Substandard Building Issues: *City of Dallas v. Heather Stewart* and More

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I. Summary of Stewart case

Heather Stewart ("Stewart") owned a house in Dallas, which she abandoned in 1991. During the subsequent ten years, the Stewart home was plagued by constant code violations and, though boarded up, was broken into and occasionally occupied by vagrants. The city of Dallas (the "City" or "Dallas") received numerous complaints about the Stewart house, and code enforcement notices issued by the City were repeatedly ignored by Stewart. In September 2001, the Dallas Urban Rehabilitation Standards Board (the "Board") found that Stewart's house constituted an urban nuisance and ordered its demolition. In September 2002, Stewart requested a rehearing before the Board, which was denied. The Board found that no repairs had been made to the property since the initial demolition order was entered the year before, and the Board affirmed the demolition order. On October 17, 2002, a City inspector again inspected the property and found that Stewart had not repaired the property. On October 28, 2002, the City obtained a judicial demolition warrant, and the City demolished the house four days later.

Before the demolition occurred, Stewart appealed the Board's decision to district court. The City subsequently demolished the home while the appeal was pending[1] and Stewart then amended her complaint to include constitutional due process and state takings claims. The trial court severed Stewart's appeal of the Board's order from her constitutional claims at the City's request. The trial court, on substantial evidence review, affirmed the Board's finding that

[1] Although the appeal did not stay the demolition order, *see* TEX. LOC. GOV'T CODE § 54.039(e), that is not the reason that the City demolished the house while the appeal was pending. The appeal was timely filed within 30 days, but the City did not receive notice of the appeal until after the 30 days had lapsed. Docket of Cause No. 02-101116L, pending in the 193rd District Court, Dallas County. The demolition of the property took place over 30 days after the URSB order. *See* Petitioner's Brief on the Merits and Appendix, filed on September 21, 2009 in City of Dallas v. Heather Stewart, Cause No. 09-0257, pending in the Texas Supreme Court.

Stewart's home was an urban nuisance and awarded the City its attorney's fees. Stewart's constitutional claims were then tried to a jury de novo. The jury rejected the City's contention that Stewart's home was a nuisance and awarded her $75,707.67 in damages.

On appeal, the Second Court of Appeals at Dallas affirmed the trial court's judgment, finding that de novo review of Stewart's constitutional claims was appropriate and that the Board's decision was not entitled to a preclusive effect because of the brief time lapse between the nuisance determination and the demolition of the property. *City of Dallas v. Stewart,* 2008 WL 5177168, *2 (Tex. App. – Dallas 2008, pet. granted) (hereafter "*Heather Stewart CoA*").

Dallas petitioned for review by the Texas Supreme Court. The Supreme Court granted review and on July 1, 2011, issued its original opinion in *City of Dallas v. Heather Stewart,* 2011 WL 2586882 (Tex. 2011) (hereafter "*Heather Stewart I*"). In a 5-4 decision affirming the Dallas Court of Appeals' and the trial court's judgments, the Texas Supreme Court held that "substantial evidence review of a nuisance determination resulting in a home's demolition does not sufficiently protect a person's rights under Article I, Section 17 of the Texas Constitution," and that administrative boards' "nuisance determinations cannot be accorded preclusive effect in a takings suit…" *Id.* at *2 and *12. While noting the major threat posed by dilapidated structures and the need of cities to abate these nuisances, the Court nonetheless stifled a city's ability to utilize quasi-judicial boards under Chapters 54 and 214 of the Local Government Code to effectuate demolitions because of the Court's concern in allowing "a panel of citizens untrained in constitutional law" to determine constitutional rights. *Id.* at *2-*4. The Court was troubled by the fact that nuisance determinations under the statutory scheme are decided by "an agency appointed by a [c]ity to represent a [c]ity's interest" and that cities are incentivized to demolish properties because "abatement actions are motivated, at least in part, by a city's bottom

line." *Id.* at *9 and fn 18. The Court, finding that substantial evidence review of nuisance determinations was constitutionally inadequate, concluded that:

> Because we believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations, we hold that the [Board's] nuisance determination, and the trial court's affirmance of that determination under a substantial evidence standard, were not entitled to preclusive effect in Stewart's taking case, and the trial court correctly considered the issue de novo.

Heather Stewart I at *12.

Dallas filed a motion for rehearing, and an onslaught of *amicus curiae* briefs shortly followed.[2] On January 27, 2012, the court vacated *Heather Stewart I* and substituted a new, almost identical opinion in its place in *City of Dallas v. Heather Stewart,* 361 S.W.3d 562, 579-80 (Tex. 2012) (hereafter "*Heather Stewart II*"). The only change from the court's *Heather Stewart I* opinion was the court's addition of a section to address the concerns raised by the amici -- that cities would be exposed to ten-years worth of takings claim litigation and could not afford to litigate all nuisance cases in district court. The court essentially dismissed these arguments by clarifying that a property owner must appeal the nuisance finding within 30 days to exhaust administrative remedies and must bring the takings claim within that appeal, that appeals are rare in nuisance determination cases, and that de novo review is only required when a nuisance determination is appealed. *Heather Stewart II* at 580.

Even in light of the clarification provided by the *Heather Stewart II* opinion, cities are still struggling to understand the reach and ramifications of the *Stewart* case on nuisance abatement and other code enforcement activities. This paper aims to provide guidance from the

[2] In total, 12 *amicus curiae* briefs were filed by the Texas Municipal League, the International Municipal Lawyers Association, and numerous Texas cities, including the cities of Abilene, Fort Worth, Houston, Irving, and San Antonio to name just a few.

authors' perspectives as to what *Heather Stewart II* actually means and to offer helpful tips on ways cities can strengthen their substandard building procedures.

II. Interpretation of Stewart

A. The Building and Standards Process

Many cities, at least prior to the issuance of the *Heather Stewart I*, relied almost exclusively on the building and standards ("BSC") process to address the most seriously substandard buildings. Post-*Heather Stewart II*, the BSC tool remains valuable and viable to cities to address substandard structures, but cities should consider options for bolstering the process.

By ordinance, cities may create a BSC consisting of five members that are appointed by the city council. *See* TEX. LOCAL GOV'T CODE § 54.033. The statute does not provide any minimum qualifications for the members, though arguably an ordinance could do so. In light of some of the dicta in *Heather Stewart II* regarding qualifications of commissioners, cities might consider this option.[3] *See Heather Stewart II* at fn 9.

