

Cause No. \_\_\_\_\_

CITY OF TOWNVILLE,  
Plaintiff,

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IN THE DISTRICT COURT

VS.

TOWNVILLE COUNTY, TEXAS

JOHN SMITH,  
Defendant.

\_\_\_\_ JUDICIAL DISTRICT

**CITY OF TOWNVILLE’S ORIGINAL PETITION, REQUEST FOR TEMPORARY  
RESTRAINING ORDER, TEMPORARY AND PERMANENT INJUNCTION, AND  
REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF THE COURT:

The City of Townville, Plaintiff, files this City of Townville’s Original Petition, Request for Temporary Restraining Order, Request for Temporary and Permanent Injunction, and Request for Disclosures, and in support of which, would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.
2. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose, within 50 days of this request, the information or material described in Rule 194.2 regarding the properties located at 123 Brown Street, Townville County, Townville, Texas.

**II. PARTIES**

3. The City of Townville (the “Plaintiff”) is a home-rule municipal corporation situated in Townville County, Texas, incorporated and operating under the laws of the State of Texas.
4. Defendant John Smith (the “Defendant”) is an individual owning property in the City of Townville. The driver’s license number of Defendant John Smith is California

DL#\_\_\_\_\_. Service of process may be made upon Defendant John Smith at 677 Smith Street #10, City, California 94XXX.

### **III. VENUE AND JURISDICTION**

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

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

### **IV. FACTS**

7. Defendant owns the structures and the properties within the City of Townville, Townville County, Texas located at Block G/7122, Lot 4, commonly known as 123 Brown Street, Townville, Townville County, Texas (the "Property").

8. The structures on the Property are occupied, multi-family structures.

9. On April 29, 2012, William Jordan (the "Inspector") a code inspector for the City, confirmed that the Property is currently leaking sewage into the public alley way. This condition violates Section 27-11(c)(1) of the Townville City Code. The leakage of raw sewage poses a significant health concern for tenants at the Property and citizens of the City of Townville.

10. Moreover, the Property is without gas service, which violates Section 27-11(c)(4) for failing to provide and maintain in operating condition a device to supply hot water of a minimum temperature of 120 Fahrenheit within each structure intended for human habitation. It additionally violates Section 27-11(c)(5) for failure to provide and connect a kitchen sink, bathtub or shower, and lavatory to a hot water source in each structure intended for human habitation. In addition, Defendant has failed to connect plumbing fixtures and heating

equipment that the owner supplies in accordance with the Townville Plumbing Code and Townville Mechanical Code. The lack of gas poses a health concern for tenants at the Property as it is an essential utility.

11. The following additional violations of the Townville City Code exist or have existed on the Property:

- a. There are holes, excavations, sharp protrusions, and other objects or conditions that exist on the land that are reasonably capable of causing injury to a person in violation of Section 27-11(a)(1);
- b. Failure to protect the exterior surfaces of a structure that are subject to decay by application of paint or other coating in violation of Section 27-11(b)(1);
- c. Failure to maintain the structure in a weather-tight and water-tight condition in violation of Section 27-11(b)(5);
- d. The floors, walls, ceilings and all supporting structural members are not in a sound condition capable of bearing imposed loads in violation of Section 27-11(b)(6);
- e. Failure to repair holes, cracks, breaks, and loose surface materials that are health or safety hazards in or on floors, walls, and ceilings in violation of Section 27-11(b)(9);
- f. Failure to maintain the fence on the Property in compliance with the standards of the Townville City Code in violation of Section 27-11(b)(10);
- g. Failure to provide and maintain in operating condition connections to discharge sewage from a structure or land into a public sewer system in violation of Section 27-11-(c)(1);
- h. Failure to provide and maintain in operating condition a toilet connected to a water source and to a public sewer in each structure intended for human habitation in violation of Section 27-11(c)(2);
- i. Failure to provide and maintain in operating condition a device to supply hot water of a minimum temperature of 120°F. within each structure intended for human habitation in violation of Section 27-11(c)(4);
- j. Failure to provide and connect a kitchen sink, bathtub or shower, and lavatory to a cold and hot water source in each structure intended for human occupancy in violation of Section 27-11(c)(5);

