

**City of San Marcos Policy Issue Packet
July 2016**

*Prepared by:
Winstead PC—Janis Carter & Price Ashley*

PRIORITY ISSUES

- Taking of Power from Home Rule Cities..... 2
- Clarify Truth-in-Taxation Language 3
- Local Hotel Occupancy Tax Revenue for Policing Sporting Events..... 4
- Local Hotel Occupancy Tax Revenue for River Operations..... 5
- Conveyance of the Beds and Banks..... 6
- Sales Tax Sourcing 7
- Storm and Water Drainage Fee..... 8
- State Demands on City Fire Department..... 9
- Sovereign Immunity on Governmental v. Proprietary Distinctions..... 9
- Intentional Taking of Property..... 10

SUPPORT ISSUES

- Economic Development Incentives and Grants..... 11
- Education: Prekindergarten Funding..... 12
- Transportation: Regional Mass Transit..... 13
- Higher Education: (TBD)..... 13

MONITOR ISSUES

- Transportation: Municipal Transportation Reinvestment Zones (TRZ)... 13
- Water Policy: General Ownership and Reuse..... 14

LISTING OF ASSOCIATIONS WITH SOME SIMILAR INTERESTS..... 17

TAKING OF POWER FROM HOME RULE CITIES

LEGISLATIVE ACTION: Oppose legislation that attempts to take away the power of self-government granted to Texas Home Rule cities by the Texas Constitution.

During the 84th Session, 2015, legislation was introduced by Senator Huffines, SB 343, that would revert the powers of Texas cities to those found before the constitutional amendment of 1912. The bill did not pass. The bill would have provided that a city may not enact an ordinance relating to anything governed by state law, unless expressly authorized to do so. This would replicate the State of New York laws and would have removed power from the government closest to the people.

In 1912, the people of Texas adopted a constitutional amendment affirming Texas' commitment to local decision making that overturned a federal judicial ruling known as "Dillion's Rule" that had centralized power with the states. Federal Judge Dillon issued a ruling in 1868 that pronounced cities to only have the authority that was expressly granted to them by their state government. The 1912 amendment to the Texas Constitution, in Article 11, Section 5, authorizes cities with a population over 5,000 to adopt a "home rule charter" by election and grant the citizens the power of self-government. This form of government allows cities some measure of freedom from state control.

Citizens prefer self-government at the local level for three main reasons. The first is to allow the state legislature and governor time to devote to matters of state-wide importance. Prior to passage of home rule cities, state legislatures spent an uneven amount of time on local requests for legislation to manage items specific to a particular local government. The second reason is to allow municipalities to initiate immediate action to resolve issues that are specific to the local entity without waiting for the state legislature to convene, especially in states that have biennial legislative sessions. The final reason is U.S. Citizens have long opposed a strong centralized government that can be unwieldy and difficult to access to resolve issues.

On March 17, 2015, The City of San Marcos adopted Resolution No. 2015-42R to oppose any "super-preemption" legislation that strips powers from the local governments and returns it to a centralized and consolidated government power.

CLARIFY TRUTH-IN-TAXATION LANGUAGE

LEGISLATIVE ACTION: Amend Section 26.05(b), of the Texas Tax Code, to clarify the prescribed language of the motion a City must use to adopt the annual tax rate.

Proposed Amended Language Highlighted:

26.05(b). A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget. The vote on the ordinance, resolution, or order setting a tax rate that exceeds the effective tax rate must be a record vote. A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the effective tax rate must be made in the following form:

"I move that ~~[the property tax rate be increased by the adoption of]~~ a tax rate of (specify tax rate) **be adopted**, which is effectively a (insert percentage by which the proposed tax rate exceeds the effective tax rate) percent increase in the tax rate." **REVISE THIS LANGUAGE FURTHER – TALK TO Michael C.**

If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceeds the amount of taxes imposed for that purpose in the preceding year, the taxing unit must:...

Under the Truth-in-Taxation laws, a municipality is required to have a record vote on a motion to adopt an ordinance, resolution or order to set a tax rate. Section 26.05(b) prescribes the language that must be used. The required form language of the motion reads "that the property tax rate be increased by adoption of...". This language must be used by law even when the tax rate is not being increased, but the revenue generated is an increase from the previous year. The prescribed language is touted to provide taxpayers with better information and "Truth-in-Taxation". However, use of the term "effective" is less than clear to the general public and forces elected officials to vote on language that appears to state they have increased the actual tax rate, even when they have not.

The prescribed language requires a governing body to use the same language when the revenue generated is greater than the previous year. This increase is termed the "effective tax rate". An increase in revenue can occur when the tax rate stays the same, but abated property becomes fully taxable, or valuations are re-calculated and increased. If the entity opts not to lower the tax rate to keep the revenue equal to the previous year, then they must post that they have an "effective tax rate increase".

