

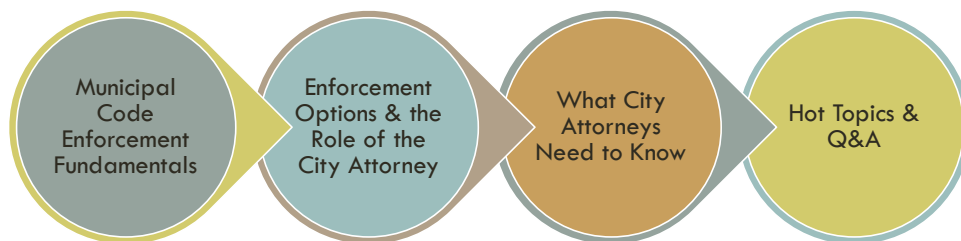
CODE ENFORCEMENT 101: A PRIMER FOR THE MUNICIPAL LAWYER

Texas City Attorney's Association
Riley Fletcher Basic Municipal Law Seminar
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POLICE POWERS

MUNICIPAL CODE ENFORCEMENT (A CITIES' AUTHORITY TO REGULATE)

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A TALE OF TWO (TYPES) OF CITIES

Presently, with very few exceptions, cities in Texas are classified as either general law or home rule and their authority to enact and enforce ordinances is conditioned upon the type of city

General Law:

- Allows for incorporation under the general laws of the State of Texas, classified as Type A, Type B or Type C
- Do not have the powers of self-government; powers and duties are derived by state statutes
- May only act if given a grant of authority from the State

Home Rule:

- Established by The Home Rule Amendment, Article XI, Section 5 of the Texas Constitution
- Allows cities with over 5,000 inhabitants the power to adopt their own charter after an election, thereby giving them the power of self-government
- May do anything authorized by its charter and not prohibited by state or federal law

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THE POWER TO ENACT AND ENFORCE ORDINANCES

- Both types of cities have implied powers under Chapter 51 of the Texas Local Government Code to adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, or order of the municipality...and is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality

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SPECIFIC STATUTORY AUTHORITY

HEALTH AND SAFETY MATTERS

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CHAPTER 214 OF THE LOCAL GOVERNMENT CODE

Regulation of Buildings

City by ordinance may establish minimum standards for the use and occupancy of buildings in the municipality regardless of the date of their construction and may adopt other ordinances as necessary to carry out this section.

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CHAPTER 214 OF THE LOCAL GOVERNMENT CODE

Regulation of Buildings

Adopts certain national model codes as the codes of the State:

- IRC as it existed on May 1, 2012 – for construction after 1/1/22
- NEC as it existed on May 1, 2001 - for construction after 1/1/06
- IBC as it existed on May 1, 2012 – for construction after 1/1/22
- ISPSC as it existed on May 1, 2019 (eff. 9/1/20)

Allows cities to adopt local amendments to these Codes

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CHAPTER 214 OF THE LOCAL GOVERNMENT CODE

City over 100,000 LGC 214.217

Notice of adopting/amending a national code posted conspicuously on web site 21 days before council consideration

Public hearing 14 days before adoption

- Required for adoption of amendments to IRC or IBC; or
- Upon written request of 5 people for other codes

N/A if have an advisory board for purpose of obtaining public comment

Delay implementation 30 days unless imminent harm LGC 214.218

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CHAPTER 214 OF THE LOCAL GOVERNMENT CODE

Regulation of Vacant Buildings



A municipality located in a county with a population of two million or more may adopt an ordinance requiring owners of vacant buildings to register their buildings by filing a registration form with a designated municipal official

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CHAPTER 217 OF THE LOCAL GOVERNMENT CODE

Regulation of Nuisances

Home Rule City may define and abate a nuisance within the city limits and up to 5,000 feet outside of city limits



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CHAPTER 342 OF THE HEALTH AND SAFETY CODE

Weeds

- The governing body of a municipality may require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter.

Stagnant water

- The governing body of a municipality may require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease.
- The governing body of a municipality may require the inspection of all premises.
- The governing body of a municipality may impose fines on the owner of premises on which stagnant water is found.



