

CITY OF TOWNVILLE, TEXAS  
*Plaintiff,*

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IN THE DISTRICT COURT

vs.

TOWN COUNTY, TEXAS

JOHN SMITH AND  
MARY SMITH  
*Defendants.*

14th JUDICIAL DISTRICT

**PERMANENT INJUNCTION AND FINAL JUDGMENT**

On this day came to be heard in the above-styled case a hearing on the City’s request for Permanent Injunction and Final Judgment. Before this Court appeared City of Townville, Plaintiff, through its attorney, and announced ready for trial. Defendants John Smith and Mary Smith, although being duly and legally cited to appear and answer, failed to appear and answer so as to place the merits of Plaintiff’s claim in issue, and wholly made default.

Citation was served according to law upon John Smith on September 14, 2011 and Mary Smith on October 1, 2011. Both returns have been on file with the clerk in excess of ten days. No answer has been filed by Defendants. Defendants did appear at hearings on the City’s Motion for Preferential Trial Setting on October 4, 2011 and October 18, 2011. At that time, Defendants were notified of this trial setting. In addition, Defendants stated under oath that they are not members of the armed forces.

Upon consideration of the pleadings, the evidence presented, and the arguments of the parties, the Court finds good cause to enter this Permanent Injunction and Final Judgment.

The City of Townville (the “Plaintiff”) is a home-rule municipal corporation situated in Town County, Texas, incorporated and operating under the laws of the State of Texas.

John Smith and Mary Smith (the “Defendants”) are individuals owning property in the City of Townville, Texas.

Venue is proper and this Court has jurisdiction pursuant to Section 54.013 of the Texas Local Government Code.

The “Property” is located at Lot 2, Block B of the C.P. Caldwell, Jr. Addition of the Town of Townville, Texas, according to the Map thereof recorded in Volume 9, Page 199, Map Records, Town County, Texas and otherwise known as 101 Lazy Lane, Townville, Texas. (the “Property”).

The Property consists of a single family residence owned by Defendants.

The Property is in violation of numerous city ordinances, many of which may create health and safety problems to neighbors and the general public.

The following violations of the Townville City Code exist on the Property:

- a. Failure to maintain all glazing materials free from cracks and holes in violation of Section 8-26 (b)(1)(l) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- b. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition in violation of Section 8-26 (b)(1)(a) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- c. Failure to maintain food-contact surfaces smooth and easily cleanable; impermeable to liquid; unpainted; not resurfaced; free from areas which are inaccessible to cleaning and inspection; free from breaks, seams, cracks, chips, pits, or similar imperfection; and free from difficult-to-clean internal corners or crevices in violation of Section 8-26 (c) (1) (e) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- d. Failure to maintain all structures free from insect and rodent infestation in violation of Section 8-26 (c)(1)(e) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- e. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c) (1) (b) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;

- f. Failure to keep receptacles enclosed so that live wiring terminals are not exposed to contact in violation of NEC Article 406.4 (f) as adopted by the City of Townville, Texas;
- g. Failure to provide and maintain all systems, devices, and equipment to detect a fire, smoke, or carbon monoxide, actuate an alarm, or suppress or control a fire or any combination thereof in operable condition at all times in accordance with the International Fire Code in violation of Section 8-26 (i) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- h. Failure to maintain a window latch on each exterior window of the dwelling and failure to provide a keyless bolting device and a door viewer on each exterior door of the dwelling in violation of the Texas Property Code Section 92.153 as adopted by Section 8-26 (b)(2) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- i. Failure to properly install and maintain all electrical equipment, wiring, and appliances in a safe manner, including, but not limited to: ground-fault circuit-interrupter protected receptacles shall be provided for the following locations: Bathrooms; Kitchens (where the receptacles are installed to serve the countertop surfaces); and Laundry (utility, and wet bar sinks where the receptacles are installed within six (6) feet of the outside edge of the sink) in violation of Section 8-26 (c)(4)(c) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- j. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to repair or remove peeling, chipping, flaking, or abraded paint; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c)(1)(b) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- k. Failure to maintain internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, free from damaged or contaminated by foreign materials such as paint, plaster, cleaners, or abrasives, and corrosive residues; failure to repair damaged parts that might adversely affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; deteriorated by corrosion, chemical action, or overheating; failure to remove foreign debris from equipment in violation of International Residential Code Section E3304.6., as adopted by the City of Townville, Texas.
- l. Failure to maintain all occupied areas and all plumbing equipment and facilities in a clean, sanitary condition at all time and to connect plumbing fixtures and heating equipment that the occupant supplies in compliance with applicable laws in violation of Section 8-26 (g)(2) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- m. Failure to maintain exterior lighting at appropriate points adjacent to all building entrances, including individual dwelling units, sufficient to illuminate areas where hazards may reasonably exist, and operable between a half hour after sunset and a half hour before sunrise; failure to repair all inoperable exterior lighting fixtures within a reasonable period of

time after being notified that the fixture is not working in violation of Section 8-27 (f)(3) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;

