Overview

- Jurisdiction
- Basic Structure of Ordinances
- Authority
- Types of Ordinances

What Kinda City?

- Four types of municipalities in Texas
  - Home rule
  - General Law
    - Type A
    - Type B
    - Type C
  - Different kind of city means different powers

What Kinda Court?

- Municipal Court of Record
- Municipal Court of Non-Record
- Different kind of court means different powers
Court of Record

- Criminal
- Civil - TGC §30.00005: city councils may by ordinance grant municipal courts of record additional authority over
  - LGC Ch.214 substandard structures
  - Tex. Transp. Code Ch 683 - Junked Vehicles

MCO Rs have concurrent jurisdiction with district courts and county courts at law to enforce these ordinances, AND can issue search warrants.

Court of Non-Record

- Criminal
- Limited Civil
  - Nuisances

Jurisdiction

- Two types:
  - Criminal
    - Exclusive Original Jurisdiction
    - SOBs?
    - $5K maximum fine if ordinance involves fire safety
      - zoning and public health and sanitation (including dumping of refuse)
    - $500 in all other cases
Jurisdiction, Cont.

- Civil Authority – what’s the difference between this and criminal jurisdiction?
  - Criminal just lets you fine them
  - Civil lets you make them, for example, clean it up or charge them for the cleanup

Ordinances – Format

- Whereas…
- Adoption of Legislative Findings of Council
- Text of ordinance
- General Penalty Provisions
  - Remedies
  - Requirement for culpable mental state (unless specifically not required)
- Repeal of Conflicting Ordinance
- Severability
- Publication & effective date

 ordinance no.

AN ORDINANCE creating section "8" OF THE TOWN OF
HOLLYWOOD PARK CODE OF ORDINANCES SPECIFYING
AND DESIGNATING ONE WAY STREETS WITHIN THE TOWN
FOR SPECIFIC TIME PERIODS OF THE DAY AND WEEK.

WHEREAS, the Town of Hollywood Park is located next to an interchange of major traffic routes in particular U.S. Highway 281 and 1604;

WHEREAS, the Town has noted an increase in traffic within the Town for lands and safety reasons determines that additional regulation is necessary to control the licencor in question;

WHEREAS, the Town finds that a large portion of the increased traffic causes from individuals attempting to avoid the interchange at 281 and 1604 by taking specific paths through the Town of Hollywood Park during certain times of the day;

WHEREAS, the Town finds the increased traffic has caused such problems for the Town as congestion, increased pollution, preventing accident from being able to occur out of the city, and other problems associated with the increased traffic;

WHEREAS, the Town finds that it is in the best interest of the citizens to restrict the use of the roads during certain times of the day to drivers who are attempting to avoid the interchange at 281 and 1604, and

WHEREAS, the Town finds that the congestion is to an unsafe level only during certain parts of the day;

NOW THEREFORE: THE TOWN ORDINES AS FOLLOWS:
Geographic Jurisdiction

Central Tex. Loc. Gov’t Code chapter 216 permits certain sign regulations to be extended into a municipalities ETJ.

City may extend the provisions of its outdoor sign ordinances AND enforce the ordinances in the ETJ (this means fines and criminal penalties). Tex. Loc. Gov’t Code § 216.902

Outdoor sign regulations cannot include regulations of political signs on private property.
- It may regulate a political sign under 36 effective feet
- Is more than eight feet high
- Is illuminated
- Has moving parts

Tex. Loc. Gov’t Code § 216.903
Authority

- City Council can grant municipal courts limited civil abatement/administrative authority under authority of state law
- **TGC §30.0005**: city councils may *by ordinance* grant municipal courts of record additional authority over
  - LGC Ch.214 substandard structures
  - TTtC Ch.683 junked vehicles

Ordinance Authority

- **Home Rule Cities**: Texas Constitution
  - authority to adopt any ordinance or charter provision, subject to limitations imposed by Legislature
  - Anything but what legislature says they can’t
- **General Law Cities**: Ch. 5, Tex LGC and
  - Chapters 6 and 22 (Type A)
  - Chapters 7 and 23 (Type B)
  - Chapters 8 and 24 (Type C)
  - Nothing except what statute permits
Validity of Ordinances

- LGC Ch. 52 tells how to adopt an ordinance
- If nobody files a lawsuit challenging the ordinance within 3 years of adoption, it’s presumed valid.
  - Oh – unless it was void or pre-empted

The Preemption Doctrine

- A municipality can’t enforce an ordinance that makes conduct that’s already criminal under state or federal law, “municipally criminal”, unless the elements mirror exactly the dominant statute.
- A municipality also can’t enforce an ordinance that establishes an offense and penalty for conduct that’s expressly permitted under state or federal law. However…

Preemption, Cont.

- It’s possible to have conflict without preemption
- It’s also possible to more stringently regulate certain activities (sewage plants, etc.) than the state/federal statute provides.
Nuisance Ordinances

- Nuisances – broad based authority vested in municipalities to abate nuisances – for General Law Municipalities:
  - **Type A**: City Council may define what constitutes a nuisance and abate and remove the nuisance
  - **Type B**: CC may prevent nuisance within city limits and have it removed at the owner’s/responsible person’s expense
  - **Type C**: power not specifically granted, but they have the same powers as Type A’s unless there’s a conflict

Nuisance Ordinances – Cont.

- Home Rule Cities: CC can by ordinance define, prohibit, prevent, abate and remove nuisances within city limits and within 5000 feet of CL
- Essentially gives HRCs implied extraterritorial jurisdiction over nuisances.

Nuisance Ordinances - Examples

- Noise ordinances
- Unsightly matters
- High weeds and grass
- Animal control – keeping of animals and livestock
- Fireworks
- SOBs
- Junked Vehicles
Zoning

- Why are cities permitted to regulate the use to which a person can put his property?
  - To promote “the public health, safety, morals, or general welfare” and
  - To “preserve places and areas of historical, cultural or architectural importance and significance”
- Requires public hearing and can’t apply outside city limits

Weedy Lots

- A city may adopt an ordinance that requires the owner of a lot in the city to keep the lot free from weeds, rubbish, brush, and other objectionable or unsanitary matter. TEX. HEALTH & SAFETY CODE ANN. § 342.004.
- The city may punish an owner of property who violates the ordinance. TEX. HEALTH & SAFETY CODE § 342.005.
Challenges to Ordinances

- Lots of way
- Texas Open Meetings Act
- Preemption
- Constitutional Challenge
- Etc…

Be responsible with your ordinance super powers!
ORDINANCES

BEGINNING, MIDDLE, AND END

Prepared by
Ryan Henry
BIO
Ryan Scott Henry

Ryan Henry graduated with honors from New Mexico State University with dual bachelor’s degrees in Criminal Justice and Psychology in 1995. He attended law school at Texas Tech School of Law and graduated in May of 1998.

While attending law school, Ryan began clerking for the Lubbock City Attorney’s Office. He received his third-year practice card and began prosecuting municipal court complaints and appearing in justice of the peace court for the City. As a result, he began defending governmental entities even before he graduated from law school and so began his career supporting local governments. Upon graduation, Ryan began working in Brownsville, Texas, with the same focus. In June of 2002, Ryan moved to San Antonio and joined a local law firm practicing the same type of law. In 2012, Ryan started the Law Offices of Ryan Henry, PLLC. In June of 2016 and 2017 Ryan was listed as one of the best lawyers in municipal law by S.A. Scene Magazine in the San Antonio area. Ryan is also on the board for the State Bar of Texas - Government Law Council. In September 2018 Ryan took an oath and became the new associate municipal judge for the West Lake Hills Municipal Court.
I. Introduction
   1. What is an Ordinance?

An “ordinance” is a law enacted by the council of a municipality.¹ Municipalities have legislative powers to enact laws and such enactments are performed through the adoption of ordinances. Those powers come from either an express statute, from a municipalities inherent police power, or from some other constitutional source.


In general, Texas Local Government Code §51.001 states:

   The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:
   (1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and
   (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.


A municipal court judge in Texas may have a good grasp of most criminal class-C misdemeanor offenses but still be unsure what the judge can and cannot do in relation to a municipal ordinance. And since every municipality is different, the variety of ordinances may seem endless. However, all ordinances have commonalities and there are only certain ordinances a municipal court need consider.

¹ Not to be confused with an “ordnance” which is a military weapon such as a cannon or artillery.
A municipal court must be concerned with more ordinances than simply those criminalizing conduct. Courts often must determine whether an ordinance properly adopts a procedure, whether an ordinance grants the court jurisdiction, and whether an ordinance was properly adopted. This applies in both criminal and civil contexts.

The primary statutory starting point for municipal ordinance adoption can be found in Chapters 52 and 53 of the Texas Local Government Code. Going through all aspects of adoption or how to challenge an ordinance is beyond the scope of this paper.

2. What is NOT an Ordinance

An ordinance should not be confused with other official acts of a city council. An ordinance is a law. Only a law can amend or repeal another law. To be an “ordinance,” within the meaning of the statute, the procedure must be more than a mere verbal motion made, adopted, and entered on the minutes, more than a mere resolution subsequently reduced to writing by the secretary. It must be reduced to writing before being acted on by the council. It must be invested, not necessarily literally, but substantially, with the formalities, solemnities, and characteristics of an ordinance, as distinguished from motions and simple resolutions. *Vance v. Town of Pleasanton*, 261 S.W. 457, 458 (Tex. Civ. App.—San Antonio 1924), aff’d, 277 S.W. 89 (Tex. Comm’n App. 1925).

**Resolution:** A “resolution” (which looks similar to an ordinance) is not a law. A resolution is an expression of an opinion of the legislative body. See, e.g., *City of Hutchins v. Prasifka*, 450 S.W.2d 829, 832 (Tex. 1970); *City of San Antonio v. Micklejohn*, 89 Tex. 79, 33 S.W. 735, 736 (1895). It can also be used to establish an authorization or acceptance of an agreement, but does not have the force of law, unto itself.

