

CIVIL ENFORCEMENT IN MUNICIPAL COURT



By Ryan Henry
Law Offices of Ryan Henry, PLLC.
1019 Central Parkway North, Suite 108
San Antonio, Texas 78232
210-257-6357 (phone)
210-569-6494 (fax)
Ryan.henry@rshlawfirm.com
www.rshlawfirm.com

I. The Court and Judge

A. Courts

First, it is important to understand the often-misunderstood role of the municipal court and the municipal judge. In 1899, a comprehensive statute was enacted to create municipal courts and to give them uniform jurisdictions and procedures. Act of April 1, 1899, 26th Leg., R.S., Ch. 33, 1899 Tex. Gen. Laws 40; see also *Aguirre v. State*, 22 S.W.3d 463, 467 (Tex. Crim. App. 1999), as modified on denial of reh'g (Dec. 8, 1999). This Act was interpreted to mean a municipal court is a state court of limited jurisdiction, which included jurisdiction over state law offenses punishable by fine only. *Ex parte Wilbarger*, 41 Tex. Crim. 514, 55 S.W. 968 (1900).

A municipal court is established by statute in each municipality. See Tex. Gov't Code Ann. § 29.002; see also *Id.* §§29.001,.003 (defining the term “municipality” and defining municipal courts' jurisdiction). The best way to think about the court is that a municipal court is a state court that is hosted by the city. This means it is not the city's court. The city is provided compensation for hosting the court through the retention of a sliding scale of fines and fees.

Municipal courts are statutory courts created pursuant to the legislature's constitutional authority to create “such other courts” as necessary. See Tex. Const. art. V, § 1 (vesting judicial power in “one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law”); see also Op. Tex. Att'y Gen. No. DM-427 (1996) at 2.

There are two kinds of municipal courts in Texas: municipal courts and municipal courts of record. See Tex. Gov't Code Ann. § 29.002 (creating a municipal court in each municipality), 30.00003(a) (permitting the governing body of certain municipalities to create a municipal court of record); see also *id.* §§ 30.00851-.00856 (pertaining to a municipal court of record for the City of Arlington); cf. *id.* § 30.00003(e) (stating a municipal court of record of a municipality may not exist concurrently with a municipal court of the same municipality).

Because the constitution does not specifically provide for them or their jurisdiction, municipal courts and municipal courts of record derive their jurisdiction from statute. See Tex. Gov't Code Ann. § 29.003 (West) (municipal courts), 30.00005 (municipal courts of record); Tex. Code Crim. Proc. Ann. art. 4.14 (Vernon Supp. 2004-05) (municipal courts and municipal courts of record). As statutory courts, municipal courts and municipal courts of record have only limited jurisdiction that cannot exceed the jurisdiction expressly conferred by the legislature. See, Op. Tex. Att'y Gen. No. DM-427 at 2 (municipal courts “have no jurisdiction other than that which the legislature prescribes”); see also Op. Tex. Att'y Gen. No. JC-0216 (2000) at 2 (stating a municipal court is one of limited jurisdiction); Op. Tex. Att'y Gen. No. GA-0316 (2005).

B. Judge

The municipal judge is not technically a city employee. Judges are classified as public officers and not employees. *Thompson v. City of Austin*, 979 S.W.2d 676, 680–82 (Tex. App.—Austin 1998, no pet.). In fact, any local judge (which presumably would include municipal, county, or district) acting in his or her judicial capacity is not considered a local government official whose actions are attributable to the hosting entity. *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir. 1995); see also *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992); *Bigford v. Taylor*, 834 F.2d 1213, 1221–22 (5th Cir. 1988)(a municipal judge acting in his or her judicial capacity to enforce state law does not act as a municipal official or lawmaker.); See Tex. Gov't Code § 30.00006(g) (“A person may not serve as a municipal judge if the person is employed by the same municipality. A municipal judge who accepts employment with the municipality vacates the judicial office.”); *City of Roman Forest v. Stockman*, 141 S.W.3d 805, 809–10 (Tex. App.—Beaumont 2004, no pet.) (holding that a municipal court judge is not within the definition of “public employee” in the Texas Whistleblower Act).

