Creative Ways of Addressing Nuisance Abatement

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

- 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

- Two Neighborhood Services lawyers
- Work to abate dangerous buildings
- Through owner compliance
Legal Liaisons with Department of Neighborhoods (How It Works)

- 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"

- 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.)

- 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.)

- 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
Common Nuisance Under Ch. 125

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)

- 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

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

- Plaintiff need NOT show Defendant was complicit in the activity
Common Nuisance Under Ch. 125 (Definitions)

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.)

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

Proper Defendants
- Property owners
- Business owners
- Managers
- The property itself, in rem
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.
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.)

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

- 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.)

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