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CHAPTER 342 OF THE HEALTH AND SAFETY CODE

Abatement

If the owner of property in the municipality does not comply within seven days of notice of a violation, the municipality may:

- do the work or make the improvements required; and
- pay for the work done or improvements made and charge the expenses to the owner of the property.

The notice must be given:

- personally to the owner in writing;
- 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
- if personal service cannot be obtained:
 - by publication at least once;
 - by posting the notice on or near the front door of each building on the property to which the violation relates; or
 - by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

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CHAPTER 683 OF THE TRANSPORTATION CODE

Junked Motor Vehicles

"Junked vehicle" means a vehicle that:
is self-propelled; and
is:

- wrecked, dismantled or partially dismantled, or discarded; or
- inoperable and has remained inoperable for more than:
 - 72 consecutive hours, if the vehicle is on public property; or
 - 30 consecutive days, if the vehicle is on private property.

Applies only to a motor vehicle that displays an expired license plate or does not display a license plate.

An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of a junked vehicle subject to regulation.

A municipality may adopt procedures for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance; must provide notice and a public hearing if requested.

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STATUTORY AUTHORITY CHART

Topic	State Statute
Regulation of Buildings	Loc. Gov't Code Chapter 214
Vacant Building Registration	Loc. Gov't Code Chapter 214
Nuisances & Graffiti	Loc. Gov't Code, Ch. 217 Health & Safety Code, Chapter 342
Rubbish, High Weeds/Grass	Health & Safety Code Chapter 342
Junked Motor Vehicles	Transportation Code Chapter 683

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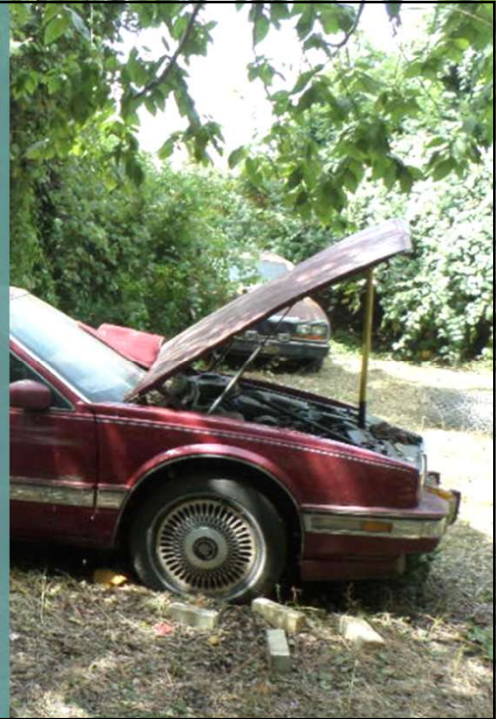
ENFORCEMENT OPTIONS & THE ROLE OF THE CITY ATTORNEY

ORDINANCES ARE LAWS

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SUMMARY NUISANCE ABATEMENT BY STATUTE

- Junked Motor Vehicles – Ch. 683 of Tex. Transp. Code
- Weeds and Heavy Clean – Tex. Health and Safety Code §§342.004-342.006
 - Lien allowed after appropriate notice
- Securing Structure - Tex. Local Gov't Code §214.0011
 - Lien allowed after appropriate notice



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SUMMARY NUISANCE ABATEMENT BY ORDINANCE

Tex. Local Gov't Code §§ 217.041 and 217.042 allow home rule cities to define and prohibit nuisances and to summarily abate

Liens allowed?

If adopted IBC or IFC, authority of Building Official or Fire Code Official to summarily abate?



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SUMMARY ABATEMENT CONCERNS: DUE PROCESS

- U.S. Constitution provides that no person shall be deprived of life, liberty or property *without due process of law*
- One component of due process rights is procedural due process, i.e. notice and an opportunity to be heard before the deprivation
- Summary Nuisance Abatement in code enforcement context could arguably violate tenets of procedural due process if no notice or opportunity to be heard

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SUMMARY NUISANCE ABATEMENT RAISES CONSTITUTIONAL CONCERNS

City of Houston v. Carlson,
393 S.W.3d 350 (Tex. App.
– Houston [14th Dist.] 2012)

