

# Nuisance Abatement: Opportunities and Limitations

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## Back to Basics

1. Jurisdiction of municipal courts
2. Criminal v. civil remedies in code enforcement
3. What you can do and what you can't do

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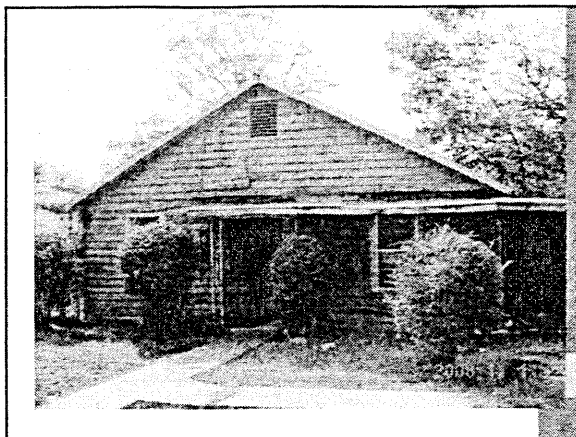
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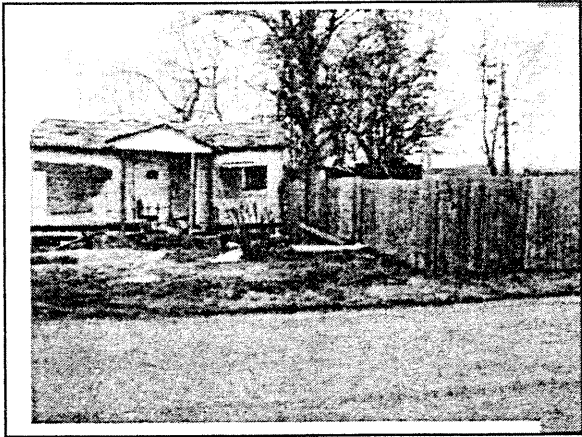
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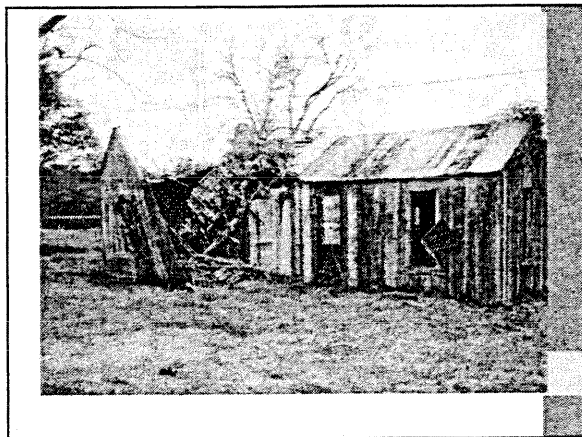
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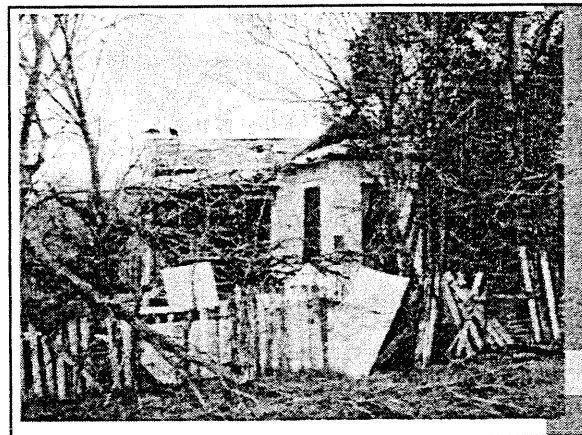
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**Local Government Code  
Section 214.001**

Municipality may establish an ordinance that allows, after notice and hearing, to

Vacate, secure, repair or demolish a building which is substandard and a threat to public health, or unsecured against unauthorized entry.

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**Local Gov. Code 214.001 (p)**

A hearing under this subchapter may be held by a *civil* municipal court.

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**Municipal Courts:**  
**Criminal or Civil Jurisdiction?**

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**Government Code Ch. 29**  
**Section 29.003 Jurisdiction**  
**(a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the municipality's territorial limits . . . in all criminal cases that:**

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**Sec. 29.003 (a)**  
**(1) arise under:**  
**(A) the ordinances of the municipality; or**  
**(B) a . . . rule . . . of a joint board operating an airport . . . ;**  
**and**

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**Sec. 29.003 (a)  
(2) are punishable by a fine not to exceed:**

**(A) \$2,000 in all cases arising under municipal ordinances or resolutions . . . that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or**

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**Sec. 29.003 (a) (2)**

**(B) \$500 in all other cases arising under a municipal ordinance or . . . rule.**

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**Sec. 29.003 (b)**

**The municipal court has concurrent jurisdiction with the justice court . . . in all criminal cases arising under state law . . . that:**

