

HOARDING:
“Oooooooooo that smell”

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**Texas City Attorneys Association
Summer Conference 2017, South Padre, Texas**

I. INTRODUCTION

There has been a lot of attention paid in recent years to the issue of hoarding. There are a plethora of television shows dedicated to the subject (e.g. Hoarders on A&E or Confessions: Animal Hoarding on Animal Planet). Many of us know someone who has this problem, or is at least making us nervous that their “thriftiness” is going to snowball.

The problem with this condition is that it is basically a matter of degrees. Owning a cat is fine. Owning 30 cats...maybe not. So the question is, when does this become the city’s problem? Generally speaking, what a person keeps on their property and in their house is a matter of personal preference or at most, eccentricity. Something stops being mere eccentricity when it starts affecting others. But there is a wide gray line between the two.

The purpose of this paper is to narrow that line and identify the threshold issues that justify government involvement. With hoarding in general, the line is “public nuisance”. Once the “collection” becomes a literal rat’s nest, a fire hazard, or the source of noxious smells, then you have created a public nuisance that the city has the police power to abate. Typically that means throw all the trash out, because more often than not, the reasons the stuff qualify as a nuisance are the same reasons the stuff qualifies as trash. However, with animals, it is a different story. Except in the case of deceased animals, you are not dealing with trash, and so your only option to alleviate the situation is to go through the cruelty seizure process. That means the threshold issue with an animal hoarder is when the conditions have gotten so bad they are a threat to the health and safety of the animals, and therefore constitute cruelty.

The paper will identify what are the characteristics of a hoarder and identify warning signs that can be used to spot a problem in advance. There are steps that can be taken to avoid the issue from the outset and other forms of intervention that can be used to stop short of legal action. Finally, there are two sure paths for resolving the issue, at least temporarily.

So let’s put on some rubber gloves and a breath mask and get started.

II. ABOUT THE AUTHOR

After graduating Cum Laude with a degree in Political Science and French from Austin College, Jonathan received his law degree from the Southern Methodist University Dedman School of Law. While primarily focused on public service, Jonathan has worked for private firms as well as governmental entities prior to joining the City of Bryan's legal team. Jonathan's practice focuses on municipal law, providing general legal services for the City of Bryan covering code enforcement, animal control, real estate, economic development, and other areas as needed. In 2011, Jonathan assisted with the creation and operation of the City of Bryan's animal shelter (the Bryan Animal Center), which included receiving certification from the Texas Academy of Animal Control Officers for a professional humane law enforcement training course in shelter management. Additionally, he has been directly and indirectly involved in the process of addressing several different hoarding situations, not all of which were relatives of his. Jonathan lives in Bryan with his wife Lana and their three dogs Chewie, Cat, and Maggie.

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III. HOARDING: GENERALLY

A. What is Hoarding

From a practical standpoint, hoarding is the result of a person's inability or unwillingness to throw anything away and/or compulsive desire to continue collecting things irrespective of value. As with some other mental disorders, hoarding can be an otherwise benign behavior (i.e. collecting) that only becomes a problem in the aggregate. Washing your hands is good. Washing your hands until they bleed is a symptom of a disorder. Collecting things is fine. Collecting things until your house is a fire hazard and/or literal rats' nest is a problem. Hoarding was previously considered just a symptom of other conditions such as Obsessive Compulsive Disorder ("OCD") ADHD, or dementia.¹ It was not until 2013 that the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders fifth edition (DSM-V) labeled "Hoarding Disorder" as a distinct mental illness.² Because of the nature of the condition, the hoarder is not likely to change unless they can be convinced to seek help.³ From a medical standpoint, simply clearing out a hoarder's house is not a solution.⁴ It is likely to be met with anger, frustration, despair, and will ultimately only be a temporary fix.⁵ The hoarder will most likely rebuild the hoard, and will be even more resistant to help in the future.⁶

But this is the TCAA conference, not the APA conference, and we are not medical professionals. It is not our job to cure the hoarder of their condition. It is our job to advise our clients about their options for addressing the hoarding situation. Because hoarding is ultimately just an aberrant form of "owning stuff" there is little the city can do about identifying problems before they start. Additionally, in order to justify taking action, the collection has to have crossed the line into public nuisance. That means the defining characteristic of "hoarding" is a collection that causes problems, such as the following:

- harbors rodents, reptiles, or other pests
- spreads disease
- creates a fire hazard

Once the conditions pose a threat to the health, safety, or general welfare of other citizens, it has become a public nuisance that the city has the power to address.

¹ Fugen Nexiroglu, PhD., ABB, ABPP "Hoarding: The Basics". <https://www.adaa.org/understanding-anxiety/obsessive-compulsive-disorder-ocd/hoarding-basics>

² Diagnostic and Statistical Manual of Mental Disorders, 5th Ed., American Psychiatric Association

³ Christiana Bratiotis, PhD; Suzanne Otte, MSW; Gail Steketee, PhD; Jordana Muroff, PhD (Boston University School of Social Work); Randy O. Frost, PhD (Smith College Department of Psychology) 2009 "Hoarding Fact Sheet". <https://iocdf.org/wp-content/uploads/2014/10/Hoarding-Fact-Sheet.pdf>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

B. Intervention

The obvious first step is to try and get the property owner to see the problem, and be willing to address it themselves (or at least without city involvement). If it is purely a question of capability, i.e. a person who wants to clean up the mess but is physically unable, then you are not dealing with a “hoarder” per se. In that case, it is really just a question of finding a support system for the citizen to help address the issue. Often the city becomes aware of the issue after police get a welfare check request, or code enforcement responds to a complaint from neighbors. These complainants can sometimes be the support system that helps resolve them. There may also be churches, welfare agencies, or other resources that can be called on to provide assistance.

