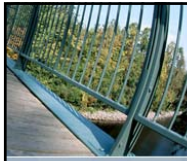




THE GOAL IS A UNIFIED, COHESIVE APPROACH

- Assure that enforcement issues are taken into consideration from the beginning
- Enforcement options, both civil and criminal, should be included when drafting the ordinance
- Create an environment where there is an open dialog and cooperation between civil litigation and prosecution
- Be creative in seeking remedies to redress code violations

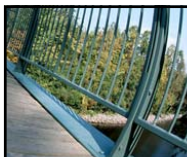
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GREEN BUILDING

- §25-2-593 - A building must achieve at least a one star rating under the Austin Green Building program, as prescribed by a rule adopted in accordance with Chapter 1-2 (*Adoption of Rules*).
- **Requirements for Green Building**
 - Building Systems Commissioning
 - Storm Water Runoff and Water Quality Control
 - Roofing to Reduce heat island
 - Building Energy Use Efficiency
 - Low VOC Interior Paints and Coatings
 - Storage and Collection of recyclables
 - Construction Waste Management (Recycle or salvage at least 50% by weight of non-hazardous construction/demolition waste)

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ENFORCEMENT OPTIONS

- Criminal charges – maximum fine of \$2,000 (possible daily offenses)
- Zoning violation – Chapter 54 Texas Local Government Code
 - Injunction requiring or prohibiting certain conduct
 - Civil penalties up to \$1,000 per day
- Require variance from board of adjustment
- Withhold certificate of occupancy and utilities

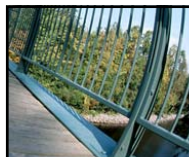
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SMOKING ORDINANCES



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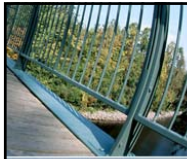


Austin Smoking Ordinance

§ 10-6-2 SMOKING PROHIBITED.

- (A) A person commits an offense if the person smokes in a public place.
- (B) A person commits an offense if the person smokes in an enclosed area in a building or facility owned, leased, or operated by the City.
- (C) A person commits an offense if the person smokes in an enclosed area of a workplace.
- (D) A person commits an offense if the person smokes within 15 feet from an entrance or openable window of an enclosed area in which smoking is prohibited.
- (E) The owner or operator of a public place commits an offense if the person fails to take necessary steps to prevent or stop another person from smoking in an enclosed area in a public place.

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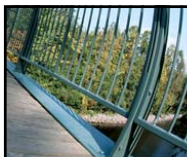
Roark & Hardee, LP, etc. v. City of Austin (522 F.3rd 533)



Ashtrays and signs were the only steps clearly identified

- The term “necessary steps” was initially ruled unconstitutionally vague by the Federal district judge, but was reversed by the 5th circuit court of appeals
 - Guidelines were issued by the city to define “necessary steps”
- Fines were limited to \$500 by the district judge because the ordinance defined the offense as a Class C misdemeanor – this was not addressed by the 5th Circuit opinion

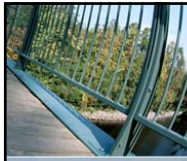
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WATER CONSERVATION



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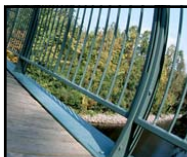


Austin's Water Ordinance

§ 6-4-64 WATER CONSERVATION STAGE ONE REGULATIONS.

- (A) This section prescribes water conservation stage one regulations and applies during the time periods prescribed by Section 6-4-62(A) (*Effective Dates of Conservation Stages*).
- (B) Except as provided in Subsection (D), a person may not irrigate outdoors at a residential facility or a commercial facility between the hours of 10:00 a.m. and 7:00 p.m.
- (C) A person may not irrigate outdoors at a residential facility except on a designated outdoor water use day, or as provided in Subsection (D).
- (D) Subsections (B) and (C) do not apply to irrigation:
 - (1) using a hand-held hose or hand-held bucket;
 - (2) during repair or testing of a new or existing irrigation system if the person performing the testing is present;
 - (3) of water nursery stock at a commercial plant nursery; or
 - (4) of an athletic field used for organized sports if:
 - (a) the irrigation is for dust abatement purposes; and
 - (b) the owner submits to the City a dust abatement exemption application on a form prescribed by rules.

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Water Conservation – Criminal Remedies

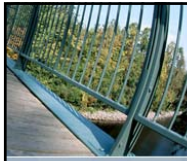
- Authority to issue citations
 - **§ 1-3-2 AUTHORITY TO ISSUE CITATIONS TO APPEAR IN MUNICIPAL COURT.** A director of a City department may issue one or more citations to a person to appear in municipal court, if the director reasonably believes that the person has engaged in conduct that violates a law or ordinance the director is responsible for enforcing.
- Fines can be tiered
 - Maximum of \$500 without mental state
 - Maximum of \$2000 with mental state
 - Daily penalties
- Notice provisions need to be addressed in the ordinance – especially for offenses requiring a mental state

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Junked Vehicles

- Chapter 683, Transportation Code
 - Expired license plate, and
 - Expired inspection, and
 - Wrecked, dismantled, partially dismantled, or discarded, **OR**
- Inoperable for more than 62 hours on public property or 30 hours on private property (Austin has defined inoperable by ordinance)
- Other remedies – Chapter 54, Local Government Code – Accumulations conducive to insect/rodent harborage
- If it's art, it may be protected under the Visual Arts Rights Act of 1990



Remember Enforcement When Writing Ordinances

- Exceptions vs. Affirmative defenses
 - Exceptions written into the ordinance must be disproved by the prosecutor (§2.02, Texas Penal Code)
 - Affirmative defenses and defenses to prosecution must be raised by the defendant (§2.03 and §2.04, Texas Penal Code)
- Clearly identify party or parties to be held criminally responsible for violations (ex. owner, property manager, tenant, etc.)
- Ordinance should state applicable remedies (both criminal and civil)
- Include definitions and mental states
- Keep in mind that the language in the ordinance will be tracked in a criminal complaint

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