

Creative Ways of Addressing Nuisance Abatement



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Chapter 54 – Texas Local Government Code Authority to Regulate Dangerous Buildings

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- Authorizes cities to file suit to enforce ordinances relating to “the preservation of public health or to the fire safety of a building or other structure or improvement” or to “dangerously damaged or deteriorated structures or improvements.” TEX. LOC. GOV'T CODE § 54.012(2) & (6).
- Authorizes administrative enforcement of such ordinances. *See id.* §§ 54.031-54.044.
- May seek an order to vacate, secure, repair or demolish
- Allows civil penalties not to exceed \$1,000/day
- Authorizes an injunction

Legal Liaisons with Department of Neighborhoods

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- Two Neighborhood Services lawyers
- Work to abate dangerous buildings
- Through owner compliance

Legal Liaisons with Department of Neighborhoods (How It Works)

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- City inspectors compile a Legal Review List with buildings recommended for dangerous building administrative hearings
- Attorneys review
 - The Legal Review List
 - Inspector notes
 - Photographs
 - Tax records
- Properties are approved for hearing or retained by the Legal Department
- Attorneys work directly with the owners to secure, repair, and/or demolish the dangerous structures

Acceptance of Real Property as Tax “Strike-Off”

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- Another approach to demolish dangerous buildings
- Pursuant to Texas Tax Code Sections 34.01 and 34.05 a tax judgment may be foreclosed at a public auction
- Where bids are not sufficient to pay all liens and costs, the Constable may “strike off” property to a taxing unit
- Property is held in trust
- Severs the owner’s legal interest
- BUT 180 day redemption period for single family residential properties (others types have 2 years)

Acceptance of Real Property as Tax “Strike-Off” (cont.)

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- City of Houston Executive Order 1-21 established a process for the city to accept strike-off properties
- Taxing entities meet monthly as “Interlocal Committee”
- City Strike-Off Panel
 - Department of Neighborhoods
 - Legal Department
 - Finance
- Strike-off criteria
 - Maintenance or other action required?
 - Sufficient funds to pay for it?
 - Cost v. benefit to the community?
 - In the best interest of the city as a whole?
 - Will environmental issues preclude prompt resale?

Acceptance of Real Property as Tax “Strike-Off”

(cont.)

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- **Prior to “Strike-off”**
 - City would file a lien after it demolished a dangerous building
 - It could only recoup costs after auction
 - Back taxes paid first from sale proceeds, so costs rarely recovered
- **After “Strike-off”**
 - City must take over property maintenance
 - Back taxes, liens, etc., wiped clean
 - Costs may be recouped first upon sale
 - Property no longer languishes without care
 - Greater likelihood of productive use

Common Nuisance Under Ch. 125
Tex. Civ. Prac. & Rem. Code

Common Nuisance Under Ch. 125

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What is it?

- Subchapter A
- A civil remedy for high levels of certain types of criminal activity as defined in § 125.0015
- Brought against the property owners, business owners, managers, lessees and/or *in rem* against the property itself
- Brought by a citizen, city, county or district attorney, or the attorney general

Common Nuisance Under Ch. 125 (Definition)

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- Defendant maintains a place to which persons habitually go to commit Chapter 125 crimes
- The activity is knowingly tolerated
- Defendant fails to make reasonable attempts to abate the activity
- Plaintiff need **NOT** show Defendant was complicit in the activity

TEX. CIV. PRAC. & REM. CODE § 125.0015

Common Nuisance Under Ch. 125 (Definitions)

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Crimes include:

- weapons violations
- organized criminal activity
- narcotics violations
- Gambling
- prostitution and compelling prostitution
- aggravated assault
- robbery and aggravated robbery
- sexual assault and aggravated sexual assault
- sexual abuse of a child
- massage therapy or services violations
- hiring a minor at a sexually oriented business
- human trafficking
- others

TEX. CIV. PRAC. & REM. CODE
§ 125.0015(a)(1)-(22)

Common Nuisance Under Ch. 125 (cont.)

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Proper Defendants

- Property owners
- Business owners
- Managers
- The property itself,
in rem

Types of Properties

- Apartments
- Hotels
- Motels
- Convenience stores
- Single family homes
- Any property with
high Ch. 125 criminal
activity

Common Nuisance Under Ch. 125 (cont.)

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- Evidence need only show Ch. 125 crimes are “frequently committed at the place involved or that the place is frequently used” for those crimes
- This is *prima facie* evidence that the activity was knowingly tolerated
- Proof of arrests or convictions show knowledge the act occurred
- Oral evidence admissible to show crime occurred at the property
- Evidence of the general reputation of the place is admissible to show existence of the nuisance

Common Nuisance Under Ch. 125 (cont.)

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Remedies

- Injunction ordering Defendant to abate the nuisance
- Reasonable requirements to prevent maintenance of the place as a nuisance
- If brought *in rem* and successful, property shall be closed for one year
- If multi-unit residential, may order appointment of a receiver

Other Remedies

If in a temporary injunction hearing, court finds petitioner is likely to succeed on the merits,

- it may include “reasonable requirements” to prevent maintenance of a nuisance
- it may require execution of a bond conditioned that Defendant not knowingly maintain a nuisance

Common Nuisance Under Ch. 125 (cont.)

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Violation of a Temporary or Permanent Injunction

Court may order:

- Discontinuation of utility services
- Revocation of certificate of occupancy
- Prohibit use of streets or public access
- Limit hours of operation
- Order termination of a lease
- Any other legal remedy
- Bond forfeiture

The Nuisance Abatement Plan

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- Likelihood of owner cooperation
- Custom-tailored to property/business needs
- Meeting with owner, HPD, and other City reps
- Signed by property/business owners
- Agreement to take steps to abate crime
- Shared with local police Captain
 - Alert to potential increase in calls for service
 - Ask for assistance from local patrol

The Nuisance Abatement Plan (cont.)

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- **Typical Provisions**
 - Lighting
 - Security
 - Surveillance cameras
 - Gates
 - Fencing
 - Trespass affidavits