Chapter 214 of the Texas Local Government Code also creates a process for addressing substandard buildings. Many cities meld the requirements found in Section 214.001 with the process in Sections 54.031-54.041 of the Texas Local Government Code as these procedures are very similar. These statutory provisions provide a detailed process for a BSC case and the

[3] After *Heather Stewart I* and *II*, some cities gave their city council the ability to hear BSC cases. This was done in response to the court's comments about commissioners not being elected. *Heather Stewart II* at 580. But also keep in mind that the court raised concerns about a city's motivation in demolishing houses being its "bottom line." *Heather Stewart II* at fn 18. One could argue that a city council, although elected, is more likely to be concerned about the economics of blighted properties than a judge or an appointed board.

required notices; these have been thoroughly covered in a prior presentation to TCAA.[4] Many of these procedures will be discussed *infra* at III.A.

The Supreme Court's January 2012 decisions in *Heather Stewart II* and *Patel v. City of Everman* attempted to clear up the concerns that *Heather Stewart I* created, i.e. the lack of finality of building and standards orders and the possible plethora of takings claims against cities. *See Heather Stewart II* and *Patel v. City of Everman,* 361 S.W.3d 600 (Tex. 2012). The Supreme Court responded to the motion for rehearing of *Heather Stewart I* and the amici briefs by saying that "takings claims must be asserted on appeal from the administrative nuisance determination." *Heather Stewart II* at 579-80. In other words, a party must appeal a BSC's demolition order to be able to assert a takings claim. A person must appeal a BSC order within 30 days of service of the order. TEX. LOCAL GOV'T CODE § 54.039. Therefore, if an owner, lienholder, mortgagee or other aggrieved party does not appeal the BSC demolition order within 30 days of service of the order, the city may demolish the building.

Some have voiced concern that the Supreme Court is in effect holding that a property owner has to bring a taking claim for a taking that has not occurred. For reasons that will be discussed at II.B. *infra*, this should not concern cities. If a city has followed the BSC process meticulously, received a demolition order, and waited for the order to become final before demolishing the building, the city should feel comfortable that a subsequent takings claim will be defeated easily.

Heather Stewart II, however, is cause to tighten up cities' BSC processes. Between the BSC demolition order and actual demolition, every city should check the county and district

[4] Sralla, Tim G., et al., How much will that Substandard Building Demolition Really Cost You? TCAA 2010 Fall Meeting; http://www.texascityattorneys.org/2010speakerpapers/fall-SubstandardBuildingDemolition-TSralla.pdf.

court records for filings of lawsuits appealing the BSC order. Remember, Dallas did not know of the lawsuit appealing the demolition order when it demolished the building; the property owner filed suit within the 30 days but did not serve the City until after the 30 days had elapsed. *See* fn 1.

There also should be a nuisance finding in the BSC order that allows the demolition; in other words, the nuisance finding needs to be made as close to the actual demolition as possible. Likewise, cities should demolish the buildings subject to BSC demolition orders as soon as they have final orders and feel comfortable that no appeal has been filed. Some cities allow many months, even a year, to elapse between the demolition order and the actual demolition due to budget constraints, staffing, or other factors. This kind of delay could be problematic. *Heather Stewart CoA* based its holding that the BSC nuisance finding was not preclusive on the delay between the nuisance finding and the house's demolition. *Heather Stewart CoA* at *2. The court stated that the city could defend against the takings claim by proving that the property was a nuisance on the day that it was demolished; Dallas' nuisance finding was made one year before the demolition. *Id.* Although the Supreme Court in *Heather Stewart II* did not base their decision on the delay, they referred to it and in a footnote, referred to a Houston court of appeals case that held similarly. *Heather Stewart II* at 565 and fn 3.

Obviously, cities cannot demolish the buildings for which they receive a demolition order on the day that they receive the orders as suggested by *Heather Stewart CoA*. First, it is best in light of the *Heather Stewart II* to wait until the order is final, at least 30 days. Second, there are other legal and practical concerns that make this impossible, i.e. bid laws. But each city should perform a risk analysis to decide at which point the city feels the risk is too great to proceed with a stale order: 60 days? 90 days? 6 months? 3 years? Even if the city picks a relatively short

period of time after the order to demolish the property, inspectors should be at the property on the day of the demolition to photograph the condition of the property. In essence, the city is documenting that the nuisance conditions remain on the day of the demolition. Some have suggested that cities should have the property appraised near the date of demolition so that the city will have value evidence in case of a takings claim. Again, each city will need to weigh the risk that is comfortable for that city with the expense of such steps as hiring a professional appraisal.

City attorney's offices should be more proactive in ensuring that the evidence presented at BSC hearings is relevant, admissible, strong, and persuasive. "Substantial evidence review" may have become a crutch that many cities leaned on too heavily when they were presenting evidence at BSC hearings. At least in the context of nuisance findings, that crutch is gone. Should a BSC demolition order be appealed, the attorney's office will be presenting similar evidence in the *de novo* appeal, a much different experience than the BSC process. City attorney's offices should work with inspectors to improve their evidence gathering and testifying skills. For example, many inspectors will take photographs that only zoom in on the violation. While close up pictures of the violation are important, context pictures can be vital when the city is trying to convince the BSC, a judge, or a jury that a violation is a nuisance. Is the story better told by a zoomed-in picture of a missing sewer cap or of a child's toy in sewage in a parking lot? Is the story better told by an unsecured window or the unsecured property with an ice cream truck out front and children stopping to get ice cream on their way home from school? Helping inspectors to understand what evidence will be persuasive cannot be over-emphasized.