If you are dealing with a true “hoarder” then one of the big obstacles is getting the hoarder to see the situation as a problem. In some cases, if there is a support system of family, friends or trusted neighbors, the city may be able to provide some external pressure to assist them in getting the hoarder to accept help. If you have someone who just needs a little push, a citation (or even just the threat of one) might be the only external influence that is needed. Working with the support group, the property owner can be given time tables, clear goals, and the threat of consequences for failure to meet them. Obviously if the property owner can recognize the hoarding as a problem and agree to accept help, that is a promising step towards resolution of the issue and treatment of the disorder in the long term.

However, without that existing support system trying to spur change, issuing a citation may be worse than useless. A citation would most likely get paid and then get squirreled away along with all the other papers the hoarder is collecting. The social stigma of having “broken the law” is not likely to have an impact if the hoarder can just pay the fine in exchange for not having to explain themselves. As often as not, the hoarder’s condition is not due to lack of financial resources. So without more, the citation will have little impact. If they are unwilling to see the condition as a problem, then they will simply take those steps necessary to avoid having to deal with it (e.g. stop paying for utilities to avoid future inspections, pay fines instead of cleaning house, storing things indoors instead of in public view, etc.).

C. Nuisance Abatement

Because the hoarder does not see the condition as a problem, they are not likely to resolve the matter without direct intervention. A city can take such direct action under its police powers related to the abatement of nuisances. The first step is to establish that the condition is a nuisance. Under the Local Government Code, both home rule and type A general law cities have the power to adopt ordinances defining specific conduct/conditions as nuisances, and direct the abatement of same.⁷ Alternatively, there are general provisions in the Health and Safety Code

⁷ Tex. Loc. Gov’t Code § 217.001-.002, § 217.041-.042.

that define various conditions that constitute a nuisance.⁸ So even if a city has not adopted its own ordinance, state law allows the governing body of a municipality to take action.⁹ With regards to hoarding specifically, “[t]he governing body of a municipality may regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter.”¹⁰

The next step is to send written notification to the property owner. Many, if not most, ordinances track the state law, which states that the notice must state that: 1) the condition of the property constitutes a nuisance; 2) that the owner must fix the problem within seven (7) days of the notice; and 3) that if they fail to do so the city can do the work and charge them for the cost.¹¹ The notice must be given:

- “(1) personally to the owner in writing;
- (2) by letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
- (3) if personal service cannot be obtained:
 - (A) by publication at least once;
 - (B) by posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.”¹²

A notice returned by the USPS as "refused" or "unclaimed," is considered as delivered.¹³ Be sure to note that “Returned, Unable to Forward” or “Not Deliverable as Addressed” are not the same thing as “refused” or “unclaimed”. In the latter case, the USPS is declaring that there was a live body and/or a valid address and the intended recipient either refused or took no action to accept delivery. In the former case, there were problems with the address which means the notice was insufficient.

The third step, which must be available but may not be necessary, is a hearing. Procedural due process dictates that before a person is deprived of property, they must be given notice and an opportunity to be heard.¹⁴ Neither statute nor case law specifically provides for a particular kind of hearing, simply that the opportunity for a hearing must precede the actual abatement.¹⁵ The hearing could be before a department head, city manager, citizen board, or the

⁸ See Tex. Health & S. Code Ch. 342.

⁹ *Id* at § 342.003-.007

¹⁰ *Id* at § 342.003.

¹¹ See *id* at § 342.006(a). Some cities provide more time, e.g. 10 days.

¹² *Id* at (b). With weeds and grass notices, there is usually a warning that if you commit another violation within one year of the notice, the city may abate without notice or hearing. That is less likely to be applicable in a hoarding situation.

¹³ *Id* at (c)

¹⁴ *Armstrong v. Manzano*, 380 U.S. 545, 550 (1965).

¹⁵ See *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972)

city council, but must be with someone who has the authority to grant meaningful relief.¹⁶ It is important for the ordinance or order to spell out the procedure for requesting such a hearing so that in the absence of such a request, any subsequent challenge could be dismissed for failure to exhaust administrative remedies.¹⁷ But more importantly, without expressly notifying the property owner of their right to a hearing, there is no way to prove that such an opportunity for a hearing ever meaningfully existed.

The fourth step is to conduct the actual abatement. It is recommended that the city obtain a seizure warrant from a local magistrate, establishing through a neutral third party that all the pre-requisites to the seizure have been satisfied. This is where things get tricky. In most situations, everything on the hoarder's property is going to be considered garbage, refuse, or debris and disposed of as such. There is no provision, per se, for making distinctions between what is garbage and what is salvageable. However, because of the fine line between hoarder and collector, that will not always be the case. Anecdotal evidence suggests that there is always the possibility that amongst the piles of junk and garbage there may indeed be something of value, such as cash hoards, antiques, or collectibles. In some cases the "garbage" is just an unseemly pile of things which are only a problem in the aggregate (e.g. clothes, canned goods, etc.). Common sense will have to be the rule. If there are any cash hoards, antiques, or other items of obvious value, those should obviously be left behind. The key take away from this is that regardless of the circumstances, you should document the hoard and the clean-up, thoroughly. Photographs of both junk and valuables left behind will be extremely valuable to the city as we will discuss later. When the city does the work, they should invoice the property owner for the cost of same.¹⁸ If the owner fails to pay the invoice, city can file a lien against the property.¹⁹ The lien will identify the property owner, the property, and the expenses incurred and gets filed in the property records for the county.²⁰ Liens collect interest at 10% per year and can be foreclosed on in the same manner as tax liens.²¹

The fifth and final step is the possibility of an appeal. Specifically, in the case where an owner requested, received, and lost a hearing. At that point, the owner's sole remedy is to file a lawsuit for a takings claim. As has been stated many times, no taking occurs when the city is exercising its police power to abate a nuisance.²² But it should be noted that the ultimate question of whether or not a condition actually constitutes a nuisance is a matter for judicial

¹⁶ *Id* at 81.

¹⁷ *See Dallas v. Stewart*, 361 S.W.3d 562, 580 (Tex. 2012) (holding that failure to comply with appeal deadlines and/or assert constitutional claims at administrative appeals will preclude a party from raising such claims at a subsequent, separate hearing). Although the case dealt primarily with demolition of substandard structures, it drew from case law related to other nuisances as well.

