

STATE LAWS ON CODE ENFORCEMENT

Authority

Local Government Code §51.001 allows the governing body to adopt, publish, amend, or repeal an ordinance, rule or police regulation that:

- Is for the good government, peace, or order of the municipality or for the trade and commerce 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.

Penalties

- Texas Local Government Code §54.001 allows the governing body of a municipality to enforce each rule, ordinance or police regulation of the municipality and to punish violations of such.
- Fines/penalties for the violations may not exceed \$500.00 unless the subject rule, ordinance, or police regulation governs fire safety, zoning, or public health and sanitation, including dumping of refuse, which then may result in fines/penalties not to exceed \$2,000.

Original Jurisdiction of Criminal Offenses

- Municipal courts, including municipal courts of record, have exclusive original jurisdiction in all criminal cases within the territorial limits of the municipality that arise under ordinances of the municipality and are punishable by fine only. Tex. Gov't Code §29.003.
- Municipal Courts have concurrent jurisdiction with justice courts of a precinct in which the municipality is located in all criminal cases arising under state law that are punishable only by a fine or Chapter 106 of the TABC. Tex. Gov't Code §29.003

Criminal Enforcement

- Must include a mental state (ex. knowingly, intentionally, with criminal negligence) for fines over \$500 or if mental state not explicitly waived (Texas Penal Code §6.02)
- Can impose daily penalties
- Section 3.04(a), Texas Penal Code, which allows the defendant to have cases severed, does not apply to two or more offenses consolidated or joined for trial under Section 3.02, Texas Penal Code, if each of the offenses is:
 - For the violation of an ordinance described by Section 54.012;
 - Tried in a municipal court, regardless of whether the court is a municipal court of record (Texas Local Gov't Code, §54.006)
 - New case law may affect State's desire to consolidate code enforcement cases *State v. Crook*, 2008 WL 313626, February, 2008

Civil Remedies

Various civil enforcement remedies are available through State statutes:

- Chapter 54, Local Government Code – Civil enforcement of ordinances
Chapter 54 actions can be filed in the District or County Court in the county in which the municipality is located.
- Subchapter A, Chapter 214, Local Government Code – Regulation of housing and other structures;
- Subchapter E, Chapter 683, Transportation Code – Junked Vehicles; and
- Chapter 125, Texas Civil Practice and Remedies Code – Common Nuisance

Civil enforcement actions can be filed in the Municipal Court of Record if jurisdiction has been established by ordinance and preferential settings can be obtained. Tex. Gov't Code §30.00005 –

Texas Local Government Code – Chapter 54

Allows a municipality to bring a civil action for the enforcement of an ordinance dealing with:

- Construction methods/materials
- Fire safety
- Zoning
- Planning
- Conduct classified by statute as a Class C
- Dangerous/deteriorated structures
- Accumulations conducive to insect/rodent harborage

Chapter 54 – Pleadings

Requisites of the Chapter 54 Pleading

- ID of the real property involved in the violation
- Relationship of the defendant to the real property or activity involved in the violation
- Citation to the applicable ordinance
- Description of the violation
- Statement that this subchapter applies to the ordinance

Chapter 54 – Relief

The municipality may obtain an injunction that:

- Prohibits specific conduct that violates the ordinance
- Requires specific conduct that is in compliance with the ordinance
- The municipality need not prove that there is no other adequate remedy or penalty nor that prosecution in a criminal action has occurred or has been attempted.

Chapter 54 – Penalties

Civil Penalties may be recovered if the municipality proves that:

- The defendant was actually notified of the provisions of the ordinance; and
- The defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance after receiving such notice

Not to exceed \$1,000 a day unless ordinance pertains to maintenance of municipal sewer system, then up to \$5,000 a day.

Chapter 54 – More Penalties

The municipality may bring an action to compel the repair or demolition of a structure or to obtain approval to remove the structure and recover removal costs.

- File lis pendens to encumber property
- Failure to pay a civil penalty can result in contempt proceedings for failure to comply with a valid court order.

Texas Local Government Code – Chapter 214

Municipality may establish an ordinance that requires:

- vacation of a structure
- relocation of occupants
- securing of structure
- repair of structure
- removal of structure
- demolition of structure

A hearing under Chapter 214 may be held by a civil municipal court.