Entrusted with independent and sovereign powers, judges are public officers who cannot be employees. “The determining factor which distinguishes a public officer from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.” *Aldine Indep. Sch. Dist. v. Standley*, 154 Tex. 547, 280 S.W.2d 578, 583 (1955), disapproved of by Nat'l Sur. Corp. v. Friendswood Indep. Sch. Dist., 433 S.W.2d 690 (Tex. 1968). A public officer “is authorized by law to independently exercise functions ... subject to revision and correction only according to the standing laws of this state.” *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 931 (Tex. Crim. App. 1994).

The municipal judge’s actions may not be reviewed by any other party, including the council. “The [c]ouncil’s lack of control results naturally from the separation of powers doctrine and sovereign nature of both the executive and judiciary branches. The [c]ouncil, which has been endowed with executive and administrative powers, does not exercise control over the independent municipal court; the [c]ouncil cannot control or influence the decisions of the municipal judge.” *Thompson*, 979 S.W.2d at 682–83 This restriction applies to the municipal court’s decisions in individual cases as well as traditional judicial functions.

This means you should not assume that the municipal court or the judge will do what the city wants. It does not have to and should not simply defer to the City’s filings. However, while the municipal court should be considered the equivalent of going to the district court, the processes, costs, and speed at which things move in municipal court will likely be significantly different than district or county court.

II. Default Civil Enforcement of City Ordinances

Under the Texas Local Government Code, Subchapter B, of Chapter 54, a municipality may bring a civil action for the enforcement of an ordinance. Tex. Loc. Gov't Code Ann. § 54.012. Jurisdiction and venue of an action under this subchapter are in the district court or the county

court at law of the county in which the municipality bringing the action is located. Tex. Loc. Gov't Code Ann. § 54.013

Further, a home-rule municipality, may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants through this subchapter. Tex. Loc. Gov't Code Ann. § 54.004; *Carlson v. City of Houston*, 309 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

Chapter 54 lawsuits have their own statutory procedures. They allow a lower threshold for pleading requirements and provide for a statutory vs common law application for injunctive relief. They also allow for the imposition of civil penalties.

However, funding and filing a district court lawsuit every time the city has a dilapidated building, or a property owner fails to follow an ordinance can be extremely costly. That is why many cities utilize the criminal complaint processes through their municipal court. The criminal complaint process does have several drawbacks, including:

- Upon conviction, the court can only fine the defendant and cannot make them come into compliance.
- Burden of proof is beyond a reasonable doubt, while civil enforcement is based on a preponderance of the evidence standard (most of the time).
- Criminal charges cannot be brought against a deceased person.
- Criminal charges cannot utilize a default judgment.
- Criminal charges are more difficult to obtain against a corporate owner of property.

III. Municipal Court Jurisdiction

Municipal courts of record have the same jurisdiction provided by general law for non-record municipal courts. Tex. Gov't Code Ann. § 30.00005. Additionally, a governmental body, by ordinance, may trigger the civil jurisdiction of a municipal court of record to include:

- (1) civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E, Chapter 683, Transportation Code;
- (2) concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and
- (3) authority to issue:

(A) search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and

(B) seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.

As a result, the municipal court has the same jurisdiction and the same jurisdictional limits as the district court for purposes of Chapter 54, subchapter B. Section 54.012 states:

A municipality may bring a civil action for the enforcement of an ordinance:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring, or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

(4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;

(6) relating to dangerously damaged or deteriorated structures or improvements;

(7) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification;

(9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality;

(10) relating to floodplain control and administration, including an ordinance regulating the placement of a structure, fill, or other materials in a designated floodplain;

(11) relating to animal care and control; or

(12) relating to water conservation measures, including watering restrictions. Tex. Loc. Gov't Code Ann. § 54.012.