Truth-in-taxation is a set of requirements in the Texas Constitution and the Tax code that call for local taxing units to make taxpayers aware of tax rate proposals and to provide taxpayers the opportunity to vote to reduce or limit tax increases. A taxing unit's governing body must adopt a tax rate by official action and set it out in a written resolution, ordinance or order using specific wording set out in the Tax Code. Truth in taxation laws were intended to clarify and make the process more transparent. But the required language that must be published with tax and budget information is misleading, at best, and not comprehensible by most.

LOCAL HOTEL OCCUPANCY TAX (HOT) REVENUE FOR POLICING SPORTING EVENTS

LEGISLATIVE ACTION: Amend the statute to allow local hotel occupancy tax (HOT) revenue to be used to cover the expenses of public safety services affiliated with football games and other athletic events at Texas State University- San Marcos.

The City of San Marcos has a population of just over 50,000 and is host to Texas State University – San Marcos which has an enrollment of 34,000 students. The Bobcat Stadium seats over 30,000 people. During the Navy game on September 14, 2014 over 32,000 people attended the game (including tailgaters). More than 25,000 attended both the Prairie View A&M game and the Southern Miss game in September of 2015. Being able to use municipal HOT revenues to cover some of the expenses incurred for public safety during these games will assist the city significantly in defraying the costs.

Section 351.101, Subsection (a)(6), of the Texas Tax code currently allows municipalities located in a county with a population of one million or less to use the funds for expenses related to sporting events where the majority of the participants are tourists. It is likely the majority of a college football games participants will be on the home team as traveling teams generally do not bring the entire bench. Therefore, the subsection does not provide for the use of the funds for expenses related to these athletic events.

Amend Sec. 351.101 (a)(6), as follows, to include allowable use of the city's hotel occupancy tax revenue to cover the expenses of public safety services affiliated with football games and other athletic events at Texas State University – San Marcos.

Sec. 351.101. USE OF TAX REVENUE.

(a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:

(6) for a municipality located in a county with a population of one million or less, expenses, including promotion expenses and policing expenses, directly related to a sporting event in which,:

(A) for a municipality located in a county with a population of one million or less, the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity; or

(B) for a municipality located in a county with a population of 189,000 or less and with a general academic teaching institution that is funded by state funds with a student enrollment greater than 33,000 , the participants are on a team organized or sponsored by a general academic teaching institution that is funded by state funds.

LOCAL HOTEL OCCUPANCY TAX (HOT) REVENUE FOR RIVER OPERATIONS

LEGISLATIVE ACTION: Amend the statute to allow local hotel occupancy tax (HOT) revenue to be used to cover the expenses related to river protection, conservation, maintenance and cleanup.

Current law provides for the use of local hotel tax revenue to be used along bays and coastal areas that are an attraction for visitors and tourists. The following subsections of Section 351, Tax Code, permit the funds to be used by cities as follows:

- Clean and maintain adjacent public land to a bay and to mitigate coastal erosion on adjacent public land to a bay in cities with a population of less than 80,000 (Sec. 351.104) Includes Ingleside, Portland, Aransas Pass, La Porte, Seabrook, Port Lavaca, Rockport and Baytown;
- Establish and acquire facilities on coastal municipalities to attract visitors and tourists (Sec. 351.105);
- Clean and maintain public beaches, provide beach security and pay for erosion response projects for eligible coastal municipalities (Sec. 351.1055) Includes the City of South Padre Island; and
- Clean and maintain public beaches in the municipality (Sec. 351.107) Includes Corpus Christi.

Section 351, Tax Code, should be amended by adding a new subsection 351.111 which will permit the City of San Marcos to use Municipal Hotel Occupancy Tax revenue to pay for expenses related to river protection, maintenance and operations of parks along the river, maintenance and cleanup of trash and litter in and along the river, water safety and enforcement of regulations in and along the San Marcos River. The San Marcos River is one of the city's largest attractions.

Other sections of the code provide for the use of Municipal Hotel Occupancy Tax revenue for cities along bays and coastal areas for the same purposes listed in this amendment.

Subchapter B, Chapter 351, Tax Code, is amended by adding Section 351.111 to read as follows:

Sec. 351.111. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES WITH A RIVER. (a) This section applies only to a municipality that has a population of at least 50,000, is located on the San Marcos River and in which Texas State University is located.

(b) Notwithstanding any other provision of this chapter, a municipality to which this section applies may use revenue from the municipal hotel occupancy tax to support river protection, maintain and operate parks along the river, maintain and cleanup trash and litter in and along the river, and promote water safety. The municipality may use the revenue to enforce regulations in and along the river.

CONVEYANCE OF THE BEDS AND BANKS OF THE SAN MARCOS RIVER

LEGISLATIVE ACTION: Statutorily convey the beds and banks of the San Marcos River that are within the corporate limits of the City of San Marcos.

This conveyance would not change ownership of the water in the bed and banks which will continue to reside with the state.