¹⁸ Tex. Health & S. Code § 342.006.

¹⁹ *Id* at § 342.007(a).

²⁰ *Id* at (b)

²¹ *Id* at (c), (e).

²² *See Stewart*, 563 S.W.3d at 569.

determination.²³ So even if the city has adopted an ordinance that defines hoarding and declares it to be a nuisance, a court does not have to agree with that definition, or with the city's finding.²⁴ The judicial determination need not be made in advance, because the police power allows a city to abate any condition that is in fact a nuisance.²⁵ In such a case, the city may proceed at its own peril, but it is a valid defense to any takings claim that the property in question was in fact a nuisance.²⁶ Obviously the risk is that the court disagrees with the nuisance finding subjecting the city to a monetary damage award for the value of the taking. That said, the property owner has at minimum two (2) years to file their lawsuit and the city cannot wait that long to address the situation.²⁷ So it is important to document, thoroughly, what is removed from the property and thrown away as garbage. It is even more important to document why it was thrown away, especially in the case of clothing, toys, books, papers, or other hypothetically usable items that are only a problem when considered in the aggregate.

D. Aftermath

As one might expect, this is typically not a final solution. It was stated previously that if a hoarder does not want help and does not perceive the problem, clearing out the property is only a "fix" until the hoarder can fill it up again. Citations and liens will only have a limited effect on a determined hoarder. But when all is said and done, the city is the sharp end of the spear and so a temporary fix may be better than none. Just because the lawn is going to grow back doesn't mean you don't need to mow from time to time.

²³ *Id.*

²⁴ *See id* at 579

²⁵ *Jones v. City of Odessa*, 574 S.W.2d 850, 853 (Tex. App.—El Paso 1978, writ ref'd n.r.e.).

²⁶ *Id.*

²⁷ Tex. Civ. Prac. & Rem. Code § 16.003(a). Typically, a claim against a city for inverse condemnation would be subject to the ten year statute of limitations for adverse possession. *See Edwards Aquifer Authority v. Bragg*, 421 S.W.3d 118 (Tex. App.—San Antonio 2013, pets. denied). However, in the case of conversion, damage to real property, or a taking as a result of closure of a street, the two year statute applies. *See Snell v. Short*, 544 F.2d 1289 (5th Cir. Tex, 1977) (holding that a cause of action for conversion of money lawfully seized by police began to run when the demand for return of the money was refused); *Allodial Ltd. Partnership v. North Texas Tollway Authority*, 176 S.W.3d 680, 684 (Tex. App.—Dallas 2005, pet denied); Tex. Civ. Prac. & Rem. Code § 16.005.

IV. ANIMAL HOARDING

A. Defining the Hoarders

We can start off this section by explaining why animal hoarding is a separate category. Apart from the obvious, (i.e. it involves animals), the conditions, causes, and remedies can be different from a true “hoarder”. While there will sometimes be overlap, i.e. an animal hoarder who hoards other things as well, the nature of the problem is different because the focus is more on the condition of the animals than on the nuisances. You can have animal related nuisances (e.g. noise, smell, etc.) that don’t relate to a hoarding situation, and you can have hoarding situations that don’t have those overt impacts. Additionally, while hoarding is generally a compulsion to collect and difficulty throwing away things, animal hoarding can have a number of different causes. Lastly, with hoarding in general, the remedy is to enter the property and throw out all the trash. Obviously that will not be the remedy in the case of animal hoarding.

Unlike the hoarding in general, animal hoarding can be broken down into subcategories based on certain characteristics. Understanding those characteristics is key to knowing what kind of solutions your client can pursue. In 2006, a study was published that analyzed animal hoarding in its different manifestations.²⁸ The study listed a number of factors that went into defining whether or not a person was an animal hoarder:

- Medical/psychological problems
- Social integration/skills
- Jeopardy of animals
- Compulsion
- Active vs. passive acquisition
- Empathy
- Denial
- Control
- Response to authority²⁹

Based on those characteristics, the study further broke down animal hoarders into three primary categories: 1) Overwhelmed Caregiver; 2) Rescuer; and 3) Exploiter.³⁰ While there can be some overlap, i.e. people who display qualities of more than one category, these are helpful generalizations that can highlight distinctions between different kinds of hoarder.³¹

²⁸ “Animal Hoarding: Structuring interdisciplinary responses to help people, animals, and communities at risk.” Patronek, Gary J.; Loar, Lynn; Nathanson, Jane N., eds. 2006. Hoarding of Animals Research Consortium.

²⁹ *Id* at 19.

³⁰ *Id*. It should be noted that there are additional sub-categories, but they are really just one of the primary categories in the early stages.

³¹ *Id* at 20.

1) *Overwhelmed Caregiver*

For the sake of simplicity, it could be said that an overwhelmed caregiver is not really a hoarder, merely someone who has acquired more animals than he or she can handle and who does not know how to resolve the situation. Like the elderly hoarder who simply isn't capable of taking the trash out, the overwhelmed caregiver is a person who exhibits some awareness, i.e. recognizes that there is a problem, but is at a loss with how to address the issue. They display strong attachment to the animals, meaning they are reluctant to take obvious steps, but have fewer issues with authority and is more willing to see reason.³² While they tend to be withdrawn, they are less deliberately secretive than other hoarders and more willing to comply with recommendations.³³ The overwhelmed caregiver usually acquires animals passively, i.e. found/inherited, and often the situation gradually declined, sometimes triggered by a change in circumstances (loss of a job, death of a spouse, etc.).³⁴

2) *Rescuer*

For most of us, the “rescuer” hoarder is what we think of when we hear the term “animal hoarder”. This is the “crazy cat/dog lady”. The rescuer has a strong sense of mission to save animals, amounting to unavoidable compulsion.³⁵ Somewhat socially isolated, in that they avoid authorities and eschew outside intervention, they often have an extensive network of enablers.³⁶ In particular they have a tendency to be plugged in with other “rescuers” as well as legitimate rescue organizations. They oppose euthanasia and tend to believe they are the only one who can provide adequate care for the animals.³⁷ The rescuer continues to actively acquire animals, even after they have exceeded their own capacity to provide care.³⁸