Chapter 214

Chapter 214 applies to structures that are:

- dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;
- unoccupied and unsecured from unauthorized entry to the extent that it could be entered or used by vagrants, children, or other uninvited persons; or
- boarded up, fenced, or otherwise secured in any manner 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.

Chapter 214 Ordinances Must:

- establish minimum standards for the continued use and occupancy of all buildings regardless of the date of their construction;
- provide for giving proper notice to the owner of a building; and
- provide for a public hearing to determine whether a building complies with the standards set out in the ordinance.

Chapter 214 – Relief

- If building is found to be in violation of standards set out in the ordinance, the municipality may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time:
 - 30 - 90 days depending upon work to be done;
 - Over 90 days may be allowed with work schedule and regular progress reports;
 - Owner has the burden of proof to show scope and time needed for repairs.
- If the owner does not take the ordered action within the allotted time, the municipality may vacate, secure, remove, or demolish the building or relocate the occupants of the building.
 - Repairs must be up to minimum housing standards.
 - Municipality must notify mortgagee(s) and lienholder(s) having an interest in the building or in the property on which the building is located.
 - Municipality may file lien to recover costs.
 - Civil penalties may be assessed against the property owner for failure to repair, remove, or demolish the building. Amount not to exceed \$1,000 a day for each violation (limited to \$10 a day if homestead)

Order may be challenged by petition to District Court.

Chapter 214 – Securing Substandard Buildings

A municipality may secure a building the municipality determines:

- Violates the minimum standards for use and occupancy of buildings; and
- Is unoccupied or is occupied only by persons who do not have a right of possession to the building.

Notice must be given by the 11th day after securing (personl, mail, publication, posting)

Owner is entitled to request a hearing about municipality's securing of the building.

Texas Civil Practice and Remedies Code – Chapter 125 – Common Nuisance Defined:

A place to which persons habitually go for the following purposes:

- discharge of a firearm in a public place as prohibited by the Penal Code;
- reckless discharge of a firearm as prohibited by the Penal Code;
- engaging in organized criminal activity as a member of a combination as described by the Penal Code;
- delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 482, Health and Safety Code;
- gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

- prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- compelling prostitution as prohibited by the Penal Code; or
- commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code.

Chapter 125 – Violations

A person maintains a common nuisance if they:

- knowingly maintain a multiunit residential property to which persons habitually go to commit the following acts and they have failed to make reasonable attempts to abate such acts:
 - aggravated assault as defined by §22.02, Texas Penal Code,
 - sexual assault as defined by §22.011, Texas Penal Code,
 - aggravated sexual assault, as defined by §22.021, Texas Penal Code,
 - robbery, as defined by §29.02, Texas Penal Code,
 - aggravated robbery, as defined by §29.03, Texas Penal Code,
 - unlawfully carrying a weapon, as defined by §46.02, Texas Penal Code,
 - murder, as defined by §19.02, Texas Penal Code,
 - capital murder, as defined by §19.03, Texas Penal Code.

Chapter 125 – Common Nuisances

Suit to enjoin and abate may be brought by an individual, the attorney general, or a district, county, or city attorney.

- Must be filed in the county in which it is alleged to exist against the person who is maintaining or about to maintain the common nuisance.
- Suit may be brought “in rem” against the premises.

“Multiunit residential property” means improved real property with at least three dwelling units, including an apartment building or condominium. The terms does not include:

- a property in which each dwelling unit is occupied by the owner of the property, or
- a single-family home or duplex.

Chapter 125 – Evidence

Proof that enumerated activities are frequently committed at the place involved or that the place is frequently used for an enumerated activity is prima facie evidence that the defendant knowingly permitted the activity.

- Evidence that persons have been arrested or convicted of offenses for an enumerated activity in the place involved is admissible to show knowledge on the part of the defendant that the act occurred.
- Evidence of the general reputation of the place involved is admissible to show the existence of the nuisance.

Chapter 125 – Relief

If judgment is granted, court SHALL order the defendant to abate the nuisance and enjoin the defendant from maintaining or participating in the nuisance.