Section §54.013, entitled Jurisdiction, states: “Jurisdiction and venue of an action under this subchapter are in the district court or the county court at law of the county in which the municipality bringing the action is located.” Tex. Loc. Gov't Code Ann. § 54.013.

IV. Jurisdictional Basics

The term “jurisdiction” “refers to a court's authority to adjudicate a case.” *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003) (citing *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000)); *In re Sheppard*, 193 S.W.3d 181, 185 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (citing *Reiss*, 118 S.W.3d at 443). Whether a court has jurisdiction is a question of law. See *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (citing *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)) (subject-matter jurisdiction); *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002) (citing *Hotel Partners v. Craig*, 993 S.W.2d 116, 120 (Tex. App.—Dallas 1994, pet. denied)) (personal jurisdiction).

Courts considering civil matters have stated that jurisdiction comprises two components: subject-matter jurisdiction and personal jurisdiction over a party. See *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996); *Fed. Underwriters Exch. v. Pugh*, 141 Tex. 539, 174 S.W.2d 598, 600 (1943); see also *Ace Ins. Co. v. Zurich Am. Ins. Co.*, 59 S.W.3d 424, 428 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (defining subject-matter jurisdiction and personal jurisdiction (quoting *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769, 81 L. Ed. 2d 680 (1984)). Subject-matter jurisdiction “refers to the court's power to hear a particular type of suit” and “exists by operation of law only.” *CSR Ltd.*, 925 S.W.2d at 594; *Federal Underwriters Exchange*, 174 S.W.2d at 600. Subject-matter jurisdiction comprises both subject-matter and territorial components. See *Lange v. State*, 639 S.W.2d 304, 305 (Tex. Crim. App. 1982), superseded by rule on other grounds as stated by *Volosen v. State*, 227 S.W.3d 77, 81 n.12 (Tex. Crim. App. 2007); *Estrada v. State*, 148 S.W.3d 506, 508 (Tex. App.—El Paso 2004, no pet.). Personal jurisdiction, on the other hand, “concerns the court's power to bind a particular person or party” and “can be conferred by consent or waiver.” *CSR Ltd.*, 925 S.W.2d at 594; *Federal Underwriters Exchange*, 174 S.W.2d at 600; see also *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 200 (Tex. 1985) (setting out the two elements of personal jurisdiction: (1) the defendant must be amenable to the court's jurisdiction, and (2) the plaintiff must invoke that jurisdiction by valid service of process). Op. Tex. Att'y Gen. No. GA-0660 (2008)

Government Code chapter 29, which concerns municipal courts generally, provides such courts with “exclusive original jurisdiction within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction in all criminal cases that” arise under municipal ordinances and that are punishable by a fine not to exceed a certain amount. Tex. Gov't Code Ann. § 29.003(a); accord Tex. Code Crim. Pro. Ann. art. 4.14(a); cf. Tex. Gov't Code Ann. § 30.00005(a) (stating that a municipal court of record “has the jurisdiction provided by general law for municipal courts”). A municipal court also has “concurrent jurisdiction with the justice court of a precinct in which the municipality is located” in certain other criminal cases “arising under state law that arise within the municipality's territorial limits or property owned by the municipality located in the municipality's extraterritorial jurisdiction” and that are punishable by fine and sanctions not consisting of confinement in jail or imprisonment. Tex. Gov't Code Ann. § 29.003(b)-(c); accord Tex. Code Crim. Pro. Ann. art. 4.14(b) (;cf. Tex. Gov't Code Ann. § 30.00005(a) (stating that a municipal court of record “has the jurisdiction provided by general law for municipal courts”); Id. (allowing a municipal governing body to provide a municipal court of record with jurisdiction concurrent with a justice court in any precinct in which the municipality is located in certain criminal cases).