B. Ripeness/Exhaustion

One major benefit to cities of the court's substituted opinion in *Heather Stewart II* is the clarification provided by the court as to when a property owner must bring a takings claim arising from an ordered demolition under Chapter 54 or 214. In support of the motion for rehearing, amici argued that because takings claims have a ten-year statute of limitations that the *Heather Stewart I* decision would "open the floodgates for takings claims." *Heather Stewart II* at 579. The court seemingly dismissed this concern by clarifying that "a party asserting a takings must first exhaust its administrative remedies and comply with jurisdictional prerequisites for suit." *Id.* Chapter 54 and 214 both require that an appeal be filed within 30 days. TEX. LOC. GOV'T CODE §§ 54.039 and 214.0012. Additionally, the takings claim must be asserted in the same proceeding as the nuisance determination appeal. *Heather Stewart II* at 579-80; *see also Patel,* 361 S.W.3d at 601-02. Thus, pursuant to *Heather Stewart II's* holding, a takings claim cannot be asserted unless the nuisance determination is appealed within 30 days and the property owner brings the takings claim in that appeal. *Heather Stewart II* at 579-80. Otherwise, the property owner's takings claim will be precluded for lack of exhaustion of remedies. *Id.*

The court's holding that a nuisance finding must be appealed within 30 days of the demolition order and that the takings claim must be asserted therein creates an interesting conundrum for property owners. The Stewart case is an anomaly in that the City of Dallas demolished the building after Heather Stewart had filed her appeal (as stated in fn 1, this was due to the City of Dallas not being served with the lawsuit within the 30 days). This is likely a rare occurrence. Despite the statutory language that an appeal does not stay the order appealed from, most cities will not demolish a property once an appeal has been filed (presuming they have knowledge of the filing). Therefore, in a typical situation when a property owner appeals within

30 days, the city will not yet have "taken, damaged, or destroyed" the owner's property because the demolition will not have occurred by that point in time. This should allow the city to assert the defense of ripeness if the property owner brings a takings claim before the substandard structure is demolished.

In sum, if the property owner files a takings claim before the building has been demolished, the city should file a plea to the jurisdiction on the basis that the takings claim is not ripe. If the city waits until after the 30 days to demolish the property and the owner has not appealed the demolition order within the 30 days as required by the statutory provisions, then the city should file a plea to the jurisdiction seeking dismissal of the takings claim on the basis that the owner failed to exhaust its administrative remedies. The court's holding in *Heather Stewart II* appears to open the door to these takings claims defenses and cities should continue to assert them when appropriate based on the facts.

C. Other than demolitions, what other actions might be considered a taking?

It is clear based upon *Heather Stewart II,* that demolition of a building may constitute a taking. *Id.* However, as evidenced by the amici briefs filed, demolition orders represent only a small portion of BSC orders. *See Heather Stewart II* at 580, fn 28. The other powers of the BSC in addressing substandard buildings are utilized more regularly and some cities have expressed concern over the application of *Heather Stewart II* to all BSC orders, going so far as to amend their BSC ordinances to provide for appellate de novo review of all BSC orders.

State takings claims in Texas derive from the Texas Constitution, which provides that "no person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made…." TEX. CONST. Art. I, Sec. 17. In that regard, a BSC order

requiring a property owner to secure or make repairs to their property would not qualify as a "taking, damage, or destruction of property." Likewise, ordering a property owner to pay civil penalties is not a taking. It remains to be seen at this point whether other city actions that could possibly constitute a taking under *Heather Stewart II* would be entitled to de novo review on appeal, including summary nuisance abatement without a BSC order (e.g., removal of junked motor vehicles) and zoning board of adjustment decisions. However, for the time being, *Heather Stewart II* has limited application to a nuisance determination by a BSC that results in a demolition order.

D. Substantial evidence survives

The court in *Heather Stewart II* stated that "[d]e novo review is required only when a nuisance determination is appealed." *Heather Stewart II* at 580. A "nuisance" finding is only necessary when a city is taking an action that constitutes a taking, because the "nuisance" finding prevents a takings claim. *Heather Stewart II* at 569. In the context of the BSC process, the destruction of a building through demolition has been found to be a taking. *Heather Stewart II* at 565-66. As discussed above, the other powers of the BSC do not constitute a taking and thus, do not require a "nuisance" finding. Thus, BSC orders requiring repairs, securing, or civil penalties, if appealed, remain subject to the "substantial evidence review" provided by Section 54.039(f) of the Texas Local Government Code.

III. Alternatives to Building and Standards Commissions

A. Municipal court proceedings pursuant to Chapter 214

Based upon the Court's concern in *Heather Stewart I* and *Heather Stewart II* that "unelected municipal agencies cannot be effective bulwarks against constitutional violations,"

several cities considered the option post-*Stewart I* of adjudicating substandard building cases in municipal court[5] pursuant to Chapter 214 of the Texas Local Government Code. TEX. LOC. GOV'T CODE §214.001(p). One benefit of Chapter 214 municipal court proceedings is that the demolition order is issued by a judge and not an administrative agency or a "panel of citizens untrained in constitutional law." *Heather Stewart II* at 569. Even pre-*Heather Stewart I* and *II,* Chapter 214 municipal court proceedings provided a viable alternative to a BSC process in certain circumstances.

Section 214.001 states:

> (a) A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:
> (1) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;
> (2) regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or
> (3) boarded up, fenced, or otherwise secured in any manner if:
> (A) the building constitutes a danger to the public even though secured from entry; or
> (B) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by Subdivision (2).
> (b) The ordinance must:
> (1) establish minimum standards for the continued use and occupancy of all buildings regardless of the date of their construction;
> (2) provide for giving proper notice, subject to Subsection (b-1), to the owner of a building; and
> (3) provide for a public hearing to determine whether a building complies with the standards set out in the ordinance

TEX. LOC. GOV'T CODE § 214.001.

A Chapter 214 municipal court proceeding can be filed *in rem* and allows a municipality to get a court order for demolition in a more expedient, less time consuming manner than a

[5] The municipal court must be a court of record in order to have civil jurisdiction under Chapter 214. *See* TEX. GOV'T CODE § 30.00005(d)(1).