- City summarily vacated unsafe condominiums and conducted post-vacation order administrative hearing for tenants
- Owners filed suit against city in district court
- Court held that LGC §214.001 applied; city failed to meet notice and hearing requirements of statute; and city's substitute procedure did not satisfy procedural due process

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CITY ATTORNEY ROLE IN SUMMARY ABATEMENT PROCESSES



Provide general counsel/advice to city enforcement staff re: application of law to particular facts and how to properly document violations



Review notices and assist with identifying proper persons to notice



Review liens to be filed



If summarily abating pursuant to statutory authority, make sure client has followed all state law requirements

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CHAPTER 54 OF THE LOCAL GOVERNMENT CODE

Governing body of a municipality may enforce each rule, ordinance or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation

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

Allows for enforcement of certain types of ordinances through:

- criminal citations;
- quasi-judicial enforcement (administrative board);
- a civil action in district or county court; or
- civil adjudication

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CRIMINAL CITATIONS



- Criminal Enforcement of a municipality's ordinances
- Fine limit (Tex. Local Gov't Code §54.001)
 - \$500
 - \$2000 if the ordinance governs fire safety, zoning, or public health or sanitation
 - \$4000 if the ordinance violation is for dumping of refuse

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BUILDING AND STANDARDS COMMISSION

Tex. Local Gov't Code §54.033 et seq.

- Quasi-judicial/administrative body comprised of appointed officials to hear cases and make determinations involving substandard buildings
 - Look also at LGC Ch. 214
- Extensive Notice, Due Diligence and Filing Requirements
- Authorized to issue orders to repair, vacate, secure, or remove the substandard building
- Civil Penalties
 - Up to \$1000 per day per violation or \$10 per day per violation if homesteaded



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BUILDING AND STANDARDS COMMISSION

Things to remember:

- Chapter 54 and Chapter 214 work in conjunction; read together
- City is movant on case and bears burden of proof
- Need to make sufficient record of proceedings, notices, condition of property, etc. in documentation to prevail in any appeal
- Appeals
 - May be brought by any owner, lienholder, or mortgagee of record
 - Must be filed in District Court within 30 days
 - Substantial evidence review of the board's determination (*But see City of Dallas v. Heather Stewart case*)



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City of Dallas v. Heather Stewart



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THE HEATHER STEWART CASE

Texas Supreme Court opinion issued July 2011

- “substantial evidence review of a nuisance determination resulting in a home’s demolition does not sufficiently protect a person’s rights under Article I, Section 17 of the Texas Constitution”
- *Stewart II* - On 1/27/12 the S.Ct. withdrew the July opinion and reissued a substantially similar opinion, saying:
 - “takings claims must be asserted on appeal from the administrative nuisance determination”
 - “a party asserting a takings must first exhaust its administrative remedies and comply with jurisdictional prerequisites for suit”

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CIVIL ENFORCEMENT ACTIONS

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CIVIL ENFORCEMENT OF CODE VIOLATIONS

- What municipal courts can do
 - Civil adjudication
 - Civil lawsuits in Municipal Court
- Civil lawsuits in District and County Courts
 - Bases for Civil Lawsuits in District and County Courts
 - Additional Causes of Action
 - Remedies in Civil lawsuits



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What Municipal Courts can do

Municipal Courts have jurisdiction over certain types of civil and criminal cases.

Criminal Cases

- These courts have original and exclusive jurisdiction in all criminal cases involving violations of city ordinances
- Fines only

Civil Cases

- Limited jurisdiction over dangerous dog determinations.

Other powers

- Issue search or arrest warrants
- Punish for contempt up to \$100 fine, confinement in city jail for not more than three days, or both fine and confinement in jail.

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WHAT ELSE CAN MUNICIPAL COURTS DO?