**Motion:** A legislative motion is not, by itself, a law. It is a form of parliamentary procedure whereby the legislative body takes individualized action or provides direction to staff.

**Executive Act:** “Executive actions” are those of the chief executive officer of the municipality. This can be a city manager or a mayor. Even if the executive officer issues a written policy, such a policy is not a law or ordinance.
3. Cities, Charters and Power

Types of Cities: There are three primary types of cities in Texas; general-law cities, home-rule cities, and cities chartered by special legislation. Tex. Loc. Gov’t Code § 1.005(3). The type of municipality determines its governmental structure and powers, including, for example, whether the municipality has a city council, board of aldermen, or city commission. Different city types have different powers.

Special Legislation Cities: Few special legislation cities exist, but they are governed by the individual legislation creating them. Special charter, or special-law, municipalities are those created by discreet acts of the legislature. This practice was rendered unconstitutional with amendments made in 1912 to the Texas Constitution.

General Law Cities: General-law cities are created and exist pursuant to legislation not applicable to any specific municipality. In other words, the state statute acts as the enacting and regulating authority over a general-law city. They have no charters and are governed only by authorizing state statutes. There are a few different types of general law cities, however, for purposes of this paper, the distinctions are largely irrelevant. You just need to be aware there are different types and to look in the corresponding state legislation for and ordinance’s applicability.

Home Rule Cities: The Texas Constitution authorizes cities exceeding 5000 inhabitants to adopt a home rule charter. Tex. Const. art. XI, § 5. Cities adopting a home rule charter have the full power of self-government. Tex. Loc. Gov’t Code Ann. § 51.072 (West). That basically means they get to regulate themselves and define their own powers (with a few exceptions). However, no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State. Tex. Const. art. XI, § 5. Thus, home rule cities look to the legislature not for grants of power, but for limitations on their power. Wilson v. Andrews, 10 S.W.3d 663, 666 (Tex. 1999).

The power a municipality has to enact a specific ordinance will differ depending on the type of city. So, it is important for a municipal judge to know the powers and limitations of any city where the judge sits as a judicial officer.
Statutes for Each City Type:
Primarily, the statutory starting points for each type of city are:

**Home-Rule:**
- Tex. Loc. Gov’t Code Chapter 9
- Tex. Loc. Gov’t Code Chapter 26
- Tex. Loc. Gov’t Code Subchapter E of Chapter 51

**General Law A:**
- Tex. Loc. Gov’t Code Chapter 6
- Tex. Loc. Gov’t Code Chapter 6
- Tex. Loc. Gov’t Code Chapters 22, 24, 25
- Tex. Loc. Gov’t Code Subchapter B of Chapter 51

**General Law B:**
- Tex. Loc. Gov’t Code Chapter 7
- Tex. Loc. Gov’t Code Chapters 23, 24, 25
- Tex. Loc. Gov’t Code Subchapter C of Chapter 51

**General Law C:**
- Tex. Loc. Gov’t Code Chapter 8
- Tex. Loc. Gov’t Code Subchapter D of Chapter 51

**Special-Law City:**

4. Why Should I Care?
   i. Extra Powers
Ordinances do more than merely criminalize conduct for the court. Ordinances impact a municipal court in various ways. Courts obtain jurisdiction and additional authority from ordinances (i.e. extra powers). To know the full extent of its jurisdiction, a court must be familiar with the adoptions within its city.
ii. Collection of Criminal Fines

In addition to defining a court’s various jurisdictions, ordinances also can provide for procedures impacting the courts. Not the least of which is that a municipality may provide for various collection procedures on criminal fines.


a) The governing body of each municipality shall by ordinance prescribe rules, not inconsistent with any law of this state, as may be proper to enforce the collection of fines imposed by a municipal court. In addition to any other method of enforcement, the municipality may enforce the collection of fines by:
   (1) execution against the property of the defendant; or
   (2) imprisonment of the defendant.
(b) The governing body of a municipality may adopt such rules and regulations, not inconsistent with any law of this state, concerning the practice and procedure in the municipal court as the governing body may consider proper.
(c) The governing body of each municipality may prescribe by ordinance the collection, after due notice, of a special expense, not to exceed $25 for the issuance and service of a warrant of arrest for an offense under Section 38.10, Penal Code, or Section 543.009, Transportation Code. Money collected from the special expense shall be paid into the municipal treasury for the use and benefit of the municipality.
(d) Costs may not be imposed or collected in criminal cases in municipal court by municipal ordinance.


iii. Judicial Notice

Courts, including municipal courts, must take judicial notice of properly enacted municipal ordinances. All ordinances are pursued valid. Tex. Loc. Gov't Code Ann. § 51.003 (West 2017). However, that does not mean a party will not attempt to challenge an ordinance in court.

The rules of statutory are used to construe municipal ordinances. Bd. of Adjustment of City of San Antonio v. Wende, 92 S.W.3d 424, 430 (Tex. 2002). A court’s primary objective in construing an ordinance is to ascertain and give effect to the enacting body's intent. See TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011). To discern that intent, courts start with the plain and
ordinary meaning of the ordinance's words, using any definitions provided by the enacting body. See *Texas Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). Courts must read the ordinance as a whole, presuming the enacting body purposefully included each word, *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008), and construing the ordinance to avoid rendering any word or provision meaningless. *Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (per curiam). When the text is clear, the text, by itself, is determinative of the enacting body's intent unless the plain meaning produces an absurd result. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 164–65 (Tex. 2016) (citing *Texas Mut. Ins. Co.*, 381 S.W.3d at 452.)

In order words, because both substantive and procedural ordinances are going to come up in municipal court, the court must be prepared to perform a full statutory construction analysis. Going through the principles of statutory construction are beyond the scope of this paper. Just know, such principles apply to all ordinances.

**iv. Controlling on Courts**

The city council typically appoints the judge, unless an election is authorized by city charter. The term of office for a judge depends on whether the city is a home-rule charter city, a special charter city, or a general law city. The qualifications for the judge depend on the charter as well as whether the court is a court of record or non-record.

However, the appointment of a municipal judge is also influenced by ordinance. The ability of a council to remove a judge or to place additional qualifications on a judge, especially in a court of record, can be dictated by ordinance.

From a hosting standpoint, the city determines the judge’s staff levels, resources, location of courtroom, and has the right and ability to comment on the number of times court is held in order to deal with docket levels. *See* Tex. Gov't Code Ann. §§29.002, 29.004, 30.00006(h) (salary), 30.00009 (clerk, other personnel), 30.00010 (court reporter), 30.00012 (court facilities), 30.000125 (seal) (West 2017); Op. Tex. Att'y Gen. No. GA-0348 (2005.)

Although the hosting provisions are better set forth in the statutes regarding courts of record, the non-record courts are still hosted by their respective cities by operation of the court’s creation. Municipal judges, as members of the judicial branch of government, do not exercise policy-making authority. Typically, this policy-making role belongs to the legislative branch of government, as evidenced in Article II of the Texas Constitution. *Tex. Const. art. II, 1; see also In re*
II. General Municipal Court Jurisdiction

1. All Courts

**Legislative Authority:** The Legislature has constitutional authority to create municipal courts and to provide them with jurisdiction. Tex. Const. art. V, § 1. The Legislature has provided for the creation of municipal courts by statute in accordance with the Legislature's constitutional authority to establish “such other courts” as necessary. See Tex. Const. art. V, § 1 (vesting judicial power in “one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law” (emphasis added)); see also Op. Tex. Att'y Gen. No. DM-427 (1996) at 2 (stating that “municipal courts are not constitutionally created courts but rather exist only by virtue of the [L]egislature's constitutional power to ‘establish such other courts as it may deem necessary’” (quoting Tex. Const. art. V, § 1)).


**State Court Hosted by City:** A municipal court is established in each municipality automatically by the enactment of Tex. Gov't Code Ann. § 29.002. The best way to think about the court is that a municipal court is a state court that is hosted by the city. This means the court is not the city’s court. The city is provided compensation for hosting the court through the retention of a sliding scale of fines and fees. A municipal court is a state court of limited jurisdiction, which includes jurisdiction over state law offenses punishable by fine only. *Ex parte Wilbarger*, 41 Tex. Crim. 514, 55 S.W. 968 (1900). Act of April 1, 1899, 26th Leg., R.S., Ch. 33, 1899 Tex. Gen. Laws 40; see also *Aguirre v. State*, 22 S.W.3d 463, 467 (Tex. Crim. App. 1999).

As a result, the jurisdiction of a municipal court starts with the jurisdiction conveyed by state statutes. However, many state statutes which deal with municipal courts conditionally convey jurisdiction but require the adoption of a city ordinance before jurisdiction is vested in a particular city or court.

2. **Court of Non-Record**

**Chapter 29 of Texas Government Code:** All courts have all powers necessary for the exercise of the court’s jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction. *Tex. Gov't Code Ann.* § 21.001(a) (West 2017). The jurisdiction of a court of non-record is typically going to be found in Chapter 29 of the Texas Government Code.

**Criminal:** A municipal court shall have exclusive original jurisdiction within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction in all criminal cases that:

(a)(1) arise under:
   (A) the ordinances of the municipality; or
   (B) a resolution, rule, or order of a joint board operating an airport under Section 22.074, Transportation Code; and

(2) are punishable by a fine not to exceed:
   (A) $2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, other than the dumping of refuse;
   (B) $4,000 in cases arising under municipal ordinances that govern the dumping of refuse; or
   (C) $500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board.

