

CIVIL ENFORCEMENT IN YOUR MUNICIPAL COURT

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WHAT ARE YOU TALKING ABOUT RYAN?

- Class C misdemeanors
- Separate Violation Per Day
- What Else is There?

CITY OF PLEASANT NEIGHBORHOOD, TEXAS

- Perfect small town
- Ms. Grady has biggest house in the best neighborhood
- 90 Years Old – started declining care and maintenance
- Died

CHAPTER 54 – ONE OPTION

- **Tex. Loc. Gov't Code § 54.012 – Civil Suit to Enforce Certain Ordinances**
- **District or County Court At Law**
- **Injunction and expedited procedures**
- **Civil Penalties. Tex. Loc. Gov't Code Ann. § 54.017**
- **But ... can be cost prohibitive**

BUT – FEAR NOT!

- Texas Government Code § 30.00005 – Municipal Courts of Record
- Vests municipal courts of record with “concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code” Tex. Gov’t Code Ann. § 30.00005(d)(2).
- Vests municipal courts of record with civil jurisdiction over claims under Chapter 214, subchapter A, of the Texas Local Government Code (dangerous structures)
- Grants authority to issue search warrants and nuisance abatement warrants
- Grants authority seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing the debris from the premises.
- And a bunch of other stuff

SO.....

- Same authority as going into district court
- Cheaper
- Faster
- Plus, a bunch of other stuff

WHAT'S THE DOWNSIDE?

- Municipal judge must be capable
- Municipal clerks freak out
- More administrative tasks for clerk and some departments

WHAT DO YOU NEED TO KNOW

- Must be a court of record
- Must have proper ordinance for court. [In re Pixler, 584 S.W.3d 79, 83 \(Tex. App.—Fort Worth 2018, orig. proceeding\)](#)
- Court staff will need training
 - Citation (for service of process, not for tickets)
 - Different numbering
 - Judgments and OCA
- Software needs to work with civil system
- Practical Execution
- Parameters of what's allowed

GOODY, GOODY, GOODY...WHAT ELSE CAN I DO?

- **Administrative search warrants**
- **Dangerous structures**
- **Illegal signs**
- **Zoning enforcement**
- **Junk vehicles**

- Civil Penalties (\$1,000 per day)
 - Burden of proof is less than criminal
- Animal regulation (not just dangerous dogs)
- Injunction orders
- Abatement warrants
- Default judgments

- Fire code
- Building, plumbing, electrical, property maintenance, etc. - International Codes
- Subdivision
- Nuisance including conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents. SOB regulation enforcement

- **Environmental including point source effluent limitations or the discharge of a pollutants.**
- **Floodplain control and administration**
- **Water conservation measures and restrictions**

BURDEN OF PROOF

- Criminal case = beyond a reasonable doubt
- Civil enforcement = preponderance of the evidence

PLEADINGS AND INJUNCTIVE RELIEF

- The only allegations required to be pleaded in an action brought under this subchapter are:
 - (1) the identification of the real property involved in the violation;
 - (2) the relationship of the defendant to the real property or activity involved in the violation;
 - (3) a citation to the applicable ordinance;
 - (4) a description of the violation; and
 - (5) a statement that this subchapter applies to the ordinance.
- Tex. Loc. Gov't Code Ann. § 54.015

STATUTORY V COMMON LAW INJUNCTION

- On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the municipality may obtain against the owner or owner's representative with control over the premises an injunction that:
 - (1) prohibits specific conduct that violates the ordinance; and
 - (2) requires specific conduct that is necessary for compliance with the ordinance.
- (b) It is not necessary for the municipality to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.
- Tex. Loc. Gov't Code Ann. § 54.016

CHOOSE WISELY

- Chapter 211 (zoning), chapter 214 (dangerous structures), and many other “authorization” statutes already have injunctive relief as an enforcement mechanism
- But, individual sections do not address standards or pleadings, so use common law standards
- Chapter 54 does not authorize attorney’s fees
- Municipal court only has jurisdiction as outlined in Chapter 30 of Gov’t Code

CITY OF DALLAS V. STEWART, 361 S.W.3D 562, 564,
566, 569, 580–81 (TEX. 2012).

- Alternative administrative methods – Buildings and Standards Commission
- Substantial evidence review not allowed for admin body nuisance determinations
- “...nuisance determinations must ultimately be made by a court, not an administrative body...” *City of Dallas v. Stewart*, 361 S.W.3d 562, 569 (Tex. 2012)
- Municipal Court of Records = a court authorized to make nuisance determinations

COURTS OF LIMITED JURISDICTION

- 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
- 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 Tex. Att'y Gen. Op. No. DM-427 (1996) at 2 (municipal courts “have no jurisdiction other than that which the legislature prescribes”); see also Tex. Att'y Gen. Op. No. JC-0216 (2000) at 2 (stating a municipal court is one of limited jurisdiction).; Op. Tex. Att'y Gen. No. GA-0316 (2005).

ADDITIONAL POSITIVE PIECES

- Notices to owner listed in tax records. Tex. Loc. Gov't Code Ann. § 54.005
 - If magic language is used in the notice, the record owner must disclaim ownership by an affidavit in 20 days.
 - The record owner is presumed to be the owner of the property for all purposes to which the notice relates if no affidavit is timely received. Tex. Loc. Gov't Code Ann. § 54.005(g).*
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- * different subchapter

BUT BE WARNED

- In re Pixler, 584 S.W.3d 79, 83 (Tex. App.—Fort Worth 2018, orig. proceeding).
- Ordinances trigger the jurisdiction for courts of record
- No ordinance, no authority

IS POST JUDGMENT THE SAME AS DISTRICT COURT?

- For criminal fines, a city may collect any judgment through the normal civil process of collections. Tex. Crim. Proc. Code Ann. §45.047.
- So, the court is already expected to be set up for handle post-judgment processes, at least for most kinds of judgments

AUTHORIZATION INCLUDES

- Abstracts of judgment
- Writ of execution
- Mandamus
- A judgment creditor is entitled to aid from a court through injunction or other means in order to reach property to obtain satisfaction on the judgment. Tex. Civ. Prac. & Rem. Code Ann. § 31.002.
- Tex. Gov't Code sec. 21.001 states all courts have inherent power to enforce its lawful orders, including authority to issue the writs and orders necessary to aid its judgments.

CHAPTER 54 JUDGMENT RELIEF

- The municipality may also bring:
 - (1) a claim for civil penalties under Section 54.017; and
 - (2) an action in rem against the structure that may result in a judgment against the structure as well as a judgment against the defendant.
- Tex. Loc. Gov't Code Ann. § 54.018

THE END