

Cause No.

CITY OF ANYTOWN, TEXAS,
Plaintiff,

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IN THE DISTRICT COURT

VS.

SMITH COUNTY, TEXAS

JOHN PROPERTYOWNER,
Defendant.

999TH JUDICIAL DISTRICT

**CITY OF ANYTOWN’S THIRD AMENDED ORIGINAL PETITION AND REQUEST
FOR TEMPORARY AND PERMANENT INJUNCTIONS**

TO THE HONORABLE JUDGE OF THE COURT:

The City of Anytown, Plaintiff, files this Third Amended Original Petition, and Request for Temporary and Permanent Injunctions and respectfully shows the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under a scheduling order entered by the Court.

II. PARTIES

2. The City of Anytown is a home-rule municipal corporation situated in Smith County, Texas, incorporated and operating under its City Charter and the laws of the State of Texas.

3. Defendant John Propertyowner is an individual who owns real property and operates a business on that property in the City of Anytown. Service of process may be made upon Defendant John Propertyowner at his place of business at 9999 Main Street, Anytown, Texas 75801.

III. VENUE AND JURISDICTION

4. Plaintiff brings this cause of action to obtain temporary and permanent injunctive relief pursuant to Subchapter A of Chapter 211 of the Texas Local Government Code, and to recover civil penalties against Defendant pursuant to Subchapter B of Chapter 54 of the Texas Local Government Code.

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

IV. FACTS

6. Defendant John propertyowner (“Defendant”) owns the following real property within the City of Anytown, Smith County, Texas, along with the structures located on the property:

9999 Main Street Lots 23B, 24A, 25A, and 26A of Block B-5, Texas Land Company, Anytown, Texas

9998 West Main Lots 20B and 20C of Block B-4, Texas Land Company, Anytown, Texas

7. The structure at 9999 Main is a commercial building; it and the properties adjacent to it are being used as a junkyard and salvage yard. As an example, photographs of the property taken on June 3, 2016, were attached to the original petition.

8. The following violations of the Anytown City Code exist and have existed on the properties:

a. The properties and structures are being used as a junkyard and salvage yard, in violation of Section 1 of the Anytown Zoning Ordinance;

b. The property and structure at 9999 main are being used as a junkyard and salvage yard, while the Certificate of Occupancy issued for this property lists the permissible use as “lawnmower shop.”

c. The properties and structures at 9998 West Main are being used as junkyards and storage yards. These properties have been zoned residential, and there is no certificate of occupancy for them.

d. The properties are used in such a manner that a rat harborage has been brought into existence and maintained, in violation of Section 2 of the Anytown City Code.

e. The properties are used as a junkyard or salvage yard and the owner has refused to buffer or screen the property in accordance with a recommendation by the planning and zoning commission as required by Section 3 of Anytown’s Zoning Ordinance.

- f. The portion of the property at 9999 Main Street used as a junkyard is less than 300 feet from a residentially-zoned district, less than 300 feet from a federal highway, less than 25 feet from a street right-of-way line, and less than 20 feet from other property lines, in violation of Section 4 of Anytown's Zoning Ordinance.
- g. Even if the use was a permitted use in the zoning district, the outdoor storage or display of the junked lawnmowers and other junked equipment is not:
- (i) in compliance with the requirement in Section 5 of the Anytown Zoning Ordinance that any outdoor storage or display adjacent to a residential district be in compliance with the screening standards of Section 6, which require that it be screened;
 - (ii) in compliance with the requirement in Section 7 of the Anytown Zoning Ordinance that any outdoor storage or display be set back a minimum of ten feet from the outside curb or edge of pavement of a public street, and outside the street right-of-way;
 - (iii) in compliance with the requirement in Section 8 of the Anytown Zoning Ordinance that any outdoor storage or display be conducted on an improved surface; and
 - (iv) in compliance with the prohibition in Section 9 of the Anytown Zoning Ordinance that any outdoor storage may not be conducted in front of the primary building.
- h. The grasses and weeds on the properties have not been maintained so as to be less than 12 inches high, as is required by Sections 10 and 11 of the Anytown City Code.
- i. The properties have not been kept free of "rubbish, trash, filth, and other impure or unwholesome matter" as required by Section 12 of the Anytown City Code.
- j. Livestock, including horses and goats, is kept on the property that is not an agricultural area, in violation of Section 13 of the Anytown City Code.
- k. Junked motor vehicles, including boats and personal watercraft, are kept on the property in violation of Section 14 of the Anytown City Code.
- l. The properties have not been kept clean, free, and clear of all garbage, trash, and rubbish, in violation of Section 15 of the Anytown City Code.
- m. Defendant has failed to dispose of other articles and accumulations that have caused the properties to become insanitary and unsightly, in violation of Section 16 of the Anytown City Code.