(b) The municipal court has concurrent jurisdiction with the justice court of a precinct in which the municipality is located in all criminal cases arising under
state law that arise within the municipality's territorial limits or property owned by the municipality located in the municipality's extraterritorial jurisdiction and that:
(1) are punishable only by a fine, as defined in Subsection (c); or
(2) arise under Chapter 106, Alcoholic Beverage Code, and do not include confinement as an authorized sanction.


**Bonds:** Municipal courts have jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in criminal cases of which the court has jurisdiction. Tex. Gov't Code Ann. § 29.003(e).

**Red-Light Cameras:** All municipal courts also have exclusive appellate jurisdiction within the municipality's territorial limits in a case arising under Chapter 707, Transportation Code (i.e. red-light cameras). Tex. Gov't Code Ann. § 29.003(g).

**Shared Geographic Jurisdiction:** Municipalities which are within one-half mile of each other, by ordinance, may enter into agreements to create concurrent jurisdiction and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:
(1) all cases in which either municipality has jurisdiction under Subsection (a); and
(2) cases that arise under Section 821.022, Health and Safety Code, or Section 65.003(a), Family Code.


If one municipality has a population of 1.19 million or more and another municipality is contiguous, the two municipalities, by ordinance, may create concurrent jurisdiction for all criminal cases arising from fine-only state law offenses that occur within 200 yards of a boundary or within 2.25 miles on a segment of highway in the state highway system that traverses a major water supply reservoir. Tex. Gov’t Code Ann. §29.003(h) (West 2017).

As a result, in addition to state law offenses, a city, by ordinance can trigger and extend the jurisdiction of a municipal court of non-record, even beyond the City’s geographic boundaries.

3. **Court of Record**

**Same as Non-Record:** Courts of record have the same jurisdiction as a court of non-record, plus some. Tex. Gov’t Code Ann. § 30.00005 (West 2017). A court of record also has a tremendous amount of additional jurisdiction, depending on what ordinances are created in the court’s city.

**Additional Jurisdiction by Statute:** The types of civil/administrative jurisdiction possessed by courts of record include but not limited to:


When dealing with specific statutory authority for municipal court civil jurisdiction, you must look to the individual statutes for the appeals process. For example, in Chapter 214 of the Texas Local Government Code, an appeal from a municipal order (which could be an order from a city official or an order from a municipal court) by an aggrieved person appeals directly to district court, not county court. Tex. Loc. Gov't Code Ann. § 214.0012 (West 2017).

**Additional Jurisdiction by Ordinance:** In addition to the subjects listed by statute, cities are permitted to enact civil enforcement ordinances under a variety of categories. The scope of the power depends on the type of city, charter language,

4. General Law v Home-Rule

As noted above, there are various different types of municipalities, each with different powers and authority. The nature and source of a municipality's power depends on the type of municipality. See Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer, 904 S.W.2d 656, 658 (Tex. 1995) (“Laws expressly applicable to one category [of municipalities] are not applicable to others.”).

All municipalities may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic. Tex. Loc. Gov't Code Ann. § 51.012 (West 2017).

The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:

(1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and
(2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.


A rule-of-thumb for the difference in powers of the different types of municipalities is that a general law city must get its power from state law, while a home-rule municipality need only look to state law for a restriction. Town of Lakewood Vill. v. Bizios, 493 S.W.3d 527, 531 (Tex. 2016)

Generally speaking, the Texas Local Government Code contains numerous provisions that grant a wide variety of powers to general-law municipalities. See, e.g., Tex. Loc. Gov't Code §§ 211.001–.033 (zoning); id. §§ 212.001–.904 (subdivisions and property development); id. §§ 213.001–.005 (comprehensive plans); id. §§ 214.001–.905 (housing and other structures); id. §§ 215.002–.075 (businesses and occupations); id. §§ 216.001–.903 (signs); id. §§ 217.001–.042 (nuisances and disorderly conduct); id. §§ 229.001–.055 (miscellaneous authority of municipalities); id. §§ 241.001–.903 (airports); id. §§ 242.001–.003
(subdivisions in and outside ETJ); id. §§ 243.001–.011 (sexually oriented business); id. §§ 244.001–.026 (location of facilities and shelters); id. §§ 245.001–.007 (local permits); id. §§ 246.001–.004 (telecommunications facilities); id. §§ 250.001–.007 (miscellaneous authority of municipalities and counties).

Home-rule municipalities have all of the same authority, plus any categories not expressly prohibited by state law. Such is the power of self-government.

III. Criminal and Civil Jurisdiction

1. General

A city ordinance may be either civil or criminal in nature, depending upon whether penalties are assessable. Depending on the subject matter, a city may have the authority to impose civil or administrative penalties which appear similar to penal fines. Contrary to a common misunderstanding, municipal courts have different levels of civil and administrative jurisdiction.

2. Criminal

Applicable to all types of municipalities, a city may enact an ordinance and impose a criminal penalty as listed by Tex. Gov't Code Ann. § 29.003.

However, a court of record also has additional jurisdiction over criminal cases arising under ordinances authorized by:

a. Tex. Loc. Gov’t Code § 215.072 (i.e. dairies and slaughterhouses);
b. Tex. Loc. Gov’t Code § 217.042 (nuisances in home-rule);
c. Tex. Loc. Gov’t Code § 341.903 (municipal parks and speedways outside city limits); and


The governing body may by ordinance provide that a record court has concurrent jurisdiction with a justice court in any precinct in which the municipality is located in criminal cases that arise within the territorial limits of the municipality and are punishable only by fine. Tex. Gov't Code Ann. § 30.00005(c). However, if the City does not enact the ordinance… the municipal court has no such concurrent jurisdiction.
3. Civil/Administrative

Courts of record have all the same the jurisdiction provided by general law for non-record municipal courts. Tex. Gov't Code Ann. § 30.00005. Additionally, a governmental body, by ordinance, may trigger the jurisdiction of a municipal court of record to include:

(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; and
(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 the debris from the premises.

IV. Rules of Statutory Construction

While most readers should already know the general rules of statutory construction, some specific rules apply when any judge is called upon to interpret a municipal ordinance. As a result, I’ve listed a few of the common ones which tend to come up.

1. Texas Code Construction Act: The legislative aides in statutory construction can be found in the Texas Government Code Chapter 311 and provide principle guidance for ordinance interpretation.

2. Texas Civil Construction: In addition to Chapter 311, the Legislature enacted Chapter 312 of the Texas Government Code which aides with the interpretation of civil statute. Since municipal courts can encounter civil statutes, this chapter must also be factored in to any interpretation. In the civil context, it uses slightly different definitions, as listed in Tex. Gov't Code Ann. § 312.011 (West 2017).
3. **Acts Apply to Ordinances:** Courts use the same rules that are used to construe statutes to construe municipal ordinances. *Mills v. Brown*, 159 Tex. 110, 316 S.W.2d 720, 723 (1958).

4. **Meaning of Intent and Words:** Statutory construction is a legal question reviewed *de novo*. In construing statutes, courts ascertain and give effect to the Legislature's intent as expressed by the language of the statute. *See State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). Courts use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired. Tex. Gov't Code Ann. § 311.011(b) (West 2017). Otherwise, courts must construe the statute's words according to their plain and common meaning, *Texas Department of Transportation v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex.2004), unless a contrary intention is apparent from the context, *Taylor v. Firemen's & Policemen's Civil Serv. Comm'n of City of Lubbock*, 616 S.W.2d 187, 189 (Tex. 1981), or unless such a construction leads to absurd results. *Texas Dept. of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004) (noting that when statutory text is unambiguous, courts must adopt the interpretation supported by the statute's plain language unless that interpretation would lead to absurd results). When construing an ordinance, we presume “the ordinance is intended to be effective, a just and reasonable result is intended, a result feasible of execution is intended, and the public interest is favored over private interest.” *TGS-NOPEC Geophysical Co.*, 340 S.W.3d at 439.

5. **Reasonable Interpretation of Plain Text:** Court’s presume the Legislature intended a just and reasonable result by enacting the statute. Tex. Gov't Code § 311.021(3). When a statute's language is clear and unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997); *Ex parte Roloff*, 510 S.W.2d 913, 915 (Tex. 1974). Courts presume the language of the ordinance was carefully selected and that every word and phrase was used for a purpose. *See Texas Lottery Com'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). Courts must avoid treating any language as surplusage where possible. *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000). In addition, courts consider the ordinance as a whole rather than its isolated parts. *See Edwards v. City of Tomball*, 343 S.W.3d 213, 221 (Tex. App.—Houston [14th Dist.] 2011, no pet.). To enforce the plain language of the ordinance does not authorize courts to employ a “bloodless literalism.
in which text is viewed as if it had no context.” *City of Laredo v. Villarreal*, 81 S.W.3d 865, 868 (Tex. App.—San Antonio 2002, no pet.) (internal citations omitted).

6. **Policy Reason for Deference:** The Texas Supreme Court has long recognized that “there is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed at problems made manifest by experience, and that its discriminations are based upon adequate grounds.” *Smith v. Davis*, 426 S.W.2d 827, 831 (Tex. 1968). Where public interest is involved, individuals' rights often yield to overriding public interests and are often regulated under the police power of the state. See, e.g., *Linick v. Employers Mut. Cas. Co.*, 822 S.W.2d 297, 300 (Tex. App.—San Antonio 1991, no writ) (contractual relationship between insurer and insurance agency highly regulated under state's police powers); *Palmer v. Unauthorized Practice Comm. of State Bar of Tex.*, 438 S.W.2d 374, 376–77 (Tex. Civ. App.—Houston [14th Dist.] 1969, no writ) (non-lawyer's sale of will "forms" held to violate state's interest in regulating the practice of law for the benefit of the public welfare).