However, nothing requires the Legislature to provide jurisdiction only in the acts establishing a particular court. Thus, the jurisdiction of a municipal court can be established in a statute outside of Government Code chapters 29 and 30, and the Legislature has, in fact, done so in various instances. Op. Tex. Att'y Gen. No. GA-0660 (2008). The Legislature has conferred some limited civil jurisdiction upon municipal courts of non-record. Government Code chapter 29 authorizes such jurisdiction. See generally Tex. Gov't Code Ann. § 29.001-.105; Op. Tex. Att'y Gen. No. GA-0660 (2008). Examples of civil jurisdiction applicable in courts of non-record include dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047, civil truancy under Tex. Fam. Code § 65.001 *et. seq*, bond forfeitures under Tex. Gov't Code Ann. § 29.003(e).

When dealing with specific statutory authority for municipal court civil jurisdiction, you must look to the individual statutes for the appeals process as well. For example, in Chapter 214 of the Texas Local Government Code, an appeal from a municipal order (which could be an order from a city official or an order from a municipal court) by an aggrieved person appeals directly to district court, not county court. Tex. Loc. Gov't Code Ann. § 214.0012.

In addition to the subjects listed by statute, cities are permitted to enact civil enforcement ordinances under a variety of categories. The scope of the power depends on the type of city, charter language, and other authorizations. Municipal courts have power over civil penalties created by ordinance for different health, safety, and nuisance violations. Tex. Gov't Code Ann. § 30.00005; Subchapter B of Chapter 54 of Texas Local Government Code and Tex. Loc. Gov't Code Ann. § 217.002.

But, keep in mind, the nature and source of a municipality's power depends on the type of municipality. See *Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 658

(Tex. 1995) (“Laws expressly applicable to one category [of municipalities] are not applicable to others.”). Different cities have different powers and abilities.

All municipalities may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic. Tex. Loc. Gov't Code Ann. § 51.012.

The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:

(1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and

(2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.

Tex. Loc. Gov't Code Ann. § 51.001.

A rule-of-thumb for the difference in powers of the different types of municipalities is that a general law city must get its power from state law, while a home-rule municipality need only look to state law for a restriction. *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016)

The Texas Local Government Code contains numerous provisions that grant a wide variety of powers to general-law municipalities. See, e.g., Tex. Loc. Gov't Code §§ 211.001–.033 (zoning); *id.* §§ 212.001–.904 (subdivisions and property development); *id.* §§ 213.001–.005 (comprehensive plans); *id.* §§ 214.001–.905 (housing and other structures); *id.* §§ 215.002–.075 (businesses and occupations); *id.* §§ 216.001–.903 (signs); *id.* §§ 217.001–.042 (nuisances and disorderly conduct); *id.* §§ 229.001–.055 (miscellaneous authority of municipalities); *id.* §§ 241.001–.903 (airports); *id.* §§ 242.001–.003 (subdivisions in and outside ETJ); *id.* §§ 243.001–.011 (sexually oriented business); *id.* §§ 244.001–.026 (location of facilities and shelters); *id.* §§ 245.001–.007 (local permits); *id.* §§ 246.001–.004 (telecommunications facilities); *id.* §§ 250.001–.007 (miscellaneous authority of municipalities and counties).

Home-rule municipalities have all the same authority, plus any categories not expressly prohibited by state law. Such is the power of self-government.

V. Judicial Notice

Courts, including municipal courts, must take judicial notice of properly enacted municipal ordinances. All ordinances are pursued valid. Tex. Loc. Gov't Code Ann. § 51.003 (West 2017). However, that does not mean a party will not attempt to challenge an ordinance in court.

