

2019-20

LEGISLATOR'S GUIDE to the Issues

The California-zation of Texas: Tree-Cutting Ordinances

The Issue

According to the Texas Chapter of the International Society of Arboriculture, about 50 Texas cities—including major population centers like Austin, Dallas, Houston, and San Antonio—have adopted burdensome regulations that restrict or prohibit a property owner's right to prune or remove trees on their land.

The city of Austin requires private landowners to request and receive the city's permission to remove any tree with a trunk diameter of 19 inches or more. Further, Austin forbids the removal of "heritage trees"—trees of particular species with diameters of 24 inches or more—unless the landowner can prove to the city that the tree is diseased, a fire safety risk, or that the tree prevents reasonable development of the land.

The city of West Lake Hills prohibits the removal of any tree except under certain specified conditions. Even when those conditions apply, a city inspector must give approval before trees can be removed to establish a fire safety buffer zone, to make way for new construction, to remove non-native invasive species trees or plants, or even to remove a dead or diseased tree.

Proponents of tree-cutting ordinances argue that the presence of trees can improve property values for the neighborhood as a whole: Trees mitigate flooding impacts, they improve air quality, and they reduce stormwater runoff. Additionally, it is argued that trees provide aesthetic or sentimental value, or that they are key to a community's self-conception. Supposedly, these communal benefits justify prohibiting the removal of privately owned trees.

But this approach to private property flips the Texas legal tradition on its head. Whatever societal benefits they may provide, trees on private property are not a collective resource to be communally managed. They are real property owned by the landowner.

The idea that private property rights include ownership of the natural resources contained within—including timber—dates back to the philosophical articulation of private property ownership itself. As John Locke wrote: "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property."

It is unjust for government to coerce a private owner to use their private property to provide a social benefit without

compensation. The state of Texas has long understood this as an issue of justice—Article I, Section 17 of the Texas Constitution states: "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made."

If public benefits are being provided by trees on private property, and the public wants to continue to receive those benefits against the wishes of the landowner, then the public should pay for these benefits. Otherwise, property owners should be free to develop their land as they see fit—including trimming and removing all trees and timber.

The Facts

- Approximately 50 Texas cities have adopted burdensome regulations that restrict or prohibit a property owner's right to prune or remove trees on their land, according to the Texas Chapter of the International Society of Arboriculture.
- It is generally recognized that private property rights include ownership of the natural resources contained within the land. As John Locke states in the *Second Treatise of Civil Government*: "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property."
- Article I, Section 17 of the Texas Constitution states "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made."

Recommendations

- The Texas Legislature should prohibit local governments from restricting the trimming or removal of trees or timber located on a landowner's property.
- The Legislature should clarify that if a government forces unwanted trees to remain on private land, the government must provide adequate compensation.

Resources

[Local Overregulation: Tree-Cutting Ordinances](#) by James Quintero, Texas Public Policy Foundation (May 2017).

[Section 22.03.303](#), West Lake Hills Code of Ordinances.