7. **Presumption of Validity:** City ordinances are presumed to be valid. Tex. Loc. Gov't Code Ann. § 51.003; *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982). Courts must construe a city ordinance in a manner that renders it constitutional if it is possible to do so consistent with a reasonable interpretation of its language. See *Earle v. Program Centers of Grace Union Presbytery, Inc.*, 670 S.W.2d 777, 779–80 (Tex. App.—Fort Worth 1984, no writ); *Swearingen v. City of Texarkana*, 596 S.W.2d 157, 161 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (op. on reh'g). The party attacking the ordinance bears an “extraordinary burden” to show “that no conclusive or even controversial or issuable fact or condition existed” which would authorize the municipality's passage of the ordinance. *City of Brookside Village*, 633 S.W.2d at 792–93 (citing *City of Waxahachie v. Watkins*, 154 Tex. 206, 275 S.W.2d 477 (1955)).

8. **Separation of Powers:** the state constitution assigns the law-making function to the Legislature while assigning the law interpreting function to the Judiciary. See Tex. Const. art. II, § 1; *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). The Texas Supreme Court has held that a court's inherent judicial powers, which “[spring] from the doctrine of separation of powers between the three governmental branches,” exists to enable a court to effectively perform its judicial
functions and to protect its independence, integrity, and dignity. *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 399 (Tex. 1979). However, the Texas Supreme Court has also recognized that the Texas Constitution “only guarantees the separation of the state legislative, executive, and judicial branches of government.” Tex. Const. art. II, § 1; *City of Fort Worth v. Zimlich*, 29 S.W.3d 62, 72 (Tex. 2000); *A.H.D. Houston, Inc. v. City of Houston*, 316 S.W.3d 212, 222 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (Texas Constitution’s separation-of-powers provision does not apply to local governments and, accordingly, no separation-of-powers issue existed with regard to ordinance). Consequently, because the Texas Constitution does not guarantee the separation of the local legislative, executive, and judicial branches of government, the merger of positions under ordinance is not inherently unconstitutional. *City of El Paso v. Arditti*, 378 S.W.3d 661, 665–67 (Tex. App.—El Paso 2012, no pet.)


10. **State Law on Same Subject:** The Texas Constitution mandates that no city ordinance “shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” Tex. Const. art. XI, § 5(a). Therefore, a city's ordinance is unenforceable to the extent that it is inconsistent with the state statute preempting that particular subject matter. *BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d 1, 7 (Tex. 2016), reh'g denied (Sept. 23, 2016), reh'g denied (Sept. 23, 2016). “Of course, a general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached. In other words, both will be enforced if that be possible under any reasonable construction....” *City of Beaumont v. Fall*, 116 Tex. 314, 291 S.W. 202, 206 (Comm'n App. 1927). Furthermore, “[t]he entry of the state into a field of legislation ... does not automatically preempt that field from city regulation; local regulation, ancillary to and in harmony with the general scope and purpose of the state enactment, is acceptable.” *City of Brookside Village*, 633 S.W.2d at 796.
V. Structure of Ordinances

1. Title/Caption

The title or caption of the ordinance is the main designation and notice provision of what the ordinance is meant to address. Usually the title is in all capital print and the fold is bolded. That is mainly to make it noticeable but is not required. In performing a statutory construction analysis, a court may consider the administrative construction of the statute, title (caption), and preamble, along with other legislative history information. Tex. Gov't Code Ann. § 311.023 (West 2017). However, that consideration goes more to the totality of the intent to pass as the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute. Tex. Gov't Code Ann. § 311.024 (West 2017).

2. Style

The “style” of an ordinance, which is typically applicable only to general law municipalities is statutorily required to state:

“Be it ordained by the ____________ (insert the name by which the governing body of the municipality is known, such as city council, board of aldermen, or city commission) of the ____________ (insert the type of entity that the municipality is known as, such as city, town, or village) of (insert the name of the municipality).”” Tex. Loc. Gov't Code Ann. § 52.002(a) (West 2017).

The style is the adoption provision within the ordinance, but may be omitted when published in a book or pamphlet. Tex. Loc. Gov't Code Ann. § 52.002(b).

3. Codes

An ordinance is the full document adopted, incorporating all provisions and listing the procedural compliance sections. Codes divide ordinances into topical categories for better organization and enforcement. A municipal code of ordinances has the force and effect of an ordinance regularly adopted in accordance with law. Tex. Loc. Gov't Code Ann. § 53.005 (West 2017).

The full ordinance is not codified, only the regulatory provisions, including the body. Tex. Loc. Gov't Code Ann. § 53.002 (West 2017). A municipality may adopt, by ordinance, a codification of its civil and criminal ordinances, together

A code of municipal ordinances may be subdivided into chapters, titles, articles, or sections at the discretion of the governing body of the municipality. Tex. Loc. Gov't Code Ann. § 53.003 (West 2017). A municipality may have printed (including web publications), under the direction of the governing body of the municipality, a copy of the code that is authenticated and approved by the mayor's signature and attested by the secretary of the municipality. In any court, the printed code is prima facie evidence of the existence and regular enactment of the ordinance adopting the code. A court shall admit the printed code in evidence without further proof. Tex. Loc. Gov't Code Ann. § 53.005.

4. Incorporation by Reference

A city’s ordinance (or code) may adopt various other regulations by incorporation. Common incorporations include a general penalty provision or general savings Clause provision contained with a city’s full code or ordinances. May codes of ordinances also contain a general disclaimer clause of culpable mental state.

Cities also have the authority to adopt international codes, typically utilized for technical matters such as building codes and fire codes. Dahl v. State, 14-16-00283-CR, 2017 WL 1497332, at *3 (Tex. App.—Houston [1st Dist.] Apr. 25, 2017, no pet.)(citing State v. Cooper, 420 S.W.3d 829, 832 (Tex. Crim. App. 2013)(approving the City of Plano's incorporation of the International Property Maintenance Code published by the International Code Council; noting that international codes “give local governments the ability to adopt more thorough and well-researched codes at lower costs to their taxpayers”)). When such codes are properly adopted by incorporation, courts must take the same judicial notice of the codes as if they were part of the ordinance. Dahl at *3.

5. Whereas Clauses (i.e. legislative findings)

One of the most underutilized structural sections of an ordinance is the legislative findings section. The legislative findings, often titled as “Whereas” clauses, generally define the intent of the ordinance, what authority the municipality has to enact the ordinance, and the purpose of what the city is trying to regulate. Since the primary object of the court is to determine the legislative intent of an ordinance, the legislative findings are essential for this role.

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The Texas Supreme Court, in Day Land & Cattle Co. v. State, 68 Tex. 526, 4 S.W. 865, 873 (1887), stated the rule:

“If the legislature states facts or reasons which in its judgment authorize the suspension of the rule and the immediate passage of a bill, the courts certainly have no power to re-examine that question, and to declare that the legislature came to an erroneous conclusion.
‘The legislature ascertains in its own way the facts on which it bases its action, and it is made the sole judge whether facts exist to authorize the immediate passage of a bill; and whatever facts or reasons it may give for such action must be held sufficient.”

A legislative function cannot, under the separation of powers doctrine, be reviewed de novo by any other branch of government. Article II, section 1 of the Texas Constitution divides the functions of government and separates the branches. Quick v. City of Austin, 7 S.W.3d 109, 114–15 (Tex. 1998). Courts are not permitted to reweigh the City's legislative decisions regarding the reasonableness, effectiveness, and efficiency of the Ordinance, which is an unconstitutional judicial review of public policy determinations. Id. at 115. Further, the judiciary has no power to allow a jury to redetermine the policy behind legislative issues. Instead, in reviewing an ordinance, the court is to consider all the circumstances and determine as a matter of law whether the legislation is invalidated by a relevant statute or constitutional provision. Id. at 116.

In other words, as long as the legislative facts of an ordinance have some basis for them, the factual background as to why the council passed the ordinance should be sustained as true. The ordinance is presumed valid. City of Brookside Village, 633 S.W.2d at 792. With that in mind, the party challenging the ordinance bears an extraordinary burden to establish its invalidity. City of Brookside Village, 633 S.W.2d at 792. However, pursuant to their constitutional check-and-balance authority, courts are allowed to review “unreasonable” and “arbitrary,” provisions as a deferential standard of reviewing a city ordinance. Id.

6. Text/Body
The text or body of the ordinance is the actual regulation language and the portion which is ordained via ordinance. As a result, it becomes the primary focus of all aspects involving statutory construction.


A court’s primary focus in statutory interpretation is to give effect to legislative intent, considering the language of the enactment, as well as its history, the objective sought, and the consequences that would flow from alternative constructions. *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 383 (Tex. 2000). Therefore, courts seek that intent “first and foremost” in the statutory text. *Lexington Ins. Co.*, 209 S.W.3d at 85.

Courts must begin with the plain and ordinary meaning of the ordinance’s words, using any definitions provided by the enacting body. See *Texas Mut. Ins. Co.*, 381 S.W.3d at 452. Courts must also presume that every word in a statute has been used for a purpose and that every word excluded was excluded for a purpose. *Emeritus Corp. v. Blanco*, 355 S.W.3d 270, 276 (Tex. App.—El Paso 2011, pet. denied); see also *In re M.N.*, 262 S.W.3d at 802; *Tabrizi v. City of Austin*, 551 S.W.3d 290, 299 (Tex. App.—El Paso 2018, no pet.).

The text/body is what typically becomes the codification. As a result, when reviewing properly submitted city codes, a court is actually just reviewing the text/body of the ordinance and not the other structural sections. The remaining sections may be beneficial in performing an analysis of intent, but the initial focus of an analysis is to be on the ordinance text.