3) *Exploitative hoarder*

Like the Overwhelmed Caregiver, the exploitative hoarder is not what you would typically think of as a “hoarder”. The exploitative hoarder is really just a criminal. They display sociopathic, anti-social tendencies and are frequently motivated by profit (e.g. dog fighting, puppy mills, fake rescues). They acquire animals purely for their own needs, lack empathy towards people or animals, and are devoid of guilt or social conscience.³⁹ They tend to be narcissistic, demonstrate predatory behavior, and actively evade the law.⁴⁰ Often they are

³² *Id* at 19.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id* at 20.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

manipulative, superficially charming, and believe themselves to have expertise or superior knowledge.⁴¹ Examples include:

- Puppy mills that keep dozens or hundreds of dogs in squalor so they can be shipped off to malls all across the country for profit.
- Dog fighting rings.
- The person who claims to be an animal rescue but doesn't actually adopt out animals or provide care or feeding, but simply takes in animals and donations.

The reason these categories are important is because they will factor directly into the type of intervention that is likely to be effective. An overwhelmed caregiver is more likely to accept outside help and/or relinquish ownership of animals. They see the problem but do not want or do not know how to fix it. By comparison, the rescuer thinks that the animal shelter and other rescue agencies are inadequate or worse. They believe they alone can provide the animals with care, even if they are not actually providing adequate care. So in those cases, social pressure can be a key factor. The stigma of being labeled “fraud,” “hoarder,” or worse “cruel,” will have a dramatic impact on someone whose self-worth is derived from their “rescue work”. It can also isolate them from their network of enablers. And lastly, when you are dealing with an exploitative hoarder or a dyed-in-the-wool rescuer, often seizure of the animals is the only real solution.

B. Intervention

There are a few approaches to addressing animal hoarding that can be taken. Just like with generalized hoarding, if there is a support system of friends, family, or neighbors willing to help resolve the situation, working with them would be the first step. But what is different with animals is that Animal Control Officers (ACOs) can engage with the hoarder sooner, you don't have to wait for the situation to become truly absurd. For example, most cities have ordinances that are intended to avoid the hoarding situation (e.g. numerical limits, litter permits, etc.) allowing the ACO to get involved before the situation has become cruel. Additionally, there are more positive solutions available and, especially with the overwhelmed caregiver, you may find that they relinquish animals voluntarily. Sometimes the ACO can offer solutions that the hoarder did not consider. Other times they can provide direction or even ultimatums that will spur positive action. Because there is justification to act before someone has shown themselves to be a genuine hoarder, intervention of this nature is more likely to be successful.

There are programs that can be sponsored, supported, or just permitted by the city which can have an impact. For cities that operate a shelter, or contract with a local shelter to take in animals, the better the shelter's reputation (i.e. live release rate) the more likely people will work with the shelter. If the shelter has a bad reputation, hoarders are more likely to think that

⁴¹ *Id.*

surrendering the animal is tantamount to euthanasia and they will resist intervention all the more. Reducing the overall population of unwanted animals will help with that goal, which is why communities should consider programs to encourage people to spay or neuter their pets. Trap-neuter-return programs (feral cat colony maintenance) will allow people to care for animals without taking them into custody or increasing the burden on the shelter.

With regards to specific individuals, issuance of a citation may be another tool to motivate change. There are ordinances that can be adopted or enforced to try and avoid the problem from the start, for example, making the following a violation:

- allowing your animals to create a nuisance from noise or smell,
- exceeding the allowable number of animals for a particular property,
- failure to register intact animals, or
- Failure to register a litter.

There are multiple benefits to these kinds of ordinances. An ACO can issue an ultimatum (“meet this standard or else”) based on the ordinance requirements. Whether to avoid the citation or the social stigma associated with “breaking the law”, ordinances can induce an animal hoarder to make a decision they did not otherwise want to make. They provide a benchmark for self-enforcement. Additionally, ordinance violations may provide probable cause to conduct a more thorough search of the premises which leads to further enforcement action.

C. Seizure Process

Ultimately, just as with general hoarding, if a hoarder does not want to change, the city will need to take direct action. That means seizing the animals. Seizure is authorized by state law in several different contexts: when an animal is at large⁴², dangerous animals⁴³, or in the case of animal cruelty.⁴⁴ Animals are personal property, and a person cannot be deprived of property without notice and an opportunity to be heard.⁴⁵ Therefore, in most cases of animal hoarding, the city must follow the cruelty seizure process set out in the Texas Health and Safety Code.⁴⁶

The threshold issue is whether the animals are being cruelly treated, as the term is defined in the statute. An animal is being “cruelly treated” if it is being tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal.⁴⁷ In the context of most cases of hoarding, the

⁴² Tex. Health & S. Code § 826.033

⁴³ *Id* at Ch. 822.

⁴⁴ *Id* at § 821.021-.026.

⁴⁵ *Strickland v. Medlen*, 397 S.W.3d 184, 188 (Tex. 2013); *Armstrong*, at 550.

⁴⁶ The City of Waco has empowered its Animal Welfare Advisory Board to hear appeals of its ACO decisions, which in turn would provide an alternative process for addressing hoarding. After reviewing the codes of 50 different Texas cities, Waco’s board is the only one to have such power.

⁴⁷ Tex. Health & S. Code § 821.021(1).

issues are deprivation of necessary food, care, or shelter or alternatively cruel confinement, but that is not to say that other conditions won't exist as well.⁴⁸

Step 1: Affidavit

The first step in the process is to prepare an affidavit for seizure warrant to be presented to a justice court, municipal court, or other magistrate.⁴⁹ The threshold issue is cruelty to the animal, so simply having too many animals (i.e. in violation of a city ordinance) will not be sufficient.⁵⁰ But since many of these kinds of cases begin with limited information such as “I think I’ve seen 10 or 12 cats around that property,” or “I’m always hearing barking, it is really annoying,” an interim step may be an administrative search warrant related to ordinance violations (e.g. no more than __ animals, noise, etc.). That provides justification to enter the property to gather evidence, and most likely a hoarder will have left enough evidence of cruelty in plain sight to satisfy the probable cause standard for the seizure warrant. The ACO or police officer should be looking for substandard living conditions for the animals, lack of food/water, evidence of untreated medical conditions, etc., which will be used in a subsequent affidavit for a seizure warrant.

