

---

---

---

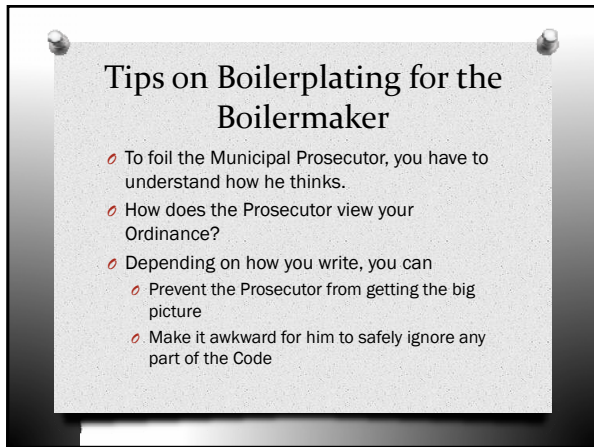
---

---

---

---

---



---

---

---

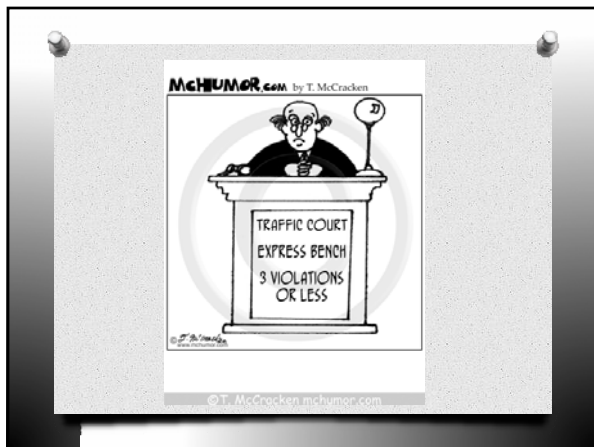
---

---

---

---

---



---

---

---

---

---

---

---

---

**The view from the trench in front of The Bench**

- o The Docket
- o A whole new meaning to "tubing"
- o General penalty clauses
- o General provisions

---

---

---

---

---

---

---

---

**Penalty clause buried somewhere in City Code**

- o **Sec. 1-7. - Compliance with Code required.**
- o **(a) General penalty for violation.** Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding five hundred dollars (\$500.00); provided, however, the maximum penalty for offenses arising under such Code or ordinance of the city governing fire safety, zoning, public health and sanitation, including the dumping of refuse, and vegetation and litter violations shall not exceed the sum of two thousand dollars (\$2,000.00); provided further, that if such maximum penalty provided for by this Code or any such offense is greater than maximum penalty provided for same or a similar offense under the laws of the state, then the maximum penalty for violation as provided by state statute shall be the maximum penalty under this Code. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

---

---

---

---

---

---

---

---

**More buried City Code terms**

- o **Joint authority.** Words purporting to give authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.
- o **May.** The word "may" is permissive and not mandatory.
- o **Month.** The word "month" shall mean a calendar month.
- o **Owner.** The word "owner" applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.
- o **Preceding, following.** The words "preceding" and "following" shall mean next before and next after, respectively.
- o **Shall.** The word "shall" is mandatory and not permissive.

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

### The exception to the rule

- o Many ordinances provide exceptions.
- o Many, many exceptions
- o Who has the burden to prove a violation doesn't fall within an exception?
- o Whenever possible, use affirmative defenses to "except" behaviors from the regulatory scheme.

---

---

---

---

---

---

---

---

### Affirmative Defenses

- o **E. Affirmative Defenses.** It is an affirmative defense to prosecution that any of the following conditions apply:
  - o (1). The person required to register on the database established the permanent or temporary residence and has complied with all of the sex offender registration laws of the State of Texas, prior to the date of the adoption of the ordinance codified in this section.
  - o (2). The person was a minor when he/she committed the offense and was not convicted as an adult.
  - o (3). The information on the Database is incorrect, and if corrected, this chapter section would not apply to the person.