Courts must seek to effectuate the collective intent or purpose of the legislators who enacted the legislation. *State v. Cooper*, 420 S.W.3d 829, 831 (Tex. Crim. App. 2013). In order to do this, courts must focus their attention on the literal text of the statute in question and attempt to discern the fair, objective meaning of that text at the time of its enactment. *Id*. The Texas Court of Criminal Appeals has determined that “[t]his is because the law is the only thing that is actually enacted through compromise and debate, and because it is the only definitive evidence of what the legislators had in mind at the time of enactment.” *Id*. The judiciary is supposed to faithfully follow and enforce the adopted text.
7. Penalty/Remedy

The governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation. Tex. Loc. Gov't Code Ann. § 54.001 (West 2017).

The penalty provision must be contained somewhere, but does not necessarily exist within the ordinance. Many times, the penalty provision is found either within the text/body of the ordinance or in a codified section of the entire code of ordinances of the municipality and incorporated by reference only.

Courts have recognized that the Legislature may impose both a criminal and a civil sanction for the same act or omission. Ex parte Poplin, 933 S.W.2d 239, 243 (Tex. App.—Dallas 1996, pet. ref'd) (citing United States v. Ursery, 518 U.S. 267, 292, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996)). A penalty can be criminal or civil in nature. Criminal conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a commissioner’s court, or rule authorized by and lawfully adopted under a statute. Tex. Pen. Code Ann. § 1.03(a) (West 2017); see also State v. Cooper, 396 S.W.3d 603, 605 (Tex. App.—Dallas 2012), aff'd, 420 S.W.3d 829 (Tex. Crim. App. 2013). Proceedings may be civil matters even though they are “incidental to criminal prosecutions and a mechanism to enforce criminal judgments.” Harrell v. State, 286 S.W.3d 315, 318–19 (Tex. 2009) (inmate withdrawal orders are civil matters); see also Heckman v. Williamson Cty., 369 S.W.3d 137, 146–49 (Tex. 2012).

To determine whether a case is a criminal law matter, courts look to the essence of the case to determine if the underlying regulations are more substantively criminal or civil. Criminal law matters include disputes where criminal law is the subject of the litigation. Criminal cases arise over the enforcement of statutes governed by the Texas Code of Criminal Procedure.” Heckman, 369 S.W.3d.

However, simply because a monetary penalty is imposed, does not mean the regulation is inherently criminal. Monetary penalties have not historically been viewed as punishment. City of Richardson v. Bowman, 555 S.W.3d 670, 687–88 (Tex. App.—Dallas 2018, pet. filed). Although the possibility of a civil penalty may have a deterrent effect, “the mere presence of this [deterrent] purpose is insufficient to render the sanction criminal because such deterrence serves civil as well as criminal goals.” Id. (internal citations omitted).
The substantive and procedural aspects which apply for enforcement differ depending on the underlying nature of the case. For example, by its terms, article I, section 10 of the Texas Constitution (involving publication of criminal regulations) applies only in “criminal prosecutions.” Tex. Const. art. I, § 10. The Texas Supreme Court has recognized that article I, section 10 “clearly refers only [to] criminal prosecutions in the ordinary sense.” Ex parte Winfree, 153 Tex. 12, 263 S.W.2d 154, 156 (1953).

8. Repeal and Severability

Ordinances typically have a repeal, severability, and savings clause. These are not typically found within the adopted code but are contained within the original ordinance. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it. Tex. Gov't Code Ann. § 311.030 (West 2017).

Ordinances may have a specific savings clause, a grandfather clause, or be subject to the general savings statute found in the Texas Code Construction Act. See Tex. Gov't Code Ann. § 311.031 (West 2017); Quick v. City of Austin, 7 S.W.3d at 128–29.

Absent a saving clause adopted within the ordinance, the Texas Code Construction Act encompasses a generalized saving clause to allow for continued enforcement of amended or replead provisions, under certain circumstances. Tex. Gov't Code Ann. § 311.031.

9. Publication and Effective Date

The governing body of the municipality shall designate, by ordinance or resolution, an official public newspaper. Tex. Loc. Gov't Code Ann. § 52.004 (West 2018). The city shall publish in the municipality's official newspaper each ordinance, notice, or other matter required by law or ordinance to be published. Tex. Loc. Gov't Code Ann. § 52.004.

As noted above, this publication requirement is important to satisfy Tex. Const. art. I, § 10 notice requirements of criminal offenses. The newspaper publication aspects are less important when dealing with civil matters, unless the ordinance or legislature as expressly determined otherwise.

If a Type A general-law municipality adopts an ordinance that imposes a penalty, fine, or forfeiture, the ordinance, or a caption that summarizes the purpose of the
ordinance and the penalty for violating the ordinance must be published in the official newspaper multiple times. Specifically, if the official newspaper is a daily paper, the publication must be for two consecutive days. If the paper is a weekly paper, then in one issue for a full week. Tex. Loc. Gov't Code Ann. § 52.011(a) (West 2017). An affidavit by the printer or publisher verifying the publication, which is filed in the city secretary’s office, is prima facie evidence of the adoption of the ordinance and of the required publication in all courts of this state. Tex. Loc. Gov't Code Ann. § 52.011(b).

For a Type B municipality, the publication must be posted in three public places in the municipality or published in a newspaper that is published in the municipality. If no newspaper is published in the municipality, the ordinance, bylaw, or summary may be published in a newspaper with general circulation in the municipality for a period of no less than two days. Tex. Loc. Gov't Code Ann. § 52.012 (West 2017).

A home-rule municipality must publish either consistent with its charter or published at least twice in the municipality's official newspaper. Tex. Loc. Gov't Code Ann. § 52.013 (West 2017).

And while the publication is necessary in order to establish when the criminal ordinance becomes effective, it is also necessary to establish when the ordinance falls under the state’s validation statute. A governmental act or proceeding of a municipality is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if (1) the third anniversary of the effective date of the act or proceeding has expired, and (2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary. Tex. Loc. Gov't Code Ann. § 51.003(a)(1)-(2); Hunt v. City of Diboll, 12-17-00001-CV, 2017 WL 7663041, at *7 (Tex. App.—Tyler Nov. 8, 2017, pet. filed). The validation statute does not apply, however, if the ordinance was void from the beginning as opposed to merely voidable. Tex. Loc. Gov't Code Ann. § 51.003(b).

10. Adoption

An ordinance must be adopted by the authorized number of votes of the governing body. Before an ordinance or resolution adopted by the governing body of the municipality may take effect, the ordinance or resolution must be placed in the office of the secretary of the municipality. The mayor shall sign the ordinances and

If the mayor does not sign an ordinance or resolution before the fourth day after the date it is placed in the secretary's office and does not return the ordinance or resolution through mayoral veto, the ordinance or resolution takes effect. Tex. Loc. Gov't Code Ann. § 52.003(b). However, the mayor of a municipality, unless provided otherwise by charter, has the ability to utilize a mayoral veto. If the mayor returns an ordinance or resolution to the governing body with a statement of objections before the fourth day after the date the ordinance or resolution is placed in the secretary's office, the governing body shall, on the return, reconsider the vote by which the ordinance or resolution was adopted. If a majority of the total number of members of the governing body, excluding the mayor, approve the ordinance or resolution on reconsideration and enter the votes in the journal of the governing body's proceedings, the ordinance or resolution may take effect. Tex. Loc. Gov't Code Ann. § 52.003(c).

11. Ordinance Imposed Presumptions

Both criminal and civil ordinances are permitted, with certain exceptions, to impose legal presumptions within the enforcement system. “A presumption is simply a rule of law requiring the trier of fact to reach a particular conclusion in the absence of evidence to the contrary.” Temple Indep. Sch. Dist. v. English, 896 S.W.2d 167, 169 (Tex. 1995). The presumption disappears when evidence to the contrary is introduced. Id.

“The Constitution does not prohibit statutes from creating rebuttable presumptions …, even if they favor …[an agency].” Pierce v. Texas Racing Com'n, 212 S.W.3d 745, 762 (Tex. App.—Austin 2006, pet. denied) (presumption of violation of rule prohibiting use of illegal drugs in horse racing arising from positive drug test was rebuttable); see also Uptegraph v. Sandalwood Civic Club, 312 S.W.3d 918, 932–33 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (statutory presumption that home owners' association reasonably exercises its discretionary authority concerning restrictive covenants was permissive and rebuttable); City of Richardson, 555 S.W.3d at 694.

VI. Geographic Jurisdiction
1. Internal Boundaries
Normally, unless an express state statute provides otherwise, the power of a municipality ends at its city limits. A city may only extend its regulations beyond its city limit boarders with clear legislative permission. *Town of Lakewood Vill. v. Bizios*, at 529.

However, such permissions do exist. A municipal court should not assume all power ends at the city limit line.

2. ETJ

The extraterritorial jurisdiction of a municipality is commonly referred to as the “ETJ” of the city. An ETJ is an “unincorporated area that is contiguous to the corporate boundaries of the municipality” and is located within a specified distance of those boundaries, depending on the municipality's population. Tex. Loc. Gov't Code Ann. § 42.021. A municipality with fewer than 5,000 inhabitants has an ETJ extending one-half mile beyond its corporate boundaries. Tex. Loc. Gov't Code Ann. § 42.021(a)(1); see also *Town of Lakewood Vill. v. Bizios*, at 529. Certain authorized regulations are permitted to be extended, by ordinance, into the ETJ and enforcement winds up before the municipal court.

The ETJ is almost like an alternate dimension of the City, where certain ordinances apply equally in the area, but other ordinances which may be connected are prohibited from extension. For example, §§212.002-.003 of the Texas Local Government Code allow a city to extend plat and subdivision regulations into the ETJ. However, since there is no express power to extend the connected building codes, cities may not extend general building code regulations into the ETJ. *Town of Lakewood Village*, 493 S.W.3d at 536. As a result, a municipal court must be aware that it may possess limited jurisdiction outside of the municipal boundaries, but only as to the specific ordinances which are authorized and have been passed. But, the court may also have jurisdiction if an agreement has been reached with the county to voluntarily extend plat and subdivision regulations, even beyond the ETJ of the city. Tex. Loc. Gov't Code Ann. § 242.001 (West 2017).