Statutorily convey to the City of San Marcos ownership of the bed and banks of the San Marcos River that are within the corporate limits of the city. This action would be in line with the current ownership of beds and banks within Austin, Waco, Beaumont, Dallas, El Paso, Fort Worth, Galveston, Houston, San Antonio and Wichita Falls.

The conveyance will allow city ordinances to be enforced by issuing warnings or citations to individuals who are in or on the San Marcos River within the corporate limits of the city. Many visitors and residents alike enjoy tubing and recreation on the San Marcos River. While most are respectful and law abiding, some visitors trespass on private property along the banks, disregard conservation measures, tube under the influence, create a public nuisance, litter and violate city ordinances. It has been argued that the State's ownership of riverbeds preempts enforcement of city ordinances against any person who is using the navigable waters of the state for any purpose. Transferring ownership of the segment of a river within the corporate limits of a city to that city allows the city to protect the beds and banks, without hindering the visitor's use of the river.

History of previous conveyance:

In 1966, the Legislature transferred the land underlying navigable streams within cities that had a population of 40,000 or more according to the 1920 census to the cities themselves (at the time that included Beaumont, Dallas, El Paso, Fort Worth, Galveston, Houston, San Antonio, and Wichita Falls). TEX. REV. CIV. STAT. ANN. art. 7467 (Vernon 1966).

Other cities (Waco and Austin) have acquired title to riverbeds within those cities by conveyance from the State as well.

- Act of May 17, 1965, 59th Leg., R.S., ch, 157, § 1, [SB 172] 1965 Tex. Gen. Laws 334 (WACO);
- Act of May 30, 1969, 61st Leg., R.S., ch, 726, § I, [SB 763] 1969 Tex. Gen. Laws 2122 (WACO);
- Act of Mar. 23, 1945, 49th Leg., R.S., ch, 44, § I, [HB 21] 1945 Tex. Gen. Laws 64 (AUSTIN).

There may be other cases where the public ownership resides in the municipality rather than the state.

SALES TAX SOURCING

LEGISLATIVE ACTION: Monitor legislative action that alters local sales and use tax “sourcing” to amend the current law determining which local taxing jurisdiction receives sales and use tax revenue on a given purchase.

Texas and 44 other states collect sales taxes. In FY 2015 Texas sales tax collections accounted for 26.4% of all state tax collections. In Texas, the Comptroller maintains that, “A seller who uses catalogs or the Internet to sell goods is treated the same as any other seller of taxable items.”

The national Streamlined Sales Tax Project was created by the National Governor’s Association (NGA) and the National Conference of State Legislatures (NCSL). The Agreement is designed to establish common definitions, collections and administration of sales tax across state lines and in doing so reduce costs and administration by retailers operating in multiple states. It encourages “remote sellers” selling over the internet and by mail order to collect tax on sales to customers living in the participating Streamlined states. It is designed to bring some parity between local “brick-and-mortar” stores and remote sellers by requiring the same tax collection rules.

Texas has not participated in the project. Part of the original project required that states shift intrastate sales tax sourcing from the origin city to the destination city, although subsequent amendments permitted cities to keep origin sourcing. This project has been under discussion in Texas for well over 10 years, but no legislation has been filed in the state. It has been projected that participating in the Streamlining process in Texas will result in a tax increase, which is why most speculate the Texas legislature will never pass conforming legislation.

In 2008, several Texas cities were in lawsuits against one another over whether cities with warehouses or cities with retail storefronts are the proper “place of business” for purposes of sales taxation under Texas law. In 2009, SB 636 passed that provided when there are retailers with more than one place of business in Texas, city sales taxes are sourced where the retailer first received the order for the goods, provided the order was placed in person. In 2011, the Texas legislature passed legislation in the special session (SB 1) to address the practice of online sellers, like Amazon, that avoided collecting state and local sales and use tax. The law changed the definition of retailer to include a company that has a distribution center or any other physical presence in Texas, and by doing so, requires those companies to collect sales tax on sales delivered in Texas.

The fight for Streamlined Sales Tax Agreement has continued at the federal level. But language that permits the collection of only a state assessed sales tax to be collected by remote sellers (6.25%) vs. the collection of state and local sales taxes (8.25%) has created additional opposition to the bill from local governments. Twenty-four states, of the forty-four that have a sales tax, have passed conforming legislation and participate in the agreement to date.

STORM AND WATER DRAINAGE FEE

LEGISLATIVE ACTION: Examine the feasibility of seeking an exemption to permit the City to charge the storm and water drainage fees to state facilities.

In 1982, Attorney General Mark White issued Opinion No. MW-551 in response to a request of *Whether state agencies must pay a drainage fee imposed by the City of Austin to fund a Drainage Utility System*. The question of whether the fee is a “fee” or was deemed a “tax” and thereby prohibited by the constitution was posed by the city. The Opinion states:

“We do not think it necessary to consider the question whether such an assessment is a tax within the meaning of constitutional provisions exempting property from taxation in a case, where, as here, a political subdivision created by the sovereign is attempting to impose a monetary exaction upon its creator.

