effective September 1, 2019.)

- ▶ Cigarettes, E-Cigarettes, and Tobacco Products

Provides that: (1) the legal age to purchase tobacco products is raised from 18 to 21 years (with an exception for military members); and (2) a political subdivision may not adopt or enforce an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by state law. (Effective September 1, 2019.)

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Miscellaneous

- ▶ Dogs at Restaurants
- ▶ a food service establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:
 - ▶ (a) the establishment posts a sign in a conspicuous location in the area stating that dogs are permitted;
 - ▶ (b) the customer and dog access the area directly from the exterior of the establishment;
 - ▶ (c) the dog does not enter the interior of the establishment;
 - ▶ (d) the customer keeps the dog on a leash and controls the dog;
 - ▶ (e) the customer does not allow the dog on a seat, table, countertop, or similar surface; and
 - ▶ (f) in the area, the establishment does not prepare food or permit open food other than food that is being served to a customer; and
- ▶ a city may not adopt or enforce an ordinance, rule, or similar measure that imposes a requirement on a food service establishment for a dog in an outdoor dining area that is more stringent than the requirements in (1). (Effective September 1, 2019.)

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Miscellaneous

- ▶ Sale of Lemonade: provides that a city, county, or other local public health authority may not adopt or enforce an ordinance, order, or rule that prohibits - including by requiring a license, permit, or fee - the occasional sale of lemonade or other nonalcoholic beverages from a stand on private property or in a public park by an individual younger than 18 years of age. (Effective September 1, 2019.)
- ▶ Rock Climbing: includes rock climbing in the definition of the term “recreation” in the recreational use statute for tort liability purposes. (Effective immediately.)

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Questions?

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