Chapter 54 lawsuit. The municipality must send the record owner notice of the public hearing by certified mail return receipt requested. TEX. LOC. GOV'T CODE §214.001(d). The statute also provides for an alternative method of service by notifying all mortgagees and lienholders and filing the notice of the hearing in the deed records of the county in which the property is located. TEX. LOC. GOV'T CODE §214.001(e). Although this is not a requirement to proceed with a municipal court hearing under Chapter 214, it is recommended that a city nonetheless provide notice to the mortgagees and lienholders in addition to the property owner and file the notice of the hearing in the deed records. The benefit of this approach is that filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice. *Id.*

The municipal court has the authority to order the property demolished by the owner within 30 days, unless the owner or lienholder establishes that the work cannot reasonably be performed within 30 days. TEX. LOC. GOV'T CODE §214.001(h). Since the burden to establish that the work cannot be performed within 30 days is on the property owner or lienholder, if the city has given the statutorily required notice and the owner or lienholder fails to appear at the hearing, the court can essentially enter a default order that the property to be demolished within 30 days by the owner or lienholder. *Id.* Even though it is a default order in the sense that the owner or lienholder failed to appear, the city attorney should still prove up all of the elements under Chapter 214, especially in light of *Heather Stewart I* and *II.* The demolition order should also include language that if the owner or lienholder fails to demolish within 30 days, that the city is authorized to perform the demolition. *See* TEX. LOC. GOV'T CODE § 214.001(m). Though

nothing in the statute requires any additional court order for the city to perform the demolition, it is recommended that the city file a motion to exercise remedies, set the case for one final hearing, send notice to all owners and lienholders, and prepare evidence at the hearing on the motion to exercise that the condition of the property is unchanged from the court's original demolition order.[6] If the court grants the motion to exercise remedies, it should authorize (but not require) the city to immediately demolish the property. Based on *Heather Stewart II,* the city then needs to wait at least 30 days to give the owner or lienholder time to appeal the order before it demolishes the structure.

If the owner or lienholder does appear at any hearing, the city should consider entering into an agreed order allowing them to repair or demolish the property based upon a reasonable timeframe to complete the work. The court will likely give the owner the time anyway, and it is beneficial to the city to have an agreed order with the owner's or lienholder's signature for a multitude of reasons, including the owner essentially acknowledging and consenting to the findings of fact as to the condition of the property and agreeing that if they fail to complete the work then the city can demolish. The agreed order should include specific findings of fact as to the condition of the property and language stating that if the owner or lienholder fails to repair or demolish the property within the timeframe allotted, the city is authorized to demolish the property. Even though the order is agreed, the city should still prove up the elements of its case, allow the property owner or lienholder to cross-examine the city's witnesses and present any testimony on its own behalf, and request that the court enter the agreed order. Again, the city

[6] Some cities do not follow this process. Some cities modify this process by filing a verified request for authorization to demolish, with verification from the code inspector and current photographs of the property. This verified request is filed with the court, no hearing is held, and the court enters an order on the verified request. In light of *Stewart II,* it is unclear if this process would pass constitutional muster where no hearing is provided to the property owner to appear and dispute the verified request. The safer course of action would be to file a motion and set it for hearing as set forth in this paper.

should file a motion to exercise remedies at the end of the timeframe in the agreed order if the owner has not complied and the city wants to proceed with demolition, as discussed above.

On a vacant, single-family house, a city should strongly consider a Chapter 214 proceeding in municipal court if the city has the ability. This can be an expedited process where the city may be demolishing the substandard building within 60 days from the first hearing, the volume of cases can be controlled by the city, and a court order from a municipal judge may better withstand scrutiny on appeal than a BSC order. Please contact one of the authors if your city would like copies of any pleadings from a Chapter 214 municipal court proceeding.

B. Proceedings in district or county court pursuant to Chapter 54

One of the best tools to gain code compliance under Texas law also may be the least used by some cities. Even before *Heather Stewart I*, there were many reasons to choose a Chapter 54 lawsuit[7] over the traditional, code enforcement tools of citations and the BSC process. *See* Sections III.B.1 and IV. A. *infra*. Even though *Heather Stewart II* should give cities some comfort in continuing with the BSC process, cities should consider seriously using the Chapter 54 process to avoid the remaining uncertainty post-*Heather Stewart II,* to increase efficiency, and in many cases to expedite the compliance process. At the very least, every city should have this arrow, the Chapter 54 lawsuit, in its quiver. And it is not a difficult or expensive process to use.

[7] The term "Chapter 54 lawsuit" is used to mean a civil lawsuit brought in district or county court pursuant to Sections 54.012-54.019 of the Texas Local Government Code.

1. Not every tool fits every problem

It is important to point out that the jurisdiction for a building and standards commission is less than that for a Chapter 54 lawsuit. In other words, a city has broader possibilities for the kinds of violations to be enforced in civil lawsuits brought pursuant to Section 54.012 than for the substandard building process brought under Sections 54.032 and/or 214.001 of the Texas Local Government Code:

Comparison of the Types of Ordinances to be Enforced

under Various Provisions of the Texas Local Government Code

Section 54.012	**Section 54.032**	**Section 214.001**
Civil Lawsuit filed in district or county court	Building and Standards Commission and alternative adjudication process	Dangerous Structures Process
For the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement…	For the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement…	N/A
Relating to the preservation of public health or to fire safety of a building…	Relating to the fire safety of a building…	N/A
For zoning…	N/A	N/A
Establishing criteria for land subdivision or construction buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications…	N/A	N/A

Implementing civil penalties…	N/A	N/A
Relating to dangerously damaged or deteriorated structures or improvements	Relating to dangerously damaged or deteriorated structures or improvements	N/A
Relating to conditions caused by accumulations of refuse, vegetation, or other matter…	Relating to conditions caused by accumulations of refuse, vegetation, or other matter…	N/A
Relating to interior configuration, design ... [sexually oriented business]	N/A	N/A
Relating to point source effluent limitations…	N/A	N/A
N/A	Relating to a building code or to the condition, use, or appearance of a property	N/A
N/A	N/A	Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare
N/A	N/A	Regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry…
N/A	N/A	Boarded up, fenced, or otherwise secured in any manner if the building constitutes a danger….

Certainly, some of these provisions, although worded differently, have the same meaning. But there is no doubt that a city can enforce more kinds of ordinances with a Chapter 54 lawsuit than the other processes. In addition, a city might be able to bring other causes of action in

conjunction with a Chapter 54 process which may further broaden the kinds of ordinances that may be enforced.[8]

2. Processes prior to filing a Chapter 54 lawsuit

a. Notice letters/meetings

There is no requirement in Chapter 54 of the Texas Local Government Code that the city give notice to the property owner prior to filing a civil lawsuit. Nevertheless, many cities send out notice letters or invite property owners to meetings prior to filing a lawsuit. Although this is not required by statute, there are several good reasons for giving the owner this notice from the attorney's office.

Civil penalties may be awarded only if a city proves that the defendant was actually notified of the provisions of the ordinances violated and thereafter the defendant continued to violate those provisions. *See* TEX. LOCAL GOV'T CODE § 54.017. Once a city files a Chapter 54 lawsuit, it can argue that the civil penalties to be assessed go back to the date that the property owner received the city's notice letter with copies of the ordinances attached. As a practice, the city should attach copies of the ordinances violated to its notice letter and to the petition.