Even if it be assumed that a county or municipality is subject to special assessments levied by another political subdivision of the State, it does not necessarily follow that a subordinate political subdivision can impose an involuntary monetary obligation on the sovereign. It is generally held that, in the absence of clear legislative authorization, a political subdivision of the state has no power to levy a special assessment against State property. We adopt this view at least in a case where, as here, the sovereign is neither making nor contemplating any use of the allegedly benefitted land and has neither received nor requested the services rendered by the assessing agency.”

In 2003 the Texas Local Government Code was amended by former Rep. Brian McCall adding Section 580.003(a) which prohibits all political subdivisions from collecting from a state agency or public institution of higher education any fee charged for the development or maintenance of programs or facilities for the control of excess water or storm water. (*HB 2425, 78th Legislature*) Note: today Brian McCall is the Chancellor of the Texas State University System, of which TSU-San Marcos is a part.

However, in 2007 Subsection (b) was adopted, setting up a bracketed exemption to this prohibition for a city with a population of 25,000 or less and through which the Bosque River runs, which is Stephenville. (*HB 462, 80th Legislature, by Senator Fraser and Rep. Miller*) The bill analysis states the exemption to the prohibition was adopted for the following reason:

In small communities however, this has placed an undue hardship on citizens funding these water drainage projects when a large use of the storm water drains comes from the colleges and universities in the area. Often these colleges make up a significant amount of the population in smaller communities.

The House Research Report for HB 462 noted: there was no opposition to the bill; Tarleton State wanted to be a good neighbor and recognized its impact on the city’s drainage system;

and the population of Tarleton was 15,000 with a student population of 7,000. The bill as originally filed would have applied to all cities with a population of 25,000 or less. There has been no legislation filed since 2007 seeking authority for any other political subdivision to be permitted to assess a Drainage Utility fee on a state agency or institution. In 2011 three bills were filed seeking further exemptions from the assessment in Houston for religious institutions, 501(a)s and (c)s. They did not pass.

STATE DEMANDS ON LOCAL FIRE DEPARTMENT

LEGISLATIVE ACTION: Support additional funding options to assist with additional fire equipment and personnel needed to protect high-rise apartments and buildings.

In recent years Texas State University has added several high-rise buildings, including on and off campus apartment buildings, within San Marcos that impact the city's life safety services. The height of The College Inn (9 stories), Tower Hall (9 stories), and Jackson Hall (12 stories) Chautaugua Hall exceed the tallest buildings previously located in the City. Additionally, unlike standard apartments with simple door handle locks on interior bedroom doors, some of TSU apartments have dead bolts on each of the interior bedroom doors.

High-rise buildings are defined as a building that is more than 75 feet in height, measured from the lowest level of fire department vehicle access to the floor of highest occupiable story. High-rise buildings present several unique firefighting challenges not found in traditional low-rise buildings. They have longer egress times and distances, longer evacuation strategies generally with more occupants, more difficult fire department accessibility, smoke movement and fire control. The multiple floors of high-rise buildings create the cumulative effect of requiring additional personnel to travel larger vertical distances on stairs in order to evacuate the building. To be adequately prepared a fire department requires taller ladder trucks and additional man power to fight high-rise fires.

SOVEREIGN IMMUNITY ON GOVERNMENT VS. PROPRIETARY DISTINCTION

LEGISLATIVE ACTION: Monitor legislative action that will provide clarification on the application of sovereign immunity for a breach of contract claim when a city is performing a proprietary function.

The Supreme Court of Texas ruled on April 1, 2016 in *Wasson Interests, LTD v. City of Jacksonville*, that sovereign immunity does not apply when a city is performing a proprietary function, whether the city commits a tort or a breach of contract. Prior to this ruling, cities had liability, when performing a proprietary function, for any tort claims. A cities immunity does not apply to such suits. Under the recent Supreme Court decision, the courts found that under the current law, the common law distinction between governmental acts and proprietary acts (proprietary-governmental dichotomy) also applies to contract claims. Meaning, under this

ruling, cities no longer have any immunity from suit or liability for claims arising from contracts for proprietary services, either. Additionally, this distinction means there is also no limit on damages for proprietary contracts. Prior to this ruling cities generally could be sued only for amounts that are due under the written contract. Without the protection of immunity or the Texas Tort Claims Act that limit liability to a set dollar amount for tort claims, suits against a city for breach of contract may go beyond actual contract amounts due and may include damages and other ancillary costs without a cap. Lastly, this ruling could apply to more than a written contract and could lead to cities being sued for breach of alleged oral contracts, additional fees not stated in a contract, promises, etc.

