

# **Substandard Buildings: Delineating Civil and Criminal Enforcement**

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# Overview

- o Comparison of Civil and Criminal Enforcement
- o Bases for Civil Lawsuits in District and County Courts
- o Standards for Seeking an Injunction and Civil Penalties under Chapter 54 of the Texas Local Government Code
- o Bases for Civil Lawsuits and Civil Adjudication in Municipal Courts
- o One Advantage of Civil Lawsuits: Temporary Restraining Orders
- o Injunctive Process
- o Contempt
- o Case Studies
- o Questions

# Civil v. Criminal Prosecutions

Issue	Criminal	Civil
Burden of Proof	Beyond a Reasonable Doubt	Preponderance of Evidence
Personal identification	Required	Not necessary
Corporate Defendants	Service and who to cite problematic	Can serve through secretary of state or use long arm
Detail of Ordinances	Game for attorneys is to analyze and nitpick ordinance	Most judges tend to focus on result
Posture of the Case	May consolidate per Texas Local Gov't Code § 54.006	Deal with all violations at the property in one case; may use history of Defendant and property

# Civil v. Criminal Prosecutions

Issue	Criminal	Civil
Discovery	Limited for defendant; almost non-existent for prosecutors	All discovery allowed by Rules of Civil Procedure
Testimony of Defendant	Does not have to testify	You can call Defendant to testify; can subpoena Defendant; invocation of 5th Amendment privilege can be used against Defendant
Result	Fine or perhaps clean up for deferred adjudication	1) \$1,000 per violation per day from the day notified 2) Can obtain injunctive relief; 3) May even obtain jail time through contempt

# Civil v. Criminal Prosecutions

Issue	Criminal	Civil
Post judgment relief	Fine; Capias Warrant	May collect as you do any other judgment; in some case may place lien on the property; may seek contempt

## Additional Advantages to Civil Enforcement of Code Violations

- Lis Pendens
- Temporary Restraining Order
- Injunctive relief can include positive and negative relief; can include demolition
- Can enter into agreed injunctions which may require more than is required by ordinance, i.e. mow grass once per week when ordinance says weeds have to be below 12 inches or will not open another motel in city
- May be faster than municipal court criminal process; see Tex. Local Gov't Code § 54.014 allowing preferential settings
- Can have a receiver appointed to run the property

# Bases for Civil Lawsuits in District & County Courts

- Chapter 54 of the Texas Local Government Code
- Chapter 211 of the Texas Local Government Code

## Standard for Injunction under Chapter 54 of Texas Local Government Code

- Section 54.012 lists categories of violations for which you may bring a civil action
- Section 54.016 allows the City an injunction upon a showing of “substantial danger of injury of injury or an adverse health impact to any person or to the property of a person other than the defendant”
- Unnecessary to prove that another adequate remedy does not exist



# Civil Penalties under Chapter 54

Municipality may recover a civil penalty if it proves:

- (1) The defendant was actually notified of the provisions of the ordinances; and
- (2) Thereafter, defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance

## Basis for Civil Lawsuits in Municipal Courts: Texas Gov't Code § 30.003

- (d) The governing body of a municipality by ordinance may provide that the court has:
- (1) civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E, Chapter 683, Transportation Code;
  - (2) concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances

## Basis for Civil Adjudication: Texas Local Gov't Code

### § 54.043

A municipality by ordinance may adopt a civil adjudication process, as an alternative to the enforcement process prescribed by the other provisions of this subchapter, for the enforcement of ordinances described by [Section 54.032](#). The alternative process must contain provisions relating to notice, the conduct of proceedings, permissible orders, penalties, and judicial review that are similar to the provisions of this subchapter.

# One Advantage of Civil Lawsuits: Temporary Restraining Orders



# Temporary Restraining Orders: When?

- Emergency Situations
  - Air conditioning in summer/heat in winter
  - Sewage
  - Open and vacant units in some situations
  - Extreme Electrical Violations
  - Some storm water violations
- Zoning Violations
- Chapter 125 of the Texas Civil Practice and Remedies Code: criminal nuisances
- Massage/SOB cases

# Temporary Restraining Orders: Legal Bases

- Rules 680-687 of Texas Rules of Civil Procedures
- Local Rules
- Case law establishes that if a statute authorizes injunctive relief, then the City is not required to show the traditional equitable requirements for injunctive relief. *State v. Texas Pet Foods*, 591 S.W.2d 800, 805 (Tex. 1979); *Gulf Holding Corp. v. Brazoria County*, 497 S.W.2d 614, 618-19 (Tex. Civ. App.--Houston [14th Dist.] 1973, writ refused n.r.e.); *San Miguel v. City of Windcrest*, 40 S.W.3d 104, 108 (Tex. App.--San Antonio 2000, no writ); *Kendall Appraisal Dist. v. Cordillera Ranch, Ltd.*, 2003 WL 21696901 at \*2 (Tex. App.--San Antonio 2003, no pet)(unpublished opinion)
- *Hollingsworth v. City of Dallas*, 931 S.W.2d 699, 703 (Tex. App. - Dallas 1996, writ denied)

# Injunctive Process

- File a civil petition listing all of the violations
- If no TRO, Injunctive Hearing within 3-6 weeks of filing suit
  - Court will issue a court order addressing every violation
  - You can get permission to make the repairs
  - Court probably will not order demolition at this stage
- Contempt
- Trial/Permanent Injunction

# Contempt

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



# Examples of Cases: Outside Storage



## Examples of Cases: Illegal Addition; Outside Storage



# Examples of Cases: No central line



# Examples of Cases: Substandard Apartment Complex: Before and After Lawsuit



# Examples of Cases Using Municipal Court Process and Chapter 214 of Texas Local Gov't Code



Questions?