But even with civil penalties, they accumulate faster than will ever be awarded by the court. So it would be sufficient for a litigant to attach copies of the ordinances violated to the petition and argue for civil penalties beginning on the date of service of process of the petition until compliance. In other words, in the right situation, a city should not be deterred in filing a lawsuit by the fact that it has not sent a notice letter prior to suit or met with the property owner.

[8] Three examples of additional causes of action can be found in Texas Local Government Code Chapters 211 (zoning), 212 (platting), and 315 (demolition of historic structures). In addition, a city likely is able to bring a Chapter 54 lawsuit regarding a property in its extra-territorial jurisdiction.

Especially in emergency situations, in which a temporary restraining order is necessary, such a notice letter might be inefficient.

In addition to beginning the clock for civil penalties, a city may want to send the notice letter for any of the following reasons:

1. The city wants to be able to show the court that it has been seeking compliance in every way possible prior to utilizing the civil court system (city councils often want to see this as well);

2. The attorney's office is not sure that the inspector has been speaking with/notifying the actual owner and that the actual owner may not even know about these issues (this is especially true of corporations or other businesses in which an onsite manager may not be relaying information or when later a corporate entity will tell the court that they did not know of the issues until the suit was filed);

3. The notice letter or meeting gives the parties an opportunity to work out a solution without the effort and expense of filing a lawsuit; or

4. Depending on the level of comfort with the client, it gives the attorney possibly his/her only chance to interact with the property owner and hear the owner's side of the story prior to the court hearing.

Attached as A, B, and C are three examples of Chapter 54 notice letters. In one letter, the city puts the burden on the property owner to contact the city if they want to avoid a civil lawsuit. In the other letters, the city sends essentially the same letter but instead invites the property owner to a meeting in which the matter can be discussed.

b. Repair Agreements

It is not unusual for a property owner who has been fighting citations in court or dealing with the city's code enforcement staff for months or years to become reasonable upon the threat of a civil lawsuit. One of the purposes of sending a notice letter prior to filing a Chapter 54 lawsuit or meeting with the property owner is to attempt to resolve the city's issues without the need for the lawsuit. Should the owner appear at the meeting or respond to the city's notice letter, the city could request that the owner enter into a repair agreement, an agreement laying out the timeline for repairs. The agreement formalizes the owner's promises and can keep the owner on task. Cities can even place in these agreements the ability for the city to remedy the violation if the owner does not. Attached as D is a repair agreement. A city's charter provisions, policies, and procedures determine who would have the authority to sign such an agreement.

Arguably, one would have a cause of action for breach of contract should the property owner fail to comply with the repair agreement. And some persons have suggested putting liquidated damages into these agreements which a city may want to consider. But given the remedies available in the Local Government Code, cities may not want to limit their recovery prior to suit and may choose to make the remedy for failing to comply, the filing of a Chapter 54 lawsuit. In the Chapter 54 lawsuit, the city can use the repair agreement as evidence for civil penalties, i.e. starting the clock ticking at the entry of the repair agreement. At the very least, these executed repair agreements are further evidence of knowledge and lack of compliance

3. Filing a Chapter 54 Lawsuit

a. Forms

The following forms are attached to this paper:

No.	Pleading
E	Original Petition
F	Original Petition with Request for TRO
G	Lis Pendens
H	Temporary Restraining Order
I	Temporary Injunction
J	Agreed Temporary Injunction
K	Motion for Contempt
L	Show Cause Order
M	Judgment of Contempt
N	Commitment Order
O	Permanent Injunction
P	Agreed Permanent Injunction

Please contact one of the authors if your city would like samples of discovery requests, motions to appoint a receiver, motions to modify the temporary injunction, pleadings for zoning violations, response to a motion to refer a contempt hearing to the DA, response to a motion to quash a lis pendens or bankruptcy motions for code issues.

b. Standard for Injunctive Relief

A person seeking an injunction[9] under equitable principles must prove the following: 1) a wrongful act; 2) imminent harm; 3) irreparable injury; and 4) no other adequate remedy at law. *Pinebrook Properties, Ltd. v. Brookhaven Lake Property Owners Ass'n*, 77 S.W.3d 487, 505 (Tex. App. – Texarkana 2002). If a statute authorizes injunctive relief, however, then the city is not required to show the traditional equitable requirements for injunctive relief.[10] *State v. Texas Pet Foods,* 591 S.W.2d 800, 805 (Tex. 1979)(holding that courts should balance equities when statutory violation found); *Gulf Holding Corp. v. Brazoria County,* 497 S.W.2d 614, 618-19 (Tex. Civ. App. – Houston [14th Dist.] 1973, writ refused n.r.e.)(holding that there is no need to prove irreparable injury for violation of a zoning ordinance); *San Miguel v. City of Windcrest,* 40 S.W.3d 104, 108 (Tex. App. – San Antonio 2000, no writ); *Kendall Appraisal Dist. v. Cordillera Ranch, Ltd.,* 2003 WL 21696901 at *2 (Tex. App. – San Antonio 2003, no pet.)(unpublished opinion). Therefore, if the facts definitively indicate that a person is in violation of a statute or ordinance, the trial court loses its discretion and must enjoin the violation. *See, e.g., San Miguel*, 40 S.W.3d at 107; *Priest*, 780 S.W.2d at 876; *Gulf Holding Corp.*, 497 S.W.2d at 619.

[9] An injunction cannot issue unless the litigant can demonstrate a cause of action and a probable right to relief.

[10] Often when a zoning violation is at issue, suit is brought under both Chapters 54 and 211 of the Texas Local Government Code. *Hollingsworth v. City of Dallas*, 931 S.W.2d 699, 703 (Tex. App. – Dallas 1996, writ denied), a case interpreting Chapter 211 of the Texas Local Government Code, states that City is entitled to injunctive relief if it proves the violation of a zoning ordinance. The city does not have to show a substantial danger of injury or an adverse health impact.

Section 54.016 of the Texas Local Government Code specifically acknowledges a part of this when it states it is "not necessary for the municipality to prove another adequate remedy." The city also does not have to prove that it first undertook a criminal prosecution. TEX. LOCAL GOV'T CODE § 54.016(b). On at least one occasion, a litigant has tried to argue that a city first must undertake a building and standards case prior to utilizing a Chapter 54 lawsuit. For the very same reasons, this argument fails (in addition to basic statutory construction).