- k. Failure to provide and maintain in operating condition, from April 1 through November 1, refrigerated air equipment capable of maintaining a maximum inside temperature that is 20 degrees lower than the outside temperature or 85°F, whichever is warmer, in each room of a structure intended for human occupancy in violation of Section 27-11(c)(8);
- l. Failure to provide and maintain in operating condition electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures in violation of Section 27-11(c)(11);
- m. Failure to provide a structure intended for human habitation with a screen for keeping out insects at each opening of the structure if the structure is not cooled with refrigerated air in violation of section 27-11(d)(2);
- n. Failure to keep the interior of a structure free from insects, rodents, and vermin in violation of Section 27-11(d)(4);
- o. Failure to provide and maintain security devices in each dwelling unit as required by Sections 92.153, 92.154, and 92.155 of the Texas Property Code in violation of Section 27-11(e)(1);
- p. Failure to post a Master Meter Notice in a conspicuous place in a common area of the master metered apartment building so that it is accessible to tenants at all times, easily readable, protected from the weather, and visible from the common area in violation of Section 27-26(b);
- q. Failure to maintain essential utility serves to any apartment unit of a utility service essential to the habitability of the unit and to the health of the occupants. Essential utility services are gas, electric, and water and wastewater services in violation of Section 27-28;
- r. Failure to install and maintain single and multiple station smoke alarms Groups R-2, R-3, R-4, and 1-1, regardless of occupant load at all of the following locations: (1) on the ceiling and wall outside of each separate sleeping area in the immediate vicinity of bedrooms; (2) in each room used for sleeping purposes; (3) in each story within a dwelling unit not including crawl spaces and uninhabitable attics in violation of Section 907.2.10.1.2 of the International Fire Code;
- s. Failure to obtain a permit from the building official before erecting, constructing, enlarging, adding to, altering, repairing, moving, improving, removing, installing, converting, demolishing, equipping, using, occupying, or maintaining a structure or building, service equipment, or causing same to be done in violation of Section 52-301.1.1;
- t. Failure to maintain emergency escape and rescue openings as operational from inside the room without the use of keys or tools in violation Section 1025.4 of the International Building Code;

- u. Failure to maintain the path of egress travel along a means of egress in an uninterrupted manner in violation of Section 1003.6 of the International Building Code;
  - v. Failure to maintain the Property such that no person shall suffer from any cause, nauseous, foul, offensive or injurious to the public health, or unpleasant and disagreeable to adjacent residents or persons in violation of Section 19-17;
  - w. There are accumulations of litter that are not in authorized private receptacles for collection in violation of Section 7A-18;
  - x. There are weeds or grass located on the premises that are greater than 12 inches in height in violation of Section 18-13(a)(1);
  - y. There are collections of standing or flowing water in which mosquitoes breed or are likely to breed on the premises in violation of Section 19-30;
  - z. Failure to maintain a certificate of occupancy in violation of Section 51A-1.104(a)(1);
  - aa. The lot has been used for the outside placement of items for a period in excess of twenty-four (24) hours in violation of Section 51A-4.213(9)(E);
  - bb. Failure to construct and maintain screening around garbage storage areas in violation of Section 51A-4.602(b)(1)(6); and
  - cc. Failure to comply with the requirement of numbering structures and/or units in a building complex in violation of Section 43-104.
12. A true and correct copy of the ordinances violated by the conditions of the Property is attached to this Petition as Exhibit A. These ordinances relate to:
- a. The preservation of public safety, relating to the material or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing fixtures, entrances, or exits;
  - b. the preservation of public health or to the fire safety of a building or other structure or improvement;
  - c. dangerously damaged or deteriorated structures or improvements;

- d. conditions caused by accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- e. zoning that provides for the use of land or classifies a parcel of land according to the city's classification scheme.

13. In regards to the Property, persons other than Defendant and property other than Defendant's will continue to suffer from adverse impacts and risk substantial danger of injury unless Defendant complies with one or more of these ordinances. These violations of the ordinances threaten harm that is irreparable.