The rules of statutory are used to construe municipal ordinances. *Bd. of Adjustment of City of San Antonio v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002). A court's primary objective in construing an ordinance is to ascertain and give effect to the enacting body's intent. See *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). To discern that intent, courts start with the plain and ordinary meaning of the ordinance's words, using any definitions provided by the enacting body. See *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). Courts

must read the ordinance as a whole, presuming the enacting body purposefully included each word, *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008), and construing the ordinance to avoid rendering any word or provision meaningless. *Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (per curiam). When the text is clear, the text, by itself, is determinative of the enacting body's intent unless the plain meaning produces an absurd result. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 164–65 (Tex. 2016) (citing *Texas Mut. Ins. Co.*, 381 S.W.3d at 452.)

In other words, because both substantive and procedural ordinances are going to come up in municipal court, the court must be prepared to perform a full statutory construction analysis. Going through the principles of statutory construction are beyond the scope of this paper. Just know, such principles apply to all ordinances.

VI. Subject Matter & Personal Jurisdiction

The concept of jurisdiction involves the consideration of two distinct matters: (1) jurisdiction over the subject matter; and (2) jurisdiction over the person and/or res. These two categories operate independently, and both jurisdictional concepts must be satisfied for an action to be properly before a court. See e.g., *McCarver v. State*, 257 S.W.3d 512 (Tex. App.—Texarkana 2008, no pet.); *City of El Paso v. Madero Dev.*, 803 S.W.2d 396 (Tex. App.—El Paso 1991, writ denied).

“[T]here are two types of jurisdictions: the trial court's jurisdiction to consider particular types of offenses (subject-matter jurisdiction) and the trial court's jurisdiction over a particular defendant conferred by a charging instrument (personal jurisdiction).” *Trejo v. State*, 280 S.W.3d 258, 262 (Tex. Crim. App. 2009) (Keller, P.J., concurring); see *State v. Dunbar*, 297 S.W.3d 777, 780 (Tex. Crim. App. 2009) (quoting *Fairfield v. State*, 610 S.W.2d 771, 779 (Tex. Crim. App. 1981)) (“A trial court's jurisdiction over a criminal case consists of ‘the power of the court over the “subject matter” of the case, conveyed by statute or constitutional provision, coupled with “personal” jurisdiction over the accused,’ which is invoked in ... prosecutions by the filing of [a charging instrument].”). see also *Leverson v. State*, *Leverson v. State*, No. 03-15-00090-CR, 2016 WL 4628054, at *8 (Tex. App.—Austin Aug. 30, 2016, no pet.).

In the civil or administrative context, the court must have civil jurisdiction as a judicial body or administrative jurisdiction as a hearing officer over the subject matter. “Subject matter” jurisdiction involves a court's competence to hear a specific case and may be determined by the type of claim involved and the amount of damages alleged to have been suffered. *Am. Zurich Ins. Co. v. Samudio*, 370 S.W.3d 363 (Tex. 2012); *Tellez v. City of Socorro*, 226 S.W.3d 413 (Tex. 2007). “Personal jurisdiction” involves the court's authority over a party to the action or the party's property. Municipalities are authorized by statute to institute appropriate action to restrain, correct or abate violations of their zoning ordinances and regulations, including injunctive relief. The Local Government Code's enforcement provision for general zoning regulations, rather than injunction provision for enforcement of municipal ordinances, applies to ordinances such as the regulating use of land. Tex. Loc. Gov't Code Ann. §§ 54.016, 211.012; *Hollingsworth v. City of Dallas*, 931 S.W.2d 699, 702 (Tex. App.—Dallas 1996, writ denied). For example, under the authority in Chapter 211 of the Texas Local Government Code a municipality is generally required

only to prove violation of the zoning ordinance, rather than show a substantial danger of injury or adverse health impact, as would be required for enforcement of regulations not relating to land. *Hollingsworth*, 931 S.W.2d at 703. Jurisdiction over the person or property is typically going to be easier than subject matter jurisdiction if the person was within the city limits at the time or has property located within the city.