The statute delineates the only elements that are necessary to prove in order to obtain an injunction in a Chapter 54 lawsuit:

1. Substantial danger of injury or adverse health impact;
2. To a person other than the Defendant or property other than the Defendant's; and
3. Violation of an ordinance that fits into one of the categories listed in Section 54.012.

See TEX. LOCAL GOV'T CODE §§ 54.012 and 54.016. It is rare, in the authors' experience, for a defendant or the court to focus on these elements or for the plaintiff to spend much time proving these. If a city is triaging (see section IV, *infra*) its cases appropriately, the photographic evidence and testimony will prove these elements many times over.

Most portions of an injunction issued under Chapter 54 will be mandatory, not prohibitory. Courts and defendants will be more familiar with prohibitory injunctions, i.e. refraining a litigant from taking action. Defendants may try to argue that the injunction cannot issue because requiring the defendant to repair the property does not maintain the status quo. The continuation of illegal conduct, however, cannot be justified as preservation of the status quo. *In re Newton,* 146 S.W.3d 648, 651 (Tex. 2004); *Houston Compressed Steel Corp. v. State,* 456 S.W.2d 768, 773 (Tex. Civ. App. – Houston [1st Dist.] 1970, no writ); *San Miguel*, 40 S.W.3d at 108-9. Therefore, the repairing of the property to make it comply with the ordinances

of a city is the last actual, peaceable, noncontested status which preceded the pending controversy, and a court should grant the order for all repairs at a temporary injunction hearing.

c. Temporary Restraining Order

Injunctions typically sought pursuant to Chapter 54 will be temporary and/or permanent injunctions. But in the case of an emergency, a city may want to seek a temporary restraining order ("TRO") in addition to temporary and permanent injunctive relief. Most code violations do not create the kind of emergency that courts expect when granting a TRO, no matter how upset neighbors or city staff are with the situation. Examples of the kinds of code violations in which a TRO may be appropriate are lack of air conditioning in summer, large sewage leaks, extreme electrical issues, or zoning violations. Usually, when a property owner has failed to take appropriate action in an emergency situation, other code violations also will be present at the location, but a city should seek the TRO only for the emergency and then seek temporary injunctive relief for the remaining violations.

Pleadings for a temporary restraining order contain lots of technical requirements which, if unmet, may cause a court to deny the temporary restraining order, even when it legally has merit. Rules 680-93 of the Texas Rules of Civil Procedure address all injunctive relief, and Rules 680 and 683 specifically address TROs. A request for a TRO requires pleading with particularity, and thus, a city's petition should describe in much more detail the violations to be addressed by the TRO. In contrast, when seeking a temporary injunction, the violations can be just listed. Likewise, a request of injunctive relief requires either a sworn petition or an affidavit; for TROs, the authors' practice is to attach an affidavit to the petition and have the affiant also verify the petition. Similarly, while a request for relief that asks the Court to "order the

Defendant to comply with the ordinances…" may be sufficient in a request for a temporary injunction, a more detailed request for relief is necessary for a TRO, e.g.: "ordering Defendants to immediately cease and desist allowing or permitting the Property to be without air conditioning and to cease placing boards on occupied apartment units."

Many state district court local rules add additional requirements for TROs. For instance, the Dallas County local rules require that the city deliver a copy of the petition and the TRO to the other party or its attorney at least two hours prior to presenting the request to the judge. *See* Local Rule of the Civil Courts of Dallas County Texas No. 2.02. Likewise, these local rules require a certificate of ex parte order, detailed certificate of conference, and a certificate of transfer.

Rule 684 of the Texas Rules of Civil Procedure requires the posting of a bond by the applicant for injunctive relief. Arguing over a bond is a great defensive strategy when injunctive relief is sought by a non-governmental litigant. Cities do not have to post bonds pursuant to Section 6.002 of the Texas Civil Practice and Remedies Code. Many cities' charters also dispense with the need for posting a bond.

Finally, a TRO is a huge selling point when an attorney is trying to convince his/her client to utilize a Chapter 54 lawsuit. Literally, the city can have a court order in its hands within hours of the city discovering the emergency situation; this is much faster than citations or the BSC process. Also, in emergency situations, some cities may try various kinds of self-help or extreme actions out of concern for tenants, fear of adverse media attention, or a variety of other reasons. A TRO can assist with these issues because it is quick and shows that the city is taking legal action to remedy the situation. Also, in contrast to self help in which a court could

afterwards review the legality of a city's actions, the court is viewing, reviewing, and in some cases, sanctioning both the owner's and the city's action or inaction.

d. Contempt

A litigant may seek fines or jail time for the violation of a court order. *See* TEX. R. CIV. P. 692 and TEX. GOV'T CODE §21.002. A city that has obtained an injunction in a Chapter 54 lawsuit may seek contempt for violation of the injunction. TEX. LOCAL GOV'T CODE § 54.019. If the owner of a property fails to comply with the temporary injunction, for instance, the court can award the city fines and costs and/or place the owner in jail – all of this occurring prior to the trial of the case.

Because the court may imprison a contemnor, many cases describe contempt as "quasi-criminal" and require safeguards similar to a criminal proceeding. *See, e.g., Ex parte Cardwell*, 416 S.W.2d 382 (Tex. 1967). For instance, at least one case holds that a contemnor possesses the right against self-incrimination. *Ex parte Harris,* 581 S.W.2d 545, 547 (Tex. Civ. App.—Fort Worth 1979, no writ). The case law is extensive and often contradictory, requiring different procedural protections depending on classification; the cases classify contempt as: 1) civil or criminal; 2) direct or indirect; or 3) petty or serious. *See, e.g., International Union, U.M.W.A. v. Bagwell*, 512 U.S. 821, 828, 114 S.Ct. 2552, 2558 (1994)(civil vs. criminal contempt); *Ex parte Sproull*, 815 S.W.2d 250 (Tex. 1991)(discussing petty vs. serious); *Ex parte Werblud,* 536 S.W2d 542, 545 (Tex. 1976))(civil vs. criminal contempt); *Ex parte Powell,* 883 S.W.2d 775, 777 (Tex. App. – Beaumont 1994, no writ)(direct vs. indirect).