---

---

---

---

---

---

---

---

### Getting Started

*What we call the beginning is often the end.  
And to make an end is to make a beginning.  
The end is where we start from.*  
- T. S. Eliot, *Little Gidding*

- Start where someone else has left off
- Note that plagiarism in ordinance drafting is not only permitted but encouraged

---

---

---

---

---

---

---

---

### Starting Off (continued)

- When "plari-grafting:"
  - Beware anything more than 2-3 years old, (Legislatures & courts are both busy)
  - Watch for internal references to other Code sections which won't exist in yours
  - Beware "Find & Replace - all!"
  - Remember there is a Special Interest Group for everything -

---

---

---

---

---

---

---

---

OBFUSCATE  
DISSEMBLE & GOUGE  
ATTORNEYS AT LAW

search ID: jain561

© Original Artist  
Reproduction rights obtainable from  
www.CartoonStock.com

---

---

---

---

---

---

---

---

### What did you say?

- o *Computation of time.* Whenever a notice is required to be given or an act to be done, a certain length of time before any proceeding shall be had, the day on which such notice is given or such act is done, shall not be counted in computing the time, but the day on which such proceeding is to be had shall be counted unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. If a number of months is to be computed counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

---

---

---

---

---

---

---

---

### Legal Writing For the Re-wired Brain

- o [http://www.texasbar.com/flashdrive/materials/managing\\_your\\_law\\_practice/Special\\_ManagingYourLawPracticeCLE\\_LegalWritingRe-wiredBrain\\_Dubose\\_FinalArticle.pdf](http://www.texasbar.com/flashdrive/materials/managing_your_law_practice/Special_ManagingYourLawPracticeCLE_LegalWritingRe-wiredBrain_Dubose_FinalArticle.pdf)
- o Omit ~~needless~~ words
- o Enable skimming
- o Use numbered lists
- o Use parallel structures
- o Use white space

---

---

---

---

---

---

---

---

### Use 5 cent words, not 25 cent words

- o *Quidquid latine dictum sit, altum sonatur.*
- o Whatever is said in Latin sounds profound.
  
- o Government writing should be dignified, but doesn't have to be pompous.

---

---

---

---

---

---

---

---

## A few grammatical rules...

- 1. **Write in the active voice.** The active voice eliminates confusion by forcing you to name the actor in a sentence. This construction makes clear to the reader **who** is to perform the duty.

The passive voice makes sentences longer and roundabout. Who is responsible is much less obvious. Passive verbs have a form of the verb to be plus the past participle of a main verb.

- am is are was were be been plus
- a main verb usually ending in "en" or "ed". Examples of passive verbs:
  - was received,
  - is being considered,
  - mistakes were made

---

---

---

---

---

---

---

---

## Actor before Verb

- The material will be delivered. By whom? The start date is to be decided. By whom? The application must be approved. By whom? **Putting the actor before the verb forces you to be clear about responsibility.**
- The applicant will deliver the material.
- The Building Official will decide the start date.
- The department must approve the application.

---

---

---

---

---

---

---

---



"Hey, don't blame me. I don't make the laws—I just circumvent them."

---

---

---

---

---

---

---

---

**Use "must" instead of "shall".**

Shall	Imposes obligation to act, but may be confused with predicting future action
Will	predicts future action
Must	imposes obligation, indicates a necessity to act

---

---

---

---

---

---

---

---

**To impose a legal obligation, use "must".**

Should	imposes obligation, indicates a necessity to act
May	indicates discretion to act
May not	Indicates prohibition

---

---

---

---

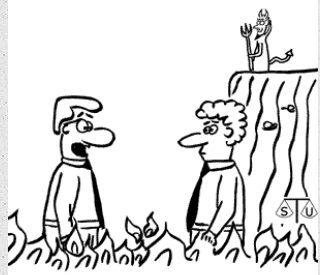
---

---

---

---

Stu's Views © 2002 Stu All Rights Reserved www.stus.com



"I still say those 10 Commandments are deceptively open to interpretation."