n. Defendant has placed garbage, trash, and rubbish on streets, alleys, and sidewalks abutting the properties, and has failed to keep the alleys, streets, and sidewalks clear of all such garbage, trash, and rubbish, in violation of Section 17 of the Anytown City Code.

9. A true and correct copy of the ordinances violated was attached to the Original Petition.

These ordinances relate to:

a. the regulation of the location and use of buildings, other structures, and land for business, commercial, residential, and other purposes, pursuant to authority granted to the City under Chapter 211 of the Texas Local Government Code, and the regulation of the location, size, height, bulk, and use of buildings within such zones or districts, pursuant to the authority granted to the City under Section 18 of the Anytown City Charter;

b. zoning that provides for the use of land or classifies a parcel of land according to the City's district classification scheme; or

c. conditions caused by accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.

10. Defendant has been given numerous notifications that his use of the property is in violation of Anytown's zoning ordinance.

a. Defendant was notified by letter dated May 13, 2016 of the violations set forth in this petition. A copy of this notice was attached to the Original Petition. Defendant was given 10 days, which is more than sufficient time for Defendant to begin the process of coming into compliance with the various ordinances' requirements.

b. Defendant met in person with staff members of the City of Anytown on May 25, 2016. At this meeting Defendant was informed of the steps needed to begin the process of coming into compliance. Defendant was told that substantial progress was necessary no

later than Friday, May 27. As of Wednesday, June 1, no visible progress whatsoever has taken place.

11. Persons other than Defendant and property other than Defendant's, specifically, the residents of the two houses on Main Street (9997 Main and 10000 Main), and those properties, will continue to suffer from adverse impacts and risk substantial danger of injury unless Defendant complies with one or more of these ordinances. These impacts and risks threaten harm that is irreparable. For example, neighbors of Defendant have experienced rat infestation that has occurred since Defendant expanded his junkyard to the adjacent property.

V. CAUSE OF ACTION

12. Subchapter B of Chapter 54 of the Texas Local Government Code applies to the ordinances that Defendant has violated.

13. Pursuant to Section 54.016 of the Texas Local Government Code, Anytown requests temporary and permanent injunctive relief, ordering Defendant to remedy the conditions of the property to bring it into compliance with the Anytown City Code.

14. Pursuant to Section 54.017 of the Texas Local Government Code, Anytown requests civil penalties not to exceed \$1,000 per day for each violation of the ordinances.

15. Pursuant to Section 211.012 of the Texas Local Government Code, Anytown also seeks temporary and permanent injunctive relief, ordering Defendant to:

- a. cease the unlawful use of the property in violation of the City's zoning ordinance;
- b. correct or abate the violations; and
- c. cease the illegal business use of the property.

WHEREFORE, PREMISES CONSIDERED, the City of Anytown, Plaintiff, prays for the following relief:

1) Anytown be granted temporary and permanent injunctive relief against further and continued violations of the Anytown City Code;

2) Anytown be awarded “monetary relief over \$100,000 but not more than \$200,000 by way of a judgment for a civil penalty not to exceed \$1,000 per day for each day that the Property remains in violation of the Anytown City Code;

3) Anytown be granted judgment for all costs of court;

4) Anytown be granted judgment for post-judgment interest at the highest legal rate, and

5) Such other and further relief, both general and special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

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By: _____
RONALD D. STUTES
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ATTORNEY FOR THE CITY OF
ANYTOWN, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served via the electronic service provider upon Defendant's counsel of record on June 6, 2017.

Ronald D. Stutes