There are different types, and this list is not intended to be exclusive. However, several specific authorizations include, but are not limited to:

1. Sign Ordinances

Chapter 216 of the Texas Local Government Code allows all types of cities to regulate the use of signs within their jurisdictions. A municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce the ordinance within its area of extraterritorial jurisdiction Tex. Loc. Gov't Code Ann. § 216.902 (West) (authorizing certain municipalities to extend outdoor sign regulation to ETJs); *Town of Lakewood Village*, 493 S.W.3d at 536.

2. Substandard Structures

A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare. Tex. Loc. Gov't Code Ann. § 214.001. By ordinance, a city council can vest civil jurisdiction to enforce such regulations. Tex. Gov't Code Ann. § 30.00005(d)(1).

3. Junked Vehicles

A municipality, by ordinance, may provide for an administrative adjudication process and an administrative penalty for the enforcement of an ordinance adopted to regulated junked vehicles. Tex. Transp. Code Ann. § 683.0765; Tex. Loc. Gov't Code Ann. § 54.044 (West 2017).

4. Nuisances

A municipality, by ordinance, may adopt regulations to control nuisances, but must, by either separate ordinance or incorporated within the nuisance ordinance, vest its municipal court with the jurisdiction over enforcement. Tex. Gov't Code Ann. § 30.00005; *In re Pixler*, 584 S.W.3d 79 (Tex. App.—Fort Worth 2018, no pet.), reh'g denied (Aug. 23, 2018), reh'g denied (Aug. 23, 2018).

5. Subdivision Regulations

Tex. Loc. Gov't Code Ann. § 212.002 provides that “the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general

welfare of the municipality and the safe, orderly, and healthful development of the municipality.” Tex. Loc. Gov’t Code Ann. § 212.002. Section 212.003 then provides that the “governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Tex. Loc. Gov’t Code Ann. § 212.002.” Id. § 212.003(a) (emphasis added). Together, these two sections expressly give all municipalities authority to enforce rules and ordinances “governing plats and subdivisions of land” within their ETJs. See Tex. Loc. Gov’t Code Ann. § 212.002, .003(a).

However, the Texas Supreme Court has noted that Subchapter B of chapter 212 (regarding development plats in lieu of a statutory plat) applies only to municipalities which have expressly adopted the alternative platting method by ordinance. *Town of Lakewood Village*, 493 S.W.3d at 533. If the city does not expressly adopt an ordinance incorporating the development plat process, it cannot utilize that subchapter for regulation. *Id.*

6. Zoning

Zoning regulation is a recognized tool of community planning, allowing a municipality, in the exercise of its legislative discretion, to restrict the use of private property. *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); *Lombardo v. City of Dallas*, 124 Tex. 1, 73 S.W.2d 475 (1934). Judicial review of a municipality's regulatory action is necessarily circumscribed as appropriate to the line of demarcation between legislative and judicial functions. Courts have no authority to interfere unless the ordinance is unreasonable and arbitrary – a clear abuse of municipal discretion. *Hunt v. City of San Antonio*, 462 S.W.2d 536, 539 (Tex. 1971).

Zoning regulations are primarily found in Chapter 211 of the Texas Local Government Code. It grants municipalities authority to regulate certain zoning matters and places restrictions on home-rule municipalities for certain land use regulations. The governing body of a municipality may adopt ordinances to enforce Chapter 211 and impose criminal and civil penalties. Tex. Loc. Gov't Code Ann. § 211.012 (West 2017). A municipality may bring a civil action for the enforcement of a zoning ordinance. Tex. Loc. Gov't Code Ann. § 54.012 (West 2017). And while §54.013 states jurisdiction for such a civil suit is in county or district court, §30.00005(d) of the Texas Government Code states a city, by ordinance, can convey concurrent civil jurisdiction to a court of record equal to that of the district or county courts. Tex. Gov't Code Ann. § 30.00005(d).

7. Sanitation

A municipality can regulate the sanitation conditions of the city, including refuse, vegetation, and other unsanitary conditions of both commercial and non-commercial properties.