Step 2: Seizure Warrant

On a showing of probable cause for cruelty to one or more animals, the court shall issue a warrant for seizure of the animals.⁵¹ When dealing with hoarders, you may not know the exact number of animals to be seized, so it is advisable to be somewhat open ended.⁵² Note, the warrant must include a notice of a hearing set within ten (10) calendar days.⁵³ Practice tip, have the ACO or police officer request the warrant from the court in which you want to hold the hearing because the judge that issues the warrant also sets the date.⁵⁴ Make sure that the court coordinator is available so that the hearing date can be written on the warrant itself. The officer will cause the animals to be impounded (i.e. seized) and shall give written notice to the owner of the time and place of the hearing.⁵⁵ The statute says very little about what is required in order to give the owner notice, other than broadly defining owner to include a person who has custody or

⁴⁸ For example, exploitative hoarders include dog fighting, or seriously overworked animals.

⁴⁹ *Id.* at § 821.022(a). In this chapter, “magistrate” includes those officers listed Art. 2.09, Code of Criminal Procedure, excluding supreme court, court of criminal appeals, courts of appeals, statutory probate courts, or judges of district courts that give preference to family law, or family district courts under Subchapter D, Ch. 24, Gov’t Code. *Id.* at § 821.0211.

⁵⁰ *See id.*

⁵¹ *Id.* at § 821.022(b).

⁵² With cats in particular, it is difficult to count them until they are individually corralled into travel crates. It may also be advisable to seize animals that are “living and/or dead”. In more serious hoarding cases, there may be corpses as well as living animals to be seized.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at (c).

control of the animal.⁵⁶ As a practical matter, personal service is usually obtained because the hoarder is on site when the animals are being seized, which is ideal because of the short notice for the hearing. There is time pressure to resolve this process quickly because, aside from the cost and burden on the impoundment facility, shelters are usually an unhealthy environment for animals.⁵⁷ That makes personal service preferable to mailed or posted notice which might not get there in time.

Step 3: Hearing: Cruelty Determination

The purpose of the hearing is for the court to determine if the animal is being cruelly treated.⁵⁸ Note that this is a civil forfeiture hearing, not a criminal proceeding under the Penal Code. That means a different standard for burden of proof and, strictly speaking, a different definition of cruelty.⁵⁹ However there can be some overlap as a finding in a court of competent jurisdiction (i.e. County or District Court) that the owner of an animal is guilty of an animal cruelty offense under the Penal Code, constitutes prima facie evidence in the seizure hearing.⁶⁰ This is less common with typical “hoarding” situations and more common with maltreated livestock.⁶¹ The statute provides that any interested party is entitled to present evidence at the hearing.⁶² As mentioned previously, some of these hoarders have an extensive network of enablers, and so you should be prepared for a number of witnesses in support of the hoarder.

The burden of proof is on the city to establish cruelty, as defined by Health and Safety Code, and ordinance violations alone will not suffice.⁶³ So while city officials may be swayed by the fact that there are complaints from neighbors, more animals than allowed by ordinance, etc., the court is considering different factors. The easy cases are the ones where animals are clearly suffering due to neglect, fighting, or other sociopathic behavior. The harder cases are the ones where the hoarder loves animals, but lacks the capacity, knowledge, or resources to care for them. The enablers will come out of the woodwork to gush about how selfless and loving this person is and that they are trying to do so much with so little. It can be difficult to convince a judge or jury that overwhelmed amounts to cruel. So the city’s case in a hoarding situation is

⁵⁶ *Id* § 821.021(3).

⁵⁷ *See In Re Brehmer*, 428 S.W.3d 920 (Tex. App.—Ft. Worth 2014, no pet.) (holding that the purpose of the statutory deadline is an expedited procedure so that animals are not held in limbo for an extended period of time).

⁵⁸ Tex. Health & S. Code § 821.022 (b).

⁵⁹ *Compare* Tex. Pen. Code § 42.09, 42.092 *with* Tex. Health & S. Code § 821.021(1).

⁶⁰ Tex. Health & S. Code § 821.023(a). Only a county or district court would have jurisdiction as the punishment for cruelty under the penal code exceeds the jurisdiction of municipal and justice courts. Tex. Pen. Code § 42.09(c), 42.092(c). It is also noteworthy that any statements made at a seizure hearing are inadmissible in a subsequent criminal proceeding for animal cruelty. Tex. Health & S. Code § 821.023(b).

⁶¹ *See Lehman v. State*, No. 07-13-00349-CR, 2014 WL 4441402 (Tex. App.—Amarillo, Sept. 8, 2014, no pet.); *Paselk v. King*, 455 S.W.3d 268 (Tex. App.—Texarkana, 2015, pet. denied).

⁶² Tex. Health & S. Code § 821.023(c).

⁶³ If a person has more animals than permitted by ordinance, that is grounds for a citation. Similarly allowing animals to become a nuisance is a Class C misdemeanor, not cruelty.

going to depend on proving a deprivation of necessary food, care, or shelter, or cruel confinement.⁶⁴ This is where the background and education of the ACO and/or peace officer charged with animal control is necessary. The urine smell is not only gross, but an indication that the animals are urinating inside the structure where they eat, increasing the risk of disease and infection. The loud noises are not only obnoxious, but in some cases can be indications that animals have been fighting or are under stress. Lack of grooming may seem like a superficial issue to a layperson, but a trained ACO can point out the health impacts.⁶⁵ The officer can be called on to discuss the absence, adequacy, or appropriateness of food, medicine, or other necessities for animal care. The key is to emphasize a reasonable standard of care that is not being met, despite the obvious affection the hoarder has for the animals.