A proprietary function of a city is one that is performed at the discretion of the city and performed to serve the interest of the inhabitants of the city, such as the operation and maintenance of a utility or amusement park. A governmental function is one that is imposed on the city by law and is given to the city by the state, as part of the state's sovereignty, to be exercised by the city for the interest of the general public.

INTENTIONAL TAKING OF PROPERTY

LEGISLATIVE ACTION: Monitor legislative action that would attempt to expand the elements of taking claims against cities.

On June 17, 2016, a 5-4 split decision was handed down by the Texas Supreme Court dismissing the case brought by more than 400 Harris County residents and homeowners that accused Harris County Flood Control of causing flooding by approving housing developments without planning for runoff and drainage. The Justices ruled that the plaintiffs could not rely on county inaction to claim that the government had "taken" their property. *Harris County Flood Control Dist. V. Kerr*

This ruling reversed the June 2015 Texas Supreme Court finding on the same case that a trial was necessary to determine if Harris County officials knew that deviating from a mitigation plan for 100-year floods and adopting a 10-year flood plan was certain to lead to damage to existing residential homes when additional upstream real estate projects were approved and built, and if so, if that was the same as intentional taking of the homeowners land. The houses flooded in 1998, 2001 and 2002 floods. The case had its roots in the late 1970s when flood control projects were completed for lower White Oak Bayou and the Army Corps of Engineers proposed similar mitigation efforts for upper White Oak Bayou, on the grounds that urbanization would worsen flooding absent such mitigation efforts. Harris County agreed, failed to obtain federal funding, assumed responsibility for the project, and commissioned studies that the plaintiffs used to assert the county officials knew the project needed to be done.

More than 15 governments or governmental associations filed briefs following the year old June 2015 ruling, asking the court to reconsider the ruling. Dissenting opinions by one of the justices and briefs filed by the groups asking for reconsideration warned that the June 2015 decision

encourages cities to do nothing to prevent flooding and that the ruling unnecessarily expands takings liability.

In the recent decision dismissing the suit, Justice Don Willett wrote the homeowners failed to link their flood damages to action the county did take, such as approving building permits upstream. He went on to state that ruling for the homeowners would impair governments' ability to operate because they could face claims when a storm knocked down a city electric pole and burned down a house, or when a city's failure to buy enough ladder trucks led to a high-rise fire. "The theory ... would appear to cover many scenarios where the government has no designs on a particular plaintiff's property," he wrote, "but only knows that somewhere, someday, its routine governmental operations will likely cause damage to some as yet unidentified private property."

ECONOMIC DEVELOPMENT INCENTIVES AND GRANTS

LEGISLATIVE ACTION: Support funding for the Texas Enterprise Fund at \$200 million dollars.

The Texas Enterprise Fund (TEF) is a cash grant used as a financial incentive tool for projects that offer significant projected job creation and capital investment and where a single Texas site is competing with another viable out-of-state option. The fund is administered through the Economic Development and Tourism division of the Office of the Governor. The Fund was appropriated \$90 million for the 2016-2017 biennium. Of that amount, \$45 million was unexpended from the previous biennium and \$45 million was taken from the Emerging Technology Fund which was abolished. This is a reduction from \$120 million for the 2014-2015 biennium and \$150 million for the 2012-2013 biennium. The TEF was established by legislation in 2003 as SB 1771. The TEF can be found in Chapter 481, Sec. 481.078 of the Government Code.

LEGISLATIVE ACTION: Support maintaining incentive programs utilized by the City of San Marcos and other local entities to promote: economic development activity; job creation; increased tax revenues; increased opportunity for input into new developments; and creation of new businesses.

Chapter 380 of the Local Government Code provides express statutory authority for municipalities to provide economic development incentives consisting of loans and grants of city funds, use of city personnel, facilities and services with or without charge for economic development. The types of incentives offered are wholly discretionary with the municipality, provided: (1) the program serves a public purpose; (2) the projects are funded by current revenue or authorized debt; and (3) the municipality complies with its Charter and applicable statutes.

Chapter 313 of the Tax Code, also known as The Texas Economic Development Act, was passed in 2001 as HB 1200. It allows a school district to offer a temporary limitation for school

property tax purposes on the property value of new investment in the state. Under Chapter 313, a local school district may defer for 8 years the time before a new investment project goes onto the tax rolls at full value. The limitation on the taxable value of a project does not take effect until the third year of the project. A taxpayer may also make a separate application to the school district for a credit for taxes paid during the first two years on the value of property in excess of the limitation amount. Projects making new investments in connection with: (1.) manufacturing, (2.) research and development, (3.) electricity generation using certain low emission technologies, and (4.) nuclear energy.

The Governor's University Research Initiative (GURI) grant program was enacted in 2015 by the 84th Legislature. GURI is a matching grant program designed to assist eligible institutions of higher education to recruit distinguished researchers who are Nobel Laureates or recipients of an equivalent honor, or members of a national honorific society. Eligible institutions are public universities or public health science centers. The program was funded \$40 million for the 2016-2017 biennium.