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**Sec. 29.003 (b)**

- (1) are punishable only by a fine . . . ; or**
- (2) arise under Ch. 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.**

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**Sec. 29.003 (e)**

**The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction.**

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**Government Code Ch. 30  
Municipal Courts of Record**

**Sec. 30.00005 Jurisdiction**

**(a) A municipal court of record has the jurisdiction provided by general law for municipal courts.**

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**Sec. 30.00005 (d)**

The governing body of a municipality by ordinance may provide that the court has:

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**Sec. 30.00005 (d)(1)**

civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Sub. A, Ch. 214, Local Government Code, or Sub. E, Ch. 683, Transportation Code;

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**Sec. 30.00005 (d)(2)**

concurrent jurisdiction with a district court or a county court at law under Sub. B, Chapter 54, Local Government Code . . . for the purpose of enforcing health and safety and nuisance abatement ordinances; and

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Sec. 30.00005 (d)(3) authority to issue:  
(A) search warrants for the purpose of investigating a health and safety or nuisance abatement ordinance violation; and  
(B) seizure warrants for the purpose of securing, removing, or demolishing the offending property and removing debris from the premises.

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**Authority**  
Local Government Code  
Section 51.001  
The . . .municipality may adopt . . . an ordinance that:  
(1) is for the good government, peace, or order . . .; and  
(2) is necessary . . . for carrying out a power granted by law . . .

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**Enforcement**  
Local Government Code  
Chapter 54, Subchapter A  
Section 54.001  
(a) The municipality may enforce each ordinance and may punish a violation.  
(b) A fine may not exceed \$500.00 --- except

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For violations of ordinances that govern fire safety, zoning, or public health and sanitation, including dumping of refuse, may not exceed \$2,000.00

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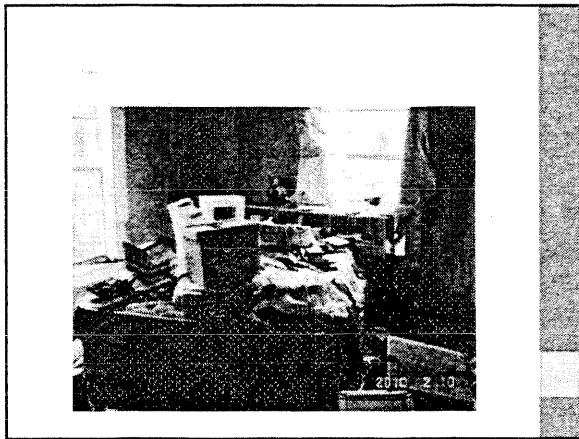
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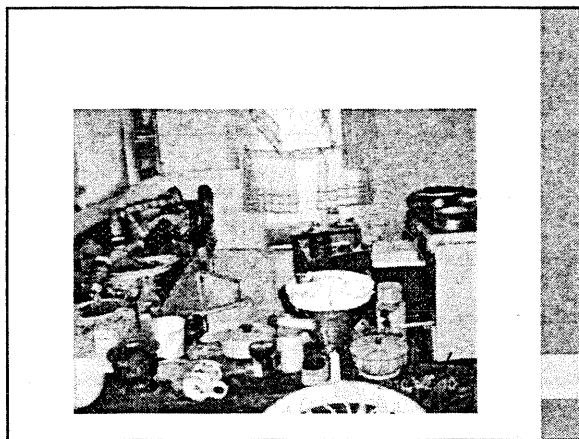
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**Civil Remedies  
Under Local Government Code  
Chapter 54  
Subchapter B  
Municipal Health and Safety  
Ordinances**

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**Local Government Code  
Subchapter B**  
**Section 54.012 *et seq.***  
**Allows for civil action to enforce code  
violations, however . . .**  
**Jurisdiction and venue are in the  
district court or the county court-at-  
law.**  
***Except . . .***

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**Jurisdiction of Municipal Court of Record**

**Sec. 30.00005 (d)(2)**

concurrent jurisdiction with a district court or a county court at law under Sub. B, Chapter 54, Local Government Code . . . for the purpose of enforcing health and safety and nuisance abatement ordinances;

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**Civil Remedies**

**Sec. 54.012**

A municipality may bring a civil action to enforce:

1. Preservation of public safety relating to building construction;
2. Relating to fire safety of a building or other improvement;

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**Sec. 54.012 continued**

3. For zoning and land use;
4. Establishing criteria for land subdivision;
5. Implementing civil penalties for conduct classified as Class C misdemeanors;

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**Sec. 54.012 continued**

6. Relating to dangerously damaged or deteriorated structures;

7. Relating to accumulations of refuse, vegetation, etc. that creates breeding or living conditions for rodents;

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**Section 54.012 continued**

8. Design and illumination of SOB's; or

9. Point source effluent limitations or the discharge of a pollutant into a municipal sewer system.

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**Remedies Under Ch. 54  
Sec. 54.016**

Injunction prohibiting specific conduct that violates the ordinance; and

Requires specific conduct that is necessary for compliance with the ordinance

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**Sec. 54.017**

**Civil Penalty**

May impose a civil penalty up to \$1,000 a day for a violation or \$5,000 a day for a violation relating to effluent or pollutant.