Step 4: Hearing: Disposition

The last step for the court is to issue its final order which will determine where the animal will go, assess costs, and set an appeal bond. Obviously, if the animal was not treated cruelly, then the court shall order the animal returned to the owner.⁶⁶ If the animal was being treated cruelly, then the court must decide where it goes.⁶⁷ The three options are: *i.* order a public sale by auction; *ii.* transfer ownership to shelter or non-profit; or *iii.* order humane euthanasia.⁶⁸ The court shall order the owner to pay all court costs (investigation, expert witnesses, auction) as well as the costs incurred for the care and/or humane euthanasia of the animal.⁶⁹ The court will also determine the likely costs to be incurred during the pendency of an appeal, and the two amounts will be set as the appeal bond.⁷⁰ In the case of hoarders, you are typically looking at options *ii* or *iii*. The public sale by auction is typically only followed in the case of livestock, i.e. where the animal has objective, market value, and so we will not go into detail here. Transfer of ownership to an animal shelter or non-profit is the preferable course of action because it enables the animals to get a second chance on life.

There are a number of obstacles to be overcome before that goal can be met. First off, when dealing with the more extreme cases of hoarders, you are talking about a large influx of animals at one time which is going to be a burden on almost any shelter. Most shelters have relationships with local non-profits, foster families, and other resources that help address overflow problems. This is an important consideration to be aware of, however, because if the seizure is timed poorly, you can have a lot of unintended consequences: e.g. otherwise adoptable

⁶⁴ *Id.* at § 821.021(1).

⁶⁵ Long nails can become ingrown and develop infections. Lack of grooming in some breeds can lead to fur becoming so matted it restricts movement. Treatable conditions like eye or ear infections can worsen to the point of permanent injury or the necessity of humane euthanasia.

⁶⁶ *Id.* at § 821.023(g).

⁶⁷ *Id.* at (d).

⁶⁸ *Id.*

⁶⁹ *Id.* at (e).

⁷⁰ *Id.* at (e-1)-(e-4).

animals euthanized to make space for the new arrivals. It should also be noted that animals from hoarding situations are more likely to have health/behavioral issues. Even “no-kill” shelters are going to euthanize animals in cases where it is necessary to prevent further suffering, or if behavioral issues make an animal un-adoptable.⁷¹ This end-game consideration should be considered on the front end, to the extent possible, especially in marginal cases. In other words, if the end result is going to be humane euthanasia, be sure that the conditions the hoarder has created are so bad that such an end result is really the most humane option. At the very least, once the animals have been seized, the shelter must be prepared to feed and care for the animals while the hearing is pending, and for longer if the owner files an appeal.⁷²

Step 5: Appeal

An owner divested of ownership of an animal may appeal the order to a county court or a county court at law.⁷³ Once an appeal has been filed, except in the case of humane euthanasia, an animal may not be transferred, sold, or euthanized.⁷⁴ The owner is not required to file a motion for new trial, but perfects the appeal by filing a notice of appeal with the lower court and the cash or surety bond within ten (10) calendar days.⁷⁵ Within five (5) calendar days of the notice/bond, the clerk of the lower court shall deliver a copy of the record, and the bond, to the court where the appeal was filed.⁷⁶ The county court or county court at law must consider the matter, de novo, within ten (10) calendar days of receiving the record.⁷⁷ The owner is entitled to a jury trial.⁷⁸

Let that sink in for a moment. Within fifteen (15) days of the first time the court’s *clerk* has learned about an appeal, the court needs to have a *jury trial*. Given that it takes longer than a couple weeks to empanel a jury, this invariably means taking priority over another case that has most assuredly been pending for a lot longer than this one. Courts don’t like that. They may ask why. You can point to the statute, but given that courts have a tendency to overturn statutes, it is

⁷¹ While there is no industry standard for what constitutes a “No-Kill” shelter, a common standard is no euthanasia of healthy/adoptable animals and an overall live-release rate of 90%. What this means is that only animals that are sick or have behavioral issues will be euthanized, but in order to maintain the live release rate, some of those animals that may have otherwise been euthanized for health/behavior reasons will be given extra care, treatment, or rehabilitation. This can also impact a shelter’s willingness to assist with resolving a hoarding situation if it means choosing between taking on a greater burden than they can bear or losing their “No-Kill” status.

⁷² Note that animals cannot be transferred to a third party until the appeal period has expired.

⁷³ *Id.* at § 821.025(a). Note that jurisdiction is established by this statute, notwithstanding other law. *See id.* at § (g).

⁷⁴ *Id.* at (h). Note that this creates a window during which the animal could, theoretically, be sold or transferred. If an appeal is not filed immediately, then the lower court order can be followed. The city transfers an animal at its peril because if an appeal is filed and the decision is overturned, there is no way to return the animal to the owner and the city is liable for a seizure. However, since the value of an animal is the objective, market value of the animal, the actual amount of liability is negligible. *See Strickland supra.*

⁷⁵ *Id.* at (b), (f).

⁷⁶ *Id.* at (c).

⁷⁷ *Id.* at (d).

⁷⁸ *Id.*

important to have a better answer. This relates back to the original comment about the need for haste in seizure situations. The longer an animal is held in a shelter environment, the more likely they are to develop health or behavioral conditions. It should also be pointed out that even if the appeal bond covers the financial costs for the shelter, there are other impacts on the shelter (e.g. loss of capacity, increased burden on staff, etc.). In my experience the judge still won't be happy so I suggest bringing cookies. The good news is that once the judge/jury issues a decision, there is no further appeal beyond the county court or county court at law.⁷⁹ So the fact that the animals are required to remain in limbo while the case is on appeal only requires the animals to remain in city custody, at the most, for up to thirty-five (35) calendar days.⁸⁰