A separate paper could be written on the intricacies of the contempt process. Even more possible pitfalls exist for contempt than for TROs. But contempt is a powerful tool in gaining compliance, and thus is worth the effort.

e. A few random tips for the unwary (learned the hard way)

1. Use staggered dates for repair or compliance

If possible, use staggered dates for repair or compliance in the injunctions with the easiest/cheapest/life safety items first and the harder/more expensive/less dangerous items later. People are tempted to have one date for compliance in the injunctions for a variety of reasons including reducing the number of city inspections. But if a defendant is not going to comply with the court's order, the city will not want to wait months to take enforcement action. With a defendant missing an earlier compliance date, the city can seek contempt earlier which will either cause compliance and/or let the judge know about the defendant's lack of compliance earlier. Under certain circumstances, a city might file multiple motions for contempt.

2. Evidentiary hearing for Temporary and Permanent Injunctive Relief

Judges will want to just enter an order if the respondent fails to appear for the injunction hearing. Unless the parties are submitting an agreed order, make sure that the city presents evidence in support of the injunction. A petitioner seeking an injunction is not entitled to a default judgment; a full evidentiary hearing is still required. *Millwrights Local Un. No. 2484 v. Rust Eng'g Co.,* 433 S.W.2d 683, 686-87 (Tex. 1968). An injunction cannot be upheld without evidence. *Atkinson v. Arnold,* 893 S.W.2d 294, 297 (Tex. App. – Texarkana 1995, no writ). The court cannot consider affidavits attached to the application for temporary injunction unless the parties agree or no one objects.

3. Trial date in a temporary injunction

Texas Rule of Civil Procedure 683 requires that a temporary injunction contain a date for the permanent injunction hearing, i.e. a trial date. Failing to include a trial date in the order renders it void. *Leighton v. Rebeles*, 343 S.W.3d 270, 273 (Tex. App. – Dallas 2011, no pet.). Even an agreed temporary injunction requires a trial date. *Forest Sun Chancellor, L.P. v. City of Dallas,* No. 05-01-01125-CV, 2001 WL 1243460 * 2 (Tex. App. – Dallas Oct. 18, 2001).

4. Service of Injunctive Order

Most court orders can be served on opposing counsel or an unrepresented party through facsimile or mail once an answer has been filed. But in the case of a non-agreed[11] injunction, the party receiving an injunctive order should have the parties to be enjoined personally served, regardless of the posture of the case. If an injunction ever needs to be enforced through contempt, the movant will need to prove that the contemnor knowingly violated the court's order. More importantly, notice in a contempt hearing is jurisdictional. *Ex parte Conway,* 419 S.W.2d 827, 828 (Tex. 1967). The safest way to prove knowledge is through personal service of the order itself. In addition, it is possible that an enjoined party will argue that his attorney never gave them the order. Although such an argument is dangerous for the contemnor's attorney, it could cause enough discomfort in the court to prevent the entry of the contempt judgment. Of course, in addition to serving the defendant personally with the court order, the city should send a copy to the defendant's attorney pursuant to Rule 21 of the Texas Rules of Civil Procedure.

Injunctions apply to the party, their officers, agents, servants, employees, and attorneys and upon those in active concert with defendant who have actual notice of injunction. See TEX.

[11] The authors would argue that service may be waived in an agreed injunction.

R. CIV. P. 683. Accordingly, the city can seek contempt from persons who are not parties to the lawsuit. Especially when a single asset entity owns the property that is the subject of lawsuit, seeking contempt against the individuals behind the corporation may encourage compliance. But in such a case, Rule 683, as well as the case law, requires personal service on individuals other than the defendants.

In certain cases, a city may want to consider placing a requirement in the injunction on the owner that the owner deliver a copy of the injunction to his employees or agents and submit an affidavit verifying delivery to the court and to the city. This injunction provision serves several purposes including: 1) avoiding service fees on minor employees against whom a city probably would not seek contempt; 2) informing employees of the court order; and 3) emphasizing the importance of the court order. Regardless of any provision in an injunction requiring the owner to notify persons and regardless of an agreed injunction waiving service, any agents or employees, such a corporate officers, who are not parties to the injunction and against whom the city may want to seek contempt need to be served personally with the injunction.

4. Chapter 54 lawsuits: Cheap and Quick

Many cities' councils, staff, and attorneys have the misperception that Chapter 54 lawsuits are expensive and slow. Although there are exceptions to every rule, this has not been the authors' experience.

Many of the advantages to a Chapter 54 lawsuit are detailed in III.B.1-3. and IV.A.1. and IV.A.2. One of the biggest advantages is the speed with which a city may gain compliance. A city may obtain a TRO the day that it files the Chapter 54 lawsuit. A temporary injunction can address any repair, and thus, within weeks of filing suit, a city may obtain an order requiring the

repair of the property. In many cases, discovery is not necessary, and thus, the trial and permanent injunction hearing can occur quickly. Because the court will have to place a trial date in the temporary injunction itself, often parties and the court discuss the trial date within weeks of the lawsuit. Moreover, Section 54.014 allows cities to seek preferential settings for the Chapter 54 lawsuits. On average, the authors' experience has been trials occurring in the 1 to 1-1/2 year range. Certainly, there are exceptions, each of the authors has reached final resolution of a Chapter 54 lawsuit within months of filing of the lawsuit, and likewise, each has had cases lasting 3-4 years.

The BSC process on paper may seem faster than the average 1 to 1-1/2 year timeline for Chapter 54 lawsuits. And in cases in which no one appeals the BSC order, the BSC process may in fact be quicker. But in those cases in which BSC orders are appealed, the authors have never seen the cases reach resolution in less than two years. Thus, in contested matters, the argument that BSC cases are faster than Chapter 54 lawsuits is not correct. Usually, many attorneys and staff know early in the code enforcement process which owners will contest any order. In those cases, a city may decide to forego BSC in favor of the quicker process of a Chapter 54 lawsuit.

Likewise, if a city has to hire outside counsel for all legal work, a Chapter 54 lawsuit would seem more expensive than the BSC process, which can be managed primarily by city staff. But if a BSC case is appealed, that city will have to hire outside counsel to defend that lawsuit. Given that on average, defense of a BSC case takes longer than prosecution of a Chapter 54 lawsuit, then the legal fees could be more for a BSC case. Regardless of whether a city uses in house attorneys or outside counsel, the Chapter 54 lawsuit process can be done efficiently and in such a way that limits legal fees.