Generally speaking, a city's authority to regulate land development in its ETJ is wholly derived from a legislative grant of authority. *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 902 (Tex. 2000); accord *Ex parte Ernest*, 138 Tex. Crim. 441, 136 S.W.2d 595, 597 (1939) (“As a general rule a municipal corporation's powers cease at municipal boundaries and cannot, without plain manifestation of legislative intention, be exercised beyond its limits.”). If no municipal ordinances are legislatively authorized to be extended to a municipality's ETJ, then only county land-use regulations apply. *FM Properties
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Operating Co., 22 S.W.3d at 876, 902; Town of Annetta S. v. Seadrift Dev., L.P., 446 S.W.3d 823, 826–27 (Tex. App.—Fort Worth 2014, pet. denied). However, once authorized, the extension of regulations into the ETJ on certain subject matters can land enforcement before the municipal court.

3. Shared/Concurrent

As noted throughout this paper, different areas and cities falling into different brackets defined by the legislature, may extend concurrent jurisdiction, both criminal and civil, into another governmental entities physical area of enforcement.

VII. Subject Matter & Personal Jurisdiction

Case and Person: The concept of jurisdiction involves the consideration of two distinct matters: (1) jurisdiction over the subject matter; and (2) jurisdiction over the person and/or res. These two categories operate independently, and both jurisdictional concepts must be satisfied for an action to be properly before a court. See e.g., McCarver v. State, 257 S.W.3d 512 (Tex. App.—Texarkana 2008, no pet.); City of El Paso v. Madero Dev., 803 S.W.2d 396 (Tex. App.—El Paso 1991, writ denied).


Criminal: In the criminal context, subject matter jurisdiction stems from the court’s jurisdiction over the offense. Levenson, 2016 WL 4628054, at *8. Personal jurisdiction is obtained by issuing a proper charging instrument identifying the defendant charged with a crime. Levenson, 2016 WL 4628054, at *6. The original jurisdiction of the municipal court was invoked by the filing of the complaints; State v. Blankenship, 170 S.W.3d 676, 681 (Tex. App.—Austin 2005,}

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pet. ref’d) (“Each complaint did charge an offense and was sufficient on its face to invoke the jurisdiction of the Austin Municipal Court of Record.”); Bailey v. State, 15 S.W.3d 622, 626 (Tex. App.—Dallas 2000, no pet.) (“The filing of the complaint in each case conferred jurisdiction on the municipal court.”).

Civil: In the civil or administrative context, the court must have civil jurisdiction as a judicial body or administrative jurisdiction as a hearing officer over the subject matter. “Subject matter” jurisdiction involves a court's competence to hear a specific case, and may be determined by the type of claim involved and the amount of damages alleged to have been suffered. Am. Zurich Ins. Co. v. Samudio, 370 S.W.3d 363 (Tex. 2012); Tellez v. City of Socorro, 226 S.W.3d 413 (Tex. 2007). “Personal jurisdiction” involves the court's authority over a party to the action or the party's property. Municipalities are authorized by statute to institute appropriate action to restrain, correct or abate violations of their zoning ordinances and regulations, including injunctive relief. The Local Government Code's enforcement provision for general zoning regulations, rather than injunction provision for enforcement of municipal ordinances, applies to ordinances such as the regulating use of land. Tex. Loc. Gov't Code Ann. §§ 54.016, 211.012; Hollingsworth v. City of Dallas, 931 S.W.2d 699, 702 (Tex. App.—Dallas 1996, writ denied). For example, under the authority in Chapter 211 of the Texas Local Government Code a municipality is generally required only to prove violation of the zoning ordinance, rather than show a substantial danger of injury or adverse health impact, as would be required for enforcement of regulations not relating to land. Hollingsworth, 931 S.W.2d at 703. Jurisdiction over the person or property is typically going to be easier than subject matter jurisdiction as long as the person was within the city limits at the time or has property located within the city.

VIII. Types of Civil and Criminal Ordinances Giving Power

1. Criminal Ordinances

A municipal court has exclusive original jurisdiction within its territorial limits of all criminal cases for violating municipal ordinances which are punishable by fine only. Tex. Crim. Proc. Code Ann. § 4.14 (West 2017); Tex. Gov't Code Ann. § 29.003(a). However, since §243.010 of the Texas Local Government Code makes regulations of a sexually oriented business a Class A misdemeanor, a municipal court has no jurisdiction to hear criminal or civil violations of an ordinance regulating such a business. State v. Chacon, 273 S.W.3d 375 (Tex. App.—San Antonio 2008, no pet.)
Additionally, as listed above, a municipal court of record, by ordinance, can be given additional criminal jurisdiction over §§215.072 (i.e. dairies and slaughterhouses), 217.042 (nuisances in home-rule), 341.903 municipal parks and speedways outside city limits), and 551.002 (Protection of Streams and Watersheds by Home-Rule Municipality) of the Texas Local Government Code. Tex. Gov't Code Ann. § 30.00005(b). But such authority requires the triggering of jurisdiction by an ordinance. No ordinance conveying such criminal jurisdiction equates to no jurisdiction over such offenses.

2. Sign Ordinances

Chapter 216 of the Texas Local Government Code allows all types of cities to regulate the use of signs within their jurisdictions. A municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce the ordinance within its area of extraterritorial jurisdiction Tex. Loc. Gov't Code Ann. § 216.902 (West) (authorizing certain municipalities to extend outdoor sign regulation to ETJs); Town of Lakewood Village, 493 S.W.3d at 536.

3. Substandard Structures

A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare. Tex. Loc. Gov't Code Ann. § 214.001 (West 2017). A city council, by ordinance, can vest civil jurisdiction to enforce such regulations. Tex. Gov't Code Ann. § 30.00005(d)(1).

4. Junked Vehicles


5. Nuisances

A municipality, by ordinance, may adopt regulations to control nuisances, but must, by either separate ordinance or incorporated within the nuisance ordinance, vest its municipal court with the jurisdiction over enforcement. Tex. Gov't Code Ann. § 30.00005; In re In re Pixler, 02-18-00181-CV, 2018 WL 3580637, at *5

6. Subdivision Regulations

Tex. Loc. Gov't Code Ann. § 212.002 provides that “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, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.” Tex. Loc. Gov't Code Ann. § 212.002. Section 212.003 then provides that the “governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002.” Id. § 212.003(a) (emphasis added). Together, these two sections expressly give all municipalities authority to enforce rules and ordinances “governing plats and subdivisions of land” within their ETJs. See Tex. Loc. Gov't Code Ann. § 212.002, .003(a).

However, the Texas Supreme Court has noted that Subchapter B of chapter 212 (regarding development plats in lieu of a statutory plat) applies only to municipalities which have expressly adopted the alternative platting method by ordinance. Town of Lakewood Village, 493 S.W.3d at 533. If the city does not adopt expressly adopt an ordinance incorporating the development plat process, it cannot utilize that subchapter for regulation. Id.

7. Zoning

Zoning regulation is a recognized tool of community planning, allowing a municipality, in the exercise of its legislative discretion, to restrict the use of private property. Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); Lombardo v. City of Dallas, 124 Tex. 1, 73 S.W.2d 475 (1934). Judicial review of a municipality's regulatory action is necessarily circumscribed as appropriate to the line of demarcation between legislative and judicial functions. Courts have no authority to interfere unless the ordinance is unreasonable and arbitrary—a clear abuse of municipal discretion. Hunt v. City of San Antonio, 462 S.W.2d 536, 539 (Tex. 1971).

Zoning regulations are primarily found in Chapter 211 of the Texas Local Government Code. It grants municipalities authority to regulate certain zoning matters and places restrictions on home-rule municipalities for certain land use regulations. The governing body of a municipality may adopt ordinances to enforce Chapter 211 and impose criminal and civil penalties. Tex. Loc. Gov't Code
Ann. § 211.012 (West 2017). A municipality may bring a civil action for the enforcement of a zoning ordinance. Tex. Loc. Gov't Code Ann. § 54.012 (West 2017). And while §54.013 states jurisdiction for such a civil suit is in county or district court, §30.00005(d) of the Texas Government Code states a city, by ordinance, can convey concurrent civil jurisdiction to a court of record equal to that of the district or county courts. Tex. Gov't Code Ann. § 30.00005(d).

8. Sanitation

A municipality can regulate the sanitation conditions of the city, including refuse, vegetation, and other unsanitary conditions of both commercial and non-commercial properties.

The governing body of a municipality may require the inspection of all premises and the regulation of filling, draining, and preventing unwholesome accumulations of stagnant contains stagnant water. Tex. Health & Safety Code Ann. § 342.001 (West 2017). It can impose fines and fees in order to enforce its regulations. Id.


A municipality may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal as long as such rules are not inconsistent with the Solid Waste Disposal Act found in Chapter 361 of the Health and Safety Code. Tex. Health & Safety Code Ann. § 363.111 (West 2017).

9. Animal

A county or municipality may place requirements or restrictions on dangerous dog determinations under Tex. Health & Safety Code Ann. § 822.047. Such does not change the initial jurisdiction conveyed upon a municipal court by Chapter 822, but can impact the way in which the court is authorized to conduct hearings or handle dangerous animal matters.