#### **V. CAUSES OF ACTION**

14. Subchapter B of Chapter 54 of the Texas Local Government Code applies to these ordinances.

15. Pursuant to Sections 54.016 and 54.018 of the Texas Local Government Code, Plaintiff requests that the Court issue a temporary restraining order, ordering Defendant to immediately cease and desist from failing to provide and maintain in operating condition connections to discharge sewage from a structure or land into a public sewer system in violation of Section 27-11(c)(1) of the Townville City Code at the Property located at 123 Brown Street, Townville, Texas. In addition, Plaintiff requests the Court to order that Defendant immediately cease and desist from maintaining and operating the Property as a place without essential gas utility service. Specifically, Defendant shall cease and desist from failing to provide and maintain in operating condition a device to supply hot water of a minimum temperature of 120 Fahrenheit within each structure intended for human habitation in violation of Section 27-11(c)(4) and failing to provide and connect a kitchen sink, bathtub or shower, and lavatory to a cold and hot

water source in each structure intended for human occupancy in violation of Section 27-11(c)(5) at the Property located at 123 Brown Street, Townville, Texas.

16. Pursuant to Sections 54.016 and 54.018 of the Texas Local Government Code, Plaintiff requests temporary and permanent injunctive relief, ordering Defendant to remedy or repair the conditions of the Property to bring them into compliance with the Townville City Code. In addition, Plaintiff requests that Defendant be ordered to remove and dispose of the standing sewage caused by the sewage leak on the Property. If Defendant fails to remove and dispose of the sewage, Plaintiff requests this Court allow Plaintiff to remove and dispose the sewage, and charge the costs against Defendant and place a lien upon the Property for these costs.

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

18. Plaintiff also requests post-judgment interest and costs of court.

#### **VI. REQUEST FOR JURY TRIAL**

19. Plaintiff respectfully requests a trial by jury on all issues so triable.

#### **VII. PRAYER FOR RELIEF**

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

- 1) Plaintiff be granted temporary restraining order as provided herein;
- 2) Plaintiff be granted temporary and permanent injunctive relief as provided herein;

- 3) Plaintiff be awarded judgment for a civil penalty not to exceed \$1,000 per violation, per day, for each day that the Property remain in violation of the Townville City Code;
- 4) Plaintiff be granted judgment for all costs of court;
- 5) Plaintiff be granted judgment for post-judgment interest at the highest legal rate; and
- 6) All such other and further relief, both general or special, at law or in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,  
OFFICE OF THE CITY ATTORNEY

CITY OF TOWNVILLE, TEXAS

By: \_\_\_\_\_  
Samantha Smith  
Assistant City Attorney  
State Bar of Texas No. \_\_\_\_\_  
1500 Smith Street  
Townville, Texas 75205  
Tel. (XXX) XXX-XXX  
Fax (XXX) XXX-XXX  
ATTORNEYS FOR PLAINTIFF  
CITY OF TOWNVILLE, TEXAS



**VERIFICATION**

STATE OF TEXAS           §

COUNTY OF TOWNVILLE §

I, William Jordan, a Code Inspector with the City of Townville, after being duly sworn, hereby certify that I am qualified and authorized to make this affidavit, and that I have read the factual allegations paragraphs 7 – 13 contained in this petition and said factual allegations are within my personal knowledge and are true and correct..

\_\_\_\_\_  
William Jordan

Subscribed and sworn to before me this \_\_\_\_\_ day of May 2012.

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF COUNSEL**

I contacted two attorneys, Wynn Wynn and John Maloney, who I believed may represent Defendant John Smith in this matter; however, neither attorney would confirm with certainty that they represented Defendant in this case. Therefore, to the best of my knowledge, the party against whom the relief is sought is not represented by counsel in the matter made the basis of this suit in which relief is sought.

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Samantha Smith

**CERTIFICATE OF TRANSFER**

To the best of my knowledge, the case in which this application is presented is related to two other causes of action:

*City of Townville v. John Smith*, No. 12-13934 (116<sup>th</sup> Dist. Ct., Townville County, Tex. Nov. 27, 2007)

*City of Townville v. John Smith*, No. 11-01018 (H-160<sup>th</sup> Dist. Ct., Townville County, Tex. Jan. 29, 2012)

Accordingly, this case *may* be subject to transfer under Local Rule 1.06.