Texas Gov't Code § 29.003

By ordinance, a city may give municipal courts *civil* jurisdiction for purpose of:

- enforcement of municipal ordinances enacted under Subchapter A, Chapter 214 of the Local Government Code
- enforcement of health and safety and nuisance abatement ordinances brought under Subchapter B, Chapter 54 of the Local Government Code (concurrent with district and county courts)

They also have authority to issue:

- search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation
- seizure warrants for the purpose of securing, removing or demolishing the offending property and removing the debris from the premises

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MAKING THE MOST OF YOUR MUNICIPAL COURT

□ Tools for civil code enforcement in municipal courts:

- Chapter 54 lawsuits in Municipal Court
 - for code issues
 - but not for zoning
- Civil adjudication process
- Substandard structure docket
 - Either Municipal Court or City Council can hear these case



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CIVIL ADJUDICATION IN MUNICIPAL COURT

Tex. Loc. Gov't Code Section 54.043

Alternative to a building and standards commission for the enforcement of ordinances described in 54.032 LGC, i.e. health and safety ordinances

- The alternative process must contain provisions relating to notice, the conduct of the proceedings, permissible orders, penalties, and judicial review similar to provisions of the subchapter.

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- Process -- Tex. Loc. Gov't Code Section 54.044
 - Defendant not required to attend hearing
 - Defendant who fails to appear is considered to admit liability for the violation charged
 - Hearing officer shall issue an order stating:
 - 1) whether the person charged with violating an ordinance is liable; and
 - 2) the amount of a penalty, cost or fee assessed
 - Order may be enforced by:
 - Filing of a civil suit for the collection of a penalty; and
 - Obtaining an injunction.

CIVIL ADJUDICATION IN MUNICIPAL COURT

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Section 214.001 of the Tex. Loc. Gov't

Code provides that:

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;
- Regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry; or
- Boarded up, fenced or otherwise secured if:
 - ▶ the building constitutes a danger to the public even though secured from entry; or
 - ▶ the means used to secure the building are inadequate to prevent unauthorized entry or use of the building

**Beware of state law that requires city to pay for relocation of occupants who are displaced as a result of code enforcement or demolition program [Tex. Prop. Code Section 21.046(e)].*

SUBSTANDARD STRUCTURE DOCKET

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SUBSTANDARD STRUCTURE DOCKET PROCEDURES

Ordinance must:

- Establish minimum standards for continued use and occupancy of all buildings;
- Provide for giving proper notice (see LCG 214) to the owner of a building;
- Provide for a public hearing to determine whether the building complies with the standards in the ordinance.

Due diligence requirements:

- Must search the real property records of the county, appraisal district records for the county, secretary of state records for Texas; assumed name records of the county; tax records of the city; and utility records of the city.

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SUBSTANDARD STRUCTURE DOCKET PROCEDURES

Option to file notice of the hearing in the real property records of the county:

Notice must contain the name and address of the owner; a legal description of the property; and a description of the hearing.

The filing of the notice is **binding** on subsequent grantees, lienholders, or other transferees who acquire an interest in the property after the filing of the notice.



The Order:

Within **10 days** after the order is issued, municipality shall:

- Mail a copy to the owner, mortgagee, and lienholder
- File a copy of the order in the office of the city secretary
- Publish a notice in a newspaper of general circulation in the city

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ORDERS FOR REPAIR OR DEMOLITION UNDER 214



Within 30 days:

Secure the building from unauthorized entry; or
Repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.



If allow more than 30 days (but not more than 90 days):

Establish specific time schedules for commencement and performance of the work



If allow more than 90 days:

Owner must submit a detailed plan and time schedule for the work and establish that work cannot reasonably be completed within 90 days because of the scope and complexity of the work

Require progress reports to be regularly submitted to the municipality to demonstrate compliance with the time schedules

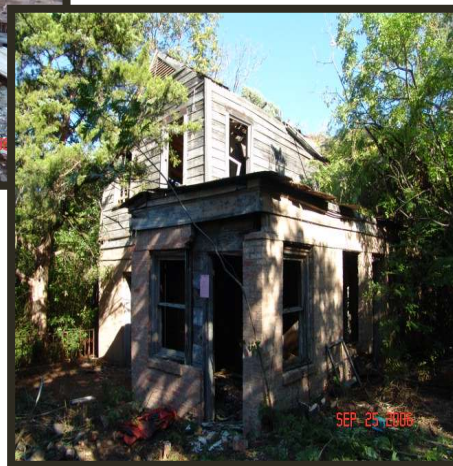
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ORDERS FOR REPAIR OR DEMOLITION UNDER 214

If the owner does not comply, the city may vacate, secure, remove or demolish the building at its own expense and place a lien on the property unless it is homesteaded.