---

---

---

---

---

---

---

---

**Draft in the present tense**

- o **DON'T SAY:** The fine for driving without a permit **shall be** \$100.00.
- o **SAY:** The fine for driving without a permit is \$100.00.

---

---

---

---

---

---

---

---

**Naming**

*"When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."*

- Lewis Carroll - Through the Looking Glass, Chapter 6

- o There are several ways you can befuddle the prosecutor through naming
- o One thing can have many names

---

---

---

---

---

---

---

---

**Naming, cont.**

- o Creative Miss-spelling
- o Just as many things have many names, use them all interchangeably
- o Alternately, define everything
- o A.C.R.O.N.Y.M.S.
- o Keep the ordinance terse!

---

---

---

---

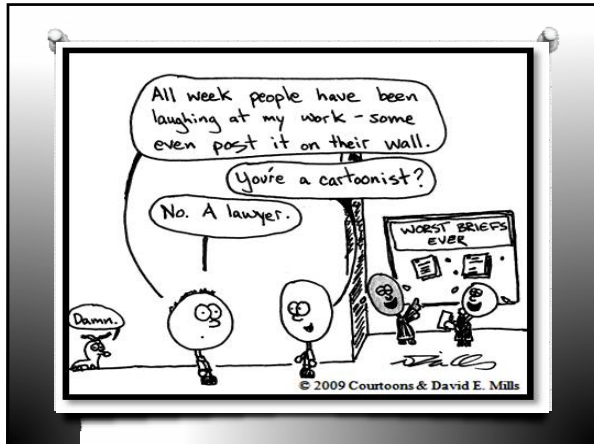
---

---

---

---





---

---

---

---

---

---

---

---

Certain types of ordinances present special challenges

- o *Hell is other people.*  
- Jean-Paul Sartre, No Exit, 1934
- o <http://vimeo.com/17784798>

---

---

---

---

---

---

---

---

Controlling text

- o Definitions:
- o "Cul-de-sac" - a street with a single means of ingress/egress and having a turnaround at the end. A turnaround may be in the form of a circular "bubble" of pavement or an internal "looped" street. (Figure 4)

---

---

---

---

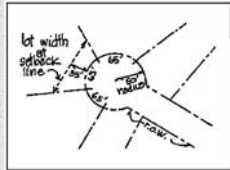
---

---

---

---

Try pictures, images or diagrams  
Let me draw you a picture:




---

---

---

---

---

---

---

---

### Another example

- o Building height" - the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater building height:
  - o a) the elevation of the highest adjoining sidewalk or ground surface within a five foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above lowest grade. (No. 1)
  - o b) an elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in item 1 above is more than 10 feet above lowest grade. (No. 2)(Figure 3)

---

---

---

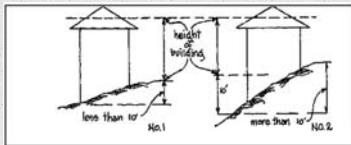
---

---

---

---

---



o If all else fails, hire an interpreter for the Court...

---

---

---

---

---

---

---

---



---

---

---

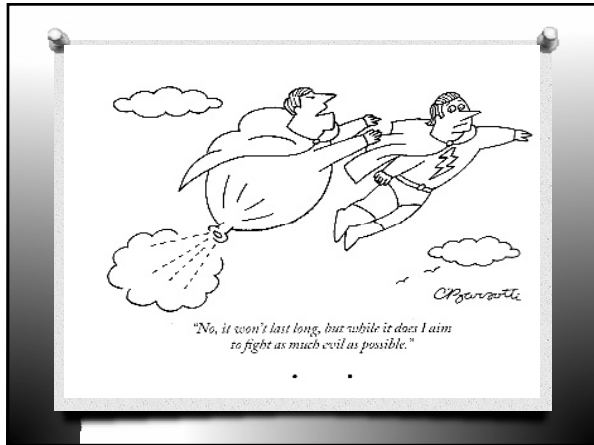
---

---

---

---

---



---

---

---

---

---

---

---

---