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Samantha Smith

## CERTIFICATE OF CONFERENCE

Counsel for Plaintiff has personally attempted to contact Defendant John Smith to resolve the matters presented as follows:

On April 28, 2012, at approximately 4:00 p.m., I contacted Mr. Wynn Wynn's Office to discuss the situation at 123 Brown, Townville, Texas. Mr. Wynn was not at the office. I spoke with Darrin Wynn another attorney at the firm. I was given an email address for reaching Mr. Wynn [twhitt@federaltitle.com](mailto:twhitt@federaltitle.com)

On April 28, 2012, at 4:40 p.m., I spoke with John Maloney regarding the condition of the property at 123 Brown. He provided me with his email address. He did not confirm whether he was representing Mr. Smith with respect to the property made subject of this suit.

On April 28, 2012, at 5:12 p.m., I followed up with an email to Mr. Wynn and Mr. Maloney regarding the situation at 123 Brown to confirm whether or not either of them represent Defendant. If they did represent Defendant, the email was my first attempt to confer with counsel regarding the temporary restraining order.

On April 30, 2012, at 2:00 p.m., I attempted to contact Defendant via telephone [(XXX) XXX-XXXX] at his last known place of employment, Relax Hotel, 835 Smith, San Francisco, CA at. I was advised that he no longer worked at the hotel.

On April 30, 2012, at 2:20 p.m., I attempted to contact Defendant via telephone [(XXX) XXX-XXXX] at another place which I believed to be a place of employment for Defendant, Spa Hotel, 1353 Smith Street, San Francisco, CA. No one would answer the telephone.

On April 30, 2012, at 3:29 p.m., I attempted to contact Defendant via telephone [(XXX) XXX-XXXX] at another place, which I believed to be a place of employment for Defendant, Sleep Hotel, 200000 Post Street, San Francisco, CA. I was advised that he left the hotel about a month ago.

On April 30, 2012, at 3:45 p.m., I attempted to contact Defendant via telephone [(XXX) XXX-XXXX] at another place, which I believed to be a place of employment for Defendant, Pacifier Equities, San Francisco, CA. The number was disconnected. I also sent an email to Defendant but did not receive a response.

On April 30, 2012, at approximately 4:30 p.m., I emailed Defendant at our last known email address at \_\_\_\_\_@hotmail.com and copied John Maloney and Wynn Wynn. I did not receive a response from Defendant.

On May 1, 2012, at 11:11 a.m. and 12:27 p.m., I attempted to contact Defendant at his last known cell number [(XXX) XXX-XXXX] (that I obtained from a receiver in another action

involving Defendant's properties). There was no answer, and I could not leave a message either time because the number's mailbox was full.

On May 1, 2012, at 4:12 pm, I attempted to contact Defendant at his last known cell number telephone [(XXX) XXX-XXXX]. There was no answer; however, I was able to leave a voicemail advising that the City of Townville would be filing suit and would be seeking a temporary restraining order on May 2, 2012.

On May 1, 2012, at 5:08 p.m., I spoke with Defendant to confer about the temporary restraining order and the emergency issues related to it. He requested the weekend to resolve the gas and sewage problems, but the City's past experience with Defendant in *City of Townville v. John Smith*, No. 12-13934 (116<sup>th</sup> Dist. Ct., Townville County, Tex. Nov. 27, 2012) and *City of Townville v. John Smith*, No. 11-01018 (H-160<sup>th</sup> Dist. Ct., Townville County, Tex. Jan. 29, 2011) has shown that Defendant has been unable to resolve violations in a timely fashion. I explained that an emergency exists of such a nature that further delay would cause irreparable harm and that the City would seek relief on May 2, 2012. Defendant advised that he would send counsel, John Maloney, to represent him.

Additionally, counsel for Plaintiff has provided Defendant via electronic mail with a copy of the application for TRO and proposed order at least 2 hours before the application and proposed order were presented to the Court for a decision. Moreover, counsel for Plaintiff has provided Wynn Wynn and John Maloney via electronic mail and fax a copy of the application for TRO and proposed order at least 2 hours before the application and proposed order were presented to the Court for a decision.

An emergency exists of such a nature that further delay would cause imminent irreparable harm to the movant, as stated above in City of Townville's Original, Request for Temporary Restraining Order, Request for Temporary and Permanent Injunction, and Request for Disclosures.

Certified to the \_\_\_\_\_ Day of \_\_\_\_\_, 2012.

by \_\_\_\_\_  
Samantha Smith