D. Aftermath

Because of the possible end game scenarios, it is important to advise clients at the outset about the burdens that will be taken on while the case is pending. The shelter should be prepared with adequate space and staff to handle the increased burden. The ACOs or peace officers should be prepared for the transport, treatment, or possible euthanasia of animals. Obviously evidence will need to be gathered for the hearing because, unlike with generalized hoarding, a hearing is a requirement whether the owner requests it or not. Because animals are involved, the potential for public interest in this kind of a case is significant. That means there are other considerations related to public information that would not normally be at play. For example, information maintained in a public database regarding registration of animals is confidential by law.⁸¹ Specifically, the name, address, telephone number, or other personally identifying information relating to the owner of a dog or cat that is registered with the city or county is confidential and not subject to disclosure.⁸² Information relating to the status of all the animals seized from a particular address, which may or may not include the name, address, phone number, or other identifying information of people who adopted such animals, is not confidential.⁸³

V. CONCLUSION

Because of the interest that hoarding has been afforded in popular culture, these kinds of cases will generate a greater degree of public interest. So while legal concerns typically dominate our considerations, public relations and political concerns will be at play as well. Even though the city may be in the right, legally speaking, it is important to consider the overall narrative. Hoarding is a psychological condition, which must be a consideration when dealing

⁷⁹ *Id.* at (e).

⁸⁰ *Id.* at (h). This is assuming that the appeal at the county level does not take more than a single day.

⁸¹ *Id.* at § 826.0311

⁸² *Id.*

⁸³ See Tex. Att'y Gen. Op. OR 2017-02159 (2017); citing Tex. Att'y Gen. ORD No. 658 (1998) (holding that the statutory provision applies only to the pet registry itself and does not apply to the contents of other records, even though those documents may contain the same information).

with the hoarder as either a criminal or a citizen in need of public assistance. Similarly, the high probability of recidivism means that the soft touch approach may work in the first instance, but mounting citizen complaints may require more direct action. Ultimately, the threshold issues discussed in this paper will be the key to determining when public action is necessary and justified. While preemptive action can be beneficial, if there is no public nuisance or cruelty to animals, there are strict limits to what the city can do.

VI. APPENDICES

1. Abatement notice (nuisance)
2. Affidavit for seizure warrant (nuisance)
3. Seizure warrant (nuisance)
4. Affidavit for seizure warrant (cruelty seizure)
5. Seizure warrant (cruelty seizure)

[Date]

[PROPERTY OWNER]

[PROPERTY ADDRESS]

[INSERT CITY, STATE ZIP]

VIA U.S. MAIL AND CMRRR # _____

NOTICE OF VIOLATION AT [ADDRESS]

Dear Mr. Wintersmith,

The City of Anycity, Texas (“City”) has investigated the above referenced location on and found that the property is in violation of City of Anycity Municipal Code Section(s) [INSERT CODE SECTIONS], specifically:

[INSERT DESCRIPTION OF JUNK, DEBRIS, ETC.]

According to the real property records of Anycounty County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not.

A person who violates these ordinances is guilty of a misdemeanor and upon conviction is punishable by a fine up to \$2,000 per day per violation. If the [INSERT TERM FOR JUNK, DEBRIS, ETC.] are not removed within seven (7) days after receipt of this letter, a citation may be issued, the City may abate the nuisance, invoice you for the cost, and place a lien on the property.

To request an administrative hearing on the City’s abatement of this nuisance, you must file a written request with the City’s Code Enforcement Division no later than the 5th calendar day after receiving this letter.

Sincerely,

[PRINT NAME CITY OFFICIAL]

[PRINT TITLE CITY OFFICIAL]

cc: City Attorney

THE STATE OF TEXAS

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A PROPERTY LOCATED AT
1234 ANYSTREET
ANYCITY
_____ COUNTY, TEXAS

COUNTY OF _____

AFFIDAVIT FOR ADMINISTRATIVE SEARCH WARRANT

BEFORE ME, the undersigned authority, this day personally appeared the undersigned Affiant, a person whose identity is known to me. After I administered an oath, the affiant stated that:

1. My name is _____. I am a _____ for the City of Anycity, Texas. On the ____ day of _____, 2014 the property at [INSERT ADDRESS] was identified as being in violation of City of Anycity Code of Ordinances Section _____ which states:

[INSERT RELEVANT CODE TEXT]

2. According to the _____ County Appraisal District website, the property described as [INSERT ADDRESS], is owned by [INSERT OWNER] (the "Property"). The legal description is [INSERT WOEFULLY INADEQUATE LEGAL DESCRIPTION HERE] which is more accurately described in the deed recorded in Volume ___, Page ___ of the Official Records of _____ County, Texas.

3. The Property is a [INSERT DESCRIPTION OF STRUCTURE, PROPERTY, ZONING CLASSIFICATION, ETC.]

4. On the ___ day of _____, 20__ notice was issued via certified mail and regular mail to [INSERT OWNER] at [INSERT ADDRESS] notifying the property owner that it was in violation of City of Anycity Code Of Ordinances Section _____. The notice requested the Property be cleaned and that the debris, rubbish, being stored on the property be removed within seven (7) days of receiving the letter or else a citation may be issued and the City may abate the nuisance, invoice the owner for the cost, and file a lien for that amount on the property.

5. I have good reason to believe and do believe the City of Anycity complied with all of the procedures set forth in City of Anycity Code of Ordinances Section _____ which allows the City to remove, abate or destroy without delay the nuisance on the property if the owner, agent, or occupant of the lot fails to act. The file states the following facts:

a. [INSERT RELEVANT FACTS SUCH AS DATES OF CONTACT, ATTEMPTS TO WORK WITH PROPERTY OWNER, AND MOST IMPORTANTLY ALL THE CONDITIONS OF THE PROPERTY THAT NEED TO BE ABATED]

6. WHEREFORE, based on the foregoing conditions that the City found and based upon their order, I request that the _____ Court of _____ County grant a judicial warrant to enter upon the Property to abated the above described nuisance,

Nick Koski
Code Enforcement Officer
City of Bryan

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of _____, 20__
at _____ o'clock p.m. to certify which witness my hand and official seal.