IV. Triage – How does the city decide which process to use?

Every attorney who does code enforcement work should be aware of all of the available tools for achieving compliance and work with city staff to pick the appropriate tool for a given situation.

A. Charts

1. Comparison of Civil v. Criminal Process

A lot of residents respond to informal verbal warnings or formal written notices of violation without there ever being a need for actual enforcement. In any Texas city, the vast majority of code compliance is achieved through the municipal court citation process. But there are residents that are so resistant or problems that are so big or complicated, that mere citations do not achieve the desired result in the most efficient manner. Below is a chart that details some of the factors an attorney should consider when deciding between citations and using civil court process:

Issue	Criminal	Civil
Burden of Proof	Beyond a reasonable doubt	Preponderance of the evidence
Personal Identification	Required	Not necessary
Corporate Defendants	Service and whom to cite problematic	Can serve registered agent, through secretary of state, using Texas' long arm statute, or by substitute service
Detail of Ordinances	Can be a game for defense attorneys to analyze and nitpick ordinance	Most judges tend to focus on the result
Posture of the Case	May consolidate per Texas Gov't Code § 54.006	Can deal with all violations and causes of actions at once; can use history of Defendant and property owner as evidence

Discovery	Limited for defendant; almost non-existent for prosecutors	All discovery allowed by the Texas Rules of Civil Procedure
Testimony of Defendant	Defendant does not have to testify	The plaintiff can call the Defendant in front of the jury; invocation of 5th Amendment protection can be used against the defendant
Result	Fine; if defendant agrees to deferred adjudication, the city may add clean up as a condition	1)$1,000 per violation per day in civil penalties from day defendant notified; 2) Can obtain injunctive relief; 3) May even obtain jail time through contempt of court order
Post judgment relief	Fine; capias warrant	Civil judgment that may be collected as any other civil judgment, e.g. lien on property or contempt

2. Comparison of Building and Standards with Civil Court Lawsuits

Building and Standards	**Civil Litigation**
City most likely will be the defendant if the BSC order is appealed	City is the plaintiff
Substantial evidence standard of review or de novo review – see discussion above	Trial with civil appellate review
Plaintiff owner may bring claims in addition to appeal if the BSC order is appealed	Defendant owner must bring arguments as compulsory counterclaim in lawsuit
Judge in district court is reviewing another's decision and perhaps a city's past actions	Judge in district court is solving a current, present problem through injunctive relief
Civil Penalties trump all liens except tax liens	Civil Penalties just another judgment lien
Only may address certain code issues	Address all issues at once and can add other causes of actions

At the commission hearing, violation of Commission Order results in civil penalties	Contempt if violate court order
Can be long process if sued afterwards	Usually faster
Utility Disconnections: **-- Commission may issue vacate order** **-- If sued, judge is addressing vacant structure** **-- CO issues**	Utility Disconnections: -- TRO -- Tenants may be at property without water -- Judge is addressing apartment complex with tenants
Administrative board made up of citizens with a variety of backgrounds	Judiciary will be trier of fact and law except when jury trial is requested
Notice by certified mail pursuant to the statute	Must serve the owner in order to obtain jurisdiction (can use long arm service, substitute service, or service by publication)
Some uncertainty created by *Heather Stewart II* and some foreseeable, future areas of attack	If the city has properly served the owner, followed the rules of civil procedure, and fashioned its pleadings and orders to address these issues, takings and due process are hard arguments to make and any takings claim is a necessary counterclaim

B. Who to include in triage meetings

One of the most crucial things to take away from this paper is the importance of utilizing more than one process in addressing substandard buildings. The facts of code enforcement cases are not all the same and should not all be treated the same by using one single process. For example, vacant, single-family houses should be handled differently than occupied, large apartment complexes. In order to identify which code enforcement tool should be utilized by a municipality in any particular case, it is recommended that city attorneys have meetings with their clients to triage code enforcement cases and determine which process to use based upon the

specific facts of the case. Certainly, code enforcement officers and city attorneys should be present during the triage meeting, possibly the director or manager of code enforcement or the building official (depending on the organization of the city) should be included, as well as any other city staff who will be involved in the process (e.g., legal assistant or administrative staff who will be sending notice to the property owner).

C. Educating the client

In order for triage meetings to be successful, city attorneys need to spend time educating their clients as to what information needs to be assembled and presented to the city attorney to ascertain which process to utilize. It is advisable to educate the client not only as to the correct assembly of information in a code case, but also to give some guidance to the client as to the various processes available and the benefits of each. This ensures that the client becomes familiar with the separate processes and can begin identifying early on which cases to triage and give input on which process they think is appropriate in a particular case.

D. Actual Triage procedure

Triage is essentially a meeting with the city attorney and the client or city staff where the client, i.e. a code enforcement officer, manager, or director as indentified above, present cases to the city attorney so that the city attorney can recommend which process to use on a particular code case. In presenting the case, the code enforcement officer should have color pictures of the property (including from when the code case first began and recent photographs depicting the current condition of the property); copies of any notices or citation issued to the property owner and information on the status of the citation or notice; any documentation showing record ownership of the property (including county appraisal and city utility records); an inspection

checklist which identifies the type of property (e.g., single family, multi family, commercial), the current status of the property (i.e. vacant or occupied), and all of the code violations present on the property; and any contact information for neighbors or complainants who could be potential witnesses for the city. The city staff should have the case organized in a manner that allows the city attorney to effectively flip through the case file and figure out rather quickly which course of action to recommend. Ultimately, the client should make the decision on which course of action to take, but the client will certainly be looking to the city attorney for a recommendation and may likely defer to the city attorney's judgment.

V. Conclusion

The Texas Supreme Court's *Heather Stewart II* opinion limited the uncertainty that many cities felt in the aftermath of its earlier opinion. The BSC process remains a viable and valuable tool for cities to use in ridding their neighborhoods of substandard properties. But cities should tighten up their BSC processes and contemplate whether the BSC process is the best, most efficient, fastest, and least expensive procedure to use in every case. Cities should consider other enforcement tools, including the Chapter 54 lawsuit. By implementing the various code enforcement processes outlined in this paper and effectively triaging code cases, cities can continue to aggressively tackle substandard buildings, even in the aftermath of *Heather Stewart I* and *II.*