



# 14<sup>th</sup> Annual HOG WILD 2017

A Free Continuing Education Seminar *energizing*  
Local Government Officials & Employees

Denton Navarro Rocha Bernal Hyde & Zech, P.C.





**HOGWILD 2017**

**NEXT UP**

**8:15 - 9:00**

**WELCOMING REMARKS AND ORIENTATION**

**MASTER OF CEREMONIES: GEORGE HYDE**

**PARTNER - AUSTIN**





# WELCOME TO HOG WILD 2017

## WELCOMING REMARKS AND ORIENTATION

**MASTER OF CEREMONY: GEORGE HYDE, PARTNER | SHAREHOLDER**

**KENNETH GRASSO, PH.D., PROFESSOR & CHAIR DEPARTMENT OF POLITICAL SCIENCE**

**PATRICIA SHIELDS, PH.D., PROFESSOR & DIRECTOR OF THE MASTER OF PUBLIC ADMINISTRATION PROGRAM**

**LYNN CROSSETT, J.D., ASSOCIATE PROFESSOR & DIRECTOR OF THE MASTER OF LEGAL STUDIES PROGRAM**

**THOMAS LONGORIA, PH.D., PROFESSOR & DIRECTOR OF THE CENTER FOR RESEARCH, PUBLIC POLICY & TRAINING**

**HOWARD BALANOFF, ED.D., PROFESSOR & DIRECTOR OF THE WILLIAM P. HOBBY CENTER FOR PUBLIC SERVICE**

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**HOGWILD 2017**

**NEXT UP**

**9:15 - 10:15**

**TEXAS STATE UNIVERSITY GRADUATE STUDENT  
RESEARCH PANEL PRESENTATION**





# **TEXAS STATE UNIVERSITY GRADUATE STUDENT RESEARCH PANEL PRESENTATION:**

**FEMALE CITY MANAGERS IN TEXAS: A CONTENT ANALYSIS OF RESUMES TO IDENTIFY SUCCESSFUL CAREER PATH TRENDS**

**PRESENTER: SAM ALEXANDER**

**A MODEL ASSESSMENT TOOL FOR EFFECTIVE PARTNERSHIPS BETWEEN LOCAL PARKS SYSTEMS AND NONPROFITS**

**PRESENTER: KYLE CARVELL**

**ISSUES AND TRENDS IN CONTRACT MANAGEMENT**

**PRESENTER: RICARDO ZAVALA**

**SOCIAL MEDIA AND THE SIXTH AMENDMENT**

**PRESENTER: JENNIFER STRAHL**





# HOG WILD 2017

**10:30 – 11:30**

**NEXT UP**

## TEACHING THEATER

### LEGISLATIVE UPDATE

**HARVEY KRONBERG**

THE QUORUM REPORT

**CATARINA GONZALES**

SENIOR ASSOCIATE

## ROOM 3 – 13.1

### POLICE CIVIL RIGHTS & WRONGS

**LOWELL DENTON**

PARTNER | SHAREHOLDER

## ROOM 3 – 15.1

### UNDERSTANDING AND MANAGING DEVELOPER EXPECTATIONS

**HABIB ERKAN**

SENIOR ASSOCIATE

**JAMES GRIFFIN**

ATTORNEY

**DEVIN “BUCK” BENSON**

PARTNER





# HOGWILD 2017

## LEGISLATIVE UPDATE

**HARVEY KRONBERG**  
**THE QUORUM REPORT**

**CATARINA GONZALES**  
**SENIOR ASSOCIATE**  
*DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.*

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# HOGWILD 2017

# POLICE CIVIL RIGHTS & WRONGS

## LOWELL DENTON

**PARTNER | SHAREHOLDER**

*DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.*

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# **SAME OLD FAILURES**

- **1980 COLLEGE STATION PD**
- **FAILURE TO:**
  - **FOLLOW YOUR OWN POLICY**
  - **... COMPLETE YOUR OWN REPORTS**
  - **... INTEGRATE INFORMATION INTO EIS**
  - **... IDENTIFY AND RESPOND TO PERFORMANCE AND COMPLIANCE ISSUES AT EACH SUPERVISORY LEVEL**
- **BOILER PLATE REPORTS AND STORIES**