EDUCATION: PREKINDERGARTEN FUNDING

LEGISLATIVE ACTION: Support increased funding for Prekindergarten programs , with the ultimate goal of universal prekindergarten funding for all Texas students.

The Texas Education Agency funds half-day prekindergarten through the Foundation School Program to eligible three- and four-year-old children. In 2015 the 84th Legislature created the High Quality prekindergarten Grant Program for school districts and charters that voluntarily meet the new enhanced quality standards related to curriculum, teacher qualifications, academic performance, and family engagement. Qualifying grant recipients receive \$1,500 per year per student, in addition to the half day Foundations School Program (FSP) funding that is already received for each eligible prekindergarten student. The grant money is geared toward students from low-income, non-English speaking, foster and military families.

San Marcos Consolidated Independent School District is anticipated to receive \$250,487 over the next two school years from this grant.

Beginning in 2013-2014, SMCISD provides a full day Pre-Kindergarten program for all of the district's eligible students. All Pre-K students are bus eligible and participate in the free breakfast and lunch program. The Pre-K curriculum includes all elements as defined by the Texas Pre-Kindergarten guidelines and is taught by certified teachers and part-time teaching assistants.

TRANSPORTATION: REGIONAL MASS TRANSIT

LEGISLATIVE ACTION: Actively support efforts related to the further development of efficient and economical mass transit options in the Austin and San Antonio corridor.

One of the fastest growing cities in the nation, the City of San Marcos strives to provide a seamless and comprehensive transportation system for the City and within the central Texas corridor. In 2012, the City of San Marcos was defined as an urbanized area by the U.S. Census Bureau and has some congested roadways to go along with the growth. The City supports the development of multiple mass transit options including passenger rail, a comprehensive public bus system, and upgraded bicycle and pedestrian facilities.

The city supports funding for the development of mass transit options, including funding for the Lone Star Rail District and CARTS. Additionally, to relieve some of the traffic flow issues the City supports funding the Texas Rail Relocation and Improvement Fund “to provide a method of financing the relocation and improvement of privately and publicly owned passenger and freight rail facilities to: relieve congestion on public highways, enhance public safety, improve air quality, expand economic opportunity and construct railroad underpasses and overpasses if a part of the relocation of a rail facility.”

TEXAS STATE UNIVERSITY

LEGISLATIVE ACTION: Actively support efforts by Texas State University to increase funding for the Emerging Research Institutions and Hazlewood Act,

There are eight universities in Texas that have been identified as Emerging Research Institutions. Texas State University was added to the list in January of 2012. Only the schools with this designation may access various pools of incentive funding to assist the school to reach the criteria making them eligible to be identified as a top-tier, or Tier 1, school. Currently only the University of Texas at Austin, Texas A&M University and Rice University are designated as Tier 1 schools.

The funding incentives include a pool of money to match private donations for research and a pool to recruit highly qualified faculty. Additional pools of funding are available after meeting the highest criteria to help continue the high standards reached by the institution. The City supports the state’s full funding of these revenue sources for Texas State University.

The Hazlewood Act is a Texas state law that provides qualified Veterans – as well as their spouses and children – with higher education benefits including, 150 hours of tuition and fee exemptions at state supported universities and colleges. The program has outpaced available state revenue and the schools are required to find ways to balance a budget without the revenue. In 2014, the total value of the exemptions awarded for the 1,994 recipients of the benefit under the Hazlewood program at Texas State University was over \$14 million.

**TRANSPORTATION:
MUNICIPAL TRANSPORTATION REINVESTMENT ZONES (TRZS)**

LEGISLATIVE ACTION: Support maintaining the City of San Marcos' ability to utilize TRZs to meet the transportation needs of the community. Look at all available options to increase transportation funding for the City of San Marcos.

A statute passed in 2007 (SB 1266) provides Texas cities the authority to create zones for transportation infrastructure investment. Transportation Reinvestment Zones (TRZs) are a tool used by local entities to advance transportation projects. The local governing body designates a zone in which it will promote a transportation project. Once the zone is created, a base year is established and the incremental increase in property tax revenue collected inside the zone is used to finance a project in the zone. A TRZ does not require a local entity to create a board.

A municipality must make the following determinations in order to set up a zone: (A.) The proposed zone must be deemed underdeveloped; and (B.) The area of the TRZ will 1) promote public safety; 2) facilitate the improvement, development, or redevelopment of property; 3) facilitate the movement of traffic; and 4) enhance the local entity's ability to sponsor transportation projects.