- n. Failure to maintain all exterior doors, door assemblies, and hardware in good condition with locks at all entrances to dwelling units and sleeping units that tightly secure the door in violation of Section 8-26 (b)(1)(m) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- o. Failure to maintain intake and exhaust air ducts in such a manner as to prevent the entrance of dust, dirt, and any other contaminating material in violation of Section 8-26 (c)(3)(e) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- p. Failure to maintain parking lots, fire lanes, driveways, sidewalks, porches, patios, and other paved areas free from deterioration, holes, excavations, sharp protrusions, or any other object or condition which may cause injury to a person in violation of Section 8-26 (a)(1) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- q. Failure to remove trees and tree limbs that are reasonably capable of damaging a structure, or that are reasonably capable of causing injury to a person, or which are within fourteen (14) feet of a fire lane measured vertically from the surface of the fire lane to the lowest point of the tree limb or branch in violation of Section 8-26(a)(6) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- r. Failure to maintain every exterior stairway, deck, porch, and balcony, and all appurtenances attached thereto, structurally sound, in good condition, with proper anchorage and capable of supporting the imposed loads in violation of Section 8-26 (b)(1)(j) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- s. Failure to maintain the roof and flashing sound, tight and without defects that admit rain with roof drainage adequate to prevent dampness or deterioration in the walls or interior portion of the structure and roof drains, gutters, and downspouts maintained in good condition and free from obstructions in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- t. Failure to maintain all exterior walls free from holes, breaks, and loose or rotting materials and to maintain all exterior walls and exposed surfaces of metal or wood to protect them from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment in violation of Section 8-26 (b)(1)(e & f) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- u. Failure to remove all graffiti from the Property in violation of Section 57-4 of the Code of Civil and Criminal Ordinances of the City of Townville, Texas;
- v. Failure to maintain the roof and flashing sound, tight, and without defects such that drainage is adequate to prevent dampness or deterioration and failure to maintain roof drains and

gutters in sound condition in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Townville, Texas

- w. Failure to remove outside storage in violation of Section 52-56 of the Land Development Code;
- x. Failure to legibly identify all circuits and circuit modifications as to their clear, evident, and specific purpose or use in violation of the International Residential Code Section E3606.2 as adopted by the City of Townville, Texas; and
- y. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. It is an affirmative defense to the oxidation removal requirement if the surface is designed for stabilization by oxidation or that the structure is a manufactured home or recreational vehicle that will not be in place longer than ninety (90) days in violation of Section 8-26 (b).

These ordinances relate to:

- a. the preservation of public safety, relating to the material or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing fixtures, entrances, or exits;
- b. the preservation of public health or to the fire safety of a building or other structure or improvement;
- c. dangerously damaged or deteriorated structures or improvements;
- d. conditions caused by accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- e. zoning that provides for the use of land or classifies a parcel of land according to the city's classification scheme.

Persons other than the Defendants and property other than Defendants' will continue to suffer from adverse impacts and risk substantial danger of injury unless Defendants comply with

one or more of these ordinances. These violations of the ordinances threaten harm that is irreparable. The Property is dilapidated, substandard, and unfit for human habitation and a hazard to the public health, welfare, and safety, and constitutes a nuisance. The Property cannot be repaired without substantial reconstruction. Further, regardless of its structural condition, the Property at various times is unsecured from unauthorized entry to the extent, it could be entered by vagrants or uninvited persons or could be entered by children or the means to secure the vacant portions are inadequate.

**IT IS THEREFORE ORDERED** that pursuant to Sections 54.016 and 54.018 of the Texas Local Government Code Defendants shall demolish the Property on or before \_\_\_\_\_, 2011, such that it is blade clean, with all improvements removed including foundations, porches, driveways, concrete slabs, fences, and steps, and in a fashion to prevent ponding of water. **IT IS FURTHER ORDERED** that Defendants shall ensure that all necessary permits are obtained prior to demolishing the Property, and that the demolition is conducted and the Property is maintained in accordance with the City of Townville Code and all applicable codes and statutes.

**IT IS FURTHER ORDERED** that the Defendants shall place a silt fence around the Property to prevent erosion until vegetation can be established

**IT IS FURTHER ORDERED** that if Defendants fail to demolish the Property on or before \_\_\_\_\_, 2011, the City of Townville may perform asbestos testing and/or remediation if needed, demolish the Property, remove all personalty and dispose of it, remove the components and demolition debris, and charge the costs against Defendants, and place a lien upon the Property for these costs.

**IT IS FURTHER ORDERED** that the City of Townville may enter the Property and inspect the Property at any time with or without notice to Defendants but Defendants shall make the Property available for inspection for compliance with this Judgment.

**IT IS FURTHER ORDERED** that Defendants is liable for all court costs incurred by the City in prosecuting this case in the amount of \$\_\_\_\_\_.

**IT IS FURTHER ORDERED AND AGREED** pursuant to Section 54.017 of the Texas Local Government Code that the City of Townville shall recover as civil penalties from Defendants the total of \$\_\_\_\_\_. All civil penalties shall be tendered by delivering a certified check or money order, **made payable to the City of Townville**, to the Townville City Attorney's Office c/o Sean Sunshine, 825 West Townville Boulevard, Townville, Texas 75060.

Interest shall accrue on the Injunction at a rate of 5.0% per annum until paid.

**IT IS FURTHER ORDERED** that Defendants shall provide notice of this Judgment to any subsequent holder, successor in interest, purchaser, or owner, and inform such subsequent holder, successor in interest, purchaser, or owner that he or she shall be bound by the terms and conditions contained within this Judgment.

**IT IS FURTHER ORDERED** that this Judgment will be filed in the real property records of Town County, Texas.

No bond is required to be posted by Plaintiff City of Townville.

In addition to other persons certified by the State of Texas, Joe E. Brown (SCH0000), a certified process server in the State of Texas, may serve this Order on Defendants pursuant to Rules 103 and 536(a) of the Texas Rules of Civil Procedure.

Plaintiff is allowed such writs and processes as may be necessary in the enforcement and collection of judgment.

This judgment disposes of all parties and all issues, and accordingly is a final judgment and appealable. Thus, all other relief not expressly granted herein is denied.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

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PRESIDING JUDGE