- A city may also repair the building at the city's expense and place a lien or assess a civil penalty
- If municipality does this, it may only repair a building to bring it into compliance with the minimum standards and only if the building is a residential building with 10 or fewer dwelling units.

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EXAMPLES OF PROPERTIES
DEMOLISHED THROUGH
SUBSTANDARD STRUCTURE
DOCKET IN MUNICIPAL COURT

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■ Chapter 54 Texas Local Government Code for code and zoning violations

■ Chapter 211 of the Texas Local Government Code for zoning violations

CIVIL LAWSUITS IN DISTRICT AND COUNTY COURTS

The image shows the interior of a room with significant wall damage and debris. A person is standing in the background. The text on the right side of the image lists two chapters of the Texas Local Government Code: Chapter 54 for code and zoning violations, and Chapter 211 for zoning violations. The text 'CIVIL LAWSUITS IN DISTRICT AND COUNTY COURTS' is displayed in a dark box at the bottom of the image.

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CHAPTER 54 LAWSUITS

In municipal court, can bring suit for only for health and safety violations and nuisance abatement

- Texas Gov't Code § 30.00005

Section 54.012 (LGC) lists categories of violations for which you may bring a civil action in district and county courts

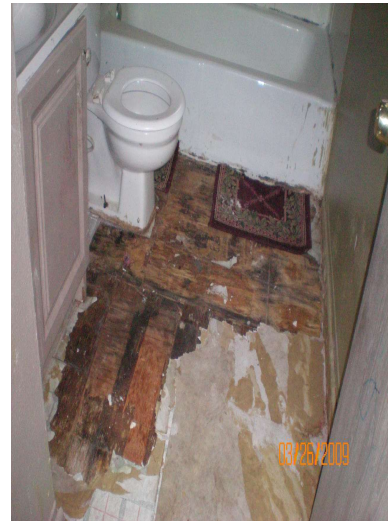
- health and safety
- zoning
- criteria for land subdivision (i.e. platting)
- interior configuration for sexually oriented businesses
- storm water
- flood plain management
- animal care and control
- water conservation

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STANDARD FOR INJUNCTION UNDER CHAPTER 54

■ Section 54.016 allows, upon 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,” an injunction that:

- Prohibits or require specific conduct
- May compel the repair or demolition or obtain approval to remove the structure and recover removal costs



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INJUNCTIVE PROCESS

File a civil petition listing all of the violations

Temporary Injunction

- Full evidentiary hearing
- Court order addressing every violation
- Court-ordered inspections
- City can get permission to make the repairs
- Court probably will not order demolition at this stage
- Lasts during pendency of case until trial

Contempt for Violations of Injunction

Trial/Permanent Injunction (where civil penalties are assessed)



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WHAT IS A TEMPORARY RESTRAINING ORDER?

- Something is happening that is so serious that the City cannot wait for a hearing; exceptional remedy
- Process:
 - Give party notice; possible ex parte hearing
 - File a petition
 - Immediate hearing (within 1-2 days)
- If TRO granted, Temporary Injunction Hearing within 14 days

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TEMPORARY RESTRAINING ORDERS

Emergency Situations

- Air conditioning in summer/heat in winter
- Sewage
- Open and vacant units in some situations
- Extreme Electrical Violations
- Fire hazards
- Some storm water violations



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TRO FOR ZONING VIOLATION



- City's entitled to injunctive relief for violation of zoning ordinance
- Does not have to prove harm

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CONTEMPT OF COURT ORDER

- Rule 692 of the Texas Rules of Civil Procedure
- Sections 21.001 and 21.002 of the Texas Government Code
- Criminal contempt
- Civil Contempt

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FINAL TRIAL IN A CHAPTER 54 SUIT

Permanent Injunction

- Like temporary injunction, but it is permanent/lasts forever as to those owners
- Court will order repair and/or demolition with deadline dates and corresponding inspections
- Can get self-help remedies for city to abate/remove/repair the violation or perform the demolition if owner fails to comply with injunction

Civil Penalties under LGC Section 54.017

- Municipality may recover a civil penalty if it proves:
 - The defendant was actually notified of the provisions of the ordinances; and
 - Thereafter, committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance
- May not exceed \$1,000 a day for a violation of an ordinance (in court's discretion)
- \$5,000 a day for violation for some environmental violations

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ADDITIONAL CAUSES OF ACTION AFFECTING CODE/ZONING ENFORCEMENT

- Demolition of Historic Structures – Tex. Local Gov't Code § 315.006
- Enforcement of Massage License Statute – Chapter 455 of Texas Occupations Code
- Abatement of public health nuisances, including a restaurant's unsanitary condition - Tex. Health and Safety Code § 341.011 et seq.
- Criminal Nuisance Abatement – Tex. Civil Prac. And Rem. Code § 125.001 et seq.



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TYPES OF PROPERTIES A CITY CAN ADDRESS IN A CHAPTER 54 LAWSUIT



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Plantation View Apartments
1100 N. Union Bower Road, Irving,
Texas

- Non-conforming apartment
- Ownership walked away
- City sued; court ordered demo;
sold at foreclosure recouping liens

**DEMOLISHED BY CITY AS A
RESULT OF CHAPTER 54
LAWSUIT**



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**ONE CASE STUDY:
OAK VILLAS APARTMENTS**

- 2nd largest apartment in Irving; over 550 units
- New, out-of-state owner acquired property in 2011
- Fall 2012
 - 60+ residents attended City Council public meeting regarding substandard condition of property, including rat/rodent infestation, holes and cracks in walls, water leaks, lack of maintenance, etc.
- Scope and Schedule entered with property owner to remedy violations
- Owner did not comply with Scope & Schedule
- City filed suit in Fall 2013, alleging 20+ categories of code and fire code violations
- As a result of code enforcement lawsuit, owner spent over \$1 Million rehabbing property and paid City \$100,000 in civil penalties

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SUCCESSFUL REHAB OF OAK VILLAS APARTMENT COMPLEX AS A RESULT OF CHAPTER 54 LAWSUIT



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WHAT CITY ATTORNEYS NEED TO KNOW IN CODE ENFORCEMENT CASES

PRACTICE TIPS

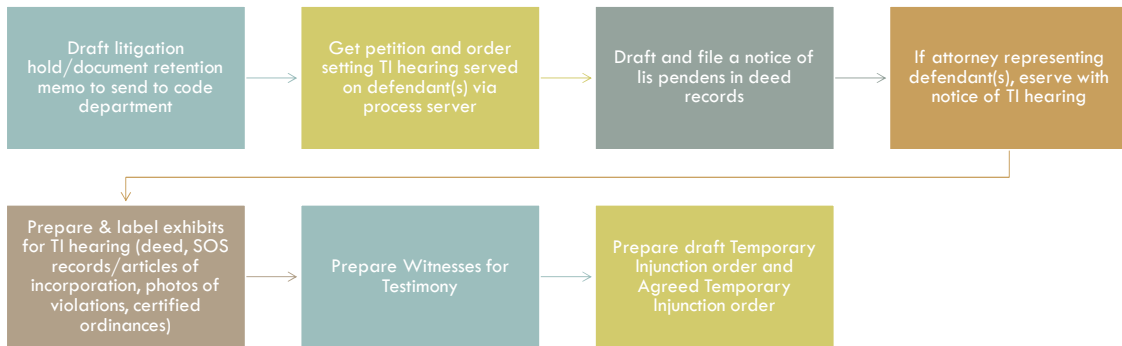
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PROCEDURES BEFORE FILING SUIT

- Work with code inspectors to get list of code violations with relevant ordinance references, and the inspector's case file (i.e. photographs, notes, prior notices/citations, etc.)
- Get copies of ordinances to attach to petition (will need to be certified for hearings)
- Get title search and certified copies of property deed
- Review title search to determine ownership and lienholders (if corporate entities, need to obtain Secretary of State records)
- Review title docs and online appraisal records to ascertain correct lot/block of property
- Draft notice letter and/or petition
- Draft order setting the temporary injunction hearing
- Get petition verified by inspector

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PROCEDURES ONCE SUIT FILED/TI PREP



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PROCEDURES AFTER TI ISSUED



Get signed copies of TI order



Get TI personally served on defendant via process server (unless agreed that service waived by virtue of Agreed TI) and obtain proof of service



Calendar any inspection dates under the TI



Calendar final trial/permanent injunction hearing



Get updated photos from inspector after each court-ordered inspection and list of corrected & remaining code violations

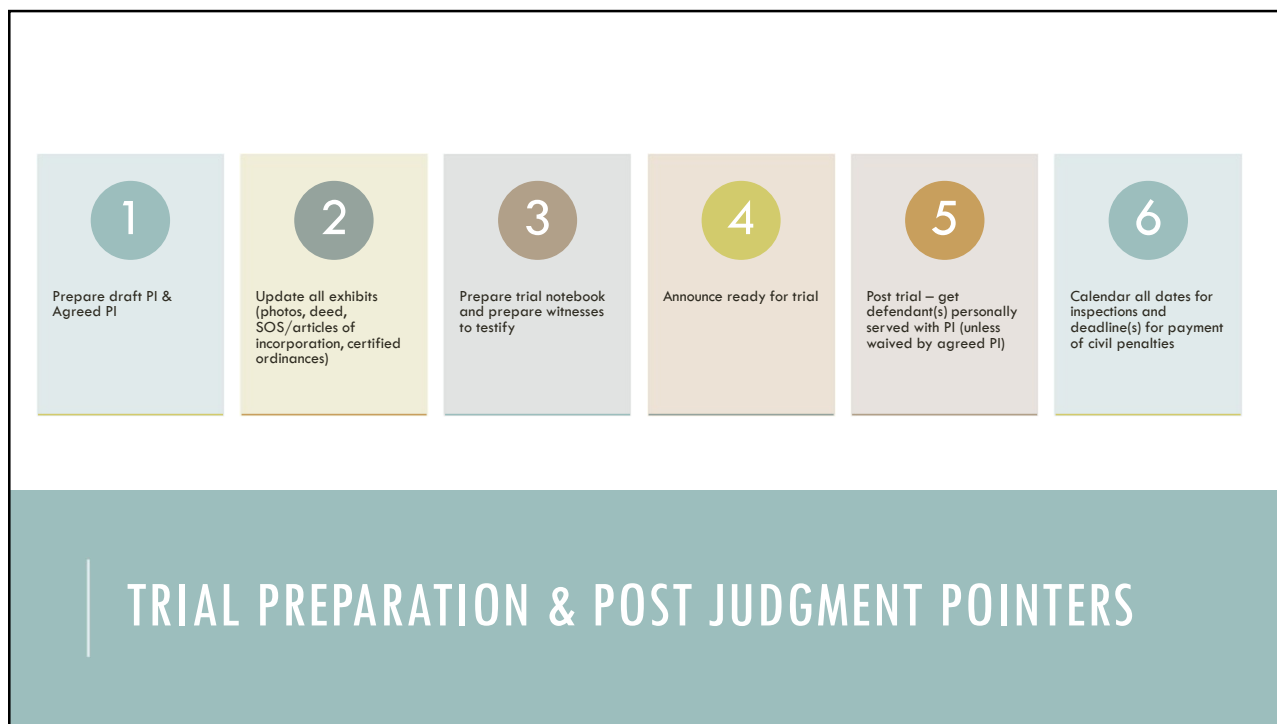


Possibly draft motion for contempt & show cause order if violations not remedied timely; requires personal service and hearing prep



Draft discovery to propound before trial (draft responses to any discovery propounded by defendant(s) on city)

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HOT(TEST) TOPICS IN CODE ENFORCEMENT

Legislative traps to keep in mind

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PRE-EMPTION

HB 2439 – Building Materials Bill (Eff. 9/1/19)

- Prohibits cities from regulating building products, materials or aesthetic methods used in constructing or renovating buildings; effective Sept. 1, 2019.

HB 1750 – Right to Farm Bill (Eff. 9/1/23)

- Does not allow city to regulate “agricultural operations” (except in narrow circumstances)
- AG operations are broadly defined and cannot require it be designated as an AG use
- Maximum height for vegetation allowed only if:
 - Max. height is at least 12 inches
 - Only applies to portions of AG operation located no more than 10 feet from a property boundary that is adjacent to a public sidewalk, street, or highway; or a property that is owned by another person and has an inhabited structure
- Restraint of dog ordinances do not apply to a dog used to protect livestock

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PRE-EMPTION

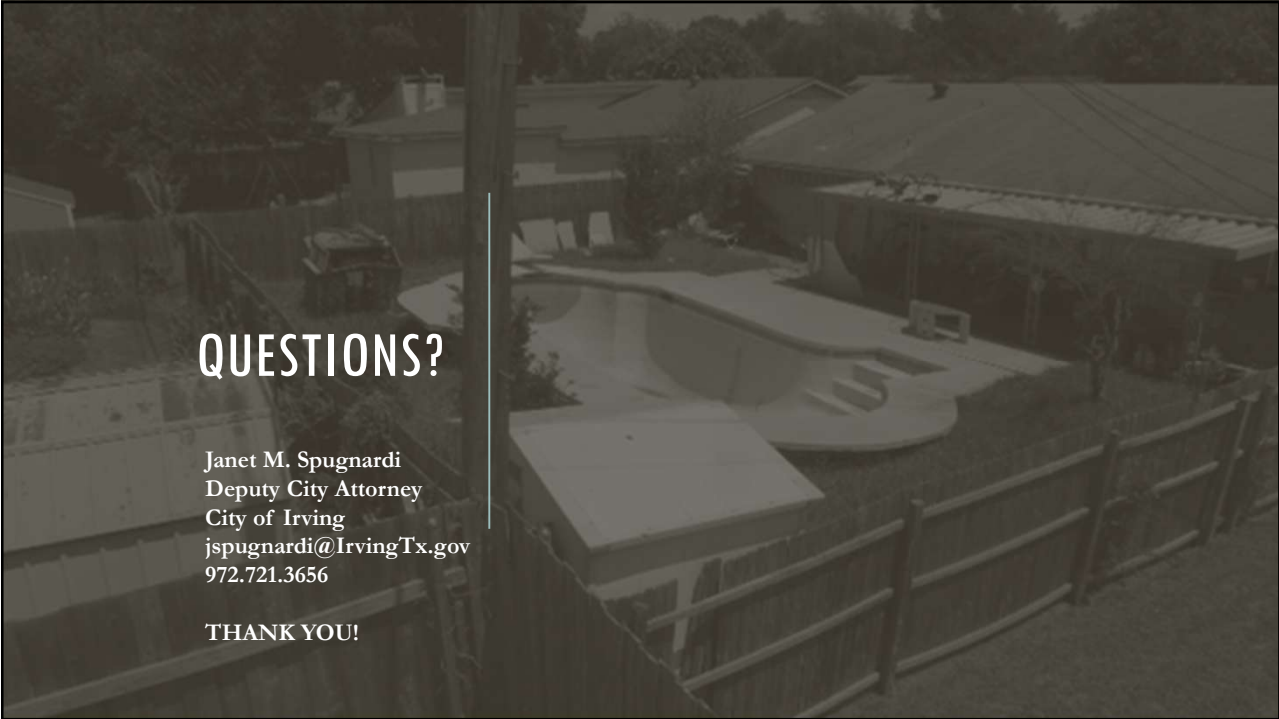
HB 2127 – Death Star Bill (Eff. 9/1/23)

- Texas Regulatory Consistency Act – Section 51.002 of the Texas Local Government Code
- New super-pre-emption law designed to erode regulatory authority of cities
- Notwithstanding Section 51.001, the governing body of a municipality may adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state.
- Limits city authority to enact regulations in fields covered by Agriculture Code, Business & Commerce Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, Occupations Code, and Property Code.
- *City of Dallas v. Dallas Short-Term Rental Alliance*, Tex. App. – Dallas, 2025 WL 2022063, pet. filed
 - HB 2127 pre-emption applied to density regulations in city’s short-term rental ordinance

For more thoughts on pre-emption, listen to:

- Code Enforcement Officers: Certification and Training, Practical Challenges, and Legal Pitfalls (TML-IRP Local Officials: Stronger, Together Podcast)
- <https://podcasts.apple.com/gy/podcast/local-officials-stronger-together-podcast/id1583052879>

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QUESTIONS?

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THANK YOU!