The TRZ has been expressly provided for in the Legislation to allow direct financing of transportation projects and primarily highway projects. After designating a contiguous area along a corridor as a TRZ, a local government entity (a city or county) can securitize the incremental tax revenues along with TxDOT Pass-Through financing to obtain the funds necessary to bring a project to fruition. Funds generated from the securitization can be used to pay for infrastructure projects in the TRZ, and investors can be repaid from the combined revenue stream—the incremental tax revenues and TxDOT Pass-Through funds. Once the securitized debt is repaid, the additional revenues generated by the TRZ are redirected toward other municipal services. The Texas TRZ model is similar in many ways to the TIF or TIRZ model in its implementation and also involves municipal bond financing.

**WATER POLICY:
GENERAL OWNERSHIP INFORMATION & REUSE**

LEGISLATIVE ACTION: Monitor the water policy discussions and any legislation pertaining to water reuse and water flows to maintain or enhance the City of San Marcos' long term plans to provide for the City's current and future water needs.

The city of San Marcos conducted a feasibility study for direct water reuse expansion in January 2014. Based on the findings of the study the city received a grant from the Texas Water Development Board in November of the same year to begin the expansion of the reclaimed water system. Under the expansion/conservation plan the water will be used to irrigate city

parks and athletic fields at the university and will be used in the university's thermal cooling plan. Utilization of reclaimed water at a higher level reduces the needed draws on water from the Edward's Aquifer and the San Marcos River in excess of 224 AF annually. Reuse is a major part of the city's long term plan to meet water needs.

Legislative issues are likely to arise over how long a water user can utilize reuse water before returning it to downstream watercourse flows. Given that the 2017 SWP places a heavy reliance on conservation and reuse, it is possible that strategies which fall under those categories and are proven successful would be viewed favorably by the legislature.

Reuse According to the 2017 State Water Plan (SWP) Municipal demands are projected to grow by the greatest total amount, from 5.2 million acre-feet per year in 2020 to 8.4 million in 2070. The majority of that growth will come out of the DFW and Houston metropolitan areas. Water management strategies include conservation, new reservoirs, groundwater wells, water reuse, seawater and groundwater desalination plants, and more.

Share of recommended water management strategies by water resource in 2070

- 45% Surface Water
- 30% Demand Management (i.e. conservation and drought management)
- 14% Reuse
- 10% Groundwater
- 1% Seawater

Water reuse is the practice of using water that has already been used. The terms reclaimed water, reused water, and recycled water are used interchangeably in the water industry. The Texas Administrative Code (TAC) defines reclaimed water as "domestic or municipal wastewater that has been treated to a quality suitable for a beneficial use," (30 TAC §210.3).

Reuse is broadly categorized as either **direct or indirect**. Either type of reuse may be used for potable or non-potable purposes. The availability of wastewater treated for reuse changes over time and is limited only by the amount of wastewater generated by water users at any given time unless a source water permit or agreement states otherwise. Reuse supplies are estimated to increase about 28% from 2020 to 2070. The increase in reuse existing supply is primarily due to an increase in wastewater flows associated with an increasing population and the capacity of existing reuse facilities.

If all the recommended municipal conservation and reuse strategies were implemented in 2070, the projected statewide municipal average gallons per capita per day would decline from the currently projected 163 gallons per capita per day in 2020 (without recommended conservation or reuse strategies) to approximately 124 gallons per capita per day in 2070 (with recommended conservation and reuse strategies).

General Ownership Information

Generally, Texas **groundwater** belongs to the landowner. Groundwater in Texas is governed by the “rule of capture”, which grants landowners the right to capture the water beneath their property. Texas courts have consistently ruled that a landowner has a right to pump all the water that they can from beneath their land regardless of the effect on wells of adjacent owners. There are some that would like to see Texas adopt the rule of “reasonable use” with respect to groundwater. The Texas legislature has historically favored the “rule of capture” over “reasonable use”. Opponents to the “rule of capture” have been known to refer to it as the “law of the biggest pump”. There are legislators that believe Texas should move away from the “rule of capture” because of concerns over scarcity of water supplies around the state.

The Legislature has attempted to strengthen the laws enabling citizens to manage groundwater disputes locally through groundwater conservation districts. However, there are many disputes over the operations of groundwater conservation districts

Surface water belongs to the state of Texas. It can be used by a landowner only with the state's permission. Anyone wishing to use surface water (exclusive of drainage water) must receive permission from the state in the form of a "water right." Awarding permits for these "water rights" is a task of the Texas Commission on Environmental Quality (TCEQ).

According to the TCEQ, water rights have priority dates which indicate the seniority of one water right over another, known as "first in time, first in right". In times of drought, those with the earliest dates have the right to get water before those with newer dates. Today, priority dates for new appropriations of water are based on the date the application is declared administratively complete.

Drainage water (a.k.a. - diffused surface water, storm water or surface runoff) in its natural state, occurs after rainfall or snowmelt and flows across land from high elevations to lower elevations. This classification of water can be used by a private landowner so long as the water has not flowed into a clearly defined watercourse and the action doesn't interfere with the natural flow. Issues occur when there are interferences or perceived interferences with the natural flow of this type of water by capturing and holding the flow or by diverting or increasing it.