But animal control is not limited to simply dangerous dogs. A municipality may regulate any aspects regarding animals which is necessary for the health and safety

Animals are recognized as property in Texas and that “[o]rdinances, including those regulating the ownership, possession, and control of [animals], are a proper exercise of a municipality's police power if they are designed to secure the safety, health and welfare of the public.” Leibowitz v. City of Mineola, Tex., 660 F. Supp. 2d 775, 783–84 (E.D. Tex. 2009); see also Vargas v. City of San Antonio, 650 S.W.2d 177, 179 (Tex. App.—San Antonio 1983, writ dism'd); Hargrove v. City of Rotan, 553 S.W.2d 246, 247 (Tex. Civ. App.—Eastland 1977, no writ); and Sentell v. New Orleans & C.R. Co., 166 U.S. 698, 704, 17 S. Ct. 693, 695–96, 41 L. Ed. 1169 (1897) (“Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the State and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens. That a State, in a bona fide exercise of its police power, may interfere with private property, and even order its destruction, is as well settled as any legislative power can be, which has for its objects the welfare and comfort of the citizen. Patterson v. City of Bellmead, 10-12-00357-CV, 2013 WL 1188929, at *7 (Tex. App.—Waco Mar. 21, 2013, pet. denied) (internal citations omitted).

10.Declaratory/Injunctive/penalty relief.


Section 54.013 provides that jurisdiction and venue of an action under subchapter B of chapter 54 “are in the district court or the county court at law of the county in which the municipality bringing the action is located.” Id. § 54.013. And § 54.016 permits the municipality to obtain injunctive relief against the owner of the premises that is allegedly in violation of the ordinance. Id. § 54.016.

However, Texas Government Code §30.00005(d) expressly provides that a city, by ordinance, can grant a municipal court of record concurrent jurisdiction with that
of the district or county courts for purposes of enforcement Subchapter B of Chapter 54 of the Texas Local Government Code. Tex. Gov't Code Ann. § 30.00005. This means a municipal court of record has declaratory powers, in juncive, powers, and the power to impose civil penalties when asked to enforce the city’s applicable ordinances. Doing so it a full-blown civil lawsuit and the court must act as a district or county court would for the suit. However, the City, by ordinance, may also provide for slightly altered or tweaked procedures when enforcing its ordinances under Chapter 54.

11. Alternative Methods of Administration

Subchapter C of Chapter 54 of the Texas Local Government Code allows a city, by ordinance, to adopt alternative administrative procedures for certain health, safety, and zoning matters. It not only allows a city to adopt a special building and standards commission, but it also allows the City to create its own alternative adjudication process. Tex. Loc. Gov't Code Ann. § 54.043 (West 2017).

However, in order to take advantage of this procedure, the municipality must expressly adopt the alternative method by ordinance. In re Pixler, 2018 WL 3580637, at *3, reh'g denied (Aug. 23, 2018). Adopting an ordinance which grants the municipal court authority to hear appeals from such decisions is not the same as adopting the actual substantive ordinance. Id.

IX. Validity of Ordinances

Ordinances can be challenged in a large number of ways. Going through all of them is beyond the scope of this paper. However, I will touch on some of the main areas which tend to arise in municipal court.

A. Preemption

The Texas Constitution expressly prohibits “any [ordinance] provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” Tex. Const. art. XI, § 5. If an ordinance “attempts to regulate a subject matter [that] a state statute preempts,” the ordinance is unenforceable, but only “to the extent it conflicts with the state statute.” In re Sanchez, 81 S.W.3d 794, 796 (Tex. 2002), as supplemented on denial of reh'g (Aug. 29, 2002).

“[I]f the Legislature decides to preempt a subject matter normally within a home-rule city's broad powers, it must do so with ‘unmistakable clarity.’” In re Sanchez,
In contrast, a general-law municipality is a creature of statute and possesses only those powers expressly granted by general law or implied therefrom. Tex. Const, art. XI, § 4. A general-law municipality may adopt an ordinance or rule that is “for the good government, peace, or order 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.” Tex. Loc. Gov't Code Ann. § 51.001; see also id. § 51.012 (providing a Type-A general-law municipality with authority to adopt an ordinance “not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality”); Op. Tex. Att'y Gen. No. KP-0034 (2015)


**Conflict without preemption.** Merely because the Legislature has enacted a law addressing a particular subject matter does not automatically mean all of the subject matter is completely preempted. BCCA Appeal Group, Inc., 496 S.W.3d 1, reh'g denied (Sept. 23, 2016). This is because “[a] general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached.” BCCA Appeal Group, Inc., 496 S.W.3d 1. In other words, both the city ordinance and general law will be enforced so long as it is possible under any reasonable construction. Id.

An ordinance is “acceptable” if it is “ancillary to and in harmony with the general scope and purpose of the state enactment.” City of Laredo, 550 S.W.3d at 593 (citing City of Beaumont, 291 S.W. at 206. “Absent an express limitation, if the general law and local regulation can coexist peacefully without stepping on each other’s toes, both will be given effect, or the latter will be invalid only to the extent of any inconsistency.” Id. Nevertheless, if the state law and city ordinance cannot be reconciled, then the state law trumps the ordinance, making the ordinance unenforceable. Laredo Merchants Association, 2016 WL 4376627, at *3.

**B. Oppressive Ordinance Argument**
Sometimes, individuals who run afoul of a municipal ordinance challenge it as being oppressive. Such is actually a challenge under the Due Course of Law argument within the Texas Constitution. Ordinances are void if they violate the substantive-due-course-of-law protections of article I, section 19 of the Texas constitution. See Tex. Const. art. I, § 19; City of Fort Worth v. Rylie, 02-17-00185-CV, 2018 WL 4782291, at *12 (Tex. App.—Fort Worth Oct. 4, 2018, no pet. h.)

However, before any substantive- or procedural-due-process rights attach, a party must have a liberty or property interest that is entitled to constitutional protection. Honors Acad., Inc. v. Texas Educ. Agency, 555 S.W.3d 54, —— (Tex. 2018), reh'g denied (Sept. 28, 2018); Klumb v. Houston Mun. Employees Pension Sys., 458 S.W.3d 1, 15 (Tex. 2015). “A constitutionally protected right must be a vested right, which is ‘something more than a mere expectancy based upon an anticipated continuance of an existing law.’” Klumb, 458 S.W.3d at 15 (quoting City of Dallas v. Trammell, 129 Tex. 150, 101 S.W.2d 1009, 1014 (1937)).

C. Notice of Violation

For conduct to be criminalized, it must be defined by statute or as otherwise provided in §1.03(a) of the Texas Penal Code. "An individual's conduct although it may be reprehensible is not criminal unless proscribed." Sanchez v. State, 182 S.W.3d 34, 59–60 (Tex. App.—San Antonio 2005), aff'd, 209 S.W.3d 117 (Tex. Crim. App. 2006)(citing 22 C.J.S. Crim. Law § 8 (West 1980)). The Legislature is vested with the lawmaking power of the people in that it may define crimes and prescribe penalties by statute. See Tex. Const. art. III, § 1; Wesbrook v. State, 29 S.W.3d 103, 112 (Tex. Crim. App. 2000); McNew v. State, 608 S.W.2d 166, 176 (Tex. Crim. App. 1978) (op. on reh'g); Frieling v. State, 67 S.W.3d 462, 468 (Tex. App.—Austin 2002, pet. ref'd); State v. Wofford, 34 S.W.3d 671, 676 (Tex. App.-Austin 2000, no pet.).

Section 1.02 of the Penal Code provides for the general purposes of the code and states that it should be construed to achieve giving fair warning of what is prohibited and of the consequences of violation as well as to safeguard conduct that is without guilt from condemnation as criminal. Tex. Penal Code Ann. § 1.02 (2), (4) (West 2017).

Section 6.01(a) and (c) provides:

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.
(c) A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

Tex. Penal Code Ann. § 6.01 (a), (c) West 2017).

A penal statute should explicitly establish the elements of the crime it creates and provide some reasonable ascertainable standards of guilt. Sanchez, 182 S.W.3d 34, See 22 C.J.S. Crim. Law § 26 (West 1989). Purely statutory offenses cannot be established by implication. Id. at § 215. Section 1.07 (a) (22) of the Penal Code provides:

"Element of offense" means:
(A) the forbidden conduct;
(B) the required culpability;
(C) any required result; and
(D) the negation of any exception in the statute.

The Sixth Amendment to the United States Constitution guarantees a right to trial by jury while the Fourteenth Amendment focuses on due process protections which the United States Supreme Court has determined require juries to find every element of a charged offense beyond a reasonable doubt. See U.S. Const. amend VI, XIV; Francis v. Franklin, 471 U.S. 307, 313, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985); In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); see also Tex. Const. art. I, § 19, art. V, § 13. The Penal Code also requires that "no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt." Tex. Pen. Code Ann. § 2.01 (West 2005) (emphasis added).

For most state law offenses which appear before your court, these issues have already been flushed out. However, when the Legislature creates a new law or when your City Council pass a new ordinance, a conviction can only apply if these constitutional requirements are met.

This also applies to notices contained within an ordinance as to any civil or administrative procedures. "A fundamental element of due process is adequate and reasonable notice of proceedings." Murphree v. Ziegelmair, 937 S.W.2d 493, 495 (Tex. App.—Houston [1st Dist.] 1995, no writ) (quoting Green v. McAdams, 857 S.W.2d 816, 819 (Tex. App.—Houston [1st Dist.] 1993, no writ)).
Different notice standards apply depending on the type of proceeding. General notice to appear in court in a typical traffic offense is different that notice for a zoning violation. Different still are the standards for use under civil administrative enforcement, such as substandard building issues. Each notice element must be applied according to the type of proceeding.


In relation to administrative matters, Chapter 54 of the Texas Local Government Code provides municipalities with the general authority to enforce rules, ordinances, and police regulations enacted by their governing bodies. See Tex. Loc. Gov't Code Ann. § 54.001(a). In addition, Chapter 214 of the Code provides municipalities with specific authority to pass substantive ordinances regulating the identification, repair, and demolition of substandard buildings. See Tex. Loc. Gov't Code Ann. § 214.001(a). In short, do not assume all of the notice provisions you typically use in your court system work equally with all types of notices.

