

CHAPTER 11 CITY ORDINANCES — General Rules

1. General Rules

Checklist 11-1	Script/Notes
☐ 1. Jurisdiction: ☐ a. A home-rule city can enact and enforce laws to abate and remove nuisances in the city or within 5,000 feet of the city limits. General law cities can enact and enforce laws to abate and remove nuisances within the city limits. ☐ b. A municipal court has jurisdiction over any individual or business entity acting within its limits. ☐ c. A municipal court has jurisdiction over city ordinance violations that occur on city-owned property in the city's extraterritorial jurisdiction. ☐ d. A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile to establish concurrent jurisdiction in the municipalities and provide original jurisdiction to the municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose. This concurrent jurisdiction is limited to the following types of cases: ☐ (1) All criminal cases arising under a municipal ordinance or resolution, rule, or order of a joint board operating an airport that either municipality would have jurisdiction over;	See <i>The Municipal Judges Book</i>: Chapter 1. Chapter 54, Secs. 217.042 and 217.022, L.G.C.; <i>Treadgill v. State</i>, 275 S.W.2d 658 (Tex. Crim. App. 1955). Art. 4.14(a), C.C.P.; Sec. 29.003(a), G.C. Sec. 29.003, G.C. Sec. 29.003(i), G.C. Sec. 29.003(a), G.C.

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| <p>☐ (2) All criminal cases arising under state law that arise within either municipality's territorial limits or property owned by the municipality located in its extraterritorial jurisdiction that are punishable only by a fine or arise under Chapter 106, A.B.C., and do not include confinement as an authorized sanction;</p> | <p>Sec. 29.003(b), G.C.</p> |
| <p>☐ (3) Seizure of cruelly treated animal cases; and</p> | <p>Sec. 821.022, H.S.C.</p> |
| <p>☐ (4) Truant conduct cases.</p> | <p>Sec. 65.003, F.C.</p> |
| <p>☐ e. A municipal court has concurrent jurisdiction with county and justice courts in cases that arise under ordinances of the municipality's extraterritorial jurisdiction under Section 216.902 of the Local Government Code (Regulation of Outdoor Signs in Municipality's Extraterritorial Jurisdiction).</p> | <p>Art. 4.11, C.C.P.</p> |
| <p>☐ f. Section 30.00005, G.C., says that municipal courts of record have jurisdiction over city ordinance violations authorized by Sections 215.072, 217.042, 341.903, and 551.002, L.G.C., providing the following:</p> | |
| <p>☐ (1) A municipality is permitted to inspect dairies, slaughterhouses, or slaughter pens in or outside the municipal limits from which milk or meat is furnished to the residents of the municipality.</p> | <p>Sec. 215.072, L.G.C.</p> |
| <p>☐ (2) A municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside those limits and may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.</p> | <p>Sec. 217.042, L.G.C.</p> |

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| <p>☐ (3) A home-rule municipality may police the following areas owned by and located outside the municipality: (1) parks and grounds; (2) lakes and land contiguous to and used in connection with a lake; and (3) speedways and boulevards.</p> | <p>Sec. 341.903, L.G.C.</p> |
| <p>☐ (4) A home-rule municipality may prohibit the pollution or degradation of the city's water supply and provide protection and policing of watersheds. The statute further provides that the authority granted by this statute may be exercised inside the city boundaries and in the extra-territorial jurisdiction only if required to meet certain other state or federal requirements. The authority granted under this statute regarding the protection of recharge areas may be exercised outside the city boundaries within the extra-territorial limits provided that the city has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the city's water supply.</p> | <p>Sec. 551.002, L.G.C.</p> |
| <p>☐ g. The city may grant the municipal court of record, by passing an ordinance, civil jurisdiction for the purpose of enforcing municipal ordinances under Chapter 214, L.G.C., (Nuisance), and Chapter 683, T.C., (Junked Vehicles). This jurisdiction is concurrent with district and county courts at law and includes the power to issue search warrants and destruction orders.</p> | |
| <p>☐ h. The city may create by ordinance an administrative procedure for dealing with nuisance violations and junked vehicles that may be appealed to the municipal court.</p> | <p>Sec. 54.044, L.G.C. and
Sec. 683.0765, T.C.</p> |

☐ 2. Ordinance is **invalid** if:

- ☐ a. It is inconsistent with the city's charter;
- ☐ b. It is inconsistent with state law or the Texas Constitution;
- ☐ c. It is preempted by state or federal law;
- ☐ d. It is inconsistent with the U.S. Constitution or federal law; or
- ☐ e. It is enacted in violation of the Texas Open Meetings law and not subsequently validated by the Legislature.

☐ 3. Culpable mental states:

- ☐ a. If the ordinance does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition of the offense plainly dispenses with any mental element.
- ☐ b. An offense defined by municipal ordinance may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding \$500.

Some statutes specifically grant authority to cities to go beyond state law definitions or regulatory schemes.

A determination of invalidity in municipal court results in an individual being found not guilty. Barring an injunction from a court of equity, a municipality may continue to enforce its ordinances. *State v. Morales*, 869 S.W.2d 941 (Tex. 1994).

Sec. 6.02(b), P.C. A city ordinance on adult businesses was held to require a culpable mental state even though the ordinance was silent as to the issue. *Aguirre v. State*, 22 S.W.3d 463 (Tex. Crim. App. 1999). NOTE: To the degree that *Aguirre* contradicts Section 6.02, P.C., its holding is modified by legislative enactment.

Sec. 6.02(f), P.C.

☐ 4. Notice

- ☐ a. There is no notice requirement in most ordinances.

A city may adopt an ordinance which incorporates some other document, such as the International Building Code. Unless a notice provision is specifically eliminated or altered, the city is bound to follow the language of the incorporated document. *State v. Cooper*, 420 S. W. 3d 829 (Tex. Crim. App. 2013).

- ☐ b. If there is a notice requirement, whether it has been complied with is a matter to be decided after hearing the testimony.

- ☐ c. Notice need not be pled in the complaint.

☐ 5. Judicial Notice:

Check procedure in Chapter 30, G.C., if a court of record.

- ☐ a. Judge **may** take judicial notice of all municipal ordinances.
- ☐ b. Some court of record statutes state that the judge **shall** take judicial notice of the ordinances.
- ☐ c. A printed ordinance is self-authenticating and a judge **shall** admit it without further proof.

☐ 6. Warrants:

- ☐ a. A magistrate may issue search warrants for code inspections based on probable cause.

Requirements for these warrants are found in Section 18.05, C.C.P.