There have been substantive discussions on water policy during every legislative session in recent memory. Legislative proposals can be expected in the following policy areas: the operations and actions of groundwater districts, regional planning groups and river authorities; the appropriate use(s) of existing water resources; state and agency funding related to development of new and existing water resources; and water ownership.

It's been 28 years since any of river authorities have been under Sunset review. Senate Bill 523 (84R), puts all river authorities under review, and Sunset staff have chosen to start with the smallest four river authorities first.

DRAFT

LISTING OF ASSOCIATIONS WITH SOME SIMILAR INTERESTS

[Texas Association of Business \(TAB\)](#)

TAB is recognized as the voice for Texas Business. They advocate on a variety of legislative policies in all areas of state government, and are highly visible at the state Capitol.

[Texas Taxpayers and Research Association \(TTARA\)](#)

The Texas Taxpayers and Research Association (TTARA) is a non-profit membership supported organization of businesses and individuals interested in the state and local fiscal policies in Texas and the way those policies impact our economy. Our membership is composed primarily of businesses and trade associations that represent businesses and professions. They include the entire range of economic sectors and activities in Texas and share a common belief that all participants in our state's economic life have a stake in determining its future.

[Texas Renewable Energy Industry Association \(TREIA\)](#)

TREIA is a trade association of companies and individuals engaged in, or considering engagement in, development, marketing, sales, installation, servicing, manufacture, of solar, wind, biomass, geothermal or hydrokinetic energy technologies. Also included are organizations and agencies involved in related research, information development and dissemination, education, or policy.

[Texas Fire Chiefs Association \(TFCA\)](#)

Their mission is to serve the citizens of Texas by actively participating in the advancement of the fire service through positive leadership, the sharing of information, and active legislative involvement, while maintaining the highest ethical and professional standards. They have stated objectives of proactive planning to identify innovative approaches to fire and life safety service delivery, promoting responsible fire and life safety through public education and exerting a comprehensive legislative effort designed to impact legislation affecting fire and life safety issues.

Texas Municipal Parks, Recreation and Tourism Association (TMPRTA)

TMPRTA supports the full restoration of the sporting good sales tax revenue to fund the State of Texas Local Park Grant Program. TMPRTA supports the acceptance of Federal pass through dollars to be used for local parks, trails, open space and tourism projects from the U.S. Department of the Interior Land and Water Conservation Fund (LWCF), the Sport Fish Restoration Boat Access program and the U.S. Department of Transportation Recreation Trails program. TMPRTA opposes any reduction or appropriation riders to the Texas Local Park Grant Program used to provide financial assistance for local parks, trails, open space and tourism projects. TMPRTA maintains that all candidate grant projects be subject to the established competitive grant process. TMPRTA opposes any legislation that would impose any unfunded mandate or would otherwise be detrimental to municipal parks, recreation, open space, trails and tourism.

[Texas Municipal Utilities Association \(TMUA\)](#)

The principal emphasis of the association is the management and the direction of municipal utilities, including the special relationship of city managers, members of

governing bodies, and boards of directors related to municipal utilities. It is a forum where members can learn from each other and benefit from professional association with other municipal utility managers in Texas.

Texas Police Chiefs Association (TPCA)

TPCA is a statewide law enforcement administrator's organization for Texas and, as such, it is concerned on a statewide basis with all issues involving the criminal justice system. We believe that local chiefs of police possess a thorough knowledge of the law enforcement needs within the state.

Through an organization such as TPCA, issues affecting the criminal justice system can be addressed both with local elected officials and the state legislature. Over five decades after its founding, TPCA actively seeks to promote the professional practice of law enforcement administration, to represent the membership and the profession on issues of concern, and to encourage high ethical standards of conduct among law enforcement administrators through its code of ethics.

Transportation Advocates of Texas (TAoT)

TAoT was organized to work with members of the Legislature and state officials to build the resolve needed to increase transportation system funding. We are working to move the discussion beyond patchwork fixes and toward development of sustainable funding sources.

Texas Infrastructure Now/Texas Good Roads/Transportation Association

Texas Infrastructure Now was formed to educate Texans across the state about the importance of taking care of our state's road and water infrastructure needs. They have a stated mission of advocating with stakeholders for safer communities, promoting job creation, sustaining economic prosperity and minimizing transit time from work to home through responsible infrastructure investments.

WaterReuse Texas

WaterReuse Texas was formed in 2005 to support the ever-increasing focus on water recycling to supplement and diversify the water supplies in Texas. Members of the Texas Section include recycled water purveyors, recycled water customers, regulatory agencies, engineering consulting firms, and equipment vendors.

Note: This is just a listing of a select number of different advocacy groups that participate in the legislative process. Some are more engaged than others. Winstead consultants are working to identify specific policy priorities for these groups that are aligned with those of the City of San Marcos or may be of interest to the City.