REVISOR'S REPORT

TRANSPORTATION CODE
TITLES 1, 2, 3, 4, 6, AND 7

VOLUME III

A NONSUBSTANTIVE REVISION
OF THE STATUTES RELATING TO
TRANSPORTATION

Including
Carriers
Aviation
Navigation
Roadways
Vehicles and Traffic

To be submitted to the 74th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
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CHAPTER 311. GENERAL PROVISIONS RELATING TO MUNICIPAL STREETS

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CHAPTER 311. GENERAL PROVISIONS RELATING TO MUNICIPAL STREETS

SUBCHAPTER A. GENERAL AUTHORITY

Revised Law

Sec. 311.001. GENERAL AUTHORITY OF HOME-RULE MUNICIPALITY.
(a) A home-rule municipality has exclusive control over and under
the public highways, streets, and alleys of the municipality.
(b) The municipality may:
   (1) control, regulate, or remove an encroachment or
obstruction on a public street or alley of the municipality;
   (2) open or change a public street or alley of the
   municipality; or
   (3) improve a public highway, street, or alley of the
   municipality. (V.A.C.S. Art. 1175, Subdivs. 3 (part), 4 (part), 5
   (part).)

Source Law

Art. 1175. A home-rule municipality has the
following powers:

3. To have exclusive dominion, control, and jurisdiction in, over and under the public streets,
avenues, alleys, highways and boulevards, of such city and to provide for the improvement of any
public street, alleys, highways, avenues or boulevards by paving, raising, grading, filling or otherwise
improving the same.

4. To open, extend, straighten, widen any
public street, alley, avenue or boulevard.

5. To control, regulate and remove all
obstructions or other encroachments or encumbrances on
any public street, alley, and to narrow, alter, widen or straighten any such streets, alleys, avenues
or boulevards.

Revisor's Note

(1) Subdivision 3 of V.A.C.S. Article 1175
grants to a home-rule municipality "exclusive dominion,
control, and jurisdiction" in relation to public
highways, streets, and alleys. The references to
"dominion" and "jurisdiction" are omitted from the
revised law because those terms are included within the
meaning of "control."

(2) Subdivisions 3, 4, and 5 of V.A.C.S. Article 1175 contain references to a "street," "avenue," and "boulevard." The references to "avenue" and "boulevard" are omitted from the revised law because "avenue" and "boulevard" are included within the meaning of "street."

(3) A home-rule municipality has authority under Subdivision 3 of V.A.C.S. Article 1175 to improve the public roads "by paving, raising, grading, filling or otherwise improving" them. The revised law revises only the general authority to "otherwise improve" the roads. The reference to "paving, raising, grading, filling" the roads is omitted from the revised law because those actions are included within the authority to "improve" the roads.

(4) Under Subdivisions 4 and 5 of V.A.C.S. Article 1175, a home-rule municipality may "extend," "straighten," "widen," or "narrow" a street or alley. The revised law omits the revision of those powers because they are included within the powers prescribed by the revised law to "open or change" or to "improve" a street or alley.

(5) Subdivision 5 of V.A.C.S. Article 1175 refers to a home-rule municipality's authority over "obstructions or other encroachments or encumbrances" on a public street or alley. The reference to "encumbrances" is omitted from the revised law because "encumbrances" is included within the meaning of "obstructions" or "encroachments."

Revised Law

Sec. 311.002. GENERAL AUTHORITY OF GENERAL-LAW MUNICIPALITY.

(a) A general-law municipality has exclusive control over the
highways, streets, and alleys of the municipality.

(b) The municipality may:

(1) abate or remove an encroachment or obstruction on a highway, street, or alley;
(2) open, change, regulate, or improve a street; or
(3) 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.

(c) To carry out its powers under this section, the municipality may:

(1) regulate or change the grade of land; and
(2) require that the grade of land be raised by filling an area. (V.A.C.S. Art. 1016 (part).)

Source Law

Art. 1016. Any city or town incorporated under the general laws of this State shall have the exclusive control and power over the streets, alleys, . . . and highways of the city or town, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and prevent encumbering thereof in any manner, and to protect same from encroachment or injury; and to regulate and alter the grade of premises; to require the filling up and raising of same; . . . .

Revisor's Note

(1) V.A.C.S. Article 1016 refers to a "city or town incorporated under the general laws of this State." The revised law substitutes the term "general-law municipality" to conform to the terminology used by the Local Government Code.

(2) A provision in V.A.C.S. Article 1146 also grants exclusive authority to certain municipalities. The legislative history of that provision reveals that the provision applies only to a Type B general-law municipality. As a result, the provision is subsumed by V.A.C.S. Article 1016, which applies to all general-law municipalities. The provision is omitted
from the revised law for this reason. The omitted provision reads:

Art. 1146. The board of aldermen shall:
1. Have and exercise exclusive control over the streets, alleys and other public places within the corporate limits; . . . .

(3) V.A.C.S. Article 1016 refers to a general-law municipality's "control and power" over highways, streets, and alleys. The reference to "power" is omitted from the revised law because "power" is included within the meaning of "control."

(4) Under V.A.C.S. Article 1016, a general-law municipality has authority to "widen, extend, establish, . . . grade, [and] clean" streets. The revised law omits the revision of those powers because they are included within the powers prescribed by the revised law to "open, change, regulate, or improve" the streets.

(5) V.A.C.S. Article 1016 authorizes a general-law municipality to prevent the "encumbering" of a drain or sewer. The revised law refers instead to preventing the "obstruction" of a drain or sewer because, in this context, "obstruction" is synonymous to and more commonly used than "encumbering."

(6) V.A.C.S. Article 1016 authorizes a general-law municipality to regulate or change the grade of land and to require that land be filled. It is clear from the context in which that authority is granted that it may be exercised only in carrying out the other powers granted to the municipality under the law revised by this section. Subsection (c) of the revised law is drafted to clarify this issue.
Sec. 311.003. ADDITIONAL AUTHORITY OF TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

(1) prevent an encroachment or obstruction on a sidewalk in the municipality;

(2) abate an encroachment or obstruction on a bridge, culvert, sidewalk, or crossway in the municipality;

(3) construct, regulate, or maintain a bridge, culvert, sidewalk, or crossway in the municipality;

(4) regulate the construction of a bridge, culvert, sewer, sidewalk, or crossway in the municipality;

(5) require a person to keep weeds, unclean matter, or trash from the street, sidewalk, or gutter in front of the person's premises; or

(6) require the owner of land to improve the sidewalk in front of the person's land. (V.A.C.S. Art. 1015, Subdivs. 1, 2 (part).)

Art. 1015. The governing body shall also have power:

1. Obstructions on public ways, etc.--To prevent the incumbering of the streets, alleys, sidewalks, and public grounds, with any vehicle whatsoever, boxes, lumber, posts, awnings, signs, or any other substance or material whatever, to compel persons to keep all weeds, filth or any kind of rubbish from the sidewalks and streets and gutters in front of their premises, and to compel the owners of property to fill up, grade, gravel and otherwise improve the sidewalks in front of same.

2. Bridges, sewers, etc.--To establish, erect, construct, regulate and keep in repair, bridges, culverts, and sewers, sidewalks and crossways, and to regulate the construction and use of the same, and to abate any obstructions or encroachments thereon; . . . .

Revisor's Note

(1) V.A.C.S. Article 1015 grants authority to the "governing body." The legislative history of this reference reveals that the reference relates to the
governing body of a Type A general-law municipality. The revised law is drafted to clarify this issue.

(2) Subdivision 1 of V.A.C.S. Article 1015 refers to a Type A general-law municipality's authority to "prevent the incumbering of the streets, alleys, sidewalks, and public grounds." The revised law omits the references to streets, alleys, and public grounds because the authority regarding those items is covered by a more general statute, V.A.C.S. Article 1016, the relevant part of which is revised by Section 311.002 of this code (as it relates to streets and alleys) and by Section 282.002, Local Government Code (as it relates to public grounds). The revised law substitutes "prevent an encroachment or obstruction" for "prevent incumbering" because the phrases are synonymous in this context and the former uses more common language.

(3) Under Subdivision 1 of V.A.C.S. Article 1015, the kinds of objects that can cause an encroachment or obstruction that a Type A general-law municipality can prevent are "any vehicle whatsoever, boxes, lumber, posts, awnings, signs, or any other substance or material whatever." The revised law omits the list of specific items because they are covered by the general grant of authority in the revised law to prevent "an encroachment or obstruction."

(4) A Type A general-law municipality may require, under Subdivision 1 of V.A.C.S. Article 1015, a landowner to "fill up, grade, gravel and otherwise improve" a sidewalk. The revised law revises only the reference to "otherwise improve" the sidewalk. The reference to "fill up, grade, gravel" is omitted from the revised law because those actions are included within the meaning of "improve."

(5) Under Subdivision 2 of V.A.C.S. Article
1015, a Type A general-law municipality may "establish, erect, construct, regulate and keep in repair, bridges, culverts, and sewers, sidewalks and crossways." The references to "establish" and "erect" are omitted from the revised law because "establish" and "erect" are included within the meaning of "construct." The reference to "sewers" is omitted from the revised law because the authority regarding sewers is covered by a more general statute, V.A.C.S. Article 1016, the relevant part of which is revised by Section 311.002 of this code. However, the reference to "sewers" is kept in the revised law provision relating to the regulation of the construction of a "bridge, culvert, sewer, sidewalk, or crossway" because Article 1016 does not cover the authority to regulate the construction of sewers.

Revised Law
Sec. 311.004. AUTHORITY OVER SIDEWALK IN HOME-RULE MUNICIPALITY. A home-rule municipality may:
(1) construct a sidewalk;
(2) provide for the improvement of a sidewalk or the construction of a curb under an ordinance enforced by a penal provision; or
(3) declare a defective sidewalk to be a public nuisance. (V.A.C.S. Art. 1175, Subdiv. 3 (part).)

Source Law
Art. 1175. A home-rule municipality has the following powers:
3... The city shall have the power to provide for the construction and building of sidewalks...; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a public nuisance...
Revisor's Note

Subdivision 3 of V.A.C.S. Article 1175 refers to a home-rule municipality's authority for the "construction and building" of a sidewalk. The reference to "building" is omitted from the revised law because "building" is included within the meaning of "construction."

Revised Law

Sec. 311.005. MOVEMENT OF STRUCTURE ON STREET IN HOME-RULE MUNICIPALITY. A home-rule municipality may regulate the movement of a structure over or on a street of the municipality. (V.A.C.S. Art. 1175, Subdiv. 5 (part).)

Source Law

Art. 1175. A home-rule municipality has the following powers:

5. . . . and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

Revisor's Note

Subdivision 5 of V.A.C.S. Article 1175 refers to the authority of a home-rule municipality "to regulate and control" the movement of "buildings or other structures" over the "streets or avenues" of the municipality. The references to "control," "buildings," and "avenues" are omitted from the revised law because "control" is included within the meaning of "regulate," because "buildings" is included within the meaning of "structures," and because "avenues" is included within the meaning of "streets."

Revised Law

Sec. 311.006. AUTHORITY OF COUNTY TO IMPROVE STREET IN TYPE B GENERAL-LAW MUNICIPALITY. To facilitate travel on a street in a Type B general-law municipality, the commissioners court of a
county may construct a bridge for or otherwise improve the street if:

(1) the street is a continuation of a public road of the county; and

(2) the governing body of the municipality consents.

(V.A.C.S. Art. 1146, Subdiv. 1 (part).)

Source Law

Art. 1146. The board of aldermen shall:

1. . . . provided, that, with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets.

Revisor's Note

(1) The legislative history of V.A.C.S. Article 1146 reveals that the article applies only to a Type B general-law municipality. The revised law is drafted to clarify this issue.

(2) The revised law substitutes "governing body" for the term "board of aldermen" used by V.A.C.S. Article 1146 because the terms are synonymous in this context and "governing body" is more commonly used in the statutes.

Revised Law

Sec. 311.007. CLOSING OF STREET OR ALLEY BY HOME-RULE MUNICIPALITY. A home-rule municipality may vacate, abandon, or close a street or alley. (V.A.C.S. Art. 1175, Subdiv. 5 (part).)

Source Law

Art. 1175. A home-rule municipality has the following powers:

5. . . . and to vacate and abandon and close any such streets, alleys, avenues or boulevards, . . . .
Reviser's Note
Subdivision 5 of V.A.C.S. Article 1175 refers to "streets, alleys, avenues or boulevards." The references to "avenues" and "boulevards" are omitted from the revised law for the reason stated in Reviser's Note (2) under Section 311.001 of this code.

Revised Law
Sec. 311.008. CLOSING OF STREET OR ALLEY BY GENERAL-LAW MUNICIPALITY. The governing body of a general-law municipality by ordinance may vacate, abandon, or close a street or alley of the municipality if a petition signed by all the owners of real property abutting the street or alley is submitted to the governing body. (V.A.C.S. Art. 1016 (part).)

Source Law
Art. 1016. . . and, upon submission of a petition signed by all of the owners of real property abutting a street or alley, the governing body of any such city or town shall also have the power, by ordinance, to vacate and abandon and close any such street or alley.

Reviser's Note
V.A.C.S. Article 1016 refers to "any such city or town." The part of Article 1016 that clarifies this reference is revised by Section 311.002 of this code. Section 311.002 refers to a "general-law municipality," and this section is drafted accordingly.

[Sections 311.009-311.030 reserved for expansion]

SUBCHAPTER B. MUNICIPAL FREEWAYS

Revised Law
Sec. 311.031. DEFINITION. In this subchapter, "freeway" means a municipal street for which the right of access to or from adjoining land has been acquired in whole or in part from the owners of the adjoining land by the governing body of a municipality. (V.A.C.S. Art. 1085a, Sec. 3 (part).)
Sec. 3. "Freeway" means a . . . city street in respect to which the right or easement of access to or from their abutting lands has been acquired in whole or in part from the owners thereof by . . . the governing body of an incorporated city or town as hereinabove provided.

Revisor's Note

(1) Section 3, V.A.C.S. Article 1085a, refers to the acquisition of "the right or easement of access" to land. The reference to an "easement of access" is omitted because that term is included within the meaning of "right of access."

(2) Section 3, V.A.C.S. Article 1085a, refers to "an incorporated city or town." The revised law substitutes "municipality" to conform to the terminology used by the Local Government Code.

Revised Law

Sec. 311.032. ESTABLISHMENT OF FREEWAY. (a) The governing body of a municipality may establish, maintain, and operate a freeway.

(b) To establish a freeway by using a street that exists at the time of the establishment, the municipality must have the consent of the owners of lands abutting the freeway or must purchase or condemn the right of access to the abutting lands. This subsection does not require consent to establish a freeway for the first time as a new way for vehicular and pedestrian traffic.

(V.A.C.S. Art. 1085a, Sec. 1 (part).)

Source Law

Art. 1085a

Section 1. . . . the governing body of any incorporated city or town, within their respective jurisdictions may do any and all things necessary to lay out, acquire, construct, maintain and operate any section or portion of any . . . city street as a freeway, and to make any . . . street within their respective jurisdictions a freeway, except that no existing . . . city street shall be converted into a freeway except with the consent of the owners of abutting lands, or by the purchase or condemnation of their right of access thereto, providing, however,
nothing herein shall be construed as requiring the consent of the owners of abutting lands where a . . . city street is constructed, established or located for the first time as a new way for the use of vehicular and pedestrian traffic.

Revisor's Note

(1) Section 1 of V.A.C.S. Article 1085a refers to "any incorporated city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (2) under Section 311.031 of this code.

(2) Under Section 1 of V.A.C.S. Article 1085a, a municipality may "do any and all things necessary to lay out, acquire, [and] construct" a freeway. The revised law refers instead to the authority to "establish" a freeway because "establish" is a more concise way of expressing the ideas. "Establish" includes the ideas of laying out, acquiring land for, and constructing a freeway. Furthermore, the idea of acquiring land for a freeway does not require specific mention in this section of the code because it is treated by Section 311.033 of this code.

Revised Law

Sec. 311.033. ACQUISITION OF LAND. For the purposes of this subchapter, the governing body may acquire necessary property or property rights by gift, devise, purchase, or condemnation in the same manner that the governing body may acquire property for a municipal street. (V.A.C.S. Art. 1085a, Sec. 2 (part).)

Source Law

Sec. 2. For the purposes of this Act, . . . the governing bodies of incorporated cities and towns, may acquire the necessary property and property rights by gift, devise, purchase, or condemnation, in the same manner as such governmental agencies are now or hereafter may be authorized by law to acquire such property for . . . city streets.
Revisor's Note

Section 2 of V.A.C.S. Article 1085a authorizes a municipality to acquire property for a freeway in the same manner that the municipality is authorized "by law" to acquire property for a street. The reference to "by law" is omitted because the authority a municipality has to acquire property is, of course, granted by law. A statement to that effect is unnecessary.

Revised Law

Sec. 311.034. CONTROL OF INTERSECTING STREET. The governing body of a municipality may:

(1) close a street in the municipality at or near the place the street intersects a freeway;

(2) provide for the construction of a street over or under a freeway;

(3) connect a street with a freeway; or

(4) perform other actions on a street as necessary to carry out a power granted by this section. (V.A.C.S. Art. 1085a, Sec. 4 (part).)

Source Law

Sec. 4. . . . the governing body of a city or town is authorized to close any . . . street within their respective jurisdictions at or near the point of its intersection with any freeway or to make provisions for carrying any . . . street over or under or to a connection with the freeway and may do any and all things on such . . . street as may be necessary therefor.

Revisor's Note

Section 4 of V.A.C.S. Article 1085a refers to the governing body of a "city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (2) under Section 311.031 of this code.
Sec. 311.035. LEASE OF LAND UNDER FREEWAY. (a) A governmental agency that holds the title and property rights to land on which a freeway is located may lease for parking purposes the part of the land beneath an elevated section of the freeway. (b) Revenue from the parking lease shall be used only for general governmental purposes. (V.A.C.S. Art. 1085a, Sec. 2a.)

Sec. 2a. The governmental agency which holds the title and property rights to land on which a freeway is located may lease for parking purposes the portions of land situated beneath the elevated sections of the freeway. Revenue from a parking lease authorized by this section shall be used for general governmental purposes.

The revision omits and repeals the portion of Section 5, V.A.C.S. Article 1085a, providing that the article is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to this code, and Section 312.013, Government Code. Those provisions state that a provision of a statute is severable from each other provision of the statute that can be given effect. Section 5, V.A.C.S. Article 1085a, also repeals all laws in conflict with that article. This revision omits and repeals this provision as unnecessary because, under general rules of statutory construction, a statute automatically has the effect of repealing prior conflicting enactments. The provision is, of course, ineffective to repeal subsequent legislation. Section 5 reads:

Sec. 5. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed
the Act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

[Sections 311.036-311.050 reserved for expansion]

SUBCHAPTER C. AUTHORITY RELATING TO RAIL TRANSPORTATION

Revised Law
Sec. 311.051. REGULATION OF STREET RAILWAY BY TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may:

(1) require a street railway company to:

(A) keep the company's roads in repair;

(B) conform the area in which the company's tracks lie to the grade of the street on which they lie, if the municipality has graded the street; or

(C) take measures to provide for the safe and convenient travel of people on the street on which the company's tracks lie; or

(2) regulate the speed of vehicles that use the company's tracks.

(b) The governing body by ordinance may establish penalties to enforce a regulation adopted under this section. (V.A.C.S. Art. 1015, Subdiv. 3.)

Source Law
Art. 1015. The governing body shall also have power:

3. Street railways.--To compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed and to compel such railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run. The city council may enforce these regulations by proper ordinances with suitable penalties.
Revisor's Note

Subdivision 3 of V.A.C.S. Article 1015 grants authority to the "governing body." The legislative history of this reference reveals that the reference relates to the governing body of a Type A general-law municipality. The revised law is drafted to clarify this issue.

Revised Law

Sec. 311.052. REGULATION OF RAILROAD BY TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

(1) direct and control the location and construction of railroad tracks, turnouts, and switches and prohibit the construction of those facilities in a street or alley, unless that action has been authorized by law;

(2) require that railroad tracks, turnouts, and switches be constructed in a way that interferes as little as possible with the ordinary use of a street or alley and that leaves sufficient space on each side of the tracks for the safe and convenient passage of vehicles and people;

(3) require a railroad company to keep in repair the street or alley on which their tracks are located;

(4) order a railroad company to construct and keep in repair a crossing at the place where the company's tracks intersect a street or alley;

(5) require a railroad company to construct and keep in repair a ditch, sewer, or culvert;

(6) direct or prohibit the use of or regulate the speed of a locomotive in the municipality; or

(7) direct and control the location of railroad depots in the municipality. (V.A.C.S. Art. 1015, Subdiv. 4.)

Source Law

Art. 1015. The governing body shall also have power:

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4. Railway companies.--To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city.

Reviser's Note

(1) V.A.C.S. Article 1015 grants authority to the "governing body." The legislative history of this reference reveals that the reference relates to the governing body of a Type A general-law municipality. The revised law is drafted to clarify this issue.

(2) Subdivision 4 of V.A.C.S. Article 1015 refers to "streets, avenues and alleys." The references to "avenues" are omitted from the revised law for the reason stated in Reviser's Note (2) under Section 311.001 of this code.

(3) Subdivision 4 of V.A.C.S. Article 1015 refers to the prevention of interference with the "ordinary travel and use" of streets and alleys. The reference to "travel" is omitted from the revised law because "travel" is included within the meaning of "use."

(4) Railroad tracks are required by Subdivision 4 of V.A.C.S. Article 1015 to be constructed to allow enough room for the safe passage of "teams, carriages and other vehicles." The reference to "teams, carriages" is omitted from the revised law because, in
this context, those are antiquated terms and, furthermore, they are included within the meaning of "vehicles."

(5) A Type A general-law municipality is authorized by Subdivision 4 of V.A.C.S. Article 1015 to require a railroad company to construct and repair ditches, sewers, and culverts "when the city council shall deem it necessary." The reference to the city council is omitted from the revised law because the authority given to the governing body of the municipality to require the construction and repair implies that it will be done when the governing body chooses to require it, and no statement to that effect is necessary.

(6) Subdivision 4 of V.A.C.S. Article 1015 authorizes a Type A general-law municipality to prohibit the "use or running" of a locomotive in the municipality. The reference to "running" is omitted from the revised law because "running" is included within the meaning of "use."

Revised Law
Sec. 311.053. CLOSING STREET FOR CERTAIN PURPOSES IN GENERAL-LAW OR SPECIAL-LAW MUNICIPALITY. The governing body of a general-law municipality or special-law municipality may close temporarily or permanently any part of a street or alley for the exclusive use by a railroad company or other corporation having the right of eminent domain or may ratify an ordinance closing a street or alley for that purpose if:

(1) the municipality operates under a municipal charter that authorizes the governing body to take that action; or
(2) a majority of the qualified voters of the municipality voting at an election on the question approve the grant of authority to the governing body. (V.A.C.S. Arts. 1018,
Source Law

Art. 1018. The charter, or any amendment thereto, may authorize the governing body to close for the exclusive use temporarily or perpetually by any railroad company or other corporation having power of eminent domain, any part or parts, of any street or streets, alley or alleys, and to ratify and confirm any prior ordinances closing any street or streets, alley or alleys, or any part or parts thereof, for the use of any railroad company or any such other corporation.

Art. 1020. The provisions of the three preceding articles shall be enforced in towns or cities under five thousand population, or cities over five thousand population which have no special charter, and in towns or cities incorporated under this title, and in cities or towns incorporated under any special law. The power authorized by this article may be conferred upon the governing body by vote of the qualified voters as provided in the preceding article.

Revisor's Note

(1) V.A.C.S. Article 1020 refers to the "provisions of the three preceding articles." Before 1987, this reference applied to V.A.C.S. Articles 1017, 1018, and 1019. Articles 1017 and 1019 were revised in 1987 as part of the Local Government Code. (See Section 253.001, Local Government Code.) As a result, Article 1020 now applies only to Article 1018. Articles 1018 and 1020 are revised together in this section.

(2) V.A.C.S. Article 1020 describes the kinds of municipalities that are covered by V.A.C.S. Article 1018. The description identifies only general-law and special-law municipalities, and the revised law is drafted to clarify this matter.

(3) V.A.C.S. Article 1018 authorizes a general-law or special-law municipality to "ratify and confirm" certain ordinances. The reference to "confirm" is omitted from the revised law because "confirm" is included within the meaning of "ratify."

(4) V.A.C.S. Article 1020 provides in part that
the power authorized by V.A.C.S. Article 1018 "may be
conferred upon the governing body by vote of the
qualified voters as provided in the preceding article,"
meaning V.A.C.S. Article 1019. Article 1019 was
revised in 1987 as Section 253.001(b), Local Government
Code. An exercise of power under that section (selling
municipal park land) requires a majority vote of the
qualified voters of the municipality voting at an
election on the issue. The revised law includes those
requirements.

[Sections 311.054-311.070 reserved for expansion]

SUBCHAPTER D. FRANCHISE TO USE STREETS
IN HOME-RULE MUNICIPALITY

Revised Law

Sec. 311.071. AUTHORITY TO GRANT FRANCHISE. (a) The
governing body of a home-rule municipality by ordinance may grant
to a person a franchise to use or occupy a public street or alley
of the municipality.

(b) The authority to grant a franchise is the exclusive
authority of the governing body. (V.A.C.S. Art. 1181 (part).)

Source Law

Art. 1181. . . . but the governing authority of
any such city shall have the exclusive power and
authority to make any such grant of any such franchise
or right to use and occupy the public streets, avenues,
alleys, . . . of the city. . . .

Revisor's Note

(1) V.A.C.S. Article 1181 refers to "such city."
The legislative history of this reference reveals that
the reference relates to a home-rule municipality. The
revised law is drafted to clarify this issue.

(2) The revised law requires a home-rule
municipality to exercise its authority "by ordinance"
because the other provisions of Article 1181 revised by
this subchapter of the code clarify that an ordinance is required.

(3) V.A.C.S. Article 1181 refers to the grant of a "franchise or right" to use or occupy streets or alleys. The reference to "right" is omitted from the revised law because, in this context, "right" is included within the meaning of "franchise." Furthermore, other provisions of Article 1181 revised by this subchapter of the code use only "franchise," therefore "right" is omitted for reasons of uniformity.

(4) V.A.C.S. Article 1181 refers to "streets, avenues, alleys." The reference to "avenues" is omitted from the revised law for the reason stated in Reviser's Note (2) under Section 311.001 of this code.

Revised Law
Sec. 311.072. PROHIBITION OF GRANT BY CHARTER. The charter of the municipality may not grant to a person a franchise described by Section 311.071. (V.A.C.S. Art. 1181 (part).)

Source Law
Art. 1181. No charter or any amendment thereof framed or adopted under this charter, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys . . . of any such city, . . . .

Reviser's Note
V.A.C.S. Article 1181 refers to the grant of a franchise to a "person, firm or corporation." The reference to "firm or corporation" is omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), "person" is defined to include a corporation or any other legal entity.

Revised Law
Sec. 311.073. ELECTION AFTER PETITION. (a) The governing body shall submit to the voters of the municipality the question of
granting a franchise to a person if, before the effective date of
the ordinance granting the franchise, the governing body receives a
petition that requests the election and is signed by 10 percent of
the registered voters of the municipality.

(b) In a municipality with a population of more than 1.2
million, the number of registered voters who must sign the petition
may be set at a lower number by the municipal charter. (V.A.C.S.
Art. 1181 (part).)

Source Law

Art. 1181. . . . If, at any time, before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by 10 percent of the bona fide qualified voters of the city or, in a city having a population of more than 1.2 million according to the last federal census, signed by a lesser number of qualified voters if so provided by city charter, then the governing body shall submit the question of granting such franchise to a vote of the qualified voters of the city, . . . .

Reviser's Note

(1) V.A.C.S. Article 1181 requires the petition to be signed by "qualified voters" of the municipality. The revised law uses "registered voters" instead because Section 277.0021, Election Code, provides that "qualified voter" means "registered voter" in determining eligibility to sign an election petition.

(2) V.A.C.S. Article 1181 describes a population number that is to be determined according to the last federal census. The revised law omits the reference to the federal census because the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 311.074. ELECTION DATE. After receipt of a petition
under Section 311.073, the election shall be held on the first
uniform election date prescribed by Section 41.001, Election Code,
that allows sufficient time to comply with other requirements of
law. (V.A.C.S. Art. 1181 (part).)

Source Law

Art. 1181. . . . the governing body shall submit
the question . . . at the next succeeding election date
authorized by Section 9b, Texas Election Code, as
amended (Article 2.01b, Vernon's Texas Election Code).

Reviser's Note

(1) The revised law adds, as a convenience to
the reader, the requirement that the election be held
on a date that "allows sufficient time to comply with
other requirements of law." The reference alerts the
reader to the fact that the election date will occur
after certain other events occur, such as the period
for notice of the election and the period that must
expire under Chapter 3, Election Code, following the
calling of the election.

(2) V.A.C.S. Article 1181 refers to "Section 9b,
Texas Election Code, as amended (Article 2.01b,
Vernon's Texas Election Code)." That statute was
codified in 1985 as Section 41.001, Election Code. The
revised law is drafted accordingly.

Revised Law

Sec. 311.075. ELECTION NOTICE. (a) Notice of the election
must be published in a daily newspaper in the municipality for at
least 20 successive days before the date of the election.

(b) This notice requirement supersedes the notice
requirements prescribed by Section 4.003, Election Code, except as
provided by that section. (V.A.C.S. Art. 1182 (part); New.)

Source Law

Art. 1182. Whenever said ordinance is submitted
at any election, notice thereof shall be published at
least twenty days successively in a daily newspaper in
said city prior to the holding of said election.

Revisor's Note
The revised law adds the reference to Section 4.003, Election Code, as a convenience to the reader. The reference alerts the reader to another notice requirement applicable to the election.

Revised Law
Sec. 311.076. BALLOT PROPOSITION. The ballot at the election shall be printed to provide for voting for or against the proposition: "Granting of a franchise (brief description of the franchise and its terms)." (V.A.C.S. Art. 1182 (part).)

Source Law
Art. 1182. . . . The ballot used at said election shall briefly describe the franchise to be voted on and the terms thereof and shall be prepared to permit voting for or against the proposition: "Granting of a franchise."

Revised Law
Sec. 311.077. EFFECTIVE DATE OF FRANCHISE. If a majority of the votes cast at the election favor the proposition:

(1) the governing body shall declare that result on canvassing the election returns; and

(2) the franchise takes effect according to its terms.

(V.A.C.S. Art. 1182 (part).)

Source Law
Art. 1182. . . . If a majority of those voting at said election shall vote in favor of granting a franchise, the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms. . . .

Revised Law
Sec. 311.078. DURATION OF FRANCHISE. A franchise under this subchapter may not extend beyond the period set for its termination. (V.A.C.S. Art. 1182 (part).)
Art. 1182. . . . No franchise shall extend beyond
the period fixed for its termination.

[Sections 311.079-311.090 reserved for expansion]

SUBCHAPTER E. FINANCING IMPROVEMENTS

Sec. 311.091. ASSESSMENT FOR STREET IMPROVEMENT IN HOME-RULE
MUNICIPALITY. (a) A home-rule municipality may assess a landowner
for the cost of improving a public highway, street, or alley
abutting the owner's land, if the municipal charter provides for
apportioning the cost between the municipality and the landowner.
The assessment may not exceed the amount by which the improvement
specially benefits the owner's abutting land by enhancing the
land's value.

(b) The municipality may issue assignable certificates for
the payment of the assessed cost.

(c) The assessment creates a lien on the owner's abutting
land for the assessed cost.

(d) Regardless of Subsection (a), a railway company shall
pay the cost of a street improvement made between the rails or
tracks of the company or made in the area extending two feet from a
rail or track of the company. (V.A.C.S. Art. 1175, Subdiv. 3
(part).)

Art. 1175. A home-rule municipality has the
following powers:

3. . . . and to charge the cost of making
such improvement against the abutting property, by
fixing a lien against the same, and a personal charge
against the owner thereof according to an assessment
specially levied therefor in an amount not to exceed
the special benefit any such property received in
enhanced value by reason of making such improvement,
and to provide for the issuance of assignable
certificates covering the payments for said cost,
provided that the charter shall apportion the cost to
be paid by the property owners and the amount to be
paid by the city, and provided further, that all street
railways, steam railways, or other railways, shall pay
the cost of improving the said street between the rails
and tracks of any such railway companies and for two
feet on each side thereof. . . .

Revisor's Note

(1) Subdivision 3 of V.A.C.S. Article 1175 refers to the cost of making "such improvement." The part of Article 1175 that clarifies this reference is revised by Section 311.001(b)(3) of this code. Section 311.001(b)(3) refers to the improvement of a public highway, street, or alley. This section is drafted accordingly.

(2) Under Subdivision 3 of V.A.C.S. Article 1175, the cost of an improvement is charged against the abutting land and against the landowner. The purpose of the charge against the landowner is to identify a specific person who is responsible for paying the cost of the improvement. The purpose of the charge against the land is to create a lien that attaches to the land and allows for foreclosure on the land to pay for the cost of the improvement if the landowner fails to pay the cost. The revised law clarifies the purposes of Subdivision 3 by providing for an assessment on the landowner and a lien on the land.

(3) Subdivision 3 of V.A.C.S. Article 1175 refers to improvement costs paid by "street railways, steam railways, or other railways." The references to those kinds of railways are omitted from the revised law because those entities are included within the meaning of "railway companies."

Revised Law
Sec. 311.092. ASSESSMENT FOR OPENING, EXTENDING, OR WIDENING OF STREET OR ALLEY IN HOME-RULE MUNICIPALITY. (a) A home-rule municipality may:

(1) acquire land necessary for opening, extending, or widening a public street or alley by the exercise of the right of
eminent domain under Section 251.001, Local Government Code; and

(2) assess the owners of land located in the territory of the improvement and specially benefitted by the improvement for the cost of the improvement.

(b) The special commissioners appointed under Chapter 21, Property Code, as part of the eminent domain proceeding shall apportion the cost of the improvement between the municipality and the landowners. The municipality's share of the cost may not exceed one-third of the cost. The municipality shall pay its share of the cost, and the landowners shall pay the balance.

(c) The special commissioners shall determine the land that is located in the territory of the improvement and is specially benefitted in enhanced value.

(d) The assessment creates a lien on the owner's land for the assessed cost.

(e) The municipality may issue assignable certificates for the payment of the assessed cost and may provide for the payment of the cost in deferred payments, which bear interest at a rate determined by the municipal charter but not to exceed eight percent. (V.A.C.S. Art. 1175, Subdiv. 4 (part).)

Source Law

Art. 1175. A home-rule municipality has the following powers:

4... and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers, of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by said special commissioners. The city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one.
third the cost, and the property owners and their
property shall be liable for the balance of the same as
may be apportioned by said commissioners. The city
may issue assignable certificates for the payment of
any such cost against such property owners and may
provide for the payment of any such cost in deferred
payments, to bear interest at such rate as may be
prescribed by the charter not to exceed eight per
cent. . . .

Revisor's Note

(1) Subdivision 4 of V.A.C.S. Article 1175
refers to a "street, . . . avenue or boulevard." The
reference to "avenue or boulevard" is omitted by the
revised law for the reason stated in Revisor's Note (2)
under Section 311.001 of this code.

(2) The revised law provides for assessing a
landowner and creating a lien on the owner's land for
the reason stated in Revisor's Note (2) under Section
311.091 of this code.

(3) A provision of Subdivision 4 of V.A.C.S.
Article 1175 authorizes a home-rule municipality to use
the power of eminent domain to acquire land for various
street purposes. That provision is omitted from the
revised law because the provision is subsumed by
Section 251.001 of the Local Government Code, which is
a broader statute relating to the municipal right of
eminent domain. A cross-reference to Section 251.001
is added to the revised law for the convenience of the
reader.

(4) Subdivision 4 of V.A.C.S. Article 1175
provides that the condemnation proceeding will be
directed by three special commissioners appointed by
the county judge or similar officer. The revised law
omits that provision because it is superseded by
Chapter 21 of the Property Code, which governs
condemnation proceedings and provides for the
appointment of special commissioners. A
cross-reference to Chapter 21 is added to the revised law for the convenience of the reader.

Revised Law

Sec. 311.093. ASSESSMENT FOR SIDEWALK IN HOME-RULE MUNICIPALITY. (a) A home-rule municipality may assess a landowner for the entire cost of constructing a sidewalk, including a curb, abutting the owner's land.

(b) The assessment creates a lien on the owner's abutting land for the assessed cost. (V.A.C.S. Art. 1175, Subdiv. 3 (part).)

Source Law

Art. 1175. A home-rule municipality has the following powers:

3. ... and charge the entire cost of constructing of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; . . . .

Revised Law

Sec. 311.094. OTHER FINANCING METHODS IN CHARTER OF HOME-RULE MUNICIPALITY. (a) A home-rule municipality by charter may adopt any other method of financing an improvement described by Section 311.091, 311.092, or 311.093.

(b) Another method adopted by charter for financing an improvement described by Section 311.092 must:

(1) charge the cost of the improvement to the property and to the owner of the property specially benefitted in enhanced value by the improvement and located in the territory in which the improvement is made; and

(2) describe the manner of:

(A) appointing commissioners;

(B) giving notice; and

(C) fixing assessments or otherwise providing for the payment of the improvement. (V.A.C.S. Art. 1175, Subdivs.)
Art. 1175. A home-rule municipality has the following powers:

3. ... The power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs, or boulevards, as it may deem advisable by its charter.

4. ... The city may adopt any other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable, and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement, that its charter may provide. The authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment of any such improvement.

(1) The purpose of Subdivisions 3 and 4 of V.A.C.S. Article 1175 is to ensure that the other provisions of Subdivisions 3 and 4, which are revised by Sections 311.091, 311.092, and 311.093 of this code, are not interpreted to prevent a home-rule municipality from adopting, by municipal charter, a method of financing certain kinds of improvements that is different from the methods authorized by those sections. Subsection (a) of the revised law refers to Sections 311.091, 311.092, and 311.093 for this reason.

(2) Subdivision 4 of V.A.C.S. Article 1175 requires that a method adopted by municipal charter for financing a kind of improvement described by the other provisions of Subdivision 4, which are revised by Section 311.092 of this code, must meet certain requirements. Subsection (b) of the revised law refers to Section 311.092 of this code for this reason.
Sec. 311.095. ASSESSMENT FOR STREET IMPROVEMENT IN TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality, by a two-thirds vote of the aldermen present, may improve a street or alley under this section.

(b) The governing body shall assess the land abutting the street or alley improved under this section for two-thirds of the cost of the improvement. The municipality shall pay the other one-third of the cost. The municipality shall pay the entire cost of an improvement at the intersection of streets.

(c) The landowner shall pay the assessment in not fewer than five equal annual payments. A collected assessment shall be appropriated for the payment of the bonds issued to finance the cost of the improvement.

(d) After the governing body determines to make an improvement, the governing body shall require the municipal engineer, another municipal officer, or a committee of three aldermen to prepare a report. The report must:

(1) contain an estimate of the cost of the improvement;

(2) list each lot or part of a lot abutting the street or alley to be improved and list the number and size of the lot, the number of the block in which the lot is located, the owner of the lot or a statement that the owner is unknown, and other information required by the governing body; and

(3) state, opposite a lot's listing, one-third the estimated cost of the improvement of the street or alley abutting the lot.

(e) On the acceptance and approval of the report, the governing body shall impose the assessment as taxes. After the assessment is imposed, the individual or committee that prepared the report shall give, as may be required by ordinance, notice of the time in which the payment of the assessment is due and shall begin to collect the payment.
(f) The assessment is a lien on the land until it is paid. After an assessment on the land becomes delinquent, the individual or committee that prepared the report on the assessments may seize any part of the land that is sufficient to pay the assessment. The individual or committee shall sell the seized land if the assessment is not paid before the day of the sale. The municipality shall give the same notice of the sale that is required to be given in other sales to collect delinquent taxes. The sale is subject to the same ordinance provisions that govern the name, circumstances, and conditions under which a sale of land may be made and the extent to which a sale may be made to collect delinquent taxes owed the municipality. The individual or committee shall execute a deed to the purchaser at the sale. The deed used in the sale is subject to another statute that governs a general-law municipality.

(g) The governing body may initiate a suit in the municipality's corporate name to recover from a landowner an assessment.

(h) The governing body may adopt resolutions, ordinances, or regulations necessary to carry out the authority granted by this section. (V.A.C.S. Arts. 1082, 1083, 1084, 1085 (part).)

Source Law

Art. 1082. The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; provided, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way shall be paid for by the city alone. Said costs shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number. All moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement.

Art. 1083. Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and
such engineer or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council; and if there be a lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown. The officer or committee aforesaid shall enter on, said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street or alley fronting, adjoining or opposite such lot or fractional lot; and, on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes, and shall be a lien upon the property until the payment of the same.

Art. 1084. After such action on the part of the city council, such officer or committee shall give such notice as may be required by ordinance, of said tax being due and within what time payable, and shall begin to collect the same. After the expiration of the period for payment of said tax, said officer or committee shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given. If said tax is not paid before the day of sale, said officer or committee shall sell property in the name and under the circumstances, and to the extent and subject to the same conditions which may be provided by ordinance for the sale of real estate in the city, charged with the payment of taxes imposed by said corporation. Said officer or committee shall execute a deed to the purchaser at any such sale; and all other provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed herein provided for.

Art. 1085. In addition to the authority granted to the city council to collect said assessment of taxes, they shall have the additional remedy of instituting suit in the corporate name for the recovery against any owner of the property for the amount due for any such work so made as aforesaid. They . . . may adopt necessary resolutions, ordinances and regulations.

Reviser's Note

(1) The revised law substitutes "governing body" for the term "city council" used by V.A.C.S. Articles 1082-1085 because the terms are synonymous in this context and "governing body" is more commonly used in the statutes.

(2) The legislative history of V.A.C.S. Articles 1082-1085 reveals that the articles apply only to a Type A general-law municipality. The revised law is
drafted to clarify this issue.

(3) V.A.C.S. Articles 1082-1085 provide a method by which a Type A general-law municipality may finance the cost of improving streets and alleys. Other statutes provide other methods. For example, see Chapters 312 and 313. As a result, a Type A general-law municipality is not required to use the method prescribed by this section of the code, but the municipality may do so if it chooses. The revised law clarifies this matter.

(4) V.A.C.S. Article 1083 refers to the improvement of an "avenue," "street," or "alley." The reference to "avenue" is omitted from the revised law for the reason stated in Reviser's Note (2) under Section 311.001 of this code.

(5) V.A.C.S. Article 1082 refers to assessing land "fronting on said street." V.A.C.S. Article 1083 refers to assessing land for an "improvement on such... street or alley fronting, adjoining or opposite such lot." The purpose of those provisions is to provide for assessing land "abutting" the street or alley that is improved. As a result, the revised law omits references to "fronting," "adjoining," or "opposite" and uses "abutting."

(6) V.A.C.S. Article 1082 requires a Type A general-law municipality to pay the entire cost of an improvement made at "the intersection of streets, from lot to lot across the streets either way." The revised law omits "from lot to lot across the streets either way" because that language is surplusage that is ineffective in clarifying the meaning of "intersection of streets."

(7) V.A.C.S. Article 1083 requires the governing body to impose the assessments "on the acceptance and
approval of said report and list." The revised law omits as unnecessary the reference to "list." The list in question is the list of information that is part of the report. Acceptance and approval of the report constitutes acceptance and approval of the list.

(8) In a few instances, V.A.C.S. Articles 1084 and 1085 use "tax" or "taxes" to refer to the assessments imposed under Article 1082. The revised law uses "assessment" for purposes of uniformity.

(9) V.A.C.S. Article 1084 provides that a Type A general-law municipality shall "levy" on property for which assessments are unpaid. The revised law instead refers to the seizure of property because, in this context, the concepts of "seizing" property and of "levying" on property are synonymous and the former is the more common way of expressing that concept.

(10) V.A.C.S. Article 1084 provides that a deed used in a sale of land to collect delinquent assessments is subject to certain "other provisions of this title." This is a reference to other statutes applicable to general-law municipalities, and the revised law is drafted accordingly.

(11) V.A.C.S. Article 1085 requires a Type A general-law municipality to provide by resolution or ordinance for carrying out the powers granted by V.A.C.S. Articles 1082-1085. This requirement is omitted from revision as unnecessary because the exercise of those powers is optional with the municipality (see Reviser's Note (3) to this section), and if the municipality chooses to exercise those powers it will by necessity have to adopt appropriate resolutions or ordinances. The omitted provision reads:

[They] shall provide by resolution or ordinance under the provision of this
title, for carrying out and executing the
powers in this chapter conferred,
and ... .

Revised Law

Sec. 311.096. COST OF SIDEWALK IN TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may require the owner of a lot, or part of a lot or block, in front of which the municipality constructs a sidewalk to pay the cost of the construction.

(b) If necessary to collect the cost of the construction, the municipality shall sell the lot, or the part of the lot or block, in the manner the governing body of the municipality by ordinance provides. The municipality may keep an amount of the sale proceeds that covers the cost of the construction and the cost of collection. The municipality shall pay to the owner the balance of the sale proceeds.

(c) The sale of the lot, or the part of the lot or block, under this section conveys a good title to the purchaser.

(V.A.C.S. Art. 1015, Subdiv. 2 (part).)

Source Law

Art. 1015. The governing body shall also have power:

2. ... and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk. The cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such manner as the city council may by ordinance provide. A sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser. The balance of proceeds of such sale, after paying the amount due the city and costs of sale, shall be paid to the owner.

Revisor's Note

(1) The legislative history of V.A.C.S. Article 1015 reveals that the article applies only to a Type A general-law municipality. The revised law is drafted to clarify this issue.
Subdivision 2 of V.A.C.S. Article 1015 requires a landowner to pay the cost of sidewalk construction. Other statutes provide other methods for financing the construction. For example, see provisions in Chapters 312 and 313 of this code. As a result, Subdivision 2 of Article 1015 does not impose a requirement on a landowner unless the governing body of the municipality chooses to impose the requirement. The revised law clarifies this issue.

[Sections 311.097-311.900 reserved for expansion]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 311.901. REGULATION OF ANIMALS ON STREET OF TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

(1) prohibit or suppress horse racing on a street or immoderate riding or driving of an animal on a street; or

(2) require a person to fasten in place the person's horse or other animal remaining in a street. (V.A.C.S. Art. 1015, Subdiv. 5.)

Source Law

Art. 1015. The governing body shall also have power:

5. Unsafe driving.--To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets.

Revisor's Note

(1) V.A.C.S. Article 1015 grants authority to the "governing body." The legislative history of this reference reveals that the reference relates to the governing body of a Type A general-law municipality. The revised law is drafted to clarify this issue.
(2) A Type A general-law municipality is authorized by Subdivision 5 of V.A.C.S. Article 1015 to regulate animals "standing or remaining" in the street. The reference to "standing" is omitted from the revised law because "standing" is included within the meaning of "remaining."

(3) Under Subdivision 5 of V.A.C.S. Article 1015, a Type A general-law municipality may regulate animals remaining in the street regardless of whether the animals are "attached to vehicles, or otherwise." This reference is omitted from the revised law because the regulatory authority applies to all animals remaining in the street and it is unnecessary to mention the specific case of an animal attached to a vehicle.

Revised Law
Sec. 311.902. STREET LIGHTING IN TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

(1) provide for and regulate the lighting of a street;
(2) create or change lamp districts; or
(3) exclusively regulate or direct the laying or repairing of gas pipes and gas fixtures in a street, alley, sidewalk, or other place. (V.A.C.S. Art. 1015, Subdiv. 6.)

Source Law
Art. 1015. The governing body shall also have power:

6. Light and gas.--To provide for lighting the streets and erecting lamp posts therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts, to exclusively regulate, direct and control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere.
Revisor's Note

(1) V.A.C.S. Article 1015 grants authority to the "governing body." The legislative history of this reference reveals that the reference relates to the governing body of a Type A general-law municipality. The revised law is drafted to clarify this issue.

(2) A Type A general-law municipality is authorized by Subdivision 6 of V.A.C.S. Article 1015 to provide for lighting the streets and for "erecting lamp posts therein." The reference to the power to erect lamp posts is omitted from the revised law because that power is included within the power to provide for lighting the streets.

(3) Under Subdivision 6 of V.A.C.S. Article 1015, a Type A general-law municipality may "regulate, direct and control" the laying of gas pipes and gas fixtures. The reference to "control" is omitted from the revised law because "control" is included within the meaning of "regulate."

Revised Law

Sec. 311.903. STREET WORK REQUIRED OF INHABITANT IN TYPE B GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type B general-law municipality may require the male inhabitants of the municipality who are at least 18 years of age but younger than 46 years of age to work on the streets and public alleys. The period of work may not exceed five days in a year.

(b) Instead of performing the work, a person may furnish a substitute to perform the work or may pay a sum not to exceed $1 for each day of work demanded so that a substitute may be employed.

(c) The requirement does not apply to a minister of the gospel actually engaged in the discharge of the minister's duties.

(V.A.C.S. Art. 1146, Subdiv. 2.)
Art. 1146. The board of aldermen shall:

2. Have the power to cause the male inhabitants between the ages of twenty-one and forty-five years, except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money, not to exceed one dollar for each day's work demanded, to employ such substitute.

Reviser's Note

(1) The revised law substitutes "governing body" for the term "board of aldermen" used by Subdivision 2 of V.A.C.S. Article 1146 for the reason stated in Reviser's Note (2) under Section 311.006 of this code.

(2) Under Subdivision 2 of V.A.C.S. Article 1146, certain persons who are at least 21 years of age may be required to work on the streets and alleys. Section 129.002, Civil Practice and Remedies Code, lowers the minimum age for a provision of this nature to 18 years of age. The revised law is drafted accordingly.

Sec. 311.904. FORMER PRESIDENT'S STREET IN HOME-RULE MUNICIPALITY. A home-rule municipality, alone or in conjunction with another person, may regulate or restrict access to a street or alley in the municipality on which the dwelling of a former president of the United States is located. This authority includes the authority to install and maintain a fence, gate, or other structure. (V.A.C.S. Art. 1175, Subdiv. 7.)

Art. 1175. A home-rule municipality has the following powers:

7. To regulate and restrict access to streets, avenues, alleys, and boulevards in the municipality on which the dwelling of a former president of the United States is located, including the installation and maintenance of fences, gates, or other structures. The municipality may act alone or in conjunction with another entity or person.
Revisor's Note

(1) Subdivision 7 of V.A.C.S. Article 1175 refers to "streets, avenues, alleys, and boulevards."
The references to "avenues" and "boulevards" are omitted from the revised law for the reason stated in Revisor's Note (2) under Section 311.001 of this code.

(2) Under Subdivision 7 of V.A.C.S. Article 1175, a home-rule municipality may act in conjunction with another "entity or person." The reference to "entity" is omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), "person" is defined to include any other legal entity.

Revisor's Note
(End of Chapter)

(1) V.A.C.S. Article 1149 authorizes certain municipalities to condemn the right-of-way and roadbed of a railway company if necessary to open, widen, or extend a street. That article is omitted from revision because it is subsumed by Section 251.001 of the Local Government Code, which is a broader statute relating to the municipal right of eminent domain. The omitted article reads:

Art. 1149. Any town or village in this State, incorporated under this chapter or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railway company whose roadbed runs within the corporate limits of such town or village, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. Failing to agree on the damages to be paid therefor, the mayor shall prepare a statement in writing showing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which

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it is sought to be condemned, the name and
style of the railway company, and file the
same with the county judge of the county in
which such town or village is situated,
whereupon proceedings shall be had to
condemn said right of way.

(2) Several statutes have validated local
government actions taken in connection with assessments
for improvements to streets, sewer systems, or water
systems or in connection with the coating of streets or
parking areas. Those statutes are omitted from the
revised law and are repealed because they served their
purpose on the day on which they took effect, and thus
are executed laws. The saving provisions in Section
311.031, Government Code (Code Construction Act),
provide that the repeal of a statute does not affect
any validation previously made under the statute. The
omitted statutes read:

Art. 1105b-1
Sec. 1. That where any city acting
through its governing body has heretofore
levied assessments for street improvements
against property abutting upon the highway
or portion thereof ordered to be improved
and against the owners of such property,
and where such city has purported to act
under the authority of Chapter 106, page
489 et seq., Acts of the Fortieth
Legislature, First Called Session, 1927, as
amended, as said Act read on the date said
assessments were levied (which Act as
amended appears as Article 1105b in
Vernon's Texas Civil Statutes), and where
not more than all of the cost of
constructing, reconstructing, repairing and
realigning curbs, gutters and sidewalks and
not more than nine-tenths (9/10) of the
remaining cost of such improvements as
shown on the estimate of costs prepared or
caused to be prepared by the governing body
of said city, where assessed against the
property abutting upon the highway or
portion thereof ordered to be improved and
against the owners thereof, and where the
portion of the cost of the improvements
which was assessed against abutting
property and the owners thereof was in fact
apportioned among the parcels of abutting
property and the owners thereof in
accordance with the front foot plan or
rule, or, where the city, in addition to
giving the published notice provided for by
Section 9 of Chapter 106 of the Acts of the
Fortieth Legislature, First Called Session,
1927, as amended, as it then read, mailed
or caused to be mailed by United States mail, postage prepaid, a reasonable time prior to the date of the hearing, notices containing the information required to be contained in the published notice, addressed to the owners of the respective properties abutting the highway, highways or portions thereof to be improved as such names of such owners were shown on the then current tax rolls of such city at the addresses so shown, all such assessments and all proceedings levying same are hereby legalized, approved and validated as of the respective times and dates of such assessments and proceedings and according to their terms and shall have the force and effect provided by the provisions of said Chapter 106 of the Acts of the Fortieth Legislature, First Called Session, 1927, as amended, except that nothing herein shall be construed as validating or legalizing any lien against any interest in property exempt at the time the improvements were ordered from the lien of special assessments for street improvements.

Sec. 2. All assignable certificates of special assessment issued in evidence of such assessments hereby validated are hereby legalized, approved and validated according to their terms. Any city which has heretofore levied assessments validated hereby but has not yet issued assignable certificates of special assessment to evidence such assessments may issue same and such certificate shall be valid and legal.

Art. 1105b-2

Section 1. All assessments and reassessments for street or highway improvements heretofore levied or purported to be levied by any and all cities in the state against properties abutting their streets or highways and against the owners of such properties, and all proceedings of the governing bodies of such cities levying or purporting to levy such assessments or reassessments are in all respects validated and shall have the force and effect provided by the provisions of Chapter 106 of the Fortieth Legislature, First Called Session, 1927, as amended, except that nothing herein shall be construed to validate or to legalize any assessment lien levied or attempted to be levied against any property or interest in property exempt at the time the improvements were ordered from the lien of special assessment for street improvements.

Sec. 2. All assignable certificates of special assessment issued in evidence of such assessments or reassessments are hereby validated according to their terms. Any city which has not yet issued assignable certificates of special assessment to evidence such assessments may issue same and such certificates shall be valid and legal.

Sec. 3. This Act is not intended to
1 validate, nor does it apply to any
2 assessments or reassessments for street
3 improvements or utility improvements
4 (regardless whether said assessment or
5 reassessment be in the form of zoning
6 regulations, plat regulations, utility
7 regulations, or direct money assessments),
8 nor to any ordinances or resolutions of the
9 governing bodies of such cities authorizing
10 the issuance of any such certificates of
11 special assessment, which are the subject
12 matter of any litigation pending on the
13 effective date of this Act, in any court of
14 competent jurisdiction in this state in
15 which the validity thereof is being
16 challenged, if such litigation is
17 ultimately determined against the validity
18 of same.
19 Art. 1105b-3
20 Sec. 1. That where any city acting
21 through its governing body has heretofore
22 levied assessments or reassessments for
23 street improvements against property
24 abutting upon a highway or portion thereof
25 ordered to be improved and against the
26 owners of such property, and such city has
27 acted or purported to act under the
28 authority of Chapter 106, pages 489 et
29 seq., Acts of the 40th Legislature, First
30 Called Session, 1927, as amended (which Act
31 as amended appears as Article 1105b in
32 Vernon's Texas Civil
33 Statutes), all such
34 assessments and reassessments heretofore
35 levied or purporting to be levied against
36 properties abutting such streets and
37 highways and against the owners of such
38 properties, and all proceedings of the
39 governing bodies of such cities levying or
40 purporting to levy such assessments or
41 reassessments are in all respects hereby
42 legalized, approved and validated as of the
43 respective times and dates of such
44 assessments and reassessments and
45 proceedings and according to their terms
46 and shall have the force and effect
47 provided by the provisions of said Chapter
48 106, pages 489 et seq., of the Acts of the
49 40th Legislature, First Called Session, 1927, as amended, and the liens thereof
50 shall be effective from and after the times
51 thereon so provided, except that nothing
52 herein shall be construed as validating or
53 legalizing any lien against any interest in
54 property exempt, at the time the
55 improvements were ordered from the lien of
56 special assessment or reassessment for
57 local improvements under the Constitution
58 of the State of Texas.
59 Sec. 2. That where any city acting
60 through its governing body has heretofore
61 levied assessments or reassessments for
62 improvements to a sanitary sewer system
63 within its limits, or improvements to a
64 water system within its limits, either or
65 both, against benefited properties and the
66 owners thereof, and the city has acted or
67 purported to act under the authority of the
68 provisions of Chapter 192, pages 512 et
Sec. 1. Acts of the 58th Legislature, Regular Session, 1963, as amended (which Act as amended appears as Article 1110c in Vernon's Texas Civil Statutes), all such assessments and reassessments and all proceedings levying same are hereby legalized, approved and validated as of the respective times and dates of such assessments and reassessments and proceedings and according to their terms and shall have the force and effect provided by the provisions of Chapter 192, pages 512 et seq., Acts of the 58th Legislature, Regular Session, 1963, as amended, and the lien thereof shall be effective from and after the respective times therein provided, except that nothing herein shall be construed as validating or legalizing any lien against any interest in property exempt from the lien of special assessment or reassessment for local improvements under the Constitution of the State of Texas.

Sec. 3. That where any city acting through its governing body has heretofore levied assessments or reassessments for street improvements against property abutting upon the highway or portions thereof ordered to be improved and against the owners of such property, and where such city has acted or purported to act under the authority of Chapter 106, pages 489 et seq., Acts of the 40th Legislature, First Called Session, 1927, as amended, and has levied or purported to levy said assessments or reassessments for such street improvements in conjunction with a levy of assessments or reassessments against benefited properties and the owners thereof for improvements to a sanitary sewer system within its limits, or for improvements to a water system within its limits, either or both, pursuant to the provisions of Chapter 192, pages 512 et seq., Acts of the 58th Legislature, Regular Session, 1963, as amended (which Act as amended appears as Article 1110c in Vernon's Texas Civil Statutes) by one joint proceeding, as provided by Section 18 of the provisions of Chapter 192, pages 512 et seq., Acts of the 58th Legislature, Regular Session, 1963, as amended, all such assessments and reassessments and all proceedings levying same are hereby legalized, approved and validated as of the respective times and dates of such assessments and reassessments and proceedings and according to their terms and shall have the force and effect provided by the provisions of Chapter 106, pages 489 et seq., Acts of the 40th Legislature, First Called Session, 1927, as amended, and by the provisions of Chapter 192, pages 512 et seq., Acts of the 58th Legislature, Regular Session, 1963, as amended, and the liens thereof shall be effective from and after the respective times so provided by said respective
statutes, except that nothing herein shall
be construed as validating or legalizing
any lien against any interest in property
exempt at the time the lien takes effect
from the lien of special assessments or
reassessments for local improvements under
the Constitution of the State of Texas.

Sec. 4. That all assignable
certificates of special assessment issued
in evidence of any of such street, water or
sanitary sewer assessment or any
combination thereof, assessments or
reassessments are hereby validated
according to their terms. Any city which
has not yet issued assignable certificates
of special assessment to evidence any of
such assessments may issue same and such
certificates shall be valid and legal
according to their terms.

Sec. 5. This Act is not intended to
validate, nor does it apply to any
assessments or reassessments for street
improvements, nor to any certificates of
special assessment or reassessment, nor to
any ordinances or resolutions of the
governing bodies of such cities authorizing
the issuance of any such certificates of
special assessment, which are the subject
matter of any litigation pending on the
effective date of this Act, in any court of
competent jurisdiction in this state in
which the validity thereof is being
challenged, if such litigation is
ultimately determined against the validity
of same.

Art. 1105b-4

Sec. 1. In this Act, "highway" has
the meaning given it in Section 2, Chapter
106, Acts of the 40th Legislature, 1st
Called Session, 1927, as amended (Article
1105b, Vernon's Texas Civil Statutes).

Sec. 2. This Act applies to:
(1) the levy of assessments or
reassessments against property abutting a
highway or portion of one and against the
owners of the property for improvements to
the highway or portion of it, where the
city acted or purported to act under the
authority of Chapter 106, Acts of the 40th
Legislature, 1st Called Session, 1927, as
amended (Article 1105b, Vernon's Texas
Civil Statutes);

(2) the levy of assessments or
reassessments against benefitted property
and the owners of the property for
improvements to a sanitary sewer system or
water system or both within the limits of
the city levying the assessments or
reassessments, where the city acted or
purported to act under the authority of
Chapter 192, Acts of the 58th Legislature,
1963, as amended (Article 1110c, Vernon's
Texas Civil Statutes); and

(3) the levy or purported levy
of assessments or reassessments as
described in Subdivision (1) of this
section in conjunction with the levy of
assessments or reassessments as described
in Subdivision (2) of this section, in a joint proceeding where the city has acted or purported to act under the authority of Section 18, Chapter 192, Acts of the 58th Legislature, 1963 (Article 1105c, Vernon's Texas Civil Statutes).

Sec. 3. Where a city acting through its governing body before the effective date of this Act levied or purported to levy an assessment or reassessment against property and the owners of property as described in Section 2 of this Act, all proceedings of the city relating to the levy or purported levy are validated, ratified, and confirmed as of the time they took place and in accordance with their terms, and the proceedings shall have the full force and effect as is provided under the law under which the city acted or purported to act. The liens created or purported to be created by the levies or purported levies are also validated, ratified, and confirmed, and they shall be effective from and after the respective times provided by the assessment proceedings, except a lien purported to be created against property that at the time was exempt under the Texas Constitution from a lien of special assessment or reassessment for local improvements is not validated, ratified, or confirmed by this Act.

Sec. 4. All assignable certificates of special assessment relating to a proceeding validated by this Act are also validated.

Sec. 5. This Act does not apply to a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction instituted for the purpose of attacking the validity of the matter if the litigation is ultimately determined against the validity of the matter.

Art. 1105b-5

Sec. 1. In any case where an incorporated city or town has contracted on behalf of itself and an independent school district and the county in which the city or town is located for the seal coating of roads or parking areas of the governmental entities by a private contractor, all governmental acts and proceedings and all transactions relating to the contract are validated, notwithstanding the failure of any one or more of the governmental entities to comply with all legal requirements concerning the awarding of the contract.

Sec. 2. This Act does not apply to:

(1) any act, transaction, or proceeding that occurred before September 1, 1975;

(2) any matter that on the effective date of this Act has been declared invalid by a final judgment of a court of competent jurisdiction;

(3) any matter involved in
litigation on the effective date of this
Act if the litigation ultimately results in
the matter being held invalid by a final
judgment of a court of competent
jurisdiction.

CHAPTER 312. CONTROL OF HIGHWAY ASSETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 312.001. DEFINITIONS

Sec. 312.002. APPLICABILITY AND ADOPTION OF SUBCHAPTERS

Sec. 312.003. HIGHWAY IMPROVEMENT

Sec. 312.004. CONFLICT OF LAWS

[Sections 312.005-312.020 reserved for expansion]

SUBCHAPTER B. ASSESSMENTS

Sec. 312.021. PAYMENT FOR IMPROVEMENT

Sec. 312.022. ASSESSMENT ORDINANCE

Sec. 312.023. ASSESSMENT OR TAX AGAINST RAILWAY

Sec. 312.024. CORRECTION OF ERROR; REASSESSMENT

[Sections 312.025-312.040 reserved for expansion]

SUBCHAPTER C. HEARING; APPEAL; PROPERTY LIEN

Sec. 312.041. HEARING REQUIRED

Sec. 312.042. HEARING

Sec. 312.043. NOTICE AND HEARING: RULES

Sec. 312.044. NO LIEN ON EXEMPT PROPERTY; LIABILITY OF

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Sec. 312.045. RIGHT TO APPEAL

Sec. 312.046. ENFORCEMENT OF ASSESSMENT LIEN AND LIABILITY

Sec. 312.047. ASSESSMENT CERTIFICATE

[Sections 312.048-312.060 reserved for expansion]

SUBCHAPTER D. SPECIAL ASSESSMENT

Sec. 312.061. DEFINITION

Sec. 312.062. ASSESSMENT FOLLOWING VOID OR ERRONEOUS

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Sec. 312.065. TIME LIMIT ON ASSESSMENT

Sec. 312.066. ASSESSMENTS IN CERTAIN MUNICIPALITIES
Sec. 312.067. RIGHT TO APPEAL

CHAPTER 312. CONTROL OF HIGHWAY ASSETS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 312.001. DEFINITIONS. In this subchapter and in Subchapters B and C:

(1) "Highway" includes all or any part of a street, alley, or public place or square that is dedicated to public use.

(2) "Improvement" means the:

   (A) filling, grading, raising, or paving of a highway in a permanent manner;

   (B) widening, narrowing, or straightening of a highway;

   (C) constructing of a gutter, curb, or sidewalk;

   or

   (D) constructing of necessary appurtenances to a highway, including sewers and drains.

(3) "Railway" includes a street railway. (V.A.C.S. Art. 1086 (part); New.)

Source Law

Art. 1086. . . . to improve any highway . . . by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters, or by widening, narrowing or straightening the same, and to construct necessary appurtenances thereto, including sewers and drains . . . and the term "highway" shall include any street, avenue, alley, highway, or public place or square, or portion thereof, dedicated to public use. . . .

Reviser's Note

(1) V.A.C.S. Article 1086 defines highway to "include any street, avenue, alley, highway, or public place or square . . . ." The reference to "avenue" is omitted from the revised law because it is included within the meaning of "street." The reference to
"highway" is omitted from the revised law because it is the term being defined, making it unnecessary to provide that a highway includes a highway.

(2) V.A.C.S. Article 1086 refers to "paving or repaving" a highway. The reference to "repaving" is omitted from the revised law because "repaving" is included within the meaning of "paving."

(3) V.A.C.S. Article 1086 refers to "construction or reconstruction" of sidewalks, curbs, and gutters. The reference to "reconstruction" is omitted from the revised law because "reconstruction" is included within the meaning of "construction."

(4) The definition of "railway" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 312.002. APPLICABILITY AND ADOPTION OF SUBCHAPTERS.

(a) This subchapter and Subchapters B and C apply only to a municipality that has adopted those subchapters as provided by this section.

(b) To adopt the subchapters, the governing body of a municipality must submit the question of the adoption to voters of the municipality at a special election called for that purpose.

(c) The governing body of a municipality by resolution:

(1) may order the election; and

(2) shall order the election if the governing body is presented with a petition for an election that is signed by at least 100 of the registered voters of the municipality.

(d) If the majority of the votes cast in the election favor the adoption of the subchapters, the governing body shall enter the result in its minutes. On entry of the result, the subchapters apply to the municipality. A certified copy of the minutes is
primafacie evidence of the regularity of the election and its result.

(e) The governing body of a municipality that adopts the subchapters may adopt any ordinance or resolution to implement the subchapters. (V.A.C.S. Arts. 1086 (part), 1104.)

Source Law

Art. 1086. Towns, cities and villages, incorporated under either general or special law, which shall accept the benefits of this chapter as herein provided . . . . "City" when used herein (except when otherwise provided above) shall include all incorporated towns, cities and villages . . . .

Art. 1104. The benefits of the provisions of this article and Articles 1086 to 1096, both inclusive, and Article 1105 shall apply to any city, and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the resident property taxpayers, who are qualified voters of said city, at a special election called for the purpose by said city. Said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered, and it shall be their duty on the written petition of one hundred qualified voters of said city, by resolution, to order said election, and prescribe the time and manner of holding the same. Said body shall canvass and determine the results of such election. If a majority of the voters voting upon the question of the adoption of said article, at such election, shall vote to adopt the same, the result of the election shall be entered by said governing body upon their minutes, and thereupon all the terms of said articles shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof. When the provisions of said articles have been adopted by any city, the governing body thereof shall have full power to pass all ordinances or resolutions necessary or proper to give full force and effect thereto and to every part thereof.

Revisor’s Note

(1) V.A.C.S. Articles 1086 and 1104 refer to incorporated towns, cities, and villages. The revised law substitutes the term "municipality" for those terms because that is the term used in the Local Government Code. The revised law also omits the term "incorporated" because under the Local Government Code all municipalities must be incorporated.
(2) V.A.C.S. Article 1104 refers to "resident property taxpayers, who are qualified voters." The revised law omits the requirement that the voters be property taxpayers because the requirement is unconstitutional. In *Hill v. Stone*, 421 U.S. 289 (1975), the United States Supreme Court determined that property ownership as a qualification for voting is an unconstitutional denial of equal protection.

(3) V.A.C.S. Article 1104 states that a governing body may adopt ordinances or resolutions necessary or proper to "give full force and effect thereto and to every part thereof." The revised law substitutes for the quoted language the phrase, "to implement the subchapters" for brevity and clarity.

(4) V.A.C.S. Article 1104 refers to "qualified voters" signing a petition. The revised law substitutes "registered" for "qualified" because Section 277.0021, Election Code, provides that "qualified voter" means "registered voter" in determining eligibility to sign an election petition.

(5) V.A.C.S. Article 1104 provides that an "election shall be held as nearly as possible in compliance with the law with reference to regular city elections . . . ." The revised law omits that requirement because the general election law prescribed by the Election Code governing municipal elections will apply without a statement to that effect.

(6) V.A.C.S. Article 1104 requires the governing body to canvass the returns and determine the results of an election. This provision is omitted from the revised law because it has been superseded by Chapter 67, Election Code.

(7) V.A.C.S. Article 1104 provides that the governing body has the "power to pass all ordinances or
resolutions necessary or proper . . . ." The revised law omits the words "necessary or proper" as unnecessary because they are not a limitation on the power of the governing body.

Revised Law

Sec. 312.003. HIGHWAY IMPROVEMENT. A municipality may:

1. order the improvement of a highway in the municipality's limits;
2. select the materials and methods to be used in that construction; and
3. contract for the construction in the name of the municipality. (V.A.C.S. Arts. 1086 (part), 1087 (part).)

Source Law

Art. 1086. [Towns, cities and villages,] . . . shall have power to improve any highway within their limits . . . .

Art. 1087. The Governing Body of any city shall have power to order the improvement of any highway therein, or part thereof, . . . . and to select the materials and methods of such improvement, and to contract for the construction of such improvements in the name of the city . . . .

Revisor's Note

V.A.C.S. Article 1086 refers to "[t]owns, cities and villages . . . ." and V.A.C.S. Article 1087 refers to "any city." The revised law substitutes "municipality" for "[t]owns, cities and villages" and for a "city" for the reason stated in Revisor's Note (1) under Section 312.002 of this code.

Revised Law

Sec. 312.004. CONFLICT OF LAWS. To the extent of a conflict between this subchapter or Subchapter B or C and a law granting a special charter to a municipality, the provision of the special charter controls. (V.A.C.S. Art. 1105 (part).)

Source Law

Art. 1105. . . . In any case in which a conflict
may exist or arise between the provisions of said articles and the provisions of any law granting a special charter to any city in this State, the provisions of such special charter shall control.

Reviser's Note

(1) The revised law omits as unnecessary the first sentence of V.A.C.S. Article 1105 relating to the cumulative effect of that article. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision. The omitted portion of Article 1105 reads:

The provisions of Articles 1086 to 1096, both inclusive, and Article 1104 and of resolutions or ordinances passed pursuant thereto shall be cumulative of and in addition to existing laws pertaining to the making of such improvements.

(2) V.A.C.S. Article 1105 refers to "any city in this State." The revised law substitutes "municipality" for the quoted language for the reason stated in Reviser's Note (1) under Section 312.002 of this code.

[Sections 312.005-312.020 reserved for expansion]

SUBCHAPTER B. ASSESSMENTS

Revised Law

Sec. 312.021. PAYMENT FOR IMPROVEMENT. (a) Payment for an improvement under Subchapter A may be made either entirely by the municipality or partly by the municipality and partly by the owners of the abutting property.

(b) The governing body of a municipality may use any available municipal money to pay the municipality's share of the cost of the improvement. (V.A.C.S. Arts. 1087 (part), 1088 (part).)
Art. 1087. [The Governing Body of any city shall have power to order the improvement of any highway therein, or part thereof,] . . . and to provide for the payment of the cost of such improvements out of any available funds of the city.

Art. 1088. The cost of making such improvements may be wholly paid by the city, or partly by the city and partly by the owners of the property abutting thereon. . . .

Revisor's Note
V.A.C.S. Articles 1087 and 1088 refer to a "city." The revised law substitutes "municipality" for "city" for the reason stated in Revisor's Note (1) under Section 312.002 of this code.

Revised Law
Sec. 312.022. ASSESSMENT ORDINANCE. (a) The governing body of a municipality by ordinance may assess the cost of an improvement made under Subchapter A against property that abuts and benefits from the improvement or against the owner of the property.

(b) Except as provided by Subsection (c), the governing body may not assess more than three-fourths of the cost of an improvement against properties or property owners.

(c) The entire cost of constructing a curb or sidewalk fronting property may be assessed against the property or its owner.

(d) The ordinance may:

(1) provide the terms of payment of an assessment;

(2) provide a rate of interest to be paid on the assessment, not to exceed eight percent a year payable on deferred payments;

(3) create a lien on the assessed property; and

(4) declare the assessment to be a personal liability of the owner of the assessed property.

(e) The ordinance must provide for the collection of the:

(1) assessment; and

(2) collection costs and reasonable attorney's fees.
(f) An assessment under this section is a lien securing the payment of the assessment. (V.A.C.S. Arts. 1088 (part), 1090 (part).)

Source Law

Art. 1088. . . . In no event shall more than three-fourths of the cost of any improvement, except sidewalks and curbs, be assessed against such property owners or their property. The whole cost of construction of sidewalks and curbs in front of any property may be assessed against the owner thereof or his property.

Art. 1090. Subject to the terms hereof, the governing body shall have power by ordinance to assess the whole cost of constructing sidewalks or curbs, and not to exceed three-fourths of the cost of any other improvement, against the owners of property abutting on such improvement and against their abutting property benefited thereby, and to provide for the time and terms of payment of such assessments and the rate of interest payable upon deferred payments thereon, which rate shall not exceed eight per cent per annum, and to fix a lien upon the property and declare such assessments to be a personal liability of the owners of such abutting property . . . . The ordinance making such assessments shall provide for the collection thereof, with costs and reasonable attorney's fees, if incurred. Such assessments shall be secured by, and constitute a lien on said property . . . .

Revisor's Note

V.A.C.S. Article 1090 refers to "the time and terms of payments of" assessments. The reference to "time" is omitted from the revised law because "time" is included within the meaning of "terms."

Revised Law

Sec. 312.023. ASSESSMENT OR TAX AGAINST RAILWAY. (a) The governing body of a municipality may assess against the owner of a railroad that occupies a highway ordered to be improved the entire cost of the improvement made in the area between or under the rails or tracks or in the area extending two feet outside of the rails or tracks.

(b) A municipality by ordinance may impose a special tax on a railway and its roadbed, ties, rails, fixtures, rights, and
franchise.

(c) An ordinance that imposes a special tax under this section must describe when the tax is due and delinquent and the method of enforcement.

(d) A tax under Subsection (b) is a lien that is superior to any other lien or claim except a lien or claim for state, county, or municipal taxes.

(e) A tax lien under Subsection (d) may be enforced by:

(1) sale of the property in the manner provided by law in the collection of ad valorem taxes by the municipality; or

(2) suit against the owner. (V.A.C.S. Art. 1089.)

Source

Art. 1089. Subject to the terms hereof, the governing body of any city shall have the power to assess against the owner of any railroad or street railroad occupying any highway ordered to be improved, the whole cost of the improvement between or under the rails or tracks of said railroad or street railroad and two feet on the outside thereof, and shall have power, by ordinance, to levy a special tax upon said railroad, or street railroad, and its roadbed, ties, rails, fixtures, rights and franchise, which tax shall constitute a lien thereon superior to any other lien or claim, except State, county and municipal taxes, and which may be enforced, either by sale of said property in the manner provided by law in the collection of ad valorem taxes by the city, or by suit against the owner. The ordinance levying said tax shall prescribe when same shall become due and delinquent, and the method of enforcing the same.

Revisor's Note

V.A.C.S. Article 1089 refers to a "city." The revised law substitutes "municipality" for "city" for the reason stated in Revisor's Note (1) under Section 312.002 of this code.

Revised Law

Sec. 312.024. CORRECTION OF ERROR; REASSESSMENT. (a) The governing body of a municipality may correct a mistake or irregularity in a proceeding regarding an improvement or in an assessment of the cost of an improvement made against abutting property or its owner.
(b) If an assessment is in error or is not valid, the governing body may reassess the cost of the improvement against abutting property or its owner. A reassessment may not exceed the improvement's benefit in enhanced value to the property.

(c) The governing body may adopt rules for giving notice to a property owner before a reassessment and for holding a hearing before a reassessment. (V.A.C.S. Art. 1095.)

Source Law

Art. 1095. The governing body of any city shall be empowered to correct any mistake or irregularity in any proceedings with reference to such improvement, or the assessment of the cost thereof against abutting property and its owners, and in case of any error or invalidity, to reassess against any abutting property and its owner the cost or part of the cost of improvements, subject to the terms hereof, not in excess of the benefits in enhanced value of such property from such improvement, and to make reasonable rules and regulations for a notice to and hearing of property owners before such reassessment.

Reviser's Note

(1) V.A.C.S. Article 1095 refers to a "city." The revised law substitutes "municipality" for "city" for the reason stated in Reviser's Note (1) under Section 312.002 of this code.

(2) V.A.C.S. Article 1095 refers to "rules and regulations." The revised law omits the reference to "regulations" because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 312.025-312.040 reserved for expansion]

SUBCHAPTER C. HEARING; APPEAL; PROPERTY LIEN

Revised Law

Sec. 312.041. HEARING REQUIRED. (a) An assessment against property abutting an improvement or against the owner of the property may be made under Subchapter B only after the property
owner has a full hearing.

(b) Reasonable notice of the hearing shall be given to the property owner or the owner’s agent or attorney.

(c) Notice of the hearing shall be published at least three times in a newspaper published in the municipality in which the assessment is to be made. If that municipality does not have a newspaper, notice shall be published in the newspaper that is published nearest to the municipality and that is of general circulation in the county in which the municipality is located.

(d) The first publication of the notice shall be made not later than the 10th day before the date of the hearing.

(e) If the owner of the property is a railway, written notice of the assessment and hearing shall be:

(1) delivered in person to the local agent of the railway; or

(2) mailed postage paid at a post office in the municipality and properly addressed to the office of the railway at the address shown on the last approved municipal tax roll.

(f) Notice required by Subsection (e) shall be mailed or delivered not later than 10 days before the date of the hearing.

(g) The governing body of the municipality may provide notice in addition to the notice required by this section.

(V.A.C.S. Art. 1093.)

Source Law

Art. 1093. No assessments of any part of the cost of such improvement shall be made against any property abutting thereon or its owner, until a full and fair hearing shall first have been given to the owners of such property, preceded by a reasonable notice thereof given to said owners, their agents, or attorneys. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, town or village where such tax is sought to be levied, if there be such a paper there; if not, then in the nearest to said city, town or village, or general circulation in the county in which said city is located; and, in addition, if the owner of such abutting property is a railway or street railway, written notice of the assessment and hearing thereon shall be served by either delivering in person to the local agent or by depositing the same in the city post office, postage paid, and properly addressed to the offices of the railway or street railway at the address.
as it appears on the last approved city tax roll; and such written notice, if required, shall be mailed or delivered, and the first publication shall be made, at least ten (10) days before the date of the hearing. The governing body may provide for additional notice cumulative of that notice specified above.

Revisor's Note

(1) V.A.C.S. Article 1093 refers to a "city, town or village" and to a "city tax roll." The revised law substitutes "municipality" for "city, town or village" and "municipal tax roll" for "city tax roll" for the reason stated in Revisor's Note (1) under Section 312.002 of this code.

(2) V.A.C.S. Article 1094 refers to a "fair hearing." The revised law omits the word "fair" because due process under the law requires a fair hearing and it is unnecessary to repeat that requirement.

Revised Law

Sec. 312.042. HEARING. (a) A hearing under this subchapter shall be before the governing body of the municipality.

(b) An owner of property abutting a proposed improvement is entitled to contest at the hearing:

(1) a proposed assessment or personal liability;

(2) the regularity of the proceedings regarding the proposed improvement;

(3) the benefit of the proposed improvement to the owner's property; or

(4) any related matter.

(c) The amount of an assessment may not exceed the benefit the property owner receives in enhanced value to the property.

(d) The enhanced value to the property shall be determined at the hearing. (V.A.C.S. Art. 1094 (part).)

Source Law

Art. 1094. Said hearing shall be before the governing body of such cities, at which such owners
shall have the right to contest the said assessment and personal liability, and the regularity of the proceedings with reference to the improvement, and the benefit of said improvement to their property, and any other matter relating thereto. No assessment shall be made against any owner of abutting property or his property in any event in excess of the actual benefit to such owner in the enhanced value of his property, by means of such improvement, as ascertained at such hearing. . . .

Reviser's Note
V.A.C.S. Article 1094 refers to a "city." The revised law substitutes "municipality" for "city" for the reason stated in Reviser's Note (1) under Section 312.002 of this code.

Revised Law
Sec. 312.043. NOTICE AND HEARING: RULES. The governing body of a municipality by ordinance shall adopt rules providing for giving notice and hearing as provided by this subchapter. (V.A.C.S. Art. 1094 (part).)

Source Law
Art. 1094. . . . The governing body of any city making improvements under the terms hereof shall, by ordinance, adopt rules and regulations providing for such hearings to property owners, and for giving reasonable notice thereof.

Reviser's Note
(1) V.A.C.S. Article 1094 refers to a "city." The revised law substitutes "municipality" for "city" for the reason stated in Reviser's Note (1) under Section 312.002 of this code.

(2) V.A.C.S. Article 1094 refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.
Sec. 312.044. NO LIEN ON EXEMPT PROPERTY; LIABILITY OF OWNER. (a) This chapter does not authorize a municipality to create a lien by assessment against property that by law is exempt from sale under execution.

(b) The owner of exempt property is personally liable for an assessment for the cost of an improvement fronting the property.

(c) The omission of an improvement fronting exempt property does not invalidate an assessment lien made against nonexempt property on the improved highway. (V.A.C.S. Art. 1091.)

Art. 1091. Nothing herein shall be construed to empower any city to fix a lien by assessment against any property exempt by law from sale under execution; but the owner of such exempt property shall nevertheless be personally liable for the cost of improvements constructed in front of his property, which may be assessed against him. The fact that any improvement is omitted in front of exempt property shall not invalidate the lien of assessments made against other property on the highway improved, not so exempt.

V.A.C.S. Article 1091 refers to a "city." The revised law substitutes "municipality" for "city" for the reason stated in Reviser's Note (1) under Section 312.002 of this code.

Sec. 312.045. RIGHT TO APPEAL. (a) A property owner against whose property or against whom the assessment has been made may bring suit to set aside or correct the assessment or any proceeding related to the assessment. The suit or proceeding must be brought not later than the 20th day after the date on which an assessment is made.

(b) After the period provided by Subsection (a), the property owner and the property owner's successors are barred from:
(1) any action to set aside or correct the assessment or a related proceeding; and
(2) raising a defense that alleges the invalidity of the assessment or of a related proceeding in any action in which the invalidity may be raised. (V.A.C.S. Art. 1096.)

Source Law
Art. 1096. Any property owner, against whom or whose property any assessment or reassessment has been made, shall have the right within twenty days thereafter, to bring suit to set aside or correct the same, or any proceeding with reference thereto, on account of any error or invalidity therein. But thereafter such owner, his heirs, assigns or successors, shall be barred from any such action, or any defense of invalidity in such proceedings or assessments or reassessments in any action in which the same may be brought in question.

Revisor's Note
(1) V.A.C.S. Article 1096 refers to an "assessment or reassessment." The revised law omits the reference to "reassessment" because it is within the meaning of "assessment."
(2) V.A.C.S. Article 1096 refers to "his heirs, assigns or successors." The reference to "heirs or assigns" is omitted from the revised law because "heirs" and "assigns" are included within the meaning of "successors."

Revised Law
Sec. 312.046. ENFORCEMENT OF ASSESSMENT LIEN AND LIABILITY.
(a) An assessment lien created against property or the personal liability of the property owner may be enforced by suit or by sale of the assessed property in the manner provided by law for the collection of municipal ad valorem taxes.
(b) A recital in a deed to property sold under Subsection (a) that all legal prerequisites to the assessment and sale of the property have been performed is prima facie evidence that the procedures and prerequisites were performed as stated.
(c) An assessment secured under Subchapter B by a lien on property is:

(1) the first enforceable claim against the property;

and

(2) superior to any other lien or claim except a lien or claim for state, county, or municipal taxes. (V.A.C.S. Arts. 1090 (part), 1092.)

Source Law

Art. 1090. . . . [Such assessments] . . . shall be the first enforceable claim against the property against which it is assessed, superior to all other liens and claims, except State, county and municipal taxes.

Art. 1092. The lien created against any property, or the personal liability of the owner thereof, may be enforced by suit or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. The recital in any deed made pursuant to such sale, that all legal prerequisites to said assessment and sale have been complied with, shall be prima facie evidence of the facts so recited and shall in all courts be accepted without further proof.

Reviser's Note

(1) V.A.C.S. Article 1092 refers to a "city."
The revised law substitutes "municipality" for "city" for the reason stated in Reviser's Note (1) under Section 312.002 of this code.

(2) V.A.C.S. Article 1092 states that a deed recital is "prima facie evidence of the facts so recited and shall in all courts be accepted without further proof." The revised law omits the phrase "and shall in all courts be accepted without further proof" because it is an unnecessary statement of the nature of prima facie evidence.

Revised Law

Sec. 312.047. ASSESSMENT CERTIFICATE. (a) A municipality that makes an assessment under Section 312.022 may:

(1) issue in its name an assignable certificate that
declares the liability of the owner and the assessed property; and

(2) determine the terms and conditions of the

certificate.

(b) A recital in a certificate that states that the
procedure for making the improvement was in compliance with law and
that all prerequisites to creating the assessment lien on the
property and to creating the personal liability of the property
owner were performed is prima facie evidence that the procedure and
prerequisites were performed as stated in the certificate.

(V.A.C.S. Art. 1090 (part.).)

Source Law

Art. 1090. . . . and such governing body shall
have the power to cause to be issued in the name of the

city, assignable certificates declaring the liability

of such owners and their property for the payment of

such assessments and to fix the terms and conditions

for such certificate. If any such certificate shall

recite that the proceedings with reference to making

such improvements have been regularly had in compliance

with law, and that all prerequisites to the fixing of

the assessment lien against the property described in

said certificate and fixing the personal liability of

the owner have been performed, such certificate shall

be prima facie evidence of the facts so recited. . . .

Revisor's Note

(1) V.A.C.S. Article 1090 refers to a "city."

The revised law substitutes "municipality" for "city"

for the reason stated in Revisor's Note (1) under

Section 312.002 of this code.

(2) V.A.C.S. Article 1090 requires that

proceedings regarding improvements be "regularly had in

compliance with law." The reference to "regularly had"

is omitted from the revised law as redundant because a

meeting that is "regularly had" is held "in compliance

with law."

Revisor's Note

(End of Subchapter)

The revised law omits V.A.C.S. Article 1090a,
validating certain assessments made before the statute
was enacted, because that article is executed. The omitted law reads as follows:

Art. 1090a
Sec. 1. This Act shall affect all cities in the State of Texas having a population of more than one hundred thousand (100,000) according to the last preceding United States Census.
Sec. 2. In every instance where a city, coming under the provisions of this Act, has attempted to fix a lien upon property by assessment ordinance for the improvement and paving of streets, highways and boulevards, where the State, County and Federal Governments have contributed to the cost of such improvement, requiring the impounding of funds by such city for the purpose of guaranteeing its portion of the cost of such paving and improvements, all actions, resolutions, order, ordinances and proceedings taken, made or passed in reference thereto, or pursuant thereto, are hereby confirmed, ratified and validated, and the lien attempted to be fixed by said assessment ordinance is a valid and subsisting lien against the property assessed irrespective of any irregularities or defects in the proceeding and in like manner as if said assessment had been authorized in the first instance.

[Sections 312.048-312.060 reserved for expansion]

SUBCHAPTER D. SPECIAL ASSESSMENT

Revised Law

Sec. 312.061. DEFINITION. In this subchapter, "improvement" means the opening, straightening, widening, paving, constructing, or grading of a street, alley, sidewalk, gutter, or public way.

(V.A.C.S. Art. 1097 (part).)

Source Law

Art. 1097. ... improvement, raising or lowering the grade of, opening, straightening, widening, paving, constructing or grading of any street, avenue, alley, sidewalk, gutter or public way, or any part thereof, ... .

Revisor's Note

V.A.C.S. Article 1097 refers to "any street [or] avenue." The revised law omits the reference to "avenue" because "avenue" is included within the
meaning of "street."

Revised Law
Sec. 312.062. ASSESSMENT FOLLOWING VOID OR ERRONEOUS ASSESSMENT. (a) The governing body of a municipality may assess property that abuts an improvement with the amount of the cost of the improvement if for any reason none of the cost of the improvement has been borne by the abutting property or its owner either because an attempted assessment and enforcement of the assessment was erroneous or void or was declared erroneous or void in a judicial proceeding and if:

(1) the municipality has spent public money on the improvement;

(2) a municipal voucher or certificate has been issued to a contractor; or

(3) the municipality has contracted for the improvement.

(b) The assessment may not exceed the special benefit the property receives in enhanced value to the property.

(c) The amount of the special benefit is to be determined on a basis of the condition of the improvement at the time of the assessment. (V.A.C.S. Art. 1097 (part).)

Source Law
Art. 1097. In any case in which the public funds of a city or town may have been or may hereafter be expended, or its vouchers or certificates issued to any contractor, or any contract made therewith, for the special improvement, . . . and if for any reason, no part of the cost of such improvement has been borne by the abutting property or paid by the owner or owners thereof, either because an attempted assessment and enforcement thereof for the same was erroneous or void, or was so declared in any judicial proceeding, the governing body shall have the power to proceed at any time to specially assess or reassess, such abutting property with such amount of the cost of such improvement as it deems proper, but in no event shall the amount exceed the special benefits such property receives therefrom by enhanced value thereto, the amount of such special benefits to be determined on a basis of the condition of such improvement as it exists at the time of such assessment or reassessment.
Revisor's Note

(1) V.A.C.S. Article 1097 refers to a "city or town." The revised law substitutes "municipality" for "city or town" because "municipality" is the term used in the Local Government Code.

(2) V.A.C.S. Article 1097 provides that a city has the authority to make assessments it "deems proper." The revised law omits "deems proper" because the authority granted is discretionary.

(3) V.A.C.S. Article 1097 refers to "an assessment or reassessment." The revised law omits "reassessment" for the reason stated in Revisor's Note (1) under Section 312.045 of this code.

Revised Law

Sec. 312.063. NOTICE OF ASSESSMENT. (a) An assessment may be made under this subchapter only if at least 10 days' written notice and an opportunity to be heard on the question of special benefits has been given to the owner of the property abutting the improvement.

(b) Notice under this section may be served personally or by publication in a newspaper of general circulation published in the municipality.

(c) If the owner of the property abutting the improvement is a railway and the property is assessed for improvements, notice shall be given by publication and by written notice delivered in person to the local agent of the railway or mailed postage paid at a post office in the municipality and properly addressed to the office of the railway at the address as shown on the last approved municipal tax roll.

(d) The governing body of the municipality may provide for the procedure and rules:

(1) for notice and a hearing under this section; and

(2) to assess and collect the assessment.
(e) In this section, "railway" includes a street railway.

(V.A.C.S. Art. 1098.)

Source Law

Art. 1098. No such assessment or reassessment shall be made without at least ten (10) days written notice and an opportunity to be heard on such question of special benefits given to the owner or owners of such abutting property. Such notice may be served either personally or by publication in some newspaper of general circulation, published in said city or town; and, when any such abutting property is owned by a railway or street railway, notice shall be made both by such publication and by delivery of written notice, either in person to its local agent, or by depositing said written notice in the city post office, postage paid, and properly addressed to the offices of the railway or street railway at the address as it appears on the last approved city tax roll, and the governing body of any such city or town shall have power, not inconsistent herewith, to provide for all procedure, rules, and regulations necessary or proper for such notice and hearing and to levy, assess, and collect such assessment or reassessment.

Revisor's Note

(1) V.A.C.S. Article 1098 refers to an "assessment or reassessment." The revised law omits the reference to "reassessment" for the reason stated in Revisor's Note (1) under Section 312.045 of this code.

(2) V.A.C.S. Article 1098 refers to a "city or town." The revised law substitutes "municipality" for "city or town" for the reason stated in Revisor's Note (1) under Section 312.062.

(3) V.A.C.S. Article 1098 refers to "rules, and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 312.064. ASSESSMENT LIEN AND LIABILITY. (a) An assessment under this subchapter is payable in not less than five
equal, annual installments.

(b) An assessment under this subchapter is a lien against the abutting property and is a personal liability of the owner of the abutting property. The assessment may not be construed as becoming due before the assessment is properly made in accordance with this subchapter. (V.A.C.S. Arts. 1099, 1102 (part).)

Source Law

Art. 1099. Such assessment, or reassessment shall constitute a lien upon such abutting property and a personal charge against the owner or owners thereof, which amount shall not be construed as becoming due, or having become due, before such assessment or reassessment is properly made in accordance with the provisions of this law.

Art. 1102. Such assessment, or reassessment, shall be due and payable in equal annual installments not less than five in number; . . . .

Revisor's Note

V.A.C.S. Article 1099 refers to an "assessment or reassessment." The revised law omits the reference to "reassessment" for the reason stated in Revisor's Note (1) under Section 312.045 of this code.

Revised Law

Sec. 312.065. TIME LIMIT ON ASSESSMENT. (a) A proceeding to assess property under this subchapter may not be started later than three years after the date on which the improvement abutting the property that is to be assessed is completed.

(b) If an original assessment on property has been in litigation, the time that the assessment was in litigation may not be computed in the time limit for assessment under Subsection (a). (V.A.C.S. Art. 1100.)

Source Law

Art. 1100. Such assessment or reassessment as hereinbefore provided shall be begun within three years after the completion of improvements contiguous to the property against which assessment or reassessment is made, and not thereafter. In cases of reassessments where the question of validity of the original assessment may be, or may have been, in litigation, the
period of time during which it was in litigation shall not be considered in computing said period of limitation.

Revisor's Note

V.A.C.S. Article 1100 refers to an "assessment or reassessment." The revised law omits "reassessment" for the reason stated in Revisor's Note (1) under Section 312.045 of this code.

Revised Law

Sec. 312.066. ASSESSMENTS IN CERTAIN MUNICIPALITIES. (a) The amount of an assessment made by the governing body of a municipality with fewer than 5,000 inhabitants may equal the entire cost of a sidewalk, curb, gutter, or improvement other than a street intersection.

(b) The governing body of a municipality making an assessment under this section shall follow applicable procedures in Section 311.095.

(c) The amount of an assessment may not exceed the special benefit the property receives in enhanced value to the property.

(d) An assessment under this section may be made only after the owner of the abutting property has:

(1) been given notice of the assessment; and

(2) the opportunity to contest the assessment before the governing body of the municipality.

(e) The governing body of the municipality may by ordinance adopt rules for the notice and opportunity to contest an assessment under this section. (V.A.C.S. Art. 1101.)

Source Law

Art. 1101. Any such assessment or reassessment made by the governing body of any city or town with less than five thousand inhabitants may equal the entire cost of sidewalk, curb and gutter, and the cost of any street improvement, exclusive of street intersections, and such governing body of such town in making such assessment or reassessment, shall follow the procedure prescribed in articles 1082 and 1083 in so far as applicable, but no such assessment or reassessment shall be made in excess of the special benefits in enhanced value conferred thereby on the
property abutting such improvement, or until the owner
or owners of such property shall have had notice, as
provided above, and opportunity to contest such issue
before such governing body under such rules and
regulations as it may, by ordinance, prescribe.

Reviser's Note
(1) V.A.C.S. Article 1101 refers to Articles
1082 and 1083. Those statutes are codified in this
code in Section 311.095, and the revised law is drafted
accordingly.

(2) V.A.C.S. Article 1101 refers to "rules and
regulations." The reference to "regulations" is
omitted from the revised law because under Section
311.005(5), Government Code (Code Construction Act), a
rule is defined to include a regulation. That
definition applies to the revised law.

(3) V.A.C.S. Article 1101 refers to an
"assessment or reassessment." The revised law omits
"reassessment" for the reason stated in Reviser's Note
(1) under Section 312.045 of this code.

Revised Law
Sec. 312.067. RIGHT TO APPEAL. (a) A property owner
against whose property or against whom an assessment has been made
may appeal to a court the decision of the governing body of the
municipality. The appeal must be brought not later than the 20th
day after the date on which an assessment is made.

(b) An assessment becomes final at the end of the period
provided for appeal if an appeal is not brought. (V.A.C.S.
Art. 1102 (part).)

Source Law
Art. 1102. ... provided that the owner of such
property shall have the right to appeal from the
decision of the governing board to any court of
competent jurisdiction within twenty days after such
reassessment shall have been made, and upon failure to
do so in said period, such assessment shall be final
and conclusive upon such owner and property.
Reviser's Note

(1) V.A.C.S. Article 1102 refers to an "assessment" or a "reassessment." The revised law omits the reference to "reassessment" for the reason stated in Reviser's Note (1) under Section 312.045 of this code.

(2) V.A.C.S. Article 1102 refers to an appeal brought to any court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over the appeal. For example, see Sections 24.007 through 24.011, Government Code, for the general jurisdiction of district courts.

Reviser's Note
(End of Subchapter)

V.A.C.S. Article 1103 refers to the cumulative effect of Articles 1097 through 1102 and validates certain municipal charter provisions. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The revised law omits the reference to the cumulative effect of Articles 1097 through 1102 because the general principle applies to this revision. The revised law also omits the portion of Article 1103 validating municipal charter provisions because it is executed. The omitted article reads:

Art. 1103. The provisions of the six preceding articles relating to special assessments or reassessments are cumulative of all powers heretofore granted to any city or town either by general or special law, and all charter provisions of all cities and towns in this State heretofore adopted relative to the subject covered by this law are hereby validated.
CHAPTER 313. STREET IMPROVEMENTS AND ASSESSMENTS IN CERTAIN MUNICIPALITIES

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CHAPTER 313. STREET IMPROVEMENTS AND ASSESSMENTS IN CERTAIN
MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 313.001. DEFINITIONS. In this chapter:

(1) "Cost" includes an expense of engineering and
other expense incident to construction of an improvement.

(2) "Governing body" means the governing body of a
municipality.

(3) "Highway" includes any part of a street, alley,
public place, or square, including a part left wholly or partly
unimproved in connection with another street improvement.

(4) "Improvement" includes the following, liberally
construed:

(A) filling, grading, raising, paving, or
repairing a highway in a permanent manner;

(B) constructing, realigning, or repairing a
curb, gutter, or sidewalk;

(C) widening, narrowing, or straightening a
highway; and

(D) an appurtenance or incidental to an
improvement, including a drain or culvert. (V.A.C.S. Art. 1105b,
Secs. 1(a) (part), 2 (part).)

Source Law

Art. 1105b
Sec. 1. (a) . . . [shall have power to cause to
be improved, any highway, within their limits] by
filling, grading, raising, paving, repaving, and
repairing in a permanent manner, and by constructing,
reconstructing, repairing and realigning curbs, gutters
and sidewalks, and by widening, narrowing and
straightening, and by constructing appurtenances and
incidentally to any of such improvements, including
drains and culverts, which power shall include that of
causing to be made any one or more of the kinds or
classes of improvements herein named or any combination
thereof, or of parts thereof.
Sec. 2. . . . that the term "governing body"
whenever used herein, includes the governing or
legislative bodies of all incorporated town, cities and
villages, whether known as councils, commissions,
boards of commissioners, common councils, boards of
aldermen, city councils, or by whatever name such
bodies may be known or designated under general or
special laws or charters. That whenever the term
"highway" is used herein it shall include any street,
avenue, alley, highway, boulevard, drive, public place,
square, or any portion or portions thereof, including
any portion that may have or may be left wholly or
partly unimproved in connection with other street
improvements heretofore or hereafter made. The term
"improve" or "improvements" when used herein shall
include the kinds and classes of improvements, with
incidents and appurtenances thereto, and any portions
or combinations thereof, or of parts thereof,
hereinabove mentioned, liberally construed. That
whenever the term "cost" or "costs of improvements" or
similar terms are used herein, same shall include
expenses of engineering and other expenses incident to
construction of improvements, in addition to the other
costs of the improvements.

Revisor's Note

(1) Section 2, V.A.C.S. Article 1105b, defines
highway to "include any street, avenue, alley, highway,
boulevard, drive, public place, square . . . ." The
references to "avenue," "boulevard," and "drive" are
omitted from the revised law because they are included
within the meaning of "street." The reference to
"highway" is omitted from the revised law because it is
the term being defined, making it unnecessary to
provide that a highway includes a highway.

(2) Section 1(a), V.A.C.S. Article 1105b, refers
to "paving" and "repaving" highways. The reference to
"repaving" is omitted from the revised law because
"repaving" is included within the meaning of "paving."

(3) Section 1(a), V.A.C.S. Article 1105b, refers
to "constructing," "reconstructing," and "repairing"
curbs, gutters, and sidewalks. The reference to
"reconstructing" is omitted from the revised law
because "reconstructing" is included within the meaning
of "constructing" and "repairing."

(4) Section 2, V.A.C.S. Article 1105b, defines
"city" to include all "incorporated cities, town [sic] and villages." The revised law omits that definition and substitutes the term "municipality" for the term "city" because the Local Government Code refers to each of those entities by the term "municipality." The omitted definition reads:

Sec. 2. That the term "city" whenever used herein shall include all incorporated cities, town and villages . . .

(5) Section 2, V.A.C.S. Article 1105b, refers to municipal governing bodies, "whether known as councils, commissions, boards of commissioners, common councils, boards of aldermen, city councils, or by whatever name such bodies may be known or designated under general or special laws or charters." The revised law omits the quoted language as unnecessary because the bodies listed are included within the meaning of "governing bodies."

Revised Law

Sec. 313.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality that has a population of more than 1,000. (Sec. 15, Ch. 106, Acts 40th Leg., 1st C.S., 1927 (part).)

Source Law

... the terms, powers, and provisions of this Act shall not apply in any city not having more than one thousand inhabitants.

Revisor's Note

Section 15, Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927, refers to "any city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.
Revised Law

Sec. 313.003. GENERAL POWERS OF GOVERNING BODY. (a) The governing body of a municipality may:

(1) determine the necessity for and order the improvement of a highway in the municipality;

(2) contract for the construction of the improvement in the name of the municipality; and

(3) provide for the payment of the cost of the improvement by the municipality or partly by the municipality and partly by assessments as provided by this chapter.

(b) The governing body by resolution, motion, order, or ordinance may exercise a power granted by this chapter unless this chapter specifically prescribes that the governing body act by ordinance.

(c) The governing body by resolution or ordinance may adopt rules appropriate to:

(1) the exercise of a power granted by this chapter;

(2) the method and manner of ordering or holding a hearing; and

(3) giving notice of a hearing. (V.A.C.S. Art. 1105b, Secs. 3, 12.)

Source Law

Sec. 3. That the governing body of any city shall have power to determine the necessity for, and to order, the improvement of any highway, highways, or parts thereof within such city, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements by the city, or partly by the city and partly by assessments as hereinafter provided.

Sec. 12. Said governing body shall have power to carry out all the terms and provisions of this Act and to exercise all the powers thereof, either by resolution, motion, order or ordinance, except where ordinance is specifically prescribed, and such governing body shall have power to adopt, either by resolution or ordinance, any and all rules or regulations appropriate to the exercise of such powers, the method and manner of ordering and holding such hearings, and the giving of notices thereof.
Revisor's Note

(1) Section 3, V.A.C.S. Article 1105b, refers to "any city." The revised law substitutes the term "municipality" for "city" for the reason stated in the reviser's note under Section 313.002.

(2) Section 3, V.A.C.S. Article 1105b, refers to "any highway, highways, or parts thereof." The reference to "parts thereof" is omitted from the revised law because the definition of "highway" in Section 2, V.A.C.S. Article 1105b, codified in this code as Section 313.001(3), includes "any portion or portions" of a highway.

(3) Section 12, V.A.C.S. Article 1105b, authorizes the governing body "to carry out all the terms and provisions of this Act [Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927] and to exercise all the powers thereof." The revised law omits the quoted language as unnecessary because the authorization to carry out the terms and provisions of this chapter is included within the authorization to exercise the powers granted by this chapter.

(4) Section 12, V.A.C.S. Article 1105b, refers to "rules or regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 313.004-313.020 reserved for expansion]

SUBCHAPTER B. IMPROVEMENTS

Revised Law

Sec. 313.021. HIGHWAY IMPROVEMENTS AUTHORIZED. (a) A municipality may improve a highway within its limits.
(b) A municipality that has a population of more than 285,000 may make an improvement on a highway outside the municipality's limits if the improvement does not extend more than 150 feet from the municipal limits. (V.A.C.S. Art. 1105b, Secs. 1(a) (part), 1a.)

Source Law

Sec. 1. (a) That cities, towns and villages incorporated under either general or special law, including those operating under special charter, or amendments of charter adopted pursuant to the Home Rule provisions of the Constitution, shall have power to cause to be improved, any highway, within their limits . . . .

Sec. 1a. Any city mentioned in Section 1 and having a population in excess of two hundred and eighty-five thousand (285,000) inhabitants according to the last preceding or any future Federal Census may make the improvements named in Section 1 hereof on any highway or road without the limits of such city if such improvements do not extend more than one hundred and fifty (150) feet from the limits of such city.

Revisor's Note

(1) Section 1(a), V.A.C.S. Article 1105b, refers to "cities, towns and villages incorporated under either general or special law, including those operating under special charter, or amendments of charter adopted pursuant to the Home Rule provisions of the Constitution." Section 1a, V.A.C.S. Article 1105b, refers to a "city mentioned in Section 1." The revised law substitutes the term "municipality" for "cities, towns and villages" for the reason stated in the revisor's note under Section 313.002 of this code and omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(2) Section 1(a), V.A.C.S. Article 1105b, authorizes a municipality to "cause" a highway to be improved. The revised law authorizes a municipality to improve a highway because the power to improve a highway includes the power to "cause" a highway to be improved.
(3) Section 1a, V.A.C.S. Article 1105b, describes a population number that is to be determined according to the last preceding or any future federal census. The revised law omits the reference to the federal census because the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

(4) Section 1a, V.A.C.S. Article 1105b, refers to the improvements named in "Section 1 hereof," meaning Section 1, V.A.C.S. Article 1105b. Section 1(a), V.A.C.S. Article 1105b, codified in part in Section 313.001 of this code, defines "improvements" for purposes of V.A.C.S. Article 1105b, codified as this chapter of this code. Because the definition by its terms applies throughout the chapter, the revised law omits the reference to Section 1, V.A.C.S. Article 1105b.

(5) Section 1a, V.A.C.S. Article 1105b, refers to a "highway or road." The reference to "road" is omitted from the revised law because the definition of "highway" in Section 1(a), V.A.C.S. Article 1105b, codified in part as Section 313.001(3) of this code, is broad enough to include a road.

Revised Law

Sec. 313.022. CONTRACT FOR IMPROVEMENT OF BOUNDARY HIGHWAY.

(a) A municipality may contract with another municipality for one municipality to make an improvement to a part of a highway as provided by this chapter and for the other to pay a part of the cost of the improvement if:

(1) the boundary between the municipalities is on or
along the highway or the edge of the highway; and
(2) the governing bodies of the municipalities
determine the improvement is necessary.
(b) Either municipality may use its money for the
improvement under the contract without regard to whether the
highway is within the municipality's limits. (V.A.C.S. Art. 1105b,
Sec. 1(c.).)

Source Law
(c) Whenever a part of the boundary between any
two (2) such cities is upon and along any street or
highway or is along the edge of any street or highway
and the governing bodies of both cities determine the
necessity for any such improvement of such portion of
said street or highway, then such two (2) cities may
contract upon such terms as their respective governing
bodies may approve to the effect that one (1) or the
other of them shall by the proceedings provided for in
this Act, improve such portion of said street and that
the other of such two (2) cities shall pay a part of
the cost thereof, such payment to be made at such time
or times and subject to such conditions as they may so
agree upon; and the use by either of such cities of its
funds for such purpose shall be lawful whether the
street to be improved lies wholly within, partly within
and partly without, or wholly outside of its limits.

Revisor's Note
(1) Section 1(c), V.A.C.S. Article 1105b, refers
to "cities." The revised law substitutes the term
"municipality" for "cities" for the reason stated in
the revisor's note under Section 313.002 of this code.
(2) Section 1(c), V.A.C.S. Article 1105b, refers
to the use by either municipality of its money "for
such purpose." The revised law substitutes "for the
improvement under the contract" for the quoted language
for purposes of clarification.
(3) Section 1(c), V.A.C.S. Article 1105b, states
that the municipalities may contract "upon such terms
as their respective governing bodies may approve," and
that the payment for the cost of the improvement shall
"be made at such time or times and subject to such
conditions as they may so agree upon." The revised law
omits these provisions as unnecessary. The right to contract for an improvement includes the right to approve the terms of the contract for the improvement and to specify the times and the conditions for paying the cost of the improvement in the contract.

(4) Section 1(c), V.A.C.S. Article 1105b, provides that a municipality's use of its money to improve a highway located on the boundary between the municipalities "shall be lawful." The revised law omits this provision as unnecessary because this statute is sufficient by its terms to authorize such an action.

Revised Law
Sec. 313.023. PAYMENT FOR IMPROVEMENT. Payment for an improvement under this chapter may be paid entirely by the municipality or may be paid partly by the municipality and partly by property abutting the part of the highway ordered to be improved and the owners of that property. (V.A.C.S. Art. 1105b, Sec. 4 (part).)

Source Law
Sec. 4. That the cost of such improvements may be wholly paid by the city, or partly by the city and partly by property abutting upon the highway or portion thereof ordered to be improved, and the owners of such property . . . .

Revisor's Note
Section 4, V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the revisor's note under Section 313.002 of this code.

Revised Law
Sec. 313.024. ESTIMATE OF COST. If part of the cost of an improvement is to be paid by the property abutting the part of the highway to be improved and the owner of the property, the governing
body shall prepare an estimate of the cost of the improvement before the improvement is constructed and before the hearing provided by Section 313.048 is held. (V.A.C.S. Art. 1105b, Sec. 4 (part).)

Source Law

Sec. 4. . . . but if any part of the cost is to be paid by such abutting property and the owners, then before any such improvements are actually constructed, and before any hearing herein provided for is held, the governing body shall prepare, or cause to be prepared, an estimate of the cost of such improvements, . . . .

Revisor's Note

(1) Section 4, V.A.C.S. Article 1105b, provides that the governing body shall prepare "or cause to be prepared" an estimate. The revised law omits the quoted language as unnecessary because the power to prepare an estimate includes the power to "cause" an estimate to be prepared.

(2) Section 4, V.A.C.S. Article 1105b, refers to "any hearing herein provided for." Section 9, V.A.C.S. Article 1105b, the pertinent part of which is codified in this code as Section 313.048, governs hearings. Accordingly, the revised law refers to the hearing provided by Section 313.048 of this code.

[Sections 313.025-313.040 reserved for expansion]

SUBCHAPTER C. ASSESSMENTS

Revised Law

Sec. 313.041. DEFINITION. In this subchapter, "railway" includes a street railway and an interurban. (New.)

Revisor's Note

The definition of "railway" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of
1 the definition.

Revised Law

Sec. 313.042. ASSESSMENT ORDINANCE. (a) The governing body
of a municipality by ordinance may assess the cost of an
improvement under this chapter against property that abuts the
highway or part of the highway the municipality orders to be
improved and against the owner of the property.

(b) Except as provided by Subsection (c), the governing body
may not assess more than nine-tenths of the estimated cost of an
improvement against properties or their owners.

(c) The entire cost of constructing, repairing, or
realigning a curb, gutter, or sidewalk may be assessed against the
property and its owner.

(d) The ordinance may:

(1) prescribe the terms of payment and default of the
assessment; and

(2) prescribe the rate of interest to be paid on the
assessment, not to exceed the greater of:

(A) eight percent a year; or

(B) the rate payable by the municipality on its
most recently issued general obligation bonds, determined as of the
date of the notice provided by Section 313.047.

(e) An assessment against abutting property is:

(1) a lien on the property; and

(2) a personal liability and charge against the owner
of the property, regardless of whether the owner is named.

(V.A.C.S. Art. 1105b, Secs. 4 (part), 6(a), (b) (part), (d)
(part).)

Source Law

Sec. 4. . . . and in no event shall more than
all the cost of constructing, reconstructing, repairing
and realigning curbs, gutters and sidewalks, and
nine-tenths of the remaining cost of such improvements
as shown on such estimate be assessed against such
abutting property and owners thereof.

Sec. 6. (a) Subject to the terms hereof, the

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governing body of any city shall have power by ordinance to assess all the cost of constructing, reconstructing, repairing, and realigning, curbs, gutters, and sidewalks, and not exceeding nine-tenths of the estimated cost of such improvements, exclusive of curbs, gutters, and sidewalks, against property abutting upon the highway or portion thereof ordered to be improved, and against the owners of such property, and to provide the time, terms, and conditions of payment and defaults of such assessments, and to prescribe the rate of interest thereon, and the rate may not exceed the greater of the following two rates:

1. eight (8) per cent per annum; or
2. the rate payable by the city on its most recently issued general obligation bonds, determined as of the date of the notice provided for by Section 9 of this Act.

(b) Any assessment against abutting property shall be a... lien thereon... and shall be a personal liability and charge against the true owners of such property at said date, whether named or not... .

(d) Such assessments... and shall be a personal liability and charge against said owners of the property assessed.

Revisor's Note

(1) Section 6, V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the revisor's note under Section 313.002 of this code.

(2) Section 6(a), V.A.C.S. Article 1105b, refers to constructing, reconstructing, repairing, and realigning curbs, gutters, and sidewalks. The revised law omits as unnecessary "reconstructing" for the reason stated in Revisor's Note (3) under Section 313.001 of this code.

(3) Section 6(a), V.A.C.S. Article 1105b, authorizes a municipality to prescribe the time, terms, and conditions of payment and defaults of assessments. The revised law omits "time" and "conditions" as unnecessary because they are included within the meaning of "terms."

(4) Section 6(a)(2), V.A.C.S. Article 1105b, refers to the notice provided by Section 9 of "this Act," meaning Chapter 106, Acts of the 40th
Legislature, 1st Called Session, 1927. The pertinent part of that statute is codified in this code as Section 313.047, and the revised law is drafted accordingly.

(5) Section 6(b), V.A.C.S. Article 1105b, refers to the "true owners" of the abutting property. The revised law omits as unnecessary "true" because that is included within the meaning of "owner."

Revised Law

Sec. 313.043. ASSESSMENT AGAINST PARCELS OWNED JOINTLY. (a) A single assessment may be made against multiple parcels of property owned by the same person.

(b) Property owned jointly may be assessed jointly.

(V.A.C.S. Art. 1105b, Sec. 11.)

Source Law

Sec. 11. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation or estate, and property owned jointly by one or more persons, firms or corporations, may be assessed jointly.

Revisor's Note

(1) Section 11, V.A.C.S. Article 1105b, refers to a "person, firm, corporation or estate." The revised law omits "firm, corporation or estate" because under Section 311.005(2), Government Code (Code Construction Act), applicable to the revised law, "person" includes "corporation . . . estate . . . and any other legal entity."

(2) Section 11, V.A.C.S. Article 1105b, refers to property owned jointly "by one or more persons, firms or corporations." The revised law omits the quoted language as unnecessary because it is clear that property owned jointly is owned by one or more persons.
Sec. 313.044. ASSESSMENT APPORTIONED UNDER FRONT FOOT RULE UNLESS INEQUITABLE. (a) A cost of an improvement that is assessed against abutting property and the owners of the property shall be apportioned among the parcels of abutting property and the owners of the property in accordance with the front foot rule.

(b) If, in the opinion of the governing body, the application of the front foot rule in a particular case would result in injustice or inequality, the governing body shall apportion and assess the costs in the proportion it determines just and equitable, considering:

(1) the special benefit the property and the owner receive in enhanced value to the property;
(2) the equities of the owners; and
(3) the adjustment of the apportionment so as to produce a substantial equality of benefits received and burdens imposed.

(c) The entirety of a parcel of real property abutting the highway proposed for assessment is subject to the assessment irrespective of subdivision or partial sale after the date on which the notice was mailed if:

(1) an assessment is imposed by ordinance; and
(2) the municipality has delivered to the county clerk for recording a notice of the proposed assessment that describes, or describes by reference, each abutting parcel. (V.A.C.S. Art. 1105b, Sec. 7.)
thereof, the equities of such owners, and the adjustment of such apportionment so as to produce a substantial equality of benefits received and burdens imposed. Any parcel of land abutting the highway proposed for assessment is subject, in its entirety as a parcel, to the assessment when the assessment is imposed by ordinance, irrespective of subdivision or partial sale after the date of mailing of the notice if the city has delivered to the county clerk for recording a notice of the proposed assessment that describes each such abutting parcel in the notice or by reference.

Revisor's Note

Section 7, V.A.C.S. Article 1105b, refers to the "Front Foot Plan or Rule." The revised law omits the reference to "plan" because in that context the terms "plan" and "rule" are synonymous and the latter is more commonly used.

Revised Law

Sec. 313.045. ASSESSMENT OR TAX ON RAILWAYS FOR CERTAIN IMPROVEMENTS. (a) The governing body of a municipality may assess against a railway that uses, occupies, or crosses a highway the cost of a highway improvement in the area between, under, or in the area extending two feet outside of the railway's rails, tracks, double tracks, turn outs, or switches.

(b) The governing body by ordinance may impose a special tax on the railway and its roadbed, ties, rails, fixtures, rights, and franchises.

(c) The tax imposed under Subsection (b) is a lien on the railway and its roadbed, ties, rails, fixtures, rights, and franchises that is superior to any other lien or claim except county or municipal ad valorem taxes.

(d) A tax lien imposed under Subsection (c) may be enforced by:

(1) sale of the property in the manner provided by law for the collection of ad valorem taxes by the municipality; or

(2) suit.

(e) The ordinance imposing the special tax must prescribe...
the terms of payment of the tax.

(f) The rate of interest may not exceed the greater of:

(1) eight percent a year; or

(2) the rate payable by the municipality on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 313.047.

(g) If the special tax imposed under Subsection (b) is not paid when due, the municipality may collect the tax, interest, expenses of collection, and reasonable attorney's fees, if incurred.

(h) The governing body may issue assignable certificates in evidence of an assessment as provided by Section 313.052.

(V.A.C.S. Art. 1105b, Sec. 5.)

Source Law

Sec. 5. (a) If improvements be ordered constructed in any part of the area between and under rails, tracks, double tracks, turn outs and switches, and two feet on each side thereof, of any railway, street railway, or interurban, using, occupying, or crossing any such highway, portion or portions thereof, ordered improved, then the governing body shall have power to assess the whole cost of the improvements in such area against such railway, street railway, or interurban, and shall have power, by ordinance, to levy a special tax upon such railway, street railway, or interurban, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim except State, County, and City ad valorem taxes, and which may be enforced either by sale of said property in the manner provided by law for the collection of ad valorem taxes by the city, or by suit in any court having jurisdiction. The ordinance levying such tax shall prescribe the time, terms and conditions of payment thereof, and the rate of interest may not exceed the greater of the following two rates:

(1) 8% per annum; or

(2) the rate payable by the City on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 9 of this Act.

(b) The tax, if not paid when due, shall be collectible, together with interest, expenses of collection and reasonable attorney's fees, if incurred. The Governing Body shall have power to cause to be issued assignable certificates in evidence of any such assessments as hereinafter provided.
Revisor's Note

(1) Section 5, V.A.C.S. Article 1105b, refers to a "City." The revised law substitutes the term "municipality" for "City" for the reason stated in the reviser's note under Section 313.002 of this code.

(2) Section 5(a), V.A.C.S. Article 1105b, provides that the tax lien under Section 5 is superior to any other lien or claim "except State, County, and City ad valorem taxes . . . ." The revised law omits the reference to state ad valorem taxes as unnecessary. Subsection 1, Section 1-e, Article VIII, Texas Constitution, provides that "[n]o State ad valorem taxes shall be levied upon any property within this State."

(3) Section 5(a), V.A.C.S. Article 1105b, refers to a suit brought "in any court having jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

(4) Section 5(a)(2), V.A.C.S. Article 1105b, refers to the notice provided by Section 9 of "this Act," meaning Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927. The pertinent part of that statute is codified in this code as Section 313.047, and the revised law is drafted accordingly.

(5) Section 5(a), V.A.C.S. Article 1105b, authorizes a municipality to prescribe the time, terms, and conditions of payment of the tax. The revised law omits "time" and "conditions" as unnecessary because
they are included within the meaning of "terms."

(6) Section 5(b), V.A.C.S. Article 1105b, provides that the governing body shall have power to "cause to be issued" assignable certificates. The revised law provides that the governing body may "issue" assignable certificates because the power to "issue" assignable certificates includes the power to "cause to be issued" assignable certificates.

(7) Section 5(b), V.A.C.S. Article 1105b, authorizes a governing body to issue assignable certificates in evidence of assessments "as hereinafter provided." Section 6, V.A.C.S. Article 1105b, governs issuance of assignable certificates. That statute is codified in pertinent part in this code as Section 313.052. Accordingly, the revised law authorizes a governing body to issue assignable certificates in evidence of assessments as provided by Section 313.052.

Revised Law

Sec. 313.046. ASSESSMENT FOR IMPROVEMENT OF BOUNDARY HIGHWAY. (a) If part of the boundary of a municipality is on or along a highway, the municipality may improve that part of the highway and assess a part of the cost of the improvement against the abutting property on both sides of the highway as provided by Section 313.048.

(b) If the highway is wholly or partly in another municipality, the improvement and assessments are subject to consent of the governing body of the other municipality.

(c) An assessment imposed under Section 313.048 against abutting property that is in a municipality other than the municipality initiating the improvement is valid only if the governing body of the other municipality by ordinance or resolution ratifies the assessment.

(d) A person who owns or claims the abutting property has,
in addition to the right of appeal provided by Section 313.049, the
right of appeal from an assessment for 15 days after the date the
ratifying ordinance or resolution is adopted by the governing body
of the other municipality.

(e) If the governing body of the other municipality does not
ratify the assessment within 30 days after the date of the
ordinance or resolution imposing the assessment, the municipality
that initiated the improvement may repeal and annul all of the
assessment proceedings, including a contract for the improvement.

(f) The failure of the governing body of the other
municipality to ratify an assessment does not affect the validity
of an assessment imposed against property that is in the
municipality that initiated the improvement. (V.A.C.S. Art. 1105b,
Sec. 1(b).)

Source Law

(b) Whenever a part of the boundary of any such
city is upon or along any street or highway, which at
that point lies wholly within, partly within and partly
without or wholly outside of its limits, such city may
improve such portion of such street and assess a part
of the cost thereof against the abutting property lying
on both sides of such street by the proceedings set
forth in this Act, provided that if such street lies
wholly or partly within the limits of any other such
city the governing body thereof shall consent to the
improvement and if assessments are levied against any
property lying within the limits of any other city than
the one (1) initiating the improvement, the governing
body of such other city shall consent to such
assessments as hereinafter provided. If assessments
are finally levied as particularly provided by Section
9 of this Act against any abutting property lying
within the limits of any other city than the one (1)
initiating the improvements, such assessments shall not
be valid unless the governing body of such other city
shall by ordinance or resolution ratify and approve the
assessments so levied, and any one owning or claiming
any such abutting property, in addition to the right of
appeal given by said Section of this Act, shall have
the further right of appeal from any such assessment
for fifteen (15) days after the passage of the
ordinance or resolution by which the governing body of
such other city so ratifies and approves such
assessments; provided further that if the governing
body of such other city does not ratify and approve
such assessments within thirty (30) days after the date
of the ordinance or resolution levying the same then
the city which initiated the project may in the
discretion of its governing body repeal and annul all
of the proceedings relating thereto, including the
contract, if any, for the work; and provided further
that failure on the part of the governing body of such
other city to so ratify and approve such assessments shall not affect the validity of the assessments which have been levied against any property lying within the limits of the city initiating the improvement.

Revisor's Note

(1) Section 1(b), V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the revisor's note under Section 313.002 of this code.

(2) Section 1(b), V.A.C.S. Article 1105b, refers to a "street or highway." The reference to "street" is omitted from the revised law because the definition of "highway" in Section 2, V.A.C.S. Article 1105b, codified in this code as Section 313.001(3), includes "street."

(3) Section 1(b), V.A.C.S. Article 1105b, refers to a highway that lies "wholly within, partly within and partly without or wholly outside" the limits of a municipality. The revised law omits the quoted language as unnecessary because it covers all possible circumstances.

(4) Section 1(b), V.A.C.S. Article 1105b, refers to the final levying of assessments as provided by Section 9 of "this Act," meaning Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927. The pertinent part of that statute is codified in this code as Section 313.048, and the revised law is drafted accordingly.

(5) Section 1(b), V.A.C.S. Article 1105b, authorizes a municipality to assess part of the cost of an improvement "by the proceedings set forth in this Act." Assessment proceedings are governed by Section 9, V.A.C.S. Article 1105b. The pertinent part of that statute is codified in this code as Section 313.048, and the revised law is drafted accordingly.
(6) Section 1(b), V.A.C.S. Article 1105b, refers to the right of appeal given by Section 9 of "this Act," meaning Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927. The pertinent part of that statute is codified in this code as Section 313.049, and the revised law is drafted accordingly.

(7) Section 1(b), V.A.C.S. Article 1105b, refers to "ratify and approve." The reference to "approve" is omitted from the revised law because "approve" is included within the meaning of "ratify."

Revised Law
Sec. 313.047. NOTICE OF HEARING ON ASSESSMENT. (a) An assessment may be made against an abutting property or its owner or against a railway or its owner only after notice and opportunity for hearing as provided by this section and Section 313.048.

(b) Notice of the hearing shall be published at least three times in a newspaper published in the municipality in which the assessment tax is to be imposed. If the municipality does not have a newspaper, the notice shall be published in the newspaper that is published nearest to the municipality and that is of general circulation in the county in which the municipality is located.

(c) The first publication of the notice shall be made not later than the 21st day before the date of the hearing.

(d) In addition to the notice required by Subsection (c), written notice of the hearing shall be given by mail, postage prepaid, deposited at least 14 days before the date of the hearing, and addressed to the owners of the properties abutting the part of the highway to be improved, as the names and addresses of the owners are shown on the rendered tax roll of the municipality. If the names of the respective owners do not appear on the rendered tax roll, the notice shall be addressed to the owners as their names and addresses are shown on the unrendered tax roll of the
(e) If a special tax is proposed to be imposed against a railway that uses, occupies, or crosses a part of a highway to be improved, the additional notice shall be given by mail, postage prepaid, deposited at least 14 days before the date of the hearing, and addressed to the railway as shown on the rendered tax roll of the municipality. If the name of the railway does not appear on the rendered tax roll of the municipality, the notice shall be addressed to the railway as its name and address are shown on the unrendered tax roll of the municipality.

(f) The notice is sufficient, valid, and binding on each person who owns or claims an interest in the property or the railway if the notice:

(1) describes in general terms the nature of the improvement for which the proposed assessment is to be imposed;
(2) states the part of the highway to be improved;
(3) states the estimated amount per front foot proposed to be assessed against the owners of abutting property and the property on which the hearing is to be held;
(4) states the estimated total cost of the improvement on each part of the highway;
(5) states the amount proposed to be assessed for the improvements proposed to be constructed in part of the area between, under, and two feet outside of rails, tracks, double tracks, turnouts, or switches of a railway; and
(6) states the time and place of the hearing.

(g) The mailed notice may consist of a copy of the published notice.

(h) If an owner of property abutting a part of a highway proposed to be improved is listed as "unknown" on the municipal tax roll or if the name of an owner is shown on the municipal tax roll but no address for the owner is shown, it is not necessary to mail a notice. If the owner is shown as an estate, the notice may be mailed to the address of the estate. (V.A.C.S. Art. 1105b, Sec. 9
Sec. 9. No assessment herein provided for shall be made against any abutting property or its owners, nor against any railway, street railway or interurban, or owner, until after notice and opportunity for hearing as herein provided. Such notice shall be by advertisement inserted at least three (3) times in some newspaper published in the city where such special assessment tax is to be imposed, if there be such a paper; if not, then the nearest to such city of general circulation in the county in which such city is located; the first publication of such notice of hearing to be made at least twenty-one (21) days before the date of the hearing; and, additional written notice of the hearing shall be given by depositing in the United States mail, at least fourteen (14) days before the date of the hearing, written notice of such hearing, postage prepaid, in an envelope addressed to the owners of the respective properties abutting such highway, highways or portion or portions thereof to be improved, as the names of such owners are shown on the then current rendered tax rolls of such city and at the addresses so shown, or if the names of such respective owners do not appear on such rendered tax rolls, then addressed to such owners as their names are shown on the current unrendered rolls of the city at the addresses shown thereon; and, where a special tax is proposed to be levied against any railway or street railway using, occupying or crossing any highway, portion or portions thereof to be improved, such additional notice shall be given by depositing in the United States mail, at least fourteen (14) days before the date of the hearing, a written notice of such hearing, postage prepaid, in an envelope addressed to the said railway or street railway as shown on the then current rendered tax rolls of such city, at the address so shown, or, if the name of such respective railways do not appear on such rendered rolls of the city, then addressed to such railways or street railways as the names are shown on the current unrendered rolls of the city, at the addresses shown thereon. If any such notice shall describe in general terms the nature of the improvements for which assessments are proposed to be levied and to which such notice relates, shall state the highway, highways, portion or portions thereof to be improved, shall state the estimated amount or amounts per front foot proposed to be assessed against the owner or owners of abutting property and such property on each highway or portion with reference to which hearing mentioned in the notice is to be held, and shall state the estimated total cost of the improvements on each such highway, portion or portions thereof, and, if the improvements are to be constructed in any part of the area between and under rails and tracks, double tracks, turnouts, and switches, and two (2) feet on each side thereof of any railway, street railway or interurban, shall also state the amount proposed to be assessed therefor, and shall state the time and place at which such hearing shall be held, then such notice shall be sufficient, valid and binding upon all owning or claiming such abutting property, or any interest therein, and upon all owning or claiming such railway, street railway, or interurban, or any interest therein. The notice to be mailed may consist
of a copy of the published notice. In those cases in which an owner of property abutting a highway or portion thereof which is to be improved is listed as "unknown" on the then current city tax roll, or the name of an owner is shown on the city tax roll but no address for such owner is shown, no notice need be mailed. In those cases where the owner is shown to be an estate, the mailed notice may be addressed to such estate.

Reviser's Note
(1) Section 9, V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the reviser's note under Section 313.002 of this code.
(2) Section 9, V.A.C.S. Article 1105b, includes several references to a "railway, street railway, or interurban." The revised law omits the specific references to "street railway" and "interurban" because Section 313.041 of this code defines "railway" to include a street railway and an interurban.
(3) Section 9, V.A.C.S. Article 1105b, provides that a notice is binding on all "owning or claiming" abutting property, "or any interest therein," and on all "owning or claiming" a railway, "or any interest therein." The revised law provides that a notice is binding on each person who "owns or claims an interest in" the property or the railway because "owning or claiming" property or a railway is included within the meaning of owning or claiming "an interest in" property or a railway.

Revised Law
Sec. 313.048. HEARING. (a) A hearing under this subchapter shall be before the governing body of the municipality.
(b) The owner of property abutting a proposed improvement or the owner of an affected railway is entitled to:
(1) be heard on any matter for which a hearing is a constitutional prerequisite to the validity of an assessment under...
this chapter; and

(2) contest:

(A) the amount of the proposed assessment;

(B) the lien and liability for the assessment;

(C) the special benefit of the proposed improvement to the abutting property and the owner of the abutting property; and

(D) the accuracy, sufficiency, regularity, or validity of the proceedings or contract for the improvement and proposed assessment.

(c) The governing body may:

(1) correct an error, inaccuracy, irregularity, or invalidity;

(2) supply a deficiency;

(3) determine the amount of an assessment;

(4) determine any other necessary matter; and

(5) by ordinance, end the hearing and impose the assessment before, during, or after the construction of the improvement.

(d) An assessment may not:

(1) exceed the enhanced value to the property as determined at the hearing; or

(2) be made to mature before the municipality accepts the improvement for which the assessment is imposed. (V.A.C.S. Art. 1105b, Sec. 9 (part).)

Source Law

Sec. 9. . . . no assessment shall be made against any abutting property or owners thereof in excess of the special benefits of such property, and its owners in the enhanced value thereof by means of such improvements as determined at such hearing. . . . Such hearing shall be by and before the governing body of such city and all owning any such abutting property, or any interest therein, and all owning any such railway, street railway or interurban, or any interest therein, shall have the right, at such hearing, to be heard on any matter as to which hearing is a constitutional prerequisite to the validity of any assessment authorized by this Act, and to contest the amounts of the proposed assessments, the lien and liability thereof, the special benefits to the abutting
property and owners thereof by means of the improvements for which assessments are to be levied, the accuracy, sufficiency, regularity and validity of the proceedings and contract in connection with such improvements and proposed assessments, and the governing body shall have power to correct any errors, inaccuracies, irregularities, and invalidities, and to supply any deficiencies, and to determine the amounts of assessments and all other matters necessary, and by ordinance to close such hearing and levy such assessments before, during or after the construction of such improvements, but no part of any assessment shall be made to mature prior to acceptance by the city of the improvements for which assessment is levied. . . .

Reviser's Note

(1) Section 9, V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the revisor's note under Section 313.002 of this code.

(2) Section 9, V.A.C.S. Article 1105b, refers to a "railway, street railway or interurban." The revised law omits the specific references to a "street railway" and "interurban" for the reason stated in Reviser's Note (2) under Section 313.047 of this code.

Revised Law

Sec. 313.049. APPEAL OF ASSESSMENT. (a) A person who owns or claims an interest in assessed property or in an assessed railway may bring suit to contest:

(1) the amount of the assessment;
(2) an inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract relating to the assessment or the improvements; or
(3) any matter or thing not in the discretion of the governing body.

(b) The suit must be brought not later than the 15th day after the date the assessment is imposed.

(c) After the period provided by Subsection (b), a person who fails to bring suit:

(1) waives every matter the hearing might have
addressed; and

(2) is barred from contesting or questioning in any manner or for any reason:

(A) the assessment;
(B) the amount, accuracy, validity, regularity, or sufficiency of the assessment;
(C) the assessment proceedings; or
(D) a contract relating to the assessment or the improvement.

(d) This section applies to an assessment made under Section 313.048 or 313.050. (V.A.C.S. Art. 1105b, Sec. 9 (part), Sec. 14.)

Source Law

Sec. 9. ... Anyone owning or claiming any property assessed, or any interest therein, or any railway, street railway, or interurban assessed, or any interest therein, who shall desire to contest any such assessment on account of the amount thereof, or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference thereto, or with reference to such improvements, or on account of any matter or thing not in the discretion of the governing body, shall have the right to appeal therefrom and from such hearing by instituting suit for that purpose in any court having jurisdiction, within fifteen (15) days from the time such assessment is levied, and anyone who shall fail to institute such suit within such time shall be held to have waived every matter which might have been taken advantage of at such hearing, and shall be barred and estopped from in any manner contesting or questioning such assessment, the amount, accuracy, validity, regularity, and sufficiency thereof, and of the proceedings and contract with reference thereto and with reference to such improvement for or on account of any matter whatsoever. ... Sec. 14. Anyone owning or claiming any property or interest in any property against which such reassessment is levied shall have the same right of appeal as herein provided in connection with original assessments, and in the event of failure to appeal within fifteen (15) days from the date of such reassessment, the provisions hereinabove made with reference to waiver, bar, estoppel, and defense shall apply to such reassessment.

Revisor's Note

(1) Section 9, V.A.C.S. Article 1105b, refers to anyone "owning or claiming" assessed property or "any
railway, street railway, or interurban assessed, or any
interest therein." The reference to "owning or
claiming" assessed property or a railway is omitted
from the revised law for the reason stated in Reviser's
Note (3) under Section 313.047 of this code. The
references to "street railway" and "interurban" are
omitted for the reason stated in Reviser's Note (2)
under Section 313.047 of this code.

(2) Section 9, V.A.C.S. Article 1105b, refers to
a suit brought "in any court having jurisdiction." The
revised law omits the quoted language as unnecessary
for the reason stated in Reviser's Note (3) under
Section 313.045.

(3) Section 9, V.A.C.S. Article 1105b, refers to
a "city." The revised law substitutes the term
"municipality" for "city" for the reason stated in the
revisor's note under Section 313.002 of this code.

(4) Section 14, V.A.C.S. Article 1105b, provides
for a right of appeal from a "reassessment" and
establishes that the consequences of not bringing such
an appeal are the same as those of not bringing an
appeal from an "original assessment." The provisions
of Article 1105b relating to a "reassessment" are
codified in Section 313.050 of this code and the
revised law is drafted to include a cross-reference to
that section.

Revised Law
Sec. 313.050. CORRECTION OF ASSESSMENTS. If an assessment
is determined to be invalid or unenforceable, the governing body of
the municipality may:

(1) supply any deficiency in the assessment
proceedings;

(2) correct any mistake or irregularity in connection
with the assessment; and

(3) at any time, make and impose a subsequent assessment after notice and hearing as nearly as possible in the manner this chapter provides for an original assessment and subject to the provisions of this chapter regarding special benefits.

(V.A.C.S. Art. 1105b, Sec. 13 (part).)

Source Law

Sec. 13. In case any assessment shall for any reason whatsoever be held or determined to be invalid or unenforceable, then the governing body of such city is empowered to supply any deficiency in proceedings with reference thereto and correct any mistake or irregularity in connection therewith, and at any time to make and levy reassessments after notice and hearing as nearly as possible in the manner herein provided for original assessments, and subject to the provisions hereof with reference to special benefits.

Reviser's Note

Section 13, V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the reviser's note under Section 313.002 of this code.

Revised Law

Sec. 313.051. NO LIEN ON EXEMPT PROPERTY; LIABILITY OF OWNER. (a) This chapter does not authorize a lien against an interest in property that, at the time an improvement is ordered, is exempt from any lien created by an assessment for a street improvement.

(b) Notwithstanding Subsection (a), the owner of exempt property is personally liable for an assessment in connection with the property.

(c) The omission of an improvement fronting exempt property does not invalidate the lien or liability for an assessment made against nonexempt property. (V.A.C.S. Art. 1105b, Sec. 8 (part).)

Source Law

Sec. 8. Nothing herein shall empower any city, or its governing body, to fix a lien against any interest in property exempt, at the time the
improvements are ordered, from the lien of special
assessment for street improvements, but the owner or
owners of such property shall nevertheless be
personally liable for any assessment in connection with
such property: The fact that any improvement, though
ordered, is omitted in front of property, any interest
in which is so exempt, shall not invalidate the lien or
liability of assessments made against other
property. . . .

Revised Law

Sec. 313.052. ASSESSMENT CERTIFICATES. (a) The governing
body may issue in the name of the municipality an assignable
certificate to evidence an assessment imposed. The certificate may
declare the lien on the property and the liability of the owner of
the property regardless of whether the owner is correctly named.
The governing body may determine the terms of the certificate.

(b) A recital in a certificate that states substantially
that the procedure for making the improvement was in compliance
with law and that all prerequisites to creating the assessment lien
on the property the certificate describes and to creating the
personal liability of the property owner were performed is prima
facie evidence of those matters.

(c) Subsection (b) applies to a recital in a certificate
that evidences an assessment under Section 313.048 or 313.050.
(V.A.C.S. Art. 1105b, Secs. 6(b) (part), (c) (part), 13 (part).)

Source Law

[Sec. 6]

(b) . . . The governing body shall have power
to cause to be issued in the name of the city
assignable certificates in evidence of assessments
levied declaring the lien upon the property and the
liability of the true owner or owners thereof whether
correctly named or not and to fix the terms and
conditions of such certificates.

(c) If any such certificate shall recite
substantially that the proceedings with reference to
making the improvements therein referred to have been
regularly had in compliance with the law and that all
prerequisites to the fixing of the assessment lien
against the property described in said certificate and
the personal liability of the owner or owners thereof
have been performed, same shall be prima facie evidence
of all the matters recited in said certificate, and no
further proof thereof shall be required. . . .

Sec. 13. . . . Recitals in certificates issued
in evidence of reassessments shall have the same force
as provided for recitals in certificates relating to
original assessments.

Revisor's Note

(1) Section 6(b), V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the reviser's note under Section 313.002 of this code.

(2) Section 6(b), V.A.C.S. Article 1105b, provides that the governing body shall have power to cause to be issued assignable certificates. The revised law provides that the governing body may issue assignable certificates because the power to issue assignable certificates includes the power to cause to be issued assignable certificates.

(3) Section 6(c), V.A.C.S. Article 1105b, refers to proceedings "regularly had in compliance with the law." The reference to "regularly had" is omitted from the revised law because "regularly had" is included within the meaning of "in compliance with the law."

(4) Section 13, V.A.C.S. Article 1105b, refers to certificates issued in evidence of "reassessments." That part of Section 13 which relates to "reassessments" is codified in Section 313.050 of this code and the revised law is drafted accordingly.

Revised Law

Sec. 313.053. CHANGES IN PROCEEDINGS; PROCEDURE. (a) The governing body of a municipality may change a plan, method, or contract for an improvement or other proceeding related to a plan, method, or contract for an improvement.

(b) A change that substantially affects the nature or quality of an improvement may not be made unless the governing body determines, by a two-thirds vote, that it is impractical to proceed with the improvement.

(c) If a substantial change is made after a hearing has been
ordered or held, the governing body, in the same manner and with
the same effect as provided for an original notice and hearing,
shall:

(1) make a new estimate of cost;
(2) order and hold a new hearing; and
(3) give new notices.

(d) If an improvement is abandoned, the new estimate,
hearing, and notices are not required.

(e) A change in or abandonment of an improvement must be
with the consent of the person who contracted with the municipality
for the construction of the improvement.

(f) If an improvement is abandoned, a municipality shall
adopt an ordinance that has the effect of canceling:

(1) any assessment imposed for the abandoned
improvement; and
(2) all other proceedings relating to the abandoned
improvement. (V.A.C.S. Art. 1105b, Sec. 10.)

Source Law
Sec. 10. The governing body of the city shall
have power to provide for changes in plans, methods or
contracts for improvements, or other proceedings
relating thereto, but any change substantially
affecting the nature or quality of any improvements
shall only be made when it is determined by two-thirds
vote of the governing body that it is not practical to
proceed with the improvement as theretofore provided
for, and if any such substantial change be made after
any hearing has been ordered or held then unless the
improvement be abandoned altogether a new estimate of
cost shall be made and a new hearing ordered, and held,
and new notices given, all with like effect and in like
manner as herein provided for original notices and
hearings. Changes in or abandonment of improvements
must be with the consent of such person, firm or
corporation as may have contracted with the city for
the construction thereof, if any such contract has been
entered into, and in case of abandonment of any
particular improvement an ordinance shall be passed
which shall have the effect of cancelling any
assessments theretofore levied therefor, and all other
proceedings relating thereto.

Revisor's Note
(1) Section 10, V.A.C.S. Article 1105b, refers
to a "city." The revised law substitutes the term
"municipality" for "city" for the reason stated in the reviser's note under Section 313.002 of this code.

(2) Section 10, V.A.C.S. Article 1105b, refers to a "person, firm or corporation." The revised law omits as unnecessary "firm or corporation" because under Section 311.005(2), Government Code (Code Construction Act), applicable to the revised law, "person" includes "corporation . . . and any other legal entity."

Revised Law
Sec. 313.054. ENFORCEMENT OF ASSESSMENT; PRIORITY OF LIEN;
DEFENSES. (a) An assessment under this subchapter:
(1) is collectible with interest, expense of collection, and reasonable attorney's fees, if incurred;
(2) is a first and prior lien on the property on which the lien is created from the date the municipality orders the improvement; and
(3) is superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes.

(b) A lien against property or the personal liability of a property owner that arises from an assessment made under this subchapter may be enforced by:
(1) suit; or
(2) sale of the property assessed in the manner provided by law for sale of property for municipal ad valorem taxes.

(c) In a suit on an assessment for which a certificate has been issued, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are true. Additional allegations about the assessment proceedings are not necessary in the suit.

(d) In a suit to enforce an assessment, the only defenses
are that:

(1) the notice of the hearing:
    (A) was not mailed as required;
    (B) was not published; or
    (C) did not contain the substance of a requirement prescribed for the notice; or

(2) the assessment exceeded the amount of the estimate. (V.A.C.S. Art. 1105b, Secs. 6(b) (part), (c) (part), 
    (d) (part), 8 (part), 9 (part).)

Source Law

[Sec. 6]

(b) [Any assessment against abutting property shall be a] first and prior [lien thereon] from the date improvements are ordered, . . .

(c) . . . In any suit upon any assessment or reassessment in evidence of which a certificate may be issued under the terms of this Act it shall be sufficient to allege the substance of the recitals in such certificate and that such recitals are in fact true, and further allegations with reference to the proceedings relating to such assessment or reassessment shall not be necessary.

(d) [Such assessments] shall be collectable with interest, expense of collections, and reasonable attorney's fee, if incurred, and shall be first and prior lien on the property assessed, superior to all other liens and claims except State, county, school district, and city ad valorem taxes, . . .

Sec. 8. . . .

The lien created against any property and the personal liability of the owner or owners thereof may be enforced by suit in any court having jurisdiction, or by sale of the property assessed in the same manner as may be provided by law or charter in force in the particular city for sale of property for ad valorem city taxes.

Sec. 9. . . . And the only defense to any such assessment in any suit to enforce the same shall be that the notice of hearing was not mailed as required or was not published or did not contain the substance of one or more of the requisites therefor herein prescribed, or that the assessments exceed the amount of the estimate . . . .

Revisor's Note

(1) Section 6, V.A.C.S. Article 1105b, provides that the lien is superior to another lien or claim, other than a lien or claim for "State, county, school district, and city ad valorem taxes." The revised law
omits the reference to state ad valorem taxes for the reason stated in Reviser's Note (2) to Section 313.045 of this code.

(2) Section 8, V.A.C.S. Article 1105b, refers to a suit brought "in any court having jurisdiction." The revised law omits the quoted language as unnecessary for the reason stated in Reviser's Note (3) under Section 313.045 of this code.

Revised Law

Sec. 313.055. CHAPTER NOT AFFECTED BY STATEMENTS OR ACTIONS OF MUNICIPAL OFFICERS OR EMPLOYEES. Nothing said or done by an employee or officer of a municipality, including a member of the governing body of the municipality, as shown in the municipality's written proceedings and other records, affects this chapter.

(V.A.C.S. Art. 1105b, Sec. 9 (part).)

Source Law

Sec. 9. . . . and no words or acts of any officer or employee of the city, or member of any governing body shown in its written proceedings and records shall in any way affect the force and effect of the provisions of this Act.

Reviser's Note

Section 9, V.A.C.S. Article 1105b, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the reviser's note under Section 313.002 of this code.

CHAPTER 314. PURCHASE OR CONDEMNATION OF PROPERTY FOR HIGHWAYS BY CERTAIN MUNICIPALITIES

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CHAPTER 314. PURCHASE OR CONDEMNATION OF PROPERTY FOR HIGHWAYS BY CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 314.001. APPLICABILITY. This chapter applies only to a
municipality with a population of more than 1,000. (V.A.C.S. Art. 1201 (part).)

Source Law

Art. 1201. Cities having more than one thousand inhabitants under the preceding Federal census may proceed in accordance with the provisions hereof . . . . The term "city" or "cities" used herein shall include all incorporated towns and cities acting hereunder.

Revisor's Note

(1) V.A.C.S. Article 1201 refers to a "city" and defines "city" or "cities" as including "all incorporated towns and cities." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code. The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(2) V.A.C.S. Article 1201 describes a population number that is to be determined according to the most recent federal census. The revised law omits the reference to the federal census because the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

(3) The revised law omits as unnecessary the provision in V.A.C.S. Article 1201 to the effect that it is cumulative of other applicable law or charter provisions. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other laws unless it provides otherwise or unless the laws are in conflict. The omitted law reads:

Art. 1201. . . . independently of
and without reference to any other law or charter provision, present or future, which, however, shall remain in force as alternative methods.

[Sections 314.002-314.010 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO PURCHASE OR CONDEMN PROPERTY

Sec. 314.011. ACQUISITION OF PROPERTY FOR HIGHWAY IMPROVEMENTS BY MUNICIPALITY. (a) The governing body of a municipality may purchase or condemn property to locate, construct, improve, or extend any highway within its boundaries.

(b) Costs incurred in making improvements, including the costs of purchase or condemnation of or damage to property and the costs of making assessments or issuing certificates under this chapter, may be paid from any municipal fund available for that purpose.

(c) A municipality may sell property originally purchased for improvements but not used for the improvements on the terms it considers appropriate. The proceeds from the sale shall be deposited in a fund that may be used only to pay for costs described by Subsection (b).

(d) In this section, "highway" includes any street, alley, public place, or square dedicated to public use. (V.A.C.S. Arts. 1202 (part); 1203 (part).)

Source Law

Art. 1202. Subject to the terms hereof, the governing body of a city may lay out, open, establish, widen, straighten, or extend any highway within its limits, and purchase, condemn, and take property therefor. The cost of property purchased, taken or damaged, and costs of condemnation and making assessments hereinafter referred to, and of the enforcement, collection, sale or realization into money of assessments or certificates, together with all other costs of making such improvements, may be paid wholly from any fund of the city available therefor, or wholly from the fund created by said assessments, or partly from each of said funds. . . . The term "highway" shall include any street, avenue, boulevard, alley, public place or square, dedicated or to be dedicated to public use.

Art. 1203. Cities may purchase by agreement with
the owner any property, all or part of which in the opinion of the governing body is necessary for the making of improvements under the terms hereof, and pay for same out of any fund available. Cities may sell and convey any part of such property not appropriated to such improvement on such terms and for such consideration as they may see fit, and the proceeds shall become a part of a special fund out of which the cost of improvements provided for herein may be defrayed and shall be used for no other purpose.

Revisor's Note

(1) The revised law deletes the designation in V.A.C.S. Article 1203 of the fund as being special because that designation is unnecessary. The designation of a fund as a special fund has no legal effect.

(2) V.A.C.S. Article 1202 refers to "lay out, open, establish, widen, straighten, or extend." The revised law substitutes "locate" for "lay out" because in the context of this section, "lay out" and "locate" are synonymous and "locate" is more commonly used. For purposes of brevity, the revised law substitutes "construct" for "open" and "establish" and substitutes "improve" for "widen" and "straighten."

(3) V.A.C.S. Article 1202 refers to a "street, avenue, [or] boulevard." The references to "avenue" and "boulevard" are omitted from the revised law because "avenue" and "boulevard" are included within the meaning of "street."

Revised Law

Sec. 314.012. RESOLUTION. (a) A governing body that determines to proceed under this chapter shall declare its determination by resolution that may:

(1) state the nature, extent, and limits of the improvement to be made; and

(2) describe the real property proposed to be condemned by:
(A) the lot or block number;
(B) the number of front feet;
(C) the name of the owner; or
(D) any other description that substantially identifies the property.

(b) A mistake or omission in the resolution does not invalidate it.

(c) Passage of the resolution is conclusive evidence of the public use and necessity of the proposed improvement. (V.A.C.S. Art. 1204.)

Source Law

Art. 1204. When the governing body shall determine to proceed hereunder it shall so declare by resolution which may state the nature and extent of the improvement to be made and the limits thereof, and may describe the parcel or parcels of land proposed to be taken or condemned by any description substantially identifying the same, or by lot or block number, or number of front feet, or by the name of the owner, or if owned by an estate, the name thereof. No mistake or omission of said resolution shall invalidate it, and its passage shall be conclusive of the public use and necessity of the proposed improvement.

Revisor's Note

(1) V.A.C.S. Article 1204 refers to land proposed to be "taken or condemned." The reference to "taken" is omitted from the revised law because "taken" is included within the meaning of "condemned."

(2) V.A.C.S. Article 1204 refers to "the name of the owner, or if owned by an estate, the name thereof." The reference to the name of the estate is omitted from the revised law because if real property is owned by an estate, the name of the estate is included within the meaning of "the name of the owner."

Revised Law

Sec. 314.013. SURVEY. (a) On passage of the resolution, the municipal engineer or engineer designated by the governing body shall prepare and submit to the governing body:
(1) a plat showing:
(A) the nature and limits of the proposed improvements;
(B) the location of the proposed improvements; and
(C) the property through which the improvements are to be extended and that is to be condemned for the improvements; and
(2) a written estimate of the total cost of:
(A) the improvements; and
(B) each parcel of property to be condemned.

(b) The governing body shall examine the plat and report and correct any errors. An error or omission does not invalidate the plat or report or a subsequent proceeding held under the plat or report. (V.A.C.S. Art. 1205.)

Source Law

Art. 1205. Upon passage of such resolution, the city engineer or engineer designated by the governing body shall prepare and submit to said body a plat showing the nature and limits of the proposed investments, the boundaries thereof, and the points between which it is proposed to establish the same, and the property through which it is to be extended, which is to be taken or condemned therefor, and shall in writing report the estimated total cost of said improvement, and of each parcel of property to be condemned or acquired. The governing body shall examine said plat and report and correct errors therein, if any, but no error or omission shall invalidate the same, or any proceeding had thereafter pursuant thereto.

Revisor's Note

(1) V.A.C.S. Article 1205 refers to the proposed "investments." Article 1205 was derived from Section 5, Chapter 4, Acts of the 38th Legislature, Regular Session, 1923, which refers to "improvements" rather than "investments." Accordingly, the revised law refers to the proposed "improvements."

(2) V.A.C.S. Article 1205 refers to the "limits of the proposed investments" and "the boundaries
thereof." The reference to "boundaries" is omitted from the revised law because "boundaries" is included within the meaning of "limits."

(3) V.A.C.S. Article 1205 refers to property to be "taken or condemned." The reference to "taken" is omitted from the revised law because "taken" is included within the meaning of "condemned."

[Sections 314.014-314.020 reserved for expansion]

SUBCHAPTER C. PROCEDURE

Revised Law

Sec. 314.021. APPOINTMENT OF CONDEMNATION COMMISSION. (a) In addition to qualifying under Section 21.014(a), Property Code, a member of a condemnation commission must be a qualified voter.

(b) If a commissioner dies, becomes disabled, refuses to act, becomes incapacitated, or is absent for more than 30 days from the county, the judge shall promptly, in term time or vacation, appoint a new commissioner having the qualifications prescribed by Subsection (a). An action of the commission taken before the vacancy is valid. After the vacancy is filled, the commission shall proceed and take all actions provided by this chapter as if a vacancy had not occurred.

(c) A commissioner is entitled to receive as compensation not more than $10 for each day the commissioner is employed in the performance of the commissioner's duties. (V.A.C.S. Art. 1206, Subsecs. (a) (part), (e).)

Source Law

Art. 1206. (a) . . . [Upon filing the statement the Judge shall forthwith,] in term time or vacation, [appoint a Commission consisting of three disinterested freeholders of said county] who are qualified voters [to assess the damages to accrue to said owners, or other interested parties, by reason of condemnation of said property.] In event of the death, disability, refusal to act, incapacity for any reason, or absence for more than thirty days from said county of any Commissioner appointed, at any time, the Judge shall forthwith appoint a new Commissioner or Commissioners having the qualifications herein prescribed, . . . and vacancies
so caused in said Commission shall be so filled by the
Judge whenever they occur. But all proceedings of said
Commissioners prior to said vacancy shall be valid
and ... but said Commissioners shall proceed after
the filling of said vacancy and take all steps and do
all things provided to be done hereunder as if no such
vacancy had occurred.

(e) Said Commissioners shall each be entitled to
receive as compensation not exceeding Ten ($10.00)
Dollars for every day employed by them in the
performance of their duties.

Revisor's Note

(1) Subsection (a), V.A.C.S. Article 1206,
provides that property may not be taken without first
paying just compensation to the owner. This provision
is omitted from the revision because it is
substantively identical to the Fifth Amendment to the
U.S. Constitution and Section 17, Article I, Texas
Constitution. The policy of the legislative council's
statutory revision program is to omit from the revised
codes the duplicating statutory provisions because a
statute that tracks the language of the constitution is
not only superfluous but may foster the erroneous
belief that a constitutional requirement is merely
statutory and subject to amendment through the ordinary
legislative process. The omitted statutory provision
reads:

Art. 1206. (a) No property shall be
taken without just compensation first made
to the owner. . . .

(2) Subsection (a), V.A.C.S. Article 1206,
requires a condemnation petition to be filed with the
county court at law or the county court. The revised
law omits this provision as unnecessary because it has
been superseded by Section 21.001, Property Code, which
provides that district courts and county courts at law
have concurrent jurisdiction in eminent domain cases
but that a county court does not have jurisdiction in
those cases. Subsection (a), V.A.C.S. Article 1206,
also specifies the procedure for filing a condemnation petition. The revised law omits this provision as unnecessary because it is duplicative of Sections 21.012 and 21.013, Property Code. The omitted law reads:

Art. 1206. (a) ... If the amount of said compensation shall not be agreed upon, the governing body shall cause to be prepared, on behalf of the city, a statement in writing containing a description of the parcel or parcels of property sought to be taken, the names of the owner or owners thereof, if known, and the purpose for which said property is sought to be taken. The statement shall be filed with the Judge of a County Court at Law, if such Court exists in the county where the property is situated, otherwise with the County Judge of such county. . . .

(3) Subsection (a), V.A.C.S. Article 1206, authorizes the judge to appoint a condemnation commission and specifies the qualifications of the commissioners and the purpose of the commission. With the exception of the provision that the commissioners must be qualified voters, these provisions are duplicative of Section 21.014(a), Property Code, and are therefore omitted from the revised law as unnecessary. The omitted law reads:

Art. 1206. (a) ... Upon filing the statement the Judge shall forthwith, [in term time or vacation,] appoint a Commission consisting of three disinterested freeholders of said county [who are qualified voters] to assess the damages to accrue to said owners, or other interested parties, by reason of condemnation of said property.

. . .

(4) Subsection (a), V.A.C.S. Article 1206, provides that a commissioner appointed to replace a commissioner succeeds to the powers and duties of the original commissioner. The revised law omits this provision as unnecessary because by implication a replacement commissioner has the powers of a commissioner. The omitted law reads:
Art. 1206. (a) ... who shall succeed to and exercise all the powers and duties of the Commissioner or Commissioners originally appointed, ... .

(5) Subsection (a), V.A.C.S. Article 1206, provides that proceedings of the commissioners before a vacancy are valid and that it is not necessary for the commissioners then qualified and acting to again do any act or take any proceeding already done or performed. The revised law omits the latter provision because it is included within the meaning of the former. The omitted law reads:

Art. 1206. (a) ... it shall not be necessary for the Commissioners then qualified and acting to again do any Act or take any proceeding already done or performed, ... .

(6) Subsection (a), V.A.C.S. Article 1206, provides that all "proceedings" of the commissioners before a vacancy are valid. The revised law substitutes "action" for "proceedings" for purposes of consistency.

Revised Law

Sec. 314.022. NOTICE OF CONDEMNATION. (a) The commission or the clerk, secretary, or recording officer of a municipality shall give written notice of a hearing before the commission to:

(1) each owner of property proposed to be condemned or damaged; and

(2) each person with an interest in or lien on the property.

(b) In addition to the requirements of Section 21.016(a), Property Code, the notice may contain:

(1) a brief statement of the nature and extent of the proposed improvement; and

(2) a description of the property proposed to be condemned.

(c) The description provided by Subsection (b)(2) may be by:
(1) lot and block number;
(2) front feet;
(3) the name of each owner; or
(4) any other description that substantially identifies the property.

(d) Notice of the hearing shall be given by publication for not less than three days in a newspaper of general circulation in the county in which the property is located beginning not later than the 10th day before the date of the hearing.

(e) Notice by publication is valid and binding on each owner or other person with an interest in or lien on the property if it generally notifies the person to appear and be heard without specifically designating the person by name. An error in the name of a person to whom the notice is directed does not invalidate the notice.

(f) A copy of the notice shall be delivered to:
(1) each owner, lienholder, or interested party who is a resident of the county where the property is located;
(2) the agent or attorney of a person described by Paragraph (1); or
(3) the guardian of the owner if the owner is a minor.

(g) The person serving the notice shall make a written return on the notice stating when and how the person served the notice.

(h) The governing body may provide for additional notice, but notice by publication is valid and binding regardless of whether any other notice is given.

(i) The governing body may provide for as many hearings in the course of condemnation proceedings as it determines necessary for whatever purposes it determines necessary.

(j) A notice and a return of a notice shall be filed with the municipality. (V.A.C.S. Art. 1206, Subsec. (b).)
(b) The clerk, secretary, or recording officer of the city, or the said Commission itself, shall give written notice to the owners of property proposed to be taken or damaged and to all persons having any interest in or lien upon said property, of a hearing before said Commission, which notice shall state the time and place of hearing, and may contain a brief statement of the nature and extent of the proposed improvement, and a description of the property proposed to be taken; such description may be by lot and block number, front feet, the name of the owner or owners, or by any other description which will substantially identify said property. Notice of said hearing shall be given by publication in a newspaper of general circulation in the county in which the property is situated, not less than three separate days, the first publication to be not less than ten days prior to the date of hearing. Notice by publication shall be valid and binding upon the real and true owners of property and all persons having an interest in or lien upon the same, if it shall generally notify them to appear and be heard, without specifically designating said parties by name, and no error or mistake in the name of any person to whom said notice is directed shall invalidate the same. Said notice shall also be served by delivering to said owners, lienholders, or interested parties, if residents of the county where said property is situated, or to their agent or attorney, or if a minor to the Guardian thereof, a copy of said notice. The person serving said notice shall make and file with the clerk, secretary or recording officer of the city a return in writing thereon, stating when and how he served said notice. The governing body may provide for other and additional notice, but notice by publication shall in all cases be valid and binding, whether other notice is given or not. The governing body may provide for any cause to be given, in accordance with due process of law, any other and additional notice of any other hearing which may become or be deemed necessary upon the vacation of the office of a Commissioner and appointing of a new one, or for any other reason, and to provide for such hearings and the nature and effect thereof, and to cause as many and different hearings to be held in the course of condemnation proceedings as may be deemed necessary. Said Notices, and the return thereof, shall be filed with the city and preserved in its records.

Revisor's Note

(1) Subsection (b), V.A.C.S. Article 1206, provides that the governing body may give notice of additional hearings "in accordance with due process of law." The revised law omits as unnecessary the reference to due process of law because the provision is substantively identical to Section 19, Article I, Texas Constitution, and the Fourteenth Amendment to the
U.S. Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process.

(2) Subsection (b), V.A.C.S. Article 1206, authorizes the governing body to hold additional hearings that it determines necessary on the vacation of the office of a commissioner and appointing of a new one or for any other reason. The revised law omits as unnecessary the reference to replacement of a commissioner and authorizes the governing body to hold hearings for whatever purposes it determines necessary because that includes the power to hold hearings on the replacement of a commissioner.

(3) Subsection (b), V.A.C.S. Article 1206, refers to the property proposed to be "taken." The revised law substitutes "condemned" for "taken" for purposes of consistency.

(4) Subsection (b), V.A.C.S. Article 1206, provides that a person serving a notice shall file a written return on the notice with the clerk, secretary, or recording officer of the city. That article also provides that the notice and return shall be filed with the city. The former provision is omitted from the revised law as unnecessary because it is included within the meaning of the latter provision.

(5) Subsection (b), V.A.C.S. Article 1206, provides that a municipality shall preserve in its records notices and returns filed with it. This provision is omitted from the revised law because it is
duplicative of provisions in Subtitle C, Title 6, Local Government Code.

Revised Law
Sec. 314.023. HEARING ON CONDEMNATION. (a) Each owner, lienholder, or other interested party is entitled to appear at the hearing in person or by agent and be heard regarding:
(1) the value of the property proposed to be condemned;
(2) the damages to property not condemned resulting from the improvement;
(3) the legality of the proceedings; or
(4) any right of the owner or other party.
(b) An objection must be in writing and filed with the commission.
(c) The commission may not close the hearing until all interested parties appearing have been heard. At the conclusion of the hearing, the commission shall:
(1) determine the damages due the owners, lienholders, or other interested parties for property taken or damaged;
(2) apportion the damages determined under Subdivision (1) among the owners, lienholders, or other interested parties;
(3) date and sign two copies of a written report; and
(4) file one copy of the report with the clerk, secretary, or recording officer of the municipality and the second copy with the clerk of the court that appointed the commission.
(d) The governing body may record in its minutes the following items relating to a condemnation proceeding:
(1) proceedings of the governing body;
(2) notices issued and returns of the notices;
(3) orders, reports, and other proceedings of the commission; and
(4) certified copies of all orders or proceedings of a court.
(e) A record made under Subsection (d) or a certified copy of the record is prima facie evidence of the facts in the record.

(V.A.C.S. Art. 1206, Subsec. (c).)

Source Law

(c) Hearings shall be adjourned and shall be kept open until all parties interested and appearing shall be fully heard. All owners, interested parties, or lienholders shall have the right to appear at said hearings in person or by agent or attorney, and be heard as to the value of property proposed to be taken or as to the damages to property not taken, resulting from the improvement, or as to the legality or regularity of the proceedings or any right of said owners and other parties. All objections or contests shall be in writing and filed with said Commission. When all parties have been heard the Commission shall close the hearing and find the damages due owners, lienholders, or others interested, for property taken or damaged, and shall in their findings apportion between them the amounts payable to each, and shall date and sign a report in writing, in duplicate, one of which reports shall be filed with the clerk, secretary or recording officer of the city, and one with the Clerk of the Court by whose Judge the Commission was appointed. All proceedings of the governing body with reference to such condemnation, as well as all notices issued in connection therewith, returns thereof, orders, reports, and other proceedings of the Commission, and certified copies of all orders or proceedings of any Judge or Court with reference thereto, may be recorded in the Minutes of said governing body, and said record, or certified copies, thereof, and the original shall be prima facie evidence of the truth of all facts therein recited.

Reviser's Note

(1) Subsection (c), V.A.C.S. Article 1206, refers to property proposed to be "taken." The revised law substitutes "condemned" for "taken" for purposes of consistency.

(2) Subsection (c), V.A.C.S. Article 1206, refers to "agent or attorney." The reference to "attorney" is omitted from the revised law because "attorney" is included within the meaning of "agent."

(3) Subsection (c), V.A.C.S. Article 1206, refers to "legality or regularity." The reference to "regularity" is omitted from the revised law because "regularity" is included within the meaning of
"legality."

(4) Subsection (c), V.A.C.S. Article 1206, refers to "objections or contests." The reference to "contests" is omitted from the revised law because "contests" is included within the meaning of "objections."

Revised Law
Sec. 314.024. OBJECTIONS. (a) Not later than the 10th day after the date the commission files a report under Section 314.023 with the court, a party affected by the decision of the commission may file with the court an objection to the decision.

(b) If an objection is not timely filed:

(1) the determinations of the commission become final and binding on the parties and their heirs, successors, and assigns and may not subsequently be questioned in any proceeding; and

(2) the judge shall enter the report in the records of the court and adopt the report as the court's.

(c) The judge may issue process as necessary to enforce a judgment under Subsection (b)(2). (V.A.C.S. Art. 1206, Subsec. (d) (part).)

Source Law
(d) Any party affected by the decision of said Commission who shall be dissatisfied therewith, shall, within ten days after the filing of said report with said Judge, file in his Court in opposition thereto . . . . If no objections are filed with said Judge within said time, he shall cause the said report to be entered in the Minutes of his Court and make the same the judgment thereof, and may issue the necessary process to enforce the same.

Upon the expiration of said time for filing objections, the findings of said Commission shall become final and binding upon the parties, their heirs, successors and assigns, and shall not thereafter be questioned in any proceeding.

Revisor's Note
(1) Subsection (d), V.A.C.S. Article 1206, provides that any party affected by the decision of the
commission who is dissatisfied with the decision "shall" file an objection within 10 days after the date the report is filed with the judge. The revised law substitutes "may" for "shall" because the provision is a condition to the validity of an objection, not an obligation.

(2) Subsection (d), V.A.C.S. Article 1206, specifies the form of an objection and the consequences of filing an objection. The revised law omits these provisions as unnecessary because they have been superseded by Section 21.018, Property Code. The omitted law reads:

(d) . . . setting forth in writing the particular cause or causes of objection, and thereupon the adverse party or parties shall be cited and said cause shall be tried and decided as other civil causes in said Court. . . .

Revised Law

Sec. 314.025. LAW APPLICABLE. Except as otherwise provided by this chapter, Chapter 21, Property Code, applies to proceedings under this chapter. (V.A.C.S. Art. 1207 (part).)

Source Law

Art. 1207. The applicable provisions of the laws relating to eminent domain are made a part of this law, and shall apply to proceedings hereunder, and all parties shall proceed in accordance with and be governed by said articles, unless otherwise herein provided. . . .

Revisor's Note

(1) V.A.C.S. Article 1207 makes applicable the provisions of the eminent domain laws. Those laws were codified in 1984 as Chapter 21, Property Code. Accordingly, the revised law makes applicable Chapter 21, Property Code.

(2) V.A.C.S. Article 1207 provides that a municipality is not required to execute the bond referred to in the eminent domain laws. Section
21.021, Property Code, authorizes a condemnor to take
possession of condemned property following the special
commissioners' award and pending the results of further
litigation if, among other things, the condemnor
executes a bond. However, Section 21.021(c), Property
Code, provides that a municipal corporation is not
required to deposit a bond. Accordingly, the revised
law omits this provision as unnecessary because it has
been superseded by Section 21.021(c), Property Code.
The omitted law reads:

The city shall not be required to execute
the bond referred to in said laws.

Revised Law

Sec. 314.026. ERRORS. The governing body, the condemnation
commission, and the judge before whom a condemnation proceeding is
pending shall take all appropriate actions to correct any error or
invalidity in the proceeding. An error or omission in a proceeding
does not invalidate the proceeding, but a proceeding may be
corrected, repeated, or adjourned until the correction is made or
omission supplied. (V.A.C.S. Art. 1208.)

Source Law

Art. 1208. The governing body, said commission
and judge before whom condemnation proceedings are
pending, shall take all steps and do all things proper
to correct any error, invalidity or irregularity in any
proceeding with reference thereto, and shall do so at the
instance of any interested party. No error or
omission in said proceedings shall invalidate the same,
but any proceeding may be corrected, taken again, or
adjourned, until such corrections are made or omissions
supplied.

Revisor's Note

V.A.C.S. Article 1208 provides that the governing
body, the condemnation commission, and the judge before
whom condemnation proceedings are pending shall take
all appropriate actions to correct any "error,
invalidity or irregularity" in the proceedings and
"shall do so at the instance of any interested party."

The reference to "irregularity" is omitted from the revised law because "irregularity" is included within the meaning of "invalidity." The revised law omits as unnecessary the reference to interested parties because the governing body, commission, and judge are required to take steps to correct errors regardless of whether an interested party requests them to do so.

[Sections 314.027-314.040 reserved for expansion]

SUBCHAPTER D. ASSESSMENTS

Revised Law

Sec. 314.041. ASSESSMENTS. (a) Except as provided by this section, the governing body may by resolution order an assessment to pay all or part of the costs of making an improvement as described by Section 314.011(b), with reasonable attorney's fees and the costs incurred in making the assessment, against the owner and property if the property is:

(1) adjacent to or in the vicinity of an improvement; and

(2) specially benefited by the improvement.

(b) In its resolution, the governing body may designate:

(1) the property to be assessed; or

(2) a district containing property to be assessed.

(c) The governing body may apportion the costs of the assessment among the owners of the property assessed.

(d) In making an assessment, the governing body may not include the cost of property purchased but not actually used for making the improvement.

(e) An assessment may not be made against:

(1) property or its owner in excess of the special benefit to the property in the enhanced value of the property resulting from the improvement; or

(2) property that is exempt from execution.
The owner of property exempt from assessment under Subsection (e)(2):

(1) shall be assessed an amount equal to the amount the assessment would have been if the property were not exempt; and

(2) is personally liable for the assessment.

(V.A.C.S. Arts. 1202 (part), 1203 (part), 1209.)

Source Law

Art. 1202. . . . The governing body shall have power to assess part or all of such costs against the owners of property abutting or in the vicinity of such improvements specially benefited thereby, and against said property, and to collect, enforce, sell or realize said assessments into money. . . .

Art. 1203. . . . but only the cost of property actually appropriated to such improvement shall be included in any assessment made under the provisions hereof.

Art. 1209. Whenever the governing body shall order the making of any improvement herein referred to, it may then or thereafter at any time provide by resolution that all or part of the costs thereof, as defined in the third article of this chapter, shall be assessed against said property abutting said proposed improvement, or in the vicinity thereof, and the owners thereof specially benefited thereby, together with reasonable attorney's fees and all costs incurred in the collection of said assessments, and shall have power to apportion the same among the owners of said property, or may designate the property proposed to be assessed, or the district within which property will be benefited and within which assessments may be made, provided no assessment shall be made against any property, or its owner, in excess of the special benefits thereto in the enhanced value thereof from said improvement. No assessments shall be made against any property exempt from execution, but the owner shall be personally liable and assessed therefor.

Revisor's Note

V.A.C.S. Article 1209 refers to "the third article of this chapter," meaning Article 1202, Revised Statutes. That statute is codified in this code as Section 314.011, and the revised law is drafted accordingly.

Revised Law

Sec. 314.042. NOTICE TO OWNER OF ASSESSMENT. (a) An assessment may not be made against the property benefited or the
owners of the property until after the owners, lienholders, and
other interested parties are given a reasonable opportunity to be
heard before the governing body or before the commission as
provided by Section 314.047.

(b) The governing body or commission shall publish three
times before the hearing reasonable notice of the hearing in a
newspaper of general circulation in the municipality beginning not
later than the 10th day before the date of the hearing.

(c) If an owner is a railway or street railway, the
governing body or commission shall also give, not later than the
10th day before the date of the hearing, written notice:

(1) in person to the owner's local agent; or
(2) by mailing the notice through the post office in
the municipality to the address of the office of the railway or
street railway as it appears on the most recent tax roll of the
municipality.

(d) The name of an owner, lienholder, or other interested
party need not be specifically set out in the notice required by
Subsection (b) or (c), but the real property proposed to be
assessed shall be briefly described in the notice by:

(1) lot and block;
(2) number;
(3) front feet;
(4) reference to a plat, report, or record filed in
connection with the proceedings; or
(5) any other description reasonably identifying the
property.

(e) The governing body or commission may give notice in
addition to the notice required by Subsections (b) and (c), but the
notice required by those subsections is sufficient. (V.A.C.S.
Art. 1211.)

Source Law

Art. 1211. No assessment shall be made against
owners of property benefited, or their property, until
after a reasonable opportunity to be heard shall have
been given them, lienholders, and others interested, before such governing body, or the commission hereafter referred to, preceded by a reasonable notice thereof published three (3) times prior to said hearing in some newspaper of general circulation in the city; and, if the owner is a railway or street railway, by additional written notice delivered either in person to its local agent, or by depositing said written notice in the city post office, postage paid, and properly addressed to the offices of the railway or street railway at the address as it appears on the last approved city tax roll; and the written notice, if required, to be mailed or delivered, and the first publication to be made not less than ten (10) days prior to said hearing, and the names of owners, lienholders, and others interested need not be specifically set out in said notice, but the parcel or parcels of land proposed to be assessed shall be briefly described in said notice, either by lot and block, number, front feet, or by any other description reasonably identifying the same, or by reference to any plat, report or record filed in connection with said proceedings. The governing body or commission shall have the power to give other and additional notice, but said published notice, together with said written notice, if required, shall be sufficient.

Reviser's Note

V.A.C.S. Article 1211 refers to the "approved" municipal tax roll. The revised law omits as unnecessary "approved" because under Section 26.09(e), Tax Code, the assessor is required to enter the amount of tax in the appraisal roll and submit it to the governing body of the taxing unit for approval, and the appraisal roll with amounts of tax entered as approved by the governing body is the tax roll of the municipality.

Revised Law

Sec. 314.043. NOTICE TO COUNTY CLERK OF ASSESSMENT. (a) A governing body that proposes to assess property abutting an improvement shall file notice with the county clerk of each county in which the property is located. The notice must be signed in the name of the municipality by its clerk, secretary, or mayor or the officer performing the duties of the clerk, secretary, or mayor.

(b) The notice required by Subsection (a) must:

(1) show substantially that the governing body has
determined it necessary that the street be improved;

(2) give the name of the street and the names of the
two cross streets or other approximate lengthwise limits between
which the street is to be or has been improved or otherwise
identify or designate the street and the portion of the street to
be improved; and

(3) state that a portion of the cost of the
improvement is to be or has been specifically assessed as a lien on
property abutting the street.

(c) A notice filed under Subsection (a) may include one or
more streets or improvements.

(d) A governing body that proposes to assess property not
abutting the improvement shall file a notice signed as required by
Subsection (a) with the clerk of each county where the property is
located.

(e) The notice required by Subsection (d) must:

(1) designate the property proposed to be assessed or
the district within which assessments have been or may be made; or

(2) otherwise identify the property against which a
lien is proposed to be assessed.

(f) A notice required by Subsection (a) or (d) need not give
details or be sworn to or acknowledged. The notice may be filed at
any time, and the county clerk with whom the notice is filed shall:

(1) record the notice in the same class of records as
a mortgage or deed of trust; and

(2) index the notice in the name of the municipality
and in the name or other designation of the street to which the
notice relates.

(g) Substantial compliance with this section is sufficient.

(h) In this section, "street" includes any part of a street,
alley, highway, public place, or square. (V.A.C.S. Art. 1220a,
Secs. 1, 2, 3, 4, 5 (part).)
Sec. 1. That the term "street" as used herein, shall include any street, avenue, alley, highway, boulevard, drive, public place, square or any portion or portions thereof.

Sec. 2. That whenever the Governing Body of any city, town or village shall, by resolution, ordinance or other proceedings, order, direct or provide or determine it to be necessary that any street be improved in any manner, then if it is proposed that all or any part of the cost of such improvements be levied or assessed and made a lien on property abutting thereon, there shall be filed with the County Clerk of the county or counties in which such property is situated, a notice signed in the name of such city, town or village by its Clerk, Secretary or Mayor or other officer performing the duties of such. Such notice shall meet all requirements of this Act when it shows substantially that the Governing Body of such city, town or village has ordered, directed or otherwise provided or determined it to be necessary that such street be improved and shall give the name thereof with the two cross streets or other approximate lengthwise limits between which same is to be or has been improved, or shall otherwise identify or designate same and shall state that a portion of the cost of such improvement is to be or has been specially assessed as a lien upon property abutting thereon. It is specially provided that one notice may embrace and include any number of streets or improvements.

Sec. 3. If it is proposed that all or any part of the cost of improving any such street be assessed as a lien on any property other than that abutting thereon, then a notice so signed shall be filed with the Clerk of the county or counties in which such property affected is situated, and such notice in such cases shall designate the property proposed to be assessed or the district within which assessments have been or may be made or shall otherwise identify the property against which a lien is proposed to be assessed.

Sec. 4. It shall not be necessary that any notice required by this Act give details or that it be sworn to or acknowledged, and same may be filed at any time and the County Clerk with whom any such notice is filed shall record same in the records of mortgages or deeds of trust and shall index same in the name of the city, town or village and in the name or other designation of the street or streets to the improvement of which the notice relates.

Sec. 5. ... and substantial compliance with the provisions of this Act shall be sufficient.

Revisor's Note

(1) Section 1, V.A.C.S. Article 1220a, refers to "street, avenue, ... boulevard, [and] drive." The references to "avenue," "boulevard," and "drive" are omitted from the revised law because "avenue," "boulevard," and "drive" are included within the meaning of "street."
(2) Section 4, V.A.C.S. Article 1220a, requires the county clerk to record the notice of assessment in the records of mortgages or deeds of trust. Article 1941(a), Revised Statutes, pertaining to microfilm records of county clerks, repealed to the extent of any conflict V.A.C.S. Article 1220a. Article 1941(a) is now codified in part in Chapter 193, Local Government Code. Section 193.008, Local Government Code, provides that a county clerk who chooses to maintain records on microfilm shall divide the instruments received for recording into seven classes, one of which is records relating to real property. Similarly, Section 193.002, Local Government Code, provides that a county clerk who does not maintain records on microfilm may divide the instruments received for recording into the seven classes provided by Section 193.008, Local Government Code. Because a county clerk is not required to maintain separate mortgage or deed of trust records, the revised law requires a county clerk with whom a notice of assessment is filed to record the notice in the same class of records as a mortgage or deed of trust.

Revised Law
Sec. 314.044. HEARING ON ASSESSMENT. (a) At a hearing under Section 314.042(a), an owner, lienholder, or other interested party may:

(1) object in writing to an assessment, special benefit to the property, invalidity of the assessment, or any prerequisite to the assessment; and

(2) present testimony in support of the objection.

(b) The governing body or the commission shall determine the amounts, if any, to be assessed. (V.A.C.S. Art. 1212.)
Art. 1212. At said hearing said owners, lienholders, and other interested parties shall have the right to contest in writing said assessments, the special benefits, irregularities or invalidities thereof, or any prerequisite thereto, and to produce testimony in support of said contests, and the governing body or said commission shall determine the amounts, if any, to be assessed.

Revisor's Note

(1) V.A.C.S. Article 1212 refers to "irregularities" and "invalidities." The reference to "irregularities" is omitted from the revised law because "irregularities" is included within the meaning of "invalidities."

(2) V.A.C.S. Article 1212 refers to "contest" and "contests." The revised law substitutes "object" and "objection" for "contest" and "contests" for purposes of consistency with Subsection (c), V.A.C.S. Article 1206, codified in this code as Section 314.023.

Sec. 314.045. LIEN. (a) An assessment creates a lien on property prior to all other liens except a lien for ad valorem taxes.

(b) The lien takes effect on the filing of the notice provided by Section 314.043(a) or (d). (V.A.C.S. Arts. 1210; 1220a, Sec. 5 (part).)

Art. 1210. Assessments shall constitute a prior lien upon the property to all others, except ad valorem taxes, and shall relate back and take effect as of the date of the resolution ordering the same.

Art. 1220a

Sec. 5. That in all instances coming within the purview of this Act the lien of any assessment or re-assessment upon the property assessed or re-assessed shall take effect and be in force at and from the filing of the notice herein provided for and not before such filing . . . .
Revisor's Note

V.A.C.S. Article 1210 provides that an assessment takes effect as of the date of the resolution ordering the assessment. Section 5, V.A.C.S. Article 1220a, provides that the lien takes effect at the time the notice is filed. Section 7, V.A.C.S. Article 1220a, provides that V.A.C.S. Article 1220a supersedes all other parts of laws with reference to the time that assessment or reassessment liens take effect. Accordingly, the revised law omits the provision in V.A.C.S. Article 1210 regarding the effective date of an assessment.

Revised Law

Sec. 314.046. ASSESSMENTS LEVIED. (a) The governing body may make an assessment only by ordinance.

(b) An assessment may:

(1) be made payable in not more than 16 installments maturing within 15 years; and

(2) bear interest at not more than eight percent a year. (V.A.C.S. Art. 1213 (part.).)

Source Law

Art. 1213. The governing body shall make assessments by ordinance. ... Assessments may be made payable in not exceeding sixteen installments, the last maturing in not over fifteen years, and may bear interest at not over eight per cent per annum.

Revised Law

Sec. 314.047. HEARING ON ASSESSMENT BEFORE CONDEMNATION COMMISSION. (a) The governing body may provide that the condemnation commissioners hold the hearing required under Section 314.042(a).

(b) The commission that holds the hearing:

(1) shall give notice as required by Section 314.042; and
(2) has the powers and duties conferred by this chapter on the governing body except as otherwise provided by this chapter.

(c) At the conclusion of the hearing, the commission shall report in writing its findings to the governing body. The governing body shall:

(1) examine the report and, if it finds the report to be correct, approve the report; and

(2) make an assessment in the proper amount against property and the owner of property found to be benefited by the improvement. (V.A.C.S. Art. 1214.)

Source Law

Art. 1214. At the time of or after the passage by the governing body of the resolution ordering such assessments, it shall have power in its discretion to declare that said hearing to property owners and other interested parties shall be had before the commissioners then or thereafter appointed to make condemnations, or before their successors are appointed should a vacancy occur, and thereupon such commission shall cause to be given the notice or notices provided in the third preceding article, and it shall have all the powers conferred by this law upon such governing body, and shall do all things with reference to said assessments which said governing body is hereby empowered to do, except as herein expressly provided. If said hearing shall be before said commission, it shall report in writing its findings to the governing body, which shall examine said report, and, if found correct, approve the same, and shall by ordinance assess against the owners and their property found to be benefited by said improvements, the amounts found to be properly chargeable against them.

Revisor's Note

(1) V.A.C.S. Article 1214 provides that "At the time of or after the passage by the governing body of the resolution ordering such assessments," the governing body may designate that the hearing be held before the condemnation commission. The revised law omits the quoted language as unnecessary because the hearing may not be held before the governing body orders the assessments.

(2) V.A.C.S. Article 1214 refers to "the third
preceding article," meaning Article 1211, Revised Statutes. That statute is codified in this code as Section 314.042, and the revised law is drafted accordingly.

Revised Law
Sec. 314.048. CERTIFICATES. The municipality may:

(1) issue assignable certificates payable to the municipality or the purchaser of the certificates stating the liability of the property and the owner of the property for the payment of assessments; and

(2) set the terms of the certificates, including the time of payment, conditions of default, and date of maturity. (V.A.C.S. Art. 1215.)

Source Law
Art. 1215. The city may issue assignable certificates, payable to the city, or to the purchaser thereof, declaring the liability of owners and their property for the payment of assessments, and may fix the terms, time of payment, the conditions of default, and maturity thereof.

Revisor's Note
V.A.C.S. Article 1215 provides that a municipality may fix the terms, time of payment, conditions of default, and maturity of the certificates. The time of payment, conditions of default, and maturity are part of the terms of the certificates. Accordingly, the revised law provides that the municipality may set the terms of the certificates, including the time of payment, conditions of default, and date of maturity.

Revised Law
Sec. 314.049. ENFORCEMENT OF ASSESSMENT. An assessment may be enforced by:

(1) suit brought by the municipality for the benefit
of a holder and owner of an assessment or a certificate issued on
the assessment;

(2) suit brought by a holder and owner of an
assessment or a certificate issued on the assessment; or

(3) sale of the assessed property in the same manner
as nearly as possible as the sale of real property for municipal
taxes. (V.A.C.S. Art. 1213 (part).)

Source Law

Art. 1213. ... Said assessments may be
enforced by suit brought by the city for the benefit of
any holder and owner of such assessments, or of the
certificates issued thereon, or brought by such holder
and owner; or by the sale of the property assessed in
the same manner as near as possible as is provided for
the sale of real estate for municipal taxes. ... 

Revised Law

Sec. 314.050. SUIT ON CERTIFICATE. In a suit to enforce a
certificate issued under Section 314.048, the recitals of the
governing body in making the improvements, the assessment for the
improvements, and all prerequisites to the assessment. The
allegations contained in the recitals need not be stated in the
pleadings. (V.A.C.S. Art. 1216.)

Source Law

Art. 1216. The allegations of such recitals of
such certificates in any suit brought for the
enforcement thereof, shall be a sufficient allegation
of all proceedings had by said governing body with
reference to the making of said improvements and the
assessment of the cost thereof, and of all
prerequisites to the said assessment, and shall be
deemed sufficient to permit proof of said proceedings
and prerequisites without the necessity of alleging and
setting forth the same in the pleadings, by caption,
substantially or in full.

Revisor's Note

V.A.C.S. Article 1216 provides that the party
bringing suit on a certificate need not allege and set
forth the allegations "in the pleadings, by caption,
substantially or in full." The references to the
caption of the pleadings as well as setting forth the allegations substantially or in full are included within the meaning of setting forth the allegations in the pleadings. Accordingly, the revised law merely provides that the allegations contained in the recitals need not be stated in the pleadings.

Revised Law

Sec. 314.051. REASSESSMENTS. (a) An error in a proceeding under this chapter, the description of property, or the name of the owner does not invalidate an assessment, and an assessment is in effect against the property and the owner of the property.

(b) A governing body that is advised of an error shall correct the error.

(c) At the request of an interested party, the governing body shall, after notice and hearing that comply with this chapter, reassess an owner or property erroneously assessed in accordance with special benefits as provided by this chapter as to original assessments. The governing body may set the terms of payment of a reassessment and may issue assignable certificates evidencing the reassessment in the same manner as for an original assessment.

(d) The governing body may not make a reassessment later than six years after the date of the ordinance making the original assessment. If the reassessment is contested in an action at law, the time consumed in the action is not included in computing the six years.

(e) In making a reassessment, the governing body is not required to repeat an action relating to the original assessment, except as required by Subsection (c). (V.A.C.S. Art. 1217.)

Source Law

Art. 1217. No error in any proceeding hereunder, or in the description of property, or in the name of the owner, shall invalidate an assessment, which shall nevertheless be in effect as against the real and true owner and his property. Whenever the governing body is advised of such error it shall correct the same, and shall at the request of any interested party reassess any owner or property erroneously assessed, after
lawful notice and hearing and in accordance with benefits as herein provided as to original assessments, and may fix the time and terms of payment of said sums so reassessed, and issue assignable certificates evidencing the same as herein provided as to original assessments. The right to make said reassessments shall continue until the expiration of six years from the date of the ordinance making the original assessment. But if the same shall have been resisted or brought in question in any action at law, the time consumed in said action shall be excluded in computing said term of six years. In making such reassessments it shall not be necessary to do any act, or take any step, or again perform any prerequisite already legally done or performed with reference to the original assessment, but the governing body may in its discretion proceed without again taking steps already validly taken or performed provided no reassessment shall be made until after the notice and hearing and in accordance with benefits, as herein provided.

Revisor's Note

(1) V.A.C.S. Article 1217 provides that an erroneous assessment is effective as against the real and true owner and the owner's property. The revised law omits as unnecessary the reference to the "real and true" owner.

(2) V.A.C.S. Article 1217 refers to the time and terms of payment of reassessments. The revised law omits as unnecessary the reference to the time of payment because that is included within the meaning of the terms of payment.

Revised Law

Sec. 314.052. DEFICIENCY ASSESSMENTS. (a) If, after an assessment is made under this chapter, the amount assessed and apportioned is insufficient to defray all the costs of an improvement:

(1) the governing body may assess the deficiency against property specially benefited and the owners of the property and apportion the deficiency among them, after notice and hearing as provided by this chapter and after complying with each provision of this chapter applicable to original assessments; or

(2) a deficiency assessment may be made after notice
and hearing before the commission in the manner provided by Section 314.047.

(b) A municipality may issue assignable certificates evidencing the deficiency assessment. (V.A.C.S. Art. 1218 (part).)

Source Law

Art. 1218. If after any assessment has been made hereunder . . . the amount assessed and apportioned between the property owners benefited shall be found insufficient to defray all the costs of the improvement as herein defined, the governing body may, in its discretion, assess the deficiency against owners of property benefited, and their property, and apportion same among them, after the hearing and notice herein provided and after complying with each provision hereof applicable to original assessments; or said deficiency assessments may be made after notice and hearing before said commission in the manner provided in the fourth preceding article and assignable certificates evidencing said assessment may be issued by the city.

Revisor's Note

(1) V.A.C.S. Article 1218 refers to "the fourth preceding article," meaning Article 1214, Revised Statutes. That statute is codified in this code as Section 314.047, and the revised law is drafted accordingly.

(2) V.A.C.S. Article 1218 refers to an assessment that has been made for certain specified reasons "or for any other reason." Because an assessment for any reason is included, the revised law omits the statement of the reasons for which the assessment is made. The omitted law reads:

Art. 1218. . . . , if by means of an increased award of compensation for property taken or damaged in condemnation proceedings hereunder, or on appeal from the award of said commission, or for any other reason, . . . .

Revised Law

Sec. 314.053. SUIT TO SET ASIDE OR CORRECT ASSESSMENT OR REASSESSMENT. (a) A suit to set aside or correct an assessment or
reassessment or a proceeding relating to the assessment or
reassessment because of an error or invalidity in the assessment or
reassessment must be brought by a property owner against whom or
whose property an assessment or reassessment has been made not
later than the 10th day after the date of the assessment or
reassessment.

(b) After the deadline prescribed by Subsection (a), the
owner and the owner's heirs, successors, and assigns are barred
from bringing an action described by that subsection or objecting
to the validity of an assessment, reassessment, or proceeding.

(V.A.C.S. Art. 1219.)

Source Law

Art. 1219. Any property owner against whom or
whose property an assessment or reassessment has been
made, may, within ten days thereafter bring suit to set
aside or correct the same, or any proceeding with
reference thereto on account of any error or invalidity
therein, but thereafter such owner, his heirs, assigns,
or successors shall be barred from such action or any
defense of invalidity in such proceedings or assessment
or reassessment, in any action in which the same may be
brought into question.

Revised Law

Sec. 314.054. VALIDITY OF ASSESSMENT. An assessment or
reassessment is valid and binding without regard to:

(1) an error, omission, or invalidity in a proceeding
of the municipality under this chapter with reference to:

(A) the making of an improvement provided by
this chapter;

(B) the taking or condemnation of property for
an improvement; or

(C) the determination and payment of damages for
property taken or damaged; or

(2) whether as of the date of the assessments the
improvement was completed. (V.A.C.S. Art. 1220 (part).)

Source Law

Art. 1220. . . . No assessment or reassessment
shall be affected or invalidated in any manner by any
error, omission or invalidity in any proceeding of the
city hereunder with reference to the making of any
improvement herein provided for, or with reference to
the taking or condemnation of any property therefor, or
with reference to determining and paying damages for
property taken or damaged, but regardless thereof, and
regardless of the fact that at the date of said
assessments said improvements may not have been
completed, the said assessments shall be in all things
valid and binding.

Reviser's Note

V.A.C.S. Article 1220 provides that the governing
body may "pass any ordinance or resolution, . . . adopt
rules and regulations, or . . . take any steps proper
to give full legal effect to every part of this
chapter." The revised law omits this provision as
unnecessary because Section 51.002, Local Government
Code, provides in part that the governing body of a
municipality may adopt, publish, amend, or repeal an
ordinance, rule, or police regulation that is necessary
or proper for carrying out a power granted by law to
the municipality or to an office or department of the
municipality. The omitted law reads:

Art. 1220. The governing body shall
have power to pass any ordinance or
resolution, or to adopt rules and
regulations, or to take any steps proper to
give full legal effect to every part of
this chapter. . . .

Reviser's Note
(End of Chapter)

(1) Section 6, V.A.C.S. Article 1220a, provides
that V.A.C.S. Article 1220a does not affect
assessments, reassessments, or liens fixed before the
effective date of V.A.C.S. Article 1220a, nor does it
affect assessments, reassessments, or liens for
improvements ordered before the effective date of
V.A.C.S. Article 1220a. The revised law omits this
provision as unnecessary because under Section 311.022,
Government Code (Code Construction Act), applicable to
this code, a statute is presumed to be prospective in
its operation unless expressly made retrospective. The
omitted law reads:

Sec. 6. That this Act shall not
apply to or in any wise affect special
assessments or re-assessments or liens
fixed nor to any assessments,
re-assessments or liens for any such
improvements ordered, directed or provided
for prior to the time this Act takes
effect.

(2) Section 7, V.A.C.S. Article 1220a, provides
that V.A.C.S. Article 1220a supersedes all other parts
of laws with reference to the time that liens of
assessments or reassessments take effect. As explained
in the reviser's note following Section 314.045,
V.A.C.S. Article 1210 provides that an assessment takes
effect on the date of the resolution ordering the
assessment. Section 5, V.A.C.S. Article 1220a,
provides that the assessment lien takes effect at the
time the notice is filed. Because Section 7, V.A.C.S.
Article 1220a, provides that Section 5, V.A.C.S.
Article 1220a, governs the effective date of assessment
liens, Section 5 is codified in Section 314.045, and
the provision in V.A.C.S. Article 1210 regarding the
effective date of assessments is omitted. Accordingly,
Section 7, V.A.C.S. Article 1220a, may be omitted as
unnecessary. The omitted law reads:

Sec. 7. That this Act shall
supersede all other parts of laws with
reference to the time that liens of any
assessments or re-assessments shall take
effect.

CHAPTER 315. ARTIFICIAL LIGHTING

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CHAPTER 315. ARTIFICIAL LIGHTING
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 315.001. DEFINITIONS. In this chapter:

(1) "Abutting property" means property abutting a street on which lighting improvements are made or proposed to be made.

(2) "Special benefit" means the amount of enhanced value that a property receives as a result of lighting improvements.

(3) "Street" includes a portion, not less than one block, of a street. (V.A.C.S. Arts. 1222 (part), 1228 (part); New.)

Source Law

Art. 1222. [. . . whenever a petition is filed . . . setting forth that] a certain street, streets, or portions thereof not less than one block . . . [should be specially illuminated, . . . the governing body shall proceed in the manner hereinafter set out.]

Art. 1228. [. . . The cost . . . shall not exceed] the amount of the special benefit in enhanced value which such property shall receive from such improvement.

Revisor's Note

The definitions of "abutting property," "special benefit," and "street" are added to the revised law for drafting convenience, consistency, and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 315.002. APPLICABILITY. This chapter applies only to a
1 municipality with a population of more than 5,000. (V.A.C.S. 
Art. 1221 (part).)

Source Law

Art. 1221. Incorporated cities or towns of more 
than five thousand inhabitants under the preceding 
Federal census . . . may proceed in accordance with the 
provisions of the next succeeding nineteen 
articles . . . .

Revisor's Note

(1) V.A.C.S. Article 1221 refers to 
"incorporated cities or towns." The revised law omits 
"incorporated" because under the Local Government Code 
all municipalities must be incorporated. The revised 
law also substitutes the term "municipality" for 
"cities or towns" in this section and "municipality" or 
"municipal," as appropriate, for "city" throughout this 
chapter because those are the terms used in the Local 
Government Code. The revised law for these reasons 
also omits the source law definition of the term 
"city." The omitted law reads:

The term "city" or "cities," as used 
herein, shall include all incorporated 
cities and towns acting hereunder.

(2) V.A.C.S. Article 1221 describes a population 
number that is to be determined according to the most 
recent federal census. The revised law omits the 
reference to the federal census because the reference 
is unnecessary. Section 311.005(3), Government Code 
(Code Construction Act), and Section 312.011(20), 
Government Code, define "population" as population 
according to the most recent federal decennial census. 
That definition applies to the revised law.

(3) The revised law omits as unnecessary the 
provision in V.A.C.S. Article 1221 to the effect that 
it is cumulative of other applicable law or charter 
provisions. An accepted general principle of statutory
construction requires a statute to be given cumulative
effect with other laws unless it provides otherwise or
unless the laws are in conflict. The omitted law
reads:

>Incorporated cities or towns . . . may
proceed in accordance with the provisions
of the next succeeding nineteen articles,]
>
any other applicable law or charter
provisions, present or future, except as
herein provided for, which said law or
charter provision shall remain in force as
alternative methods.

[Sections 315.003-315.020 reserved for expansion]

SUBCHAPTER B. AUTHORITY AND INITIAL PROCEDURES

Revised Law

Sec. 315.021. ESTABLISHMENT OF LIGHTING IMPROVEMENTS. (a)

A municipality may install and maintain lighting improvements for a
local public street as provided by this chapter if the governing
body of the municipality adopts a resolution:

(1) on its own motion if:

(A) the governing body considers it more
advantageous to the public; and

(B) public money is available for that purpose;

or

(2) following the receipt of a petition from the
owners of property abutting a street to install and maintain street
lighting improvements.

(b) Adoption of the resolution is conclusive of the public
necessity and benefit of the lighting improvements. Failure to
give notice of the adoption of a resolution does not affect the
resolution's validity.

(c) The resolution must describe:

(1) the nature and extent of the lighting improvements
to be made;

(2) any street or district composed of streets,
highways, or alleys to be lighted;
(3) the materials to be used; and

(4) the method of paying the cost of the improvements.

(V.A.C.S. Arts. 1221 (part), 1222 (part), 1224, 1238 (part).)

Source Law

Art. 1221. Incorporated cities or towns . . . for the purpose of making local public street improvements by installing and maintaining special lighting systems in said cities or portions thereof, may proceed in accordance with the provisions of the next succeeding nineteen articles . . . .

Art. 1222. Subject to the terms hereof, whenever a petition is filed with the governing body . . . praying that the governing body of such city specially illuminate such street, streets or portion thereof, and construct, install, equip and maintain additional system of street lights for that purpose, the governing body shall proceed in the manner hereinafter set out.

Art. 1224. The governing body shall have power, by resolution, to order the making of the public improvements mentioned herein, or any of them, by a majority vote, without first being petitioned to do so by the abutting property owners as hereinbefore provided, and the passage of such resolution shall be conclusive of the public necessity and the benefits thereof, and no notice of such action by the governing body shall be requisite to its validity. Such resolution shall in general terms, set forth the nature and extent of the improvements or improvement to be made, the street, streets or portions thereof to be illuminated, the material or materials with which the improvements are to be constructed, and the method or methods under which the cost of such improvements are to be paid. Such resolution shall be passed whether the improvements are made with or without the petition of the abutting property owners.

Art. 1238. The governing body, if it deems it to be more advantageous to the public, provided public funds are available therefor, may order by resolution the making of any local public improvement by installing a special lighting system as contemplated herein, and for such purpose shall prescribe the district composed of the street or streets, highways, boulevards or alleys, or any portion thereof, that are sought to be improved by the establishment and maintenance of such special lighting system . . . .

Revisor's Note

(1) V.A.C.S. Articles 1221 through 1240 refer variously to "special lighting systems," "illumination," "public improvements," and "improvement." For consistency and drafting convenience, the revised law throughout this chapter substitutes the term "lighting improvements."
(2) V.A.C.S. Article 1222 authorizes a municipality to "construct, install, equip and maintain" lighting improvements. The terms "construct" and "equip" are omitted from the revised law because "construct" and "equip" are included in the meaning of "install."

(3) V.A.C.S. Article 1224 states that the governing body of a municipality may, "by majority vote," adopt a resolution ordering lighting improvements to be made. The revised law omits the phrase "by majority vote" because a municipal resolution is adopted by a simple majority unless a greater majority is specifically required.

(4) V.A.C.S. Article 1238 describes a number of substantive provisions elsewhere in the law revised by this chapter as applicable to lighting improvements made by a municipality without a petition by property owners. The revised law omits this language as unnecessary because the revised law has been drafted so that the described provisions apply whether or not a petition is filed. The omitted law reads:

Specifications shall be prepared therefor under the direction of the governing body and bids shall be invited upon the same as provided herein for making such local improvements. Contracts shall be let as provided herein for making contracts in other cases. A hearing shall be accorded to all property owners owning property abutting upon the streets in such districts to be improved by the said lighting system, and the cost of the same shall be assessed against such property in the same manner as provided herein in other cases; a special lien shall be created against the abutting property and the owners thereof shall be personally liable as is provided herein in all other cases. All proceedings relative to making the assessments and issuing assignable certificates shall apply as far as practicable to the procedure to be followed in making the public improvements under the terms of this article.

(5) V.A.C.S. Article 1238 refers to "streets,
highways, boulevards or alleys." The term "boulevards" is omitted from the revised law because "boulevards" is included in the meaning of "streets."

Revised Law
Sec. 315.022. CONTENTS OF PETITION. (a) A petition submitted under Section 315.021(a)(2) must:

1. state that a street or a district composed of streets, highways, or alleys should be lighted;
2. state that lighting improvements are needed for that purpose;
3. name and describe the street or district to be lighted;
4. state that the lighting will be a public improvement and will be conducive to the public welfare; and
5. be signed by a majority of the owners of property abutting streets designated in the petition.

(b) A petition submitted under Section 315.021(a)(2) may:

1. provide plans and specifications for the requested lighting improvements; and
2. specify the kind of poles, lights, or other material necessary to properly install the improvements or any part of the necessary material. (V.A.C.S. Arts. 1222 (part), 1223 (part).)

Source Law
Art. 1222. . . . [whenever] a petition [is filed with the governing body] setting forth that a certain street, streets, or portions thereof not less than one block, naming and describing the same, or certain districts composed of streets, highways, boulevards or alleys, should be specially illuminated, and that an additional system is necessary for that purpose, and stating that such illumination thereof will be a public improvement and will be conducive to the public welfare, and is signed by a majority of the owners of property abutting on said street, streets or portions thereof [the governing body shall proceed in the manner hereinafter set out.]

Art. 1223. The petitioning property owners may provide in said petition plans and specifications together with the kind of poles and lights and other material necessary to properly install said special lighting system, or such part of same as they desire to
Revisor's Note

V.A.C.S. Article 1222 refers to "streets, highways, boulevards, or alleys." The revised law omits the term "boulevards" for the reason stated in Revisor's Note (5) to Section 315.021.

Revised Law

Sec. 315.023. PLANS AND SPECIFICATIONS. (a) The governing body may:

(1) order the use of all or any part of the materials specified in the petition in constructing the lighting improvements;

(2) if materials specified in the petition are not available, order the use of materials similar in kind and quality to the specified materials; or

(3) reject any or all plans and specifications included in the petition and have new plans and specifications prepared by the municipal engineer.

(b) On adoption of a resolution as provided by Section 315.021, the municipal engineer shall:

(1) prepare plans and specifications for the lighting improvements ordered by the resolution; and

(2) submit the completed plans and specifications to the governing body for approval.

(c) If there is no municipal engineer, the municipal official whose duties most closely correspond to those of a municipal engineer shall prepare and submit the plans and specifications. (V.A.C.S. Arts. 1223 (part), 1225.)

Source Law

Art. 1223. [The petitioning property owners may provide in said petition plans and specifications together with the kind of . . . material necessary to properly install said special lighting system . . . and] the governing body in that instance may order the same or any part thereof used in the construction of said system. If the kind specified in said petition is
not available, the governing body shall use material of like kind and quality to that specified in said petition. Said body may reject any or all of said plans and specifications and have same prepared as hereinafter provided for.

Art. 1225. Upon the passage of the resolution by the governing body as hereinbefore provided, it shall be the duty of the city engineer, or the official of the city whose duties most nearly correspond to that of city engineer, to forthwith prepare plans and specifications for the said improvement, which, when completed, shall be submitted to the governing body for its approval.

Revised Law
Sec. 315.024. OWNERSHIP AND CONTROL. After lighting improvements made under this chapter are installed and accepted by the municipality, the improvements become a part of the municipality's lighting system. (V.A.C.S. Art. 1240.)

Source Law
Art. 1240. After the public improvements provided for in the preceding nineteen articles have been completed and the job accepted by the city, the same shall become the property of the city, and the city shall maintain the same at its own expense, as a part of its regular lighting system.

Revised Law
Sec. 315.025. USE OF AVAILABLE MONEY. A municipality may use available money to assist in financing lighting improvements. (V.A.C.S. Art. 1239 (part).)

Source Law
Art. 1239. ... Such body may use such money as is at its disposal to assist in the financing of the public improvements herein provided for.

[Sections 315.026-315.040 reserved for expansion]

SUBCHAPTER C. BIDS AND CONTRACTS

Revised Law
Sec. 315.041. ADVERTISEMENT FOR BID. (a) On approval and adoption of plans and specifications by the governing body of a municipality, the municipal secretary or other officer designated by the governing body shall advertise for sealed bids for
installing the lighting improvements according to the specifications.

(b) The advertisement shall be published in a daily newspaper of general circulation in the municipality and shall state the time within which bids may be received. (V.A.C.S. Art. 1226 (part).)

Source Law

Art. 1226. When the plans and specifications have been approved and adopted by the governing body, it shall be the duty of the city secretary, or other officer as may be designated by the governing body, to at once advertise for sealed bids for the construction of such improvements in accordance with the specifications. Such advertisement shall be inserted in a daily paper of general circulation in the city concerned, and shall state the time within which the bids may be received...

Revised Law

Sec. 315.042. FILING OF BID. (a) The governing body of a municipality may prescribe a period of not less than 10 or more than 15 days after the date on which the advertisement for bids is published within which bids may be received.

(b) Bids shall be filed with the municipal secretary or another officer designated by the governing body. (V.A.C.S. Art. 1226 (part).)

Source Law

Art. 1226. [...Such advertisement... shall state the time within which the bids may be received] as prescribed by the governing body, which shall not be less than ten and not more than fifteen days from the insertion of said advertisement. Bids shall be filed with the city secretary, or such other officer as the governing body may designate...

Revised Law

Sec. 315.043. AMENDMENT OF BID PROHIBITED. A bid may not be amended after it has been filed. (V.A.C.S. Art. 1226 (part).)

Source Law

Art. 1226. [...No bid shall be amended, changed or revised after being filed.
Revisor's Note

The revised law substitutes "amended" for the source law phrase "amended, changed or revised" because the meaning of the latter two terms is contained in the meaning of the first.

Revised Law

Sec. 315.044. OPENING OF BIDS; ACCEPTANCE OR REJECTION. (a) Bids shall be opened and read at a public meeting of the governing body of a municipality.

(b) The governing body may:

(1) accept a bid it considers most advantageous to the owners of abutting property; or

(2) reject any or all bids. (V.A.C.S. Art. 1226 (part).)

Source Law

Art. 1226. . . . Bids . . . shall be opened and read at a public meeting of the governing body. Such body shall have the right to accept such bids as it shall deem most advantageous to the abutting property owners concerned in the improvement, or may reject any and all bids. . . .

Revised Law

Sec. 315.045. CONTRACTS. (a) After the governing body of a municipality has accepted a bid for lighting improvements, the municipality shall contract with a contractor whose bid has been accepted.

(b) A contract shall be:

(1) executed by the municipality's chief executive; and

(2) attested with the corporate seal by the municipal secretary or other officer designated by the governing body. (V.A.C.S. Art. 1227.)

Source Law

Art. 1227. When the bids for such improvements have been accepted by the governing body, the city shall enter into a contract with the contractor or
contractors to whom the work has been let for the performance thereof, which contracts shall be executed in the name of the city by its chief executive and attested by the city secretary, or such other officer as may be designated by the governing body, with the corporate seal.

[Sections 315.046-315.060 reserved for expansion]

SUBCHAPTER D. PAYMENT OF COSTS

Revised Law

Sec. 315.061. AUTHORITY TO ASSESS COSTS. (a) A municipality may assess against owners of abutting property who will specially benefit from lighting improvements the entire cost, including labor and material, of installing the improvements. (b) A municipality may impose a lien against abutting property to secure the payment of the assessment against that property. (c) Costs may not be assessed against any property or property owner and personal liability for costs may not be finally determined until after the hearing under Section 315.066 and the adjustment of equities between or among abutting property owners under Section 315.063. (V.A.C.S. Art. 1228 (part).)

Source Law

Art. 1228. The city shall have power to assess the whole cost of installing and completing the improvements provided for herein, both for labor and material, against the owners of property abutting upon the street, streets or portions thereof, upon which said improvements are to be constructed, and who are specially benefited thereby, and shall have power to fix a lien against such property to secure the payment of the proportion of such costs assessed against the owners of such property. In no event shall costs be assessed against such owners or their property, or their personal liability therefor finally determined until after the hearing hereinafter mentioned, and after the adjustment of equities between such owners. . . .

Revised Law

Sec. 315.062. METHOD OF ASSESSMENT. (a) An assessment against abutting property or an owner of abutting property shall be made according to the frontage of that property on a street to be
improved in proportion to the total frontage on all streets to be improved.

(b) The costs shall be apportioned according to the frontage or front foot rule but may not exceed the special benefit to the property. (V.A.C.S. Arts. 1228 (part), 1229 (part).)

Source Law

Art. 1228. . . . The cost assessed against any property or the owner thereof, shall not exceed the amount of the special benefit in enhanced value which such property shall receive from such improvement.

Art. 1229. The portion of the costs of such improvements which may be assessed against any such property or its owners, shall be in proportion as the frontage of the property of each owner is to the whole frontage of the property on the street, streets or portions thereof abutting on the special lighting system, and such cost shall be apportioned in accordance with what is commonly known as the frontage or front foot rule . . . .

Revised Law

Sec. 315.063. ADJUSTMENT OF EQUITIES. If the governing body of a municipality considers that assessing and apportioning costs as provided by Section 315.062 would be unjust or unequal in a particular case, the governing body shall assess and apportion the costs justly and equally, considering the special benefit to each owner, the equities of the owners, and the adjustment of the apportionment, so as to produce a substantial equality of benefits received by and burdens imposed on each owner. (V.A.C.S. Art. 1229 (part).)

Source Law

Art. 1229. . . . provided that if the application of this rule would, in the opinion of the governing body in particular cases be unjust or unequal, it shall be the duty of said body to assess and apportion said costs in such proportion as it may deem just and equitable, having in view the specific benefit in enhanced value to be received by each owner of such property, the equities of such owners and the adjustment of such apportionment, so as to produce a substantial equality of the benefits received by and the burdens imposed upon each owner.

Revised Law

Sec. 315.064. STATEMENT OF OWNERSHIP AND COSTS. (a) After
the governing body of a municipality has approved and executed a contract for lighting improvements, the municipal engineer shall prepare and submit to the governing body a written statement that:

(1) lists the owners of property abutting any street to be improved;

(2) states the number of front feet owned by each owner;

(3) describes, by lot and block number or by another method that identifies the property, the abutting property owned by each owner; and

(4) estimates:

   (A) the total cost of the improvement;

   (B) the amount for each front foot to be assessed against abutting property and its owner; and

   (C) the total amount to be assessed against each owner.

(b) If there is no municipal engineer, the municipal official whose duties most closely correspond to those of a municipal engineer shall prepare and submit the statement.

(c) The governing body shall examine the statement and correct any error in the statement.

(d) An error or omission in a statement prepared under this section does not invalidate an assessment or a lien or claim of personal liability imposed under an assessment. (V.A.C.S. Art. 1230.)

Source Law

Art. 1230. The contract or contracts for such improvements having been executed and approved by the governing body, the city engineer, or the officer of the city whose duties most nearly correspond to that of city engineer, shall prepare a written statement which shall contain the names of such persons, firms, corporations or estates as may own property abutting on the section to be improved, the number of front feet owned by each, and describing the property owned by each, either by lot and block number, or otherwise so describing such property as may be sufficient to identify same; and such statement shall contain an estimate of the total cost of the improvement, the amount per front foot to be assessed against abutting property and its owners, and the total estimated amount.
to be assessed against each owner. Such statement shall be submitted to the governing body whose duty it shall be to examine same and correct any errors that may appear therein, but no error, omission or mistake in said statement shall in any manner invalidate any assessment made, or lien or claim of personal liability fixed thereunder.

Revisor's Note

(1) V.A.C.S. Article 1230 refers to an "error, omission or mistake." The reference to "mistake" is omitted from the revised law because "mistake" is included in the meaning of "error."

(2) V.A.C.S. Article 1230 refers to "persons, firms, corporations or estates." The reference to "firms, corporations or estates" is omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a corporation or any other legal entity. That definition applies to the revised law.

Revised Law

Sec. 315.065. NOTICE OF HEARING. (a) After the governing body of a municipality has examined and approved a statement prepared under Section 315.064, the governing body by resolution shall direct publication of notice of a hearing to owners of abutting property.

(b) Notice shall be published for 10 consecutive days in a daily newspaper of general circulation in the municipality where the lighting improvements are to be made.

(c) If there is no daily newspaper, the governing body shall notify the owners by registered mail before the 10th day before the date of the hearing.

(d) The notice must:

(1) state the place and time of the hearing;
(2) generally describe the lighting improvements;
(3) name any street to be improved;
(4) state the amount proposed to be assessed against
(5) notify each owner of abutting property and each interested person to appear at the hearing.

(e) The notice is not required to describe any property or to include the name of an owner. The notice is nonetheless binding on and conclusive against an owner of abutting property or a person interested in or having a lien or claim on the property. (V.A.C.S. Art. 1231.)

Source Law

Art. 1231. When the statement shall have been examined and approved by the governing body, it shall declare by resolution, and directing notice thereof to be given to the owners aforesaid by publication for ten consecutive days in a daily newspaper of general circulation in the city where the improvement is to be made; but if there be no daily newspaper in such place, then the governing body shall give such notice to such owners by registered mail at least ten days before the time set for the hearing as hereinafter provided. The notice shall state the time and place of the hearing and the street, streets or portions thereof to be improved, with a general description of such improvements and a statement of the amount per front foot proposed to be assessed against the property, and a notice to all such property owners and all persons interested to appear at such hearing. It shall not be necessary to include in such notice a description of any property or the name of the owner, but such notice shall nevertheless be binding and conclusive upon all owners of property, or persons interested in or having a lien or claim thereon.

Revised Law

Sec. 315.066. HEARING. (a) A hearing:

(1) is before the governing body of the municipality;

and

(2) may not be held before the 10th day after the date of notice under Section 315.065.

(b) At any time before the close of the hearing, a person interested in property that may be claimed to be subject to assessment under this chapter is entitled to be heard on:

(1) any matter affecting the property itself;

(2) the benefit of the proposed improvement to the property;
(3) a claim of liability relating to the property;
(4) the proposed lighting improvements;
(5) any invalidity or irregularity in a proceeding
regarding the proposed improvements; or
(6) any other objection to the proposed improvements.

c) An objection must be filed in writing.
d) At the hearing, an interested person may:
   (1) produce evidence and witnesses; and
   (2) appear in person or by attorney.
e) The governing body:
   (1) shall give a full hearing on an objection
   presented under this section;
   (2) may, from time to time and without further notice,
adjourn the hearing;
   (3) may inquire into and determine all facts necessary
   to adjudicate an objection or ascertain the special benefit to an
owner; and
   (4) shall render a just decision in each case.

(V.A.C.S. Art. 1232 (part).)

Source Law

Art. 1232. On the day set out in the notice for
the hearing, not less than ten days from the date of
such notice, or at any time thereafter before the close
of the hearing, any person, firm or corporation
interested in any property which may be claimed to be
subject to assessment for the purpose of paying the
cost of the improvement, in whole or in part, shall be
entitled to a hearing before the governing body as to
tall matters affecting said property, or the benefits
thereto, or such improvements, or any claim of
liability, or objection to the making of said
improvements, or any invalidity or irregularity in any
proceeding with reference to making said improvements,
or any other objection thereto. Such person, firm, or
corporation shall file their objections in writing, and
thereafter the governing body shall hear and determine
the same, and all persons interested shall have full
opportunity to produce evidence and witnesses and
appear in person or by attorney; and a full and fair
hearing thereof shall be given by such governing body,
which hearing may be adjourned from time to time
without further notice. The governing body shall have
the power to inquire into and determine all facts
necessary to the adjudication of such objections and
the ascertainment of the special benefits to such
owners by reason of the contemplated improvements; and
shall render such judgment or order in each case as may
be just and proper. . . .

Revisor's Note

(1) V.A.C.S. Article 1232 refers to a "person, firm or corporation." The reference to a "firm or corporation" is omitted from the revised law for the reason stated in Revisor's Note (2) to Section 315.064.

(2) V.A.C.S. Article 1232 refers to assessment "for the purpose of paying the cost of the improvement in whole or in part." The revised law omits the quoted language as unnecessary because no other type of assessment is authorized under this chapter and the method of assessment is fully described by Section 315.062.

(3) V.A.C.S. Article 1232 refers to a "fair hearing." The revised law omits the word "fair" because due process under the law requires a fair hearing and it is unnecessary to repeat that requirement.

Revised Law

Sec. 315.067. RULES. The governing body of a municipality may adopt rules governing hearings or notice of hearings that the governing body considers advisable to give all property owners a full hearing on assessments against them because of the special benefits. (V.A.C.S. Art. 1239 (part).)

Source Law

Art. 1239. The governing body may provide additional rules and regulations governing hearings and the issuance of notices therefor as may be deemed advisable in order to afford a full hearing to all property owners concerning the assessments levied or to be levied against them on account of the special benefits received from the improvements so ordered. . . .
Revisor's Note

V.A.C.S. Article 1239 refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 315.068. WAIVER OF OBJECTION. An objection to an irregularity in a proceeding regarding proposed lighting improvements under this chapter or to the validity of an assessment or adjudication of personal liability against abutting property or an owner of abutting property is waived unless presented at the time and in the manner prescribed by Section 315.066. (V.A.C.S. Art. 1232 (part).)

Source Law

Art. 1232. ... Any objection to the irregularity of the proceedings with reference to the making of such improvements as herein provided, or to the validity of any assessment or adjudication of personal liability against such property or the owners thereof, shall be deemed waived unless presented at the time and in the manner herein specified.

Revised Law

Sec. 315.069. ASSESSMENT ORDER. (a) After the close of a hearing held under Section 315.066, the governing body of the municipality by ordinance shall assess against each owner of abutting property the proportionate cost of the lighting improvements as decided by the governing body.

(b) The ordinance shall:

(1) impose a lien on the property;

(2) declare the owner of the property personally liable for the amount assessed; and

(3) prescribe the time and manner of payment of the assessed amount. (V.A.C.S. Art. 1233 (part).)
Art. 1233. When the hearing above mentioned has concluded, the governing body shall, by ordinance, assess against the several owners of the property abutting on the street, streets or portions thereof, such proportionate part of the cost of improvements as said body shall have adjudged against the respective owners and their property. Said ordinance shall fix a lien upon such property and declare the respective owners thereof to be personally liable for the respective amounts to be assessed; and shall state the time and manner of payment of such assessment.

Sec. 315.070. INSTALLMENTS. (a) The governing body may order the assessments payable in not more than six installments and prescribe the amount, time, and manner of payment of the installments.

(b) The last payment may not be deferred beyond the fifth anniversary of the municipality's acceptance of the completed lighting improvement.

(c) The ordinance shall prescribe the rate of interest, not to exceed seven percent a year, to be charged on deferred payments.

(d) The ordinance may provide for the maturity and collection of all deferred payments on the default of an installment of principal or interest. (V.A.C.S. Art. 1233 (part).)

Art. 1233. ... and said governing body may order that the said assessments shall be payable in installments, and prescribe the amount, time and manner of payment of such installments, which, except as hereinafter provided, shall not exceed six, and the last payment shall not be deferred beyond five years from the completion of such improvement and its acceptance by the city. The said ordinance shall also prescribe the rate of interest to be charged upon deferred payments, not to exceed seven per cent per annum; and may provide for the maturity of all deferred payments and their collection upon default of any installment of principal or interest.

V.A.C.S. Article 1233 states that installments may not exceed six "except as hereinafter provided."

The revised law omits the quoted language because there
is no exception elsewhere in the source law for this chapter.

Revised Law

Sec. 315.071. DISCHARGE OF OBLIGATION. An owner of abutting property may discharge the total amount assessed against the owner, or any installment of that amount, at any time before maturity, on payment of the amount with accrued interest. (V.A.C.S. Art. 1234 (part).)

Source Law

Art. 1234. Each property owner shall have the privilege of discharging the whole amount assessed against him, or any installment thereof, at any time before maturity, upon payment thereof with accrued interest.

Revised Law

Sec. 315.072. LIEN. (a) An assessment under this subchapter against a property or property owner and any costs and reasonable attorney's fees incurred are a personal claim against the owner secured by a lien against the property.

(b) A lien under this section reverts back and takes effect as of the date of the original resolution ordering the lighting improvement. Adoption of the resolution is notice of the lien to all persons.

(c) A person who owns property on the date of an ordinance providing for an assessment against the property under Section 315.069 is personally liable for that person's respective portion of the assessment.

(d) Assessing in one assessment more than one parcel of property owned by a single owner or owned jointly by two or more persons does not invalidate the assessment or a lien or claim of personal liability under the assessment.

(e) An error in the name of an owner of assessed property in the ordinance providing for the assessment does not invalidate the lien or personal liability created by the ordinance. The lien or
personal liability exists against the true owner of the property as if the owner had been correctly described. (V.A.C.S. Arts. 1234 (part), 1238 (part).)

Source Law

Art. 1234. . . . The fact that more than one parcel of land, the property of one owner or jointly owned by two or more persons, firms or corporations, have been assessed together in one assessment, shall not invalidate the same or any lien thereon, or any claim of personal liability thereunder. The cost of any such improvement assessed against any property or owner thereof, together with all costs and reasonable attorneys fees when incurred, shall constitute a personal claim against such property owner, and shall be secured by a lien on such property . . . . The person or persons who own property at the date of any ordinance providing for the assessment thereof, shall be severally and personally liable for their respective portions of the said assessment. The lien of such improvements shall revert back and take effect as of the date of the original resolution ordering the improvement, and the passage of such resolution shall operate as notice of such lien to all persons. Any error or mistake in such ordinance in the name of the owner of the property assessed, shall not invalidate the lien or personal liability thereby created, but the same shall nevertheless exist against the real and true owner of such property as if correctly described.

Art. 1238. . . . a special lien shall be created against the abutting property and the owners thereof shall be personally liable as is provided herein in all other cases. . . .

Revisor's Note

(1) V.A.C.S. Article 1234 refers to "persons, firms or corporations." The reference to "firms or corporations" is omitted from the revised law for the reason stated in Revisor's Note (2) to Section 315.064.

(2) V.A.C.S. Article 1234 states that property owners are "severally and personally liable for their respective portions" of an assessment. The revised law omits the term "severally" because the meaning of that term is contained in the meaning of the remainder of the quoted phrase.

(3) V.A.C.S. Article 1234 refers to an "error or mistake" and to a "real and true" owner. The references to "mistake" and "real" are omitted from the
revised law because "mistake" is included in the
meaning of "error" and "real" is included in the
meaning of "true."

Revised Law
Sec. 315.073. PRIORITY OF LIEN. A lien under Section
315.072 is superior to any other lien, claim, or title, except a
municipal, county, or state tax. (V.A.C.S. Art. 1234 (part).)

Source Law
Art. 1234. [The cost . . . shall be secured by]
a lien . . . superior to all other liens, claims, or
titles, except city, county and State taxes . . . .

Revised Law
Sec. 315.074. CERTIFICATE OF OBLIGATION. (a) The governing
body of a municipality may provide that:
(1) a contractor to whom work is let under this
chapter may recover the costs assessed against abutting property
and the owners of abutting property only from the property or
property owners; and
(2) the municipality has no liability for the costs.
(b) The governing body may also authorize assignable
certificates against abutting property or owners of abutting
property.
(c) A recital in a certificate that states that the
procedure for making the lighting improvement was in compliance
with law and that all prerequisites to imposing the lien and to
creating the personal liability of the property owner were
performed is prima facie evidence in all courts that the procedure
and prerequisites were performed as stated in the certificate.
(d) A certificate authorized under this section shall be:
(1) executed by the municipality's chief executive;
and
(2) attested with the corporate seal by the municipal
secretary or other officer designated by the governing body.
Art. 1237. The governing body may provide that for the cost, which is assessed against the abutting property and its owners, the contractor to whom the work may be let shall look only to such property owners and their property, and that the city shall be relieved of liability for such cost. The governing body may also authorize assignable certificates against abutting property or property owners. The recital in such certificates that the proceedings with reference to making such improvements have been regularly had in compliance with the terms of this law, and all prerequisites to the fixing of this lien and the claim of personal liability evidenced by such certificate, have been performed, shall be prima facie evidence of the facts so recited, and no other proof thereof shall be required, but in all courts the said proceedings and prerequisites shall, without further proof, be presumed to have been had or performed. Such certificates shall be executed by the chief executive of the city, and attested with the corporate seal by the city secretary or such other officer as may be designated by the governing body.

Revisor's Note

V.A.C.S. Article 1237 states that a recital of facts in a certificate is "prima facie evidence of the facts so recited" and, without further proof, creates a presumption. The revised law omits as duplicative the reference to creation of a presumption.

Revised Law

Sec. 315.075. PAYMENT FROM AVAILABLE MONEY. (a) The cost of lighting improvements made without a petition by property owners shall be paid by the municipality out of the municipality's available money.

(b) The amount paid by a municipality to a contractor under this section shall be reimbursed to the municipality by assessments against abutting property owners under this chapter. (V.A.C.S. Art. 1238 (part).)
the city by the property owners whose property is
assessed in the manner provided for herein. . . .

[Sections 315.076-315.090 reserved for expansion]

SUBCHAPTER E. JUDICIAL PROCEEDINGS

Revised Law

Sec. 315.091. SUIT ON LIEN. Personal liability established
under Section 315.072 may be enforced by bringing suit. (V.A.C.S.
Art. 1234 (part).)

Source Law

Art. 1234. . . . and such personal liability may
be enforced by suit in any court of competent
jurisdiction. . . .

Revisor's Note

(1) V.A.C.S. Article 1234 refers to a suit
brought "in a court of competent jurisdiction." The
revised law omits the quoted language as unnecessary
because a suit may only be brought in a court, and the
general laws of civil jurisdiction determine which
courts have jurisdiction over the matter. For example,
see Sections 24.007-24.011, Government Code, for the
general jurisdiction of district courts.

(2) The revised law omits the part of V.A.C.S.
Article 1234 that refers to the joinder of certain
parties. Joinder is now governed by Rules 39 et seq.,
Texas Rules of Civil Procedure. The omitted law reads:

. . . In any suit brought under this
article, it shall be proper to join as
defendants two or more property owners who
are interested in any single improvement or
any single contract for such
improvement. . . .

Revised Law

Sec. 315.092. SUIT TO CONTEST ASSESSMENT OR PROCEEDING. (a)
A person who has an interest in property that may be subject to
assessment under this chapter or who has any other financial
interest in a proposed lighting improvement or the manner in which
the cost of the proposed improvement is to be paid may bring suit
to contest on any ground:

(1) the validity of a proceeding held on the making of
the improvement; or

(2) the validity in whole or in part of an assessment,
lien, or personal liability imposed by the proceeding.

(b) A suit under this section must be brought not later than
the 10th day after the date on which the hearing under Section
315.066 concludes.

(c) The municipality and any person to whom a contract has
been awarded shall be made defendants in a suit under this section.

(V.A.C.S. Art. 1235 (part).)

Source Law

Art. 1235. At any time within ten days after the
hearing herein provided for has been concluded, any
person or persons having an interest in any property
which may be subject to assessment under this law, or
otherwise having any financial interest in such
improvement or improvements or in the manner in which
the cost thereof is to be paid, who may desire to
contest on any ground the validity of any proceeding
that may have been had with reference to the making of
such improvements or the validity in whole or in part
of any assessment or lien or personal liability fixed
by said proceedings, may institute suit for that
purpose in any court of competent
jurisdiction. . . . The city and the person or persons
to whom the contract has been awarded shall be made
defendants in such suit . . . .

Reviser's Note

(1) V.A.C.S. Article 1235 refers to a suit
brought "in a court of competent jurisdiction." The
revised law omits the quoted language for the reason
stated in Reviser's Note (1) to Section 315.091.

(2) The revised law omits the part of V.A.C.S.
Article 1235 that refers to the joinder of parties for
the reason stated in Reviser's Note (2) to Section
315.091. The omitted law reads:

. . . any other proper parties may be
joined therein.
Revised Law

Sec. 315.093. ESTOPPEL. (a) A person who does not bring suit within the period prescribed by Section 315.092 or who does not diligently and in good faith prosecute a suit to final judgment may not contest or raise as a defense in another action the validity of a proceeding or an assessment, lien, or personal liability imposed by the proceeding.

(b) Estoppel under this section binds a person's heirs, successors, administrators, and assigns. (V.A.C.S. Art. 1235 (part).)

Source Law

Art. 1235. . . . Any person who shall fail to institute such suit in said period of ten days, or who shall fail to diligently prosecute such suit in good faith to final judgment, shall be forever barred from making any such contest or defense in any other action, and this estoppel shall bind their heirs, successors, administrators and assigns. . . .

Revised Law

Sec. 315.094. AFFIDAVIT. (a) In a suit brought under Section 315.092, an affidavit must be attached to the plaintiff's petition stating:

(1) that the matters alleged in the petition are true, except for matters alleged on information and belief; and

(2) that the suit is brought in good faith and not to injure or delay the municipality, the contractor, or an owner of abutting property.

(b) If the plaintiff does not attach the affidavit required by this section, the court shall dismiss the suit on a defendant's motion and the plaintiff is barred to the same extent as if suit had not been brought. (V.A.C.S. Art. 1236 (part).)

Source Law

Art. 1236. There shall be attached to the plaintiff's petition an affidavit of the truth of the matters therein alleged, except such matters as are alleged on information and belief, that said suit is brought in good faith and not to injure or delay the city or the contractor or any owner of real estate abutting on the improvement. Unless the provisions of
this article are complied with by the plaintiff or plaintiffs, such suit shall be dismissed on motion of any defendant and in that event plaintiff or plaintiffs shall be barred and estopped to the same extent as if suit had not been brought. . . .

Revisor's Note
V.A.C.S. Article 1236 states that a plaintiff will be "barred and estopped." The term "estopped" is omitted from the revised law because "estopped" is included in the meaning of "barred."

Revised Law
Sec. 315.095. SUSPENSION OF WORK. When suit is brought under Section 315.092, the municipality or the contractor may suspend performance of work until a final judgment is rendered in the case and all appellate remedies are exhausted. (V.A.C.S. Art. 1236 (part).)

Source Law
Art. 1236. . . . In any case where a suit is brought as above provided, then the performance of the work may be suspended at the election of either the city or contractor until such suit shall be finally determined in the court of original jurisdiction or any appellate court to which the same may be taken by appeal or writ of error. . . .

Revised Law
Sec. 315.096. APPEAL. (a) An appeal or writ of error must be perfected not later than the 30th day after the date of adjournment of the term of the court of original jurisdiction during which judgment was rendered in the suit.
(b) An appeal or writ of error under this section is entitled to precedence in state courts of appellate jurisdiction and shall be heard and determined as soon as practicable. (V.A.C.S. Art. 1236 (part).)

Source Law
Art. 1236. . . . Every appeal or writ of error shall be perfected within thirty days from the adjournment of the term of court of original jurisdiction at which final judgment was rendered in such suit; and no appeal or writ of error to review the
judgment of said court may thereafter be taken or sued out by either party. Any such suit shall be entitled to precedence in the courts of this State of appellate jurisdiction, and shall be heard and determined as promptly as practicable.

CHAPTER 316. USE OF MUNICIPAL STREETS AND SIDEWALKS FOR PUBLIC CONVENIENCES AND AMENITIES OR FOR PRIVATE USES

SUBCHAPTER A. USE OF MUNICIPAL STREETS AND SIDEWALKS FOR PUBLIC CONVENIENCES AND AMENITIES

Sec. 316.001. DEFINITIONS

Sec. 316.002. PERMITTED IMPROVEMENTS OR FACILITIES ON MUNICIPAL STREET

Sec. 316.003. FINDING REQUIRED

Sec. 316.004. PERMIT PROGRAM

Sec. 316.005. RENEWAL OF PRIOR PERMIT

Sec. 316.006. USE OF MUNICIPAL MONEY OR EMPLOYEE FOR PERMITTED FACILITY

Sec. 316.007. IMPROVEMENT OR FACILITY ESTABLISHED OR MAINTAINED BY MUNICIPALITY

Sec. 316.008. PUBLIC AND GOVERNMENTAL ACTIONS AND FUNCTIONS OF MUNICIPALITY

Sec. 316.009. RIGHT OF ABATEMENT

Sec. 316.010. POLITICAL SUBDIVISION NOT REQUIRED TO OBTAIN PERMIT

[Sections 316.011-316.020 reserved for expansion]

SUBCHAPTER B. USE OF STREETS AND SIDEWALKS FOR PRIVATE PURPOSE

Sec. 316.021. MUNICIPAL PERMISSION TO USE STREET OR SIDEWALK FOR PRIVATE PURPOSE

CHAPTER 316. USE OF MUNICIPAL STREETS AND SIDEWALKS FOR PUBLIC CONVENIENCES AND AMENITIES OR FOR PRIVATE USES

SUBCHAPTER A. USE OF MUNICIPAL STREETS AND SIDEWALKS FOR PUBLIC CONVENIENCES AND AMENITIES

Revised Law

Sec. 316.001. DEFINITIONS. In this subchapter:

(1) "Municipal street" means the entire width of a way