

# LEGISLATORS' GUIDE TO THE 85th LEGISLATURE

S P E C I A L S E S S I O N 2 0 1 7

## The California-ization of Texas: Tree-Cutting Ordinances

### The Issue

Some cities in Texas impose unreasonable regulations that either prohibit property owners from cutting down trees on their land or require payments to be made to the municipality first, sometimes in excess of the value of the tree. Around 50 cities—including major population centers like Austin, Dallas, Houston, and San Antonio—have these kinds of intrusive, California-style regulations in effect to the detriment of countless property owners.

Oddly, these ordinances treat trees differently than other types of vegetation on an owner's property. For example, picking flowers or shrubs does not generally require government permission, but in many cities cutting down a tree without approval is a violation of law. In Austin, the city 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.

Supporters of the status quo often attempt to defend these big government regulations on the basis of communal benefits. For example, proponents argue that the presence of trees can improve property values for the neighborhood as a whole; that trees mitigate flooding impacts, improve air quality, and reduce storm-water runoff; and that trees have some aesthetic or sentimental value.

Though these arguments have some surface-level appeal, this rhetoric ignores the simple fact that trees are not a collective resource. They are real property owned by the landowner. The idea that private property rights include ownership of the natural resources contained within runs back to the philosophy 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."

As private property, it is unjust for government to coerce a private actor 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, then the public should pay for those 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

To better protect landowners and strengthen private property rights, the Texas Legislature should prohibit local governments from preventing the trimming or removal of trees or timber located on a landowner's property.

### Resources

["Austin Tree Ordinance Violates Private Property Rights"](#) by Rob Henneke and James Quintero, *Austin American-Statesman* (March 25, 2017).

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