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# DON'T GET LOST

- **MENTAL HEALTH**
- **DE-ESCALATION**
- **BODY CAMERAS AND THIRD PARTY VIDEO**
- **GRAHAM V. CONNOR STANDARD**
- **QUALIFIED IMMUNITY**
- **OPINIONS AND QUOTATIONS**
- **TAKING SIDES**

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<http://www.msn.com/en-us/news/us/a-man-called-police-to-help-his-distressed-wife-they-wound-up-killing-her/ar-AAj3NZ6?%20=undefined&li=BBnb7Kz>

Browser tabs: 'We failed,' New York police co... A man called police to help his... 'We failed,' New York police... X

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# 'We failed,' New York police commissioner says of sergeant fatally shooting 'emotionally disturbed' woman

By Mark Berman October 19 at 6:56 PM

N.Y. officials: Shooting death of 66-year-old woman 'tragic'

SeaWorld HOWLO-SCREAM THEY HAVE AN APPETITE

# **A VOLATILE DISCUSSION ... HOW TO HAVE IT?**

- **PROFESSIONALS ARE PREPARED TO LEARN AND GROW**
- **THE CULTURE WILL CHANGE**
- **CHOOSE THE RIGHT THING AND THE RIGHT SIDE OF HISTORY**



# 3 KEY POINTS

- 1. CITIZENS HAVE ALWAYS BEEN ESSENTIAL TO EFFECTIVE LAW ENFORCEMENT SINCE PEEL'S PRINCIPLES IN THE 1800'S**
- 2. COPS ARE THE CORE OF A LEARNING ORGANIZATION**
- 3. SERGEANTS RUN THE ORGANIZATION: IN OTHER WORDS, YOUR OFFICERS WILL ONLY DO RIGHT WHEN YOUR SUPERVISORS GET IT, TEACH IT, AND LIVE IT**



# FAILURE TO COMMUNICATE



- OFFICERS FAIL TO COMMUNICATE WITH JUSTICE DURING THEIR TRANSACTIONS WITH CITIZENS
- OFFICERS FAIL TO REPORT ACCURATELY BASED ON AN UNDERSTANDING OF CITIZEN RIGHTS AND CONSTITUTIONAL LAW
- THE POLICE DEPARTMENT FAILS TO COMMUNICATE THE CURRENT STANDARDS AND EXPECTATIONS IN EFFECTIVE TRAINING SCENARIOS

the new  
world of  
**POLICE**  
**ACCOUNTABILITY**  
second edition



SAMUEL WALKER • CAROLA ARCH-BOLD (S)

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# SCENARIOS

- **HOW OFTEN DO OFFICERS AND SUPERVISORS EVALUATE INCIDENTS UNDER THE LAW AND THE POLICY OF THE DEPARTMENT**
- **IF YOU DON'T REVIEW THE PRINCIPLES YOU DON'T KNOW THEM**
- **USE IT OR LOSE IT**
- **EXPECT YOUR PAPER TO BE GRADED**
- **CREATE A CULTURE WHERE KNOWLEDGE AND COMPETENCE TO DO IT RIGHT HAVE VALUE AND PRESTIGE**
- **YOUR FRIEND IS THE ONE THAT MAKES SURE YOU ARE FOLLOWING THE LAW, NOT COVERS UP YOUR MISTAKES**