Judge presiding

THE STATE OF TEXAS

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A PROPERTY LOCATED AT
1234 ANYSTREET
ANYCITY
_____ COUNTY, TEXAS

COUNTY OF _____

SEIZURE WARRANT

To any Code Enforcement Officer, solid waste employee under the direction of a Code Enforcement Officer, Fire Marshal, or Police Officer of the City of Anycity, Texas

WHEREAS, the Affiant whose name appears on the attached affidavit is a _____ of the City of Anycity, _____ County, Texas, and did on this day submit said Affidavit to me (which said Affidavit is by this reference incorporated herein for all purposes); and

WHEREAS, I find that the verified facts stated by Affiant in said Affidavit show that the Affiant has probable cause for the belief expressed therein and establishes the existence of proper grounds for the issuance of this Warrant.

NOW THEREFORE, you are commanded to enter upon the property designated as [INSERT PROPERTY DESCRIPTION HERE] to seize and dispose of all [INSERT DESCRIPTION OF NUISANCE TO BE ABATED].

NOW THEREFORE, you are ordered to execute this Warrant.

ISSUED THIS THE ____ day of _____, A.D., 20__, at _____ o'clock __.m. to certify which witness my hand this day.

Judge Presiding

THE STATE OF TEXAS

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A PROPERTY LOCATED AT
1234 ANYSTREET
ANYCITY
_____ COUNTY, TEXAS

COUNTY OF _____

RETURN OF WARRANT

The undersigned Affiant, being the _____ for the City of Anycity, _____ County, Texas, on oath certifies that the foregoing warrant came to hand on the day it was issued and that it was executed on the _____ day of _____, A.D., 20__, to seize and dispose of all [INSERT DESCRIPTION OF NUISANCE TO BE ABATED] at [INSERT DESCRIPTION OF PROPERTY].

[PRINT NAME]
[TITLE]
City of Anycity, Texas

SUBSCRIBED AND SWORN TO BEFORE ME, on the _____ day of _____, A.D., 20__ at _____ o'clock __ m., to certify which, witness my hand and official seal.

Notary Public, State of Texas
My commission expires:_____

THE STATE OF TEXAS

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A PROPERTY LOCATED AT
1234 ANYSTREET
ANYCITY
_____ COUNTY, TEXAS

COUNTY OF _____

SEIZURE AFFIDAVIT

BEFORE ME, the undersigned authority, this day personally appeared the undersigned Affiant, a person whose identity is known to me. After I administered an oath, the affiant stated that:

1. My name is _____. I am an [Animal Control] [Police] Officer for the City of Anycity, Texas.
2. On the ___ day of _____, 20__, while [INSERT DETAILS AS APPROPRIATE: e.g. “conducting a search pursuant to a lawfully issued search warrant” or “standing in the public right of way within plain view” or “while conducting a welfare check requested by...”] I observed the following:
 - a. [INSERT DETAILS REGARDING ANIMALS, NUMBER OF ANIMALS IF KNOWN, TYPE, BREED, GENDER, ETC. INSERT DETAILS REGARDING THE CONDITIONS OF THE RESIDENCE/STRUCTURE. KEEP IN MIND THE ISSUE IS CRUELTY TO ANIMALS, HIGHLIGHT CONDITIONS INDICATING A DEPRIVATION OF FOOD, CARE, REASONABLE SHELTER, ETC.]
3. The conditions in which these animals are living constitutes cruelty as defined by Texas Health and Safety Code § 821.021(1) as the animals are being unreasonably deprived of care and cruelly confined [CHANGE OR LIST MORE ACTS CONSTITUTING CRUELTY, AS APPROPRIATE].
4. The City requests a warrant issue to seize the animals located at [INSERT PROPERTY ADDRESS] in accordance with Texas Health and Safety Code § 821.022. The City further requests that the Court set a time within 10 calendar days for a hearing to determine if the animals have been cruelly treated and to order the disposition of said animals.

WHEREFORE PREMISES CONSIDERED I ask that a warrant to seize said animal or animals be issued in accordance with Texas Health and Safety Code § 821.022.

[PRINT NAME]
[TITLE]
City of Anycity

SUBSCRIBED AND SWORN TO BEFORE ME, on the ___ day of _____, 20__ at _____ o'clock p.m. to certify which witness my hand and official seal.

Judge Presiding

CASE # _____

THE STATE OF TEXAS

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A PROPERTY LOCATED AT
1234 ANYSTREET
ANYCITY
_____ COUNTY, TEXAS

COUNTY OF _____

WARRANT FOR SEIZURE OF ANIMAL

To any Animal Control Officer, or Police Officer of the City of Anycity, Texas

WHEREAS, the affiant whose name appears on the attached affidavit is [animal control] [police] officer of the City of Anycity, _____ County, Texas did heretofore this day submit said affidavit, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, I, the undersigned magistrate, find that the verified facts stated by the affiant in said affidavit show that affiant has probable cause for the belief that one or more animals located in Anycity, _____ County, Texas, have been cruelly treated by way of being tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal, and that said affidavit establishes the existence of proper grounds for the issuance of this warrant; and

NOW THEREFORE, you are commanded to seize the animal or animals described in said affidavit, whether living, dead, or unborn, and may enter onto the described premises, or any other location where such animals are being held.

YOU ARE FURTHER COMMANDED to give written notice to the alleged owner of such animal(s) that a hearing will be held in the _____ Court of _____ County, Texas, on the ____ day of _____, 20__ at _____ o'clock __.m. to determine whether the animal or animals have been cruelly treated as defined by Texas state law.

Herein fail not, and due return make hereof to me at the place above named.

Witness my signature on this the ____ day of _____, 20 __.

Judge Presiding

RETURN

Came to hand on the same day issued, and executed on the ____ day of _____ 20__, by seizing and impounding the following animals, believed by me to be the same animals described in the foregoing warrant, to-wit: _____, and any other animals (alive or dead) that I found at the following premises: [INSERT ADDRESS], Anycity, _____ County, Texas. I also at or near the same time, gave written notice of the hearing set forth in said warrant to the alleged owner of said animal or animals, in obedience with the command of said warrant.

ANIMAL CONTROL OFFICER