The governing body of a municipality may require the inspection of all premises and the regulation of filling, draining, and preventing unwholesome accumulations of stagnant water. Tex. Health & Safety Code Ann. § 342.001. It can impose fines and fees to enforce its regulations. *Id.*

The governing body can regulate sewers and privies (Tex. Health & Safety Code Ann. § 342.002); trash, rubbish, filth, carrion, or other impure or unwholesome matter (Tex. Health & Safety Code Ann. § 342.003); weeds, brush, and nuisance level vegetation (Tex. Health & Safety Code Ann. § 342.004). It can adopt criminal (Tex. Health & Safety Code Ann. § 342.005) penalties and can bring a civil suit (potentially in municipal court) to enforce such ordinances. Tex. Loc. Gov't Code §§54.012 & 017.

A municipality may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal if such rules are not inconsistent with the Solid Waste Disposal Act found in Chapter 361 of the Health and Safety Code. Tex. Health & Safety Code Ann. § 363.111 (West 2017).

8. Animal

A county or municipality may place requirements or restrictions on dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047. Such does not change the initial jurisdiction conveyed upon a municipal court by Chapter 822 but can impact the way in which the court is authorized to conduct hearings or handle dangerous animal matters.

But animal control is not limited to simply dangerous dogs. A municipality may regulate any aspects regarding animals which is necessary for the health and safety of the community. Tex. Loc. Gov't Code Ann. § 54.001. It can impose a Class C misdemeanor penalty. Tex. Loc. Gov't Code Ann. § 54.001(b). A city may also bring a civil suit to enforce its general animal care and control ordinances. Tex. Loc. Gov't Code Ann. § 54.012.

Animals are recognized as property in Texas and that “[o]rdinances, including those regulating the ownership, possession, and control of [animals], are a proper exercise of a municipality's police power if they are designed to secure the safety, health, and welfare of the public.” *Leibowitz v. City of Mineola, Tex.*, 660 F. Supp. 2d 775, 783–84 (E.D. Tex. 2009); see also *Vargas v. City of San Antonio*, 650 S.W.2d 177, 179 (Tex. App.—San Antonio 1983, writ dismissed); *Hargrove v. City of Rotan*, 553 S.W.2d 246, 247 (Tex. Civ. App.—Eastland 1977, no writ); and *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 704, 17

S. Ct. 693, 695–96, 41 L. Ed. 1169 (1897) (“Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the State and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens. That a State, in a bona fide exercise of its police power, may interfere with private property, and even order its destruction, is as well settled as any legislative power can be, which has for its objects the welfare and comfort of the citizen. *Patterson v. City of Bellmead*, No. 10-12-00357-CV, 2013 WL 1188929, at *7 (Tex. App.—Waco Mar. 21, 2013, pet. denied) (internal citations omitted).

9. Alternative Methods of Administration

Subchapter C of Chapter 54 of the Texas Local Government Code allows a city, by ordinance, to adopt alternative administrative procedures for certain health, safety, and zoning matters. It not only allows a city to adopt a special building and standards commission, but it also allows the city to create its own alternative adjudication process. Tex. Loc. Gov't Code Ann. § 54.043 (West 2017).

However, to take advantage of this procedure, the municipality must expressly adopt the alternative method by ordinance. *In re Pixler*, 2018 WL 3580637, at *3, reh'g denied (Aug. 23, 2018). Adopting an ordinance which grants the municipal court authority to hear appeals from such decisions is not the same as adopting the actual substantive ordinance. *Id.*

VII. Appeals

Basically, there is no “one-size-fits-all” answer for how to operate a municipal court and that includes how to appeal from a municipal court. Some municipal courts were created when Texas was its own republic. Some were created when the Texas Legislature had to pass a specific law to create the municipal court. Some were created simply by ordinance of the hosting municipality. Article 45.042 of the Code of Criminal Procedure essentially states that unless a specific municipal court of appeals was created or other city specific legislation says otherwise, the default is for any appeal to go to a county court at law.