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**Sec. 54.018**

**Action for Repair or Demolition of Structure**

May bring action to compel the repair or demolition of a structure or remove the structure and recover costs.  
Subsequent owners takes the property subject to the orders of the court

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**Sec. 54.019**

**Contempt**

Does not affect the power of a court to imprison a person for contempt of valid court orders

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**Local Government Code  
Subchapter C**

Section 54.031 *et seq.* allows for “quasi-judicial” enforcement of health and safety ordinances.

Sec. 54.033 allows appointment of building and standards commission to hear cases.

Sec. 54.039 provides for judicial review in district court.

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Proceedings under Subchapter C do not affect the ability of a municipality to proceed under the jurisdiction of the municipal court.  
Sec. 54.042

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**Local Government Code  
Chapter 214, Subtitle A  
Municipal Regulation of  
Housing and Other  
Structures**

**Subchapter A**

**Dangerous Structures**

**Sec. 214.001**

**Authority Regarding Substandard  
Buildings**

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**Local Government Code  
Section 214.001**

Municipality may establish an ordinance that allows, after notice and hearing, to

Vacate, secure, repair or demolish a building which is substandard and a threat to public health, or unsecured against unauthorized entry.

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**Local Gov. Code 214.001 (p)**

A hearing under this subchapter may be held by a *civil* municipal court.

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**Jurisdiction of Municipal  
Court of Record**

**Sec. 30.00005 (d)(1)**

civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Sub. A, Ch. 214, Local Government Code, or Sub. E, Ch. 683, Transportation Code;

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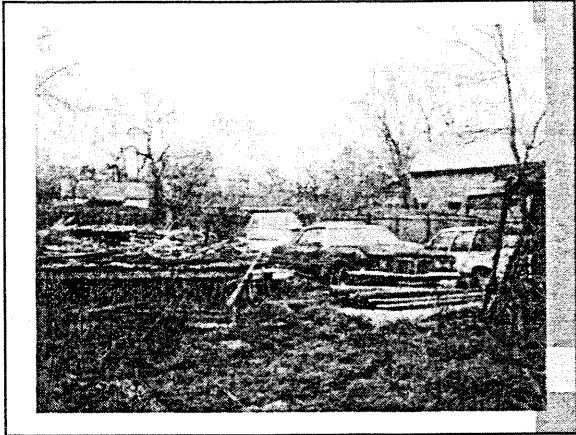
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**Transportation Code  
Subchapter E**

**Junked vehicles: Public  
Nuisance;  
Abatement**

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**Sec. 683.071**

**Junked Vehicle Defined**

Vehicle that is self-propelled and:

- (1) Does not have lawfully attached and unexpired license plate and valid motor vehicle inspection certificate; and

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(2) is wrecked, dismantled or partially dismantled, or discarded; or inoperable for more than 72 hours if on public property or 30 consecutive days if on private property.

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**Sec. 683.072  
Junked Vehicle Declared to Be a Public Nuisance**

A junked vehicle, including a part of a junked vehicle that is visible at any time of the year from a public place or public right-of-way . . . is a public nuisance.

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**Sec. 683.073  
Offense**

- (a) A person commits an offense if the person maintains a public nuisance described by Section 683.072.
- (b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.

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(c) The court *shall* order abatement and removal of the nuisance on conviction

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**Section 683.074**

**Abatement of Nuisance**

Allows a municipality to adopt procedures under which, after notice and hearing, a junked vehicle may be removed from the property and prohibit the vehicle from being reconstructed after removal.

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**Sec. 683.074 (c)**

An *appropriate* court of the municipality or county may issue necessary orders to enforce the procedures.

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**Jurisdiction of Municipal  
Courts of Record**

Sec. 30.00005 (d)(1)

civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Sub. A, Ch. 214, Local Government Code, or Sub. E, Ch. 683, Transportation Code;

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**Post Conviction Options  
For  
Non-record Courts**

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**Deferred Disposition**

- Require compliance/abatement
- Require monthly appearances to monitor progress
- Reduce fine to encourage abatement
- Impose full fine for failure to comply

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- **Enhanced Penalties**---Increase window fines for subsequent offenses
- **Daily Citations**
- **Mandatory Pretrials With Prosecutor and Code Enforcement**

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### **Conclusion**

1. **Jurisdiction of non-record courts v. courts of record;**
2. **Criminal v. civil remedies**

**And . . .**

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**Not All Courts Are Created Equal**

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