The judgment must order that the place where the nuisance exists be closed for one year after the date of judgment unless the defendant or the real property owner, lessee, or tenant of the property posts \$10,000 bond.

Penalties for civil contempt may be awarded if injunction is granted and violated.

- Fines from \$1000 - \$10,000;
- Confinement from 10 – 30 days;
- Both

Extra-Territorial Jurisdiction – Chapter 212 – Local Government Code

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,
- general welfare,
- safe, orderly, and healthful development
- access to public roads
- use of ground water

Justice courts have concurrent jurisdiction with municipal courts in criminal cases arising in the ETJ that arise under ordinance of the municipality (Texas Code of Criminal Procedure, §4.11)

Extra-Territorial Jurisdiction – §42.021 Local Government Code

- (1) within one-half mile for municipalities under 5,000 inhabitants
- (2) within one mile for municipalities between 5,000 and 24,999
- (3) within two miles for municipalities between 25,000 and 49,999
- (4) within 3-1/2 miles for municipalities with 50,000 to 99,999
- (5) within five miles for municipalities with 100,000 or more

Texas Transportation Code – Chapter 683 – Junked Vehicles

Municipality may adopt procedures to abate and remove junked vehicles from private or public property.

Subchapter E defines junk vehicle as a vehicle that:

- Does not have an unexpired license plate; **and**
- A valid motor vehicle inspection certificate; **and**
- Is wrecked, dismantled or partially dismantled, or discarded; **or**
- Inoperable and has remained inoperable for more than 72 consecutive hours on public property or 30 consecutive days on private property

Chapter 683 – City Ordinances

Municipalities may provide for a more inclusive definition of junk vehicles.

- “more inclusive definition” means including more elements in the definition, resulting in more difficult enforcement
- Legislative intent was to expand the municipality’s ability to define junk vehicles
 - Austin ordinance tracks statutory definition but includes a definition for “inoperable motor vehicle” in order to clarify what constitutes a junked vehicle. –
 - **INOPERABLE MOTOR VEHICLE** means a motor vehicle that because of mechanical failure, breakdown, or disrepair cannot be started, driven, operated, steered, or stopped under its own power and without causing damage to the vehicle.

Chapter 683 – Penalties

Maintaining junk vehicles is a Class C misdemeanor punishable by a fine not to exceed \$200.00

Court SHALL order abatement upon conviction.

Abated vehicles may not be made operable nor be reconstructed after removal.

Chapter 683 – Administrative Procedures

Municipality may establish an administrative procedure for enforcement of a junk vehicle ordinance.

- Administrative penalty may be assessed
- Public hearing is required before removal
- Vehicle is presumed to be inoperable
- Procedure must comply with Texas Local Government Code, §54.044

NOTICE REQUIREMENTS –

Chapter 54.005 language is not mandatory, but if used correctly:

- Sent by certified mail, return receipt requested, or delivered personally;
- Ownership verified through property records no sooner than 10 days before notice mailed;
- Ownership will be PRESUMED
- Burden is on the owner to inform sender of changed in ownership by affidavit sent by the 20th day after notice is received
- Failure to respond results in presumption of ownership

Sample Language for Notice –

“According to the real property records of _____ County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and state the name and last know address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this

notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not". Tex. Local Gov't Code, §54.005

Chapter 214 – Notice for dangerous or substandard buildings

Reasonable effort to determine owner(s), lienholder(s), and/or mortgagee(s) if the municipality has searched:

- County real property records
- Appraisal district records
- Records of the secretary of state
- Assumed name records

Notice for junked vehicles - Chapter 683.075 – Texas Transportation Code

- Notice must be sent to interested parties no less than 10 days before hearing
- Notice must be personally delivered or
- Notice must be sent by certified mail with a five-day return requested or delivered by the US postal service with signature confirmation service to:
 - The last known registered owner of the nuisance;
 - Each lienholder of record of the nuisance; and
 - The owner or occupant of
 - The property where the vehicle is located; or
 - If on public property, the property adjacent
- Notice must state:
 - That the nuisance must be abated by the 10th day after notice was personally delivered or mailed
 - Requests for hearing must be made by the 10th day after notice
- Notice may be placed on vehicle if no last known address is available
- If notice is returned, abatement must be continued to 11th day after the date of the return

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