Municipal courts of record are provided for by Chapter 30 of the Government Code. A municipality may choose to have either a “municipal court” or a “municipal court of record” but not both. *See* Tex. Gov't Code Ann. § 30.00003(e) (West 2017). A primary distinction between these types of municipal courts is that a “municipal court” established under §29.002 of the Government Code is not a court of record. Thus, an appeal from such a municipal court is necessarily by trial *de novo* because there is no “trial record” for the county court to consider on appeal. *See State v. Blankenship*, 170 S.W.3d 676, 680 (Tex. App.—Austin 2005, pet. ref'd) n. 7; *Tweedie v. State*, 10 S.W.3d 346, 348 (Tex. App.—Dallas 1998, no pet.). By comparison, an appeal

from a municipal court of record must be “based only on errors reflected in the record.” Tex. Crim. Proc. Code Ann. § 44.17 (West 2018); *see also* Tex. Gov’t Code Ann. § 30.00014(b) (West 2017). This includes a clerk’s record and any transcripts of proceedings.

The appeal process from a court of record is controlled primarily by Tex. Gov’t Code Ann. § 30.00014. However, it is not a picture of clarity. It does provide for procedures for appeal which are different than you would encounter in district court. First, it is mandatory that the appellant must file a written motion for new trial with the municipal clerk not later than the 10th day after the date on which judgment is rendered. Tex. Gov’t Code Ann. § 30.00014. Such a motion is normally permissible, but not required in district court.

To perfect appeal, the defendant must provide a notice of appeal and bond no later than the 10th day after the motion for new trial is ruled upon or overruled as a matter of law. Tex. Gov’t Code Ann. § 30.00014(d). If the defendant is not in custody, the appeal is not perfected until an appeal bond is filed. The appeal bond is dictated by Tex. Gov’t Code Ann. §30.00015. And while the bond must be approved by the municipal court of record, the amount must be either \$100 or double the amount of fine and court costs adjudged against the defendant, whichever is greater. Tex. Gov’t Code Ann. § 30.00015. With civil penalties of up to \$1,000 per day, a double-fine bond can be extremely expensive to file.

A lot of case law exists noting municipal appeals do not have to follow the Texas Rules of Appellate Procedure. However, Tex. Gov’t Code Ann. §30.00023 states the Texas Rules of Appellate Procedure an appeal from a court of record by default unless specifically changed by Chapter 30. Similarly, §30.00016 states the appellate record must substantially conform to those rules. Since the appeal mirrors an appeal to a court of appeals, the importance of a conforming record is emphasized. The clerk’s record and reporter’s record are needed, and the appellant shall pay for the reporter’s record. Tex. Gov’t Code Ann. §30.00019. The deadlines for requesting, filing, and transmitting the record are dictated by Tex. Gov’t Code Ann. §30.00020. The municipal judge is required to approve the record before it is sent to the county court or other court of appeals. *Id.*

The county court or other appellate court may affirm the judgment, reverse and remand, reverse and dismiss, or reform and correct. Tex. Gov’t Code Ann. §30.00024. And while specialized municipal appellate courts may be accustomed to it, many county courts will not normally want to issue a full written opinion sustaining or overruling the points of error. However, Tex. Gov’t Code Ann. § 30.00024(c) specifically requires such an opinion. If the appellate court awards a new trial, the case is treated as if the municipal court had awarded the new trial and the appeal never happened other than the fact a written opinion is issued.

Finally, a decision by a county court (or municipal court of appeals) sitting as an appellate court is appealable to the court of appeals if 1) the fine exceeds \$100 and is affirmed by the county court or municipal court of appeals or 2) the sole issue is the constitutionality of a statute or ordinance which formed the basis of a conviction. Tex. Gov’t Code Ann. § 30.00027. The only time that changes is if a subject matter specific state code provides for a different system or appellate jurisdiction.