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# CHICAGO: UN-BELIEVABLES

- **IN THE FIVE-YEAR PERIOD PRIOR TO OUR INVESTIGATION, CHICAGO HAD INVESTIGATED 409 POLICE SHOOTINGS AND FOUND THAT JUST TWO WERE UNJUSTIFIED. IT IS SIMILARLY ILLUSTRATIVE THAT THE CITY PAID OVER HALF A BILLION DOLLARS TO SETTLE OR PAY JUDGMENTS IN POLICE MISCONDUCT CASES SINCE 2004 WITHOUT EVEN CONDUCTING DISCIPLINARY INVESTIGATIONS IN OVER HALF OF THOSE CASES, AND IT RECOMMENDED DISCIPLINE IN FEWER THAN 4% OF THOSE CASES IT DID EXAMINE**
- **OUR INVESTIGATION REVEALED THAT THE CITY FAILS TO CONDUCT ANY INVESTIGATION OF NEARLY HALF OF POLICE MISCONDUCT COMPLAINTS AND THAT A NUMBER OF INSTITUTIONAL BARRIERS CONTRIBUTE TO THIS FACT**

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# CHICAGO: UN-BELIEVABLES

- **THE SUPERVISOR IS TO “RESPOND TO THE SCENE WHEN THE INJURY TO A SUBJECT OR MEMBER IS OF THE SEVERITY TO REQUIRE IMMEDIATE MEDICAL ATTENTION,” “ENSURE THAT ALL WITNESSES ARE IDENTIFIED, INTERVIEWED, AND THAT INFORMATION IS RECORDED IN THE APPROPRIATE REPORT,” AND REQUEST AN EVIDENCE TECHNICIAN TO TAKE PHOTOS OF SUBJECTS WHO WERE INJURED**
- **IN PRACTICE, LITTLE OF THIS HAPPENS. IN THE HUNDREDS OF TRR FILES WE REVIEWED, WE RARELY SAW EVIDENCE THAT SUPERVISORS RESPONDED TO THE SCENE UNLESS OFFICERS SHOT SOMEONE. CANVASSES FOR WITNESSES RARELY OCCUR AND EVEN WITNESSES WHO ARE PRESENT ARE RARELY INTERVIEWED**
- **SERGEANTS WE SPOKE TO TOLD US THEIR ONLY ROLE IS TO ENSURE THE FORM IS FILLED OUT CORRECTLY, AND NONE HAD EVER REFUSED TO SIGN A REPORT BASED ON AN EVALUATION OF THE FORCE ITSELF**





# CHICAGO: UN-BELIEVABLES

- **WITNESSES AND ACCUSED OFFICERS ARE FREQUENTLY NOT INTERVIEWED AT ALL, OR NOT INTERVIEWED UNTIL LONG AFTER THE INCIDENT WHEN MEMORIES HAVE FADED. WHEN INTERVIEWS DO OCCUR, QUESTIONING IS OFTEN BIASED IN FAVOR OF OFFICERS, AND WITNESS COACHING BY UNION ATTORNEYS IS PREVALENT AND UNIMPEDED ...**
- **WE ALSO FOUND THAT INVESTIGATIONS FOUNDERED BECAUSE OF THE PERVASIVE COVER-UP CULTURE AMONG CPD OFFICERS, WHICH THE ACCOUNTABILITY ENTITIES ACCEPT AS AN IMMUTABLE FACT RATHER THAN SOMETHING TO ROOT OUT**



# CHICAGO: UN-BELIEVABLES

- **IN FACT, FOR MOST OF THE LAWSUITS IN WHICH POLICE MISCONDUCT VICTIMS RECEIVED SIGNIFICANT SETTLEMENTS OR VERDICTS, IPRA'S PARALLEL MISCONDUCT INVESTIGATION WAS CLOSED FOR LACK OF AN AFFIDAVIT. IN OTHER WORDS, THE CITY ROUTINELY PAYS LARGE SUMS TO POLICE MISCONDUCT VICTIMS WHO HAVE FILED NON-VERIFIED COMPLAINTS IN CIVIL LITIGATION DESCRIBING THE MISCONDUCT IN QUESTION BUT FAILS TO INVESTIGATE THESE SAME OFFICERS FOR DISCIPLINARY PURPOSES BECAUSE THEIR ADMINISTRATIVE COMPLAINTS ARE NOT VERIFIED**



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# ALBUQUERQUE — SCENARIOS

- **DOMINIC SMITH – UNARMED, FLEEING BURