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## **ZONING & PLANNING - TEXAS**

### **Powell v. City of Houston**

**Supreme Court of Texas - June 4, 2021 - S.W.3d - 2021 WL 2273976 - 64 Tex. Sup. Ct. J. 1209**

Homeowners brought action against City of Houston, a home rule city, seeking a declaratory judgment that City's historic preservation ordinance (HPO) violated zoning statute and city charter's general prohibition against zoning.

Following bench trial, the County Civil Court at Law entered take-nothing judgment for city. Homeowners appealed. The Houston Court of Appeals affirmed. Homeowners petitioned for review, which was granted.

The Supreme Court held that:

- HPO did not zone property in violation of city charter's general prohibition against zoning;
- City complied with zoning statute's requirement that HPO be enacted in accordance with a comprehensive plan; and
- City complied with zoning statute's requirement that home-rule municipality appoint zoning commission to implement regulations authorized by statute.

Historic preservation ordinance (HPO) enacted by home rule city did not zone property in violation of city charter's general prohibition against zoning; ordinance did not regulate purposes for which land could be used and, in fact, provided that it could not be construed to authorize city to regulate use of any structure or property, ordinance focused on protecting and preserving the exterior architectural characteristics of buildings based on historical significance, distinctiveness and connection to a neighborhood, instead of restricting the purposes for which land could be used, ordinance was targeted to fewer than one percent of city's total lots, thereby lacking geographical comprehensiveness associated with zoning regulations, and Local Government Code provided different remedies for violations of zoning ordinances and for damage to designated historic structures.

City of Houston, a home rule city, complied with zoning statute's requirement that historic preservation ordinance (HPO) be enacted in accordance with a comprehensive plan; ordinance was comprehensive with respect to changes to structures in historic areas, as it laid out in detail which changes were prohibited, which were allowed, and procedures for carrying out allowed changes, it required owners not to allow their landmarks and contributing structures to fall into state of disrepair resulting in deterioration of exterior features, and exemptions were similarly thorough.

City of Houston complied with zoning statute's requirement, when enacting historic preservation ordinance (HPO), that home-rule municipality appoint zoning commission to implement regulations authorized by statute; Houston Archaeological and Historical Commission served as requisite commission, which made recommendations to City Council by identifying areas with potential for historic-district designations and initiating designation process, reviewed applications for designation of landmarks and historic districts and made recommendations before Council decided

whether to make designation.

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