**X. Appeals**

**A. Generally**

County courts at law have appellate jurisdiction over all inferior courts, unless specified otherwise by a more specific state statute. Tex. Crim. Proc. Code Ann. § 4.08 (West 2017). However, while some counties have county courts at law with civil and criminal jurisdiction there are other counties which have only county courts of criminal jurisdiction. However, depending on the type of case, an appeal from municipal court may not exist, may go only to a municipal court of appeals as specified by state law, may to a criminal county court at law, a county court at law, a county court, or even a district court. It all depends on the ordinance and how it operates with state law.

Basically, there is no “one-size-fits-all” answer for how to operate a municipal court and that includes how to appeal from a municipal court. Some municipal courts were created when Texas was its own republic. Some were created when the Texas Legislature had to pass a specific law to create the municipal court. Some were created simply by ordinance of the hosting municipality. Article 45.042 of the
Code of Criminal Procedure essentially states that unless a specific municipal court of appeals was created or other city specific legislation says otherwise, the default is for any appeal to go to a county court at law.

**B. Courts of Non-Record**

i. **Criminal**


A court conducting a trial *de novo* based on an appeal from a justice or municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court. Tex. Code of Crim. Proc. Ann. art. 44.181(a)(Emphasis added). This means the defendant must preserve the right to object in county court by properly and timely objecting in the municipal court. Such a preservation must be reflected in record submitted to the county court. However, even if the defendant does preserve the objection, the state must be given the ability to correct any defects. Tex. Crim. Proc. Code Ann. § 44.181(b). If no objection occurred, the complaint and any substantive or procedural objections are waived. This means the only practical effect of the *de novo* appeal is to retry the factual basis behind the conviction.

When a defendant files the appeal bond required by law with the municipal court, all further proceedings in the case in the municipal court shall cease. Tex. Crim. Proc. Code Ann. § 45.043 (West 2015). When the appeal bond has been filed no later than the 10th day after the date the judgment was entered, the appeal in such case shall be held to be perfected. Tex. Code of Crim. Proc. Proc. art 44.14(b); art. 45.0426 (West 2015); *Tweedie v. State*, 10 S.W.3d 346, 347 (Tex. App.—Dallas 1998, no pet.).

ii. **Civil**

The short answer is... it depends. There is no appeal from a Chapter 707 determination and bond forfeitures follow the process outlined in Tex. Crim. Proc. Code Ann. § 45.042. Truancy appeals follow the provisions found in the Family Code. The limited areas where a court of non-record has civil jurisdiction individually address appeals and whether they are permitted.

**C. Courts of Record**

i. **General**
Municipal courts of record are provided for by Chapter 30 of the Government Code. A municipality may choose to have either a “municipal court” or a “municipal court of record” but not both. See Tex. Gov’t Code Ann. § 30.00003(e) (West 2017). A primary distinction between these types of municipal courts is that a “municipal court” established under §29.002 of the Government Code is not a court of record. Thus, an appeal from such a municipal court is necessarily by trial de novo because there is no “trial record” for the county court to consider on appeal. See Blankenship, 170 S.W.3d at 680 n. 7; Tweedie, 10 S.W.3d at 348. By comparison, an appeal from a municipal court of record must be “based only on errors reflected in the record.” Tex. Crim. Proc. Code Ann. § 44.17 (West 2018); see also Tex. Gov’t Code Ann. § 30.00014(b) (West 2017). This includes a clerk’s record and any transcripts of proceedings.

ii. Criminal

To perfect an appeal from the judgment of a municipal court of record, an appellant must file a written motion for new trial with the municipal clerk setting forth the points of error of which appellant complains. See Tex. Gov’t Code Ann. § 30.00014(c). Such motion must be filed no later than 10 days after the date the judgment is rendered. Id. The reviewing court must then determine the appeal “on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the clerk's record and reporter's record prepared from the proceedings leading to the conviction or appeal.” See Tex. Gov’t Code Ann. § 30.00014(b) (West 2017) (emphasis added). Thus, when appealing from a municipal court of record, to preserve an issue for consideration, a claim of error must be raised in the motion for new trial, and the record must reflect that the same claim was raised before the municipal court prior to conviction. This means that on appeal a claim of error is cognizable only if it is both (a) presented in the record; and (b) set forth in the motion for new trial.”). 2016 WL 4628054, at *2. A court, for good cause may extend the time for filing or amending for up to 90 days. Tex. Gov’t Code Ann. § 30.00014(c). However, if the court takes no action on the motion for new trial, the motion is overruled as a matter of law after the 30th day. Tex. Gov't Code Ann. § 30.00014(c).

Additionally, to perfect appeal, the defendant must provide a notice of appeal and bond no later than the 10th day after the motion for new trial is ruled upon or overruled as a matter of law. Tex. Gov't Code Ann. § 30.00014(d). If the defendant is not in custody, the appeal is not perfected until an appeal bond is filed. The appeal bond is dictated by Tex. Gov’t Code Ann. §30.00015 (West 2017). And while the bond must be approved by the municipal court of record, the amount must be either $100 or double the amount of fine and court costs adjudged against the defendant, whichever is greater. Tex. Gov't Code Ann. § 30.00015.

A lot of case law exists noting municipal appeals do not have to follow the Texas Rules of Appellate Procedure. However, Tex. Gov’t Code Ann. §30.00023 states the Texas Rules of Appellate Procedure an appeal from a court of record by default unless specifically changed by Chapter 30. Similarly §30.00016 states the appellate record must substantially conform to those rules. Mainly this is due to the fact that the appeal mirrors an appeal to a court of appeals, so the importance of a conforming record is emphasized. The clerk’s record and reporter’s record are needed and the appellant shall pay for the reporter’s record. Tex. Gov’t Code Ann. §30.00019 (West 2017). The deadlines for requesting, filing, and transmitting the record are dictated by Tex. Gov’t Code Ann. §30.00020 (West 2017). The municipal judge is required to approve the record before it is sent to the county court or other court of appeals. Id.

The county court or other appellate court may affirm the judgment, reverse and remand, reverse and dismiss, or reform and correct. Tex. Gov’t Code Ann. §30.00024 (West 2017). And while specialized municipal appellate courts may be accustom to it, many county courts will not normally want to issue a full written opinion sustaining or overruling the points of error. However, Tex. Gov't Code Ann. § 30.00024(c) specifically requires such an opinion. If the appellate court awards a new trial, the case is treated as if the municipal court had awarded the new trial and the appeal never happened …. other than the fact a written opinion is issued.

Finally, a decision by a county court (or municipal court of appeals) sitting as an appellate court is appealable to the court of appeals if 1) the fine exceeds $100 and is affirmed by the county court or municipal court of appeals or 2) the sole issue is the constitutionality of a statute or ordinance which formed the basis of a conviction. Tex. Gov't Code Ann. § 30.00027 (West 2017).

iii. Civil
Again, it depends... a lot more stuff, including the ordinance, the county, the subject matter and any specialized appellate references. For example, as noted above, in an appeal from a dangerous dog determination no motion for new trial is required.

Texas Government Code §30.00014 states a defendant has the right of appeal from a judgment or conviction. Tex. Gov't Code Ann. § 30.00014. As a result, at first glance it appears as though a defendant can appeal a civil judgment. The appeal is to a county criminal court, county criminal court of appeal, or municipal court of appeal. If there are no such county courts in the venue, the county courts at law shall have jurisdiction of an appeal. Tex. Gov't Code Ann. § 30.00014(a).

County courts at law have appellate jurisdiction over all inferior courts. Tex. Crim. Proc. Code Ann. § 4.08 (West 2017). However, that does not mean the county court at law has civil jurisdiction over a specific subject matter which is the issue of a municipal court order. For example, prior to 2015, a party may have had a limited right to appeal from a dangerous dog determination. In the case of In re Loban, 243 S.W.3d 827, 828 (Tex. App.—Fort Worth 2008, no pet.) Relator Jason Loban had two dogs declared to be dangerous animals in the City of Grapevine Municipal Court of Record. He attempted to appeal to County Court at Law No. 3 but the county judge refused the case.

Both the City and Loban sought a mandamus to compel the county judge to exercise jurisdiction. Tex. Health & Safety Code Ann. § 822.0421 authorizes an appeal from a dangerous dog declaration; it provides that the owner of an alleged dangerous dog “may appeal the decision of the ... municipal court in the same manner as appeal from other cases from the ... municipal court.” Tex. Health & Safety Code Ann. § 822.0421. However, by statute, county criminal courts in Tarrant County have no jurisdiction over civil matters. See Tex. Gov't Code Ann. § 25.2223(a) (West 2004) (providing that county criminal courts in Tarrant County have no jurisdiction over civil matters).

A county court at law acquires jurisdiction over an appeal from a municipal court of record only if there is no county criminal court, county criminal court of appeal, or municipal court of appeal in the county. Because Tarrant County does have county criminal courts, Tarrant County Court at Law No. 3 did not have jurisdiction over Loban’s appeal. In re Loban, 243 S.W.3d at 830. However, now a person now has an express statutory right to appeal to a county court or county court at law any municipal order under Texas Health and Safety Code §822.0421(d) or §822.0423.
D. Municipal Court of Appeals

The Legislature, by specific state statute, has created various jurisdictions with municipal courts of appeal. Just be aware that such exist and check your jurisdiction to determine the procedures applicable.

XI. Conclusion

Ordinances grant municipal courts extra powers by triggering various conditional jurisdictional authority. Ordinances also can dictate certain aspects relating to how a municipal court operates. A municipal court must be aware of what the permissible scope an ordinance can address as well as the limits of its own authority.

Since, depending on the type of city and court, so many different combinations exist for what ordinances can and cannot do there is no one-size-fits-all checklist I can give you. However, hopefully this article will give you a reference point to assist with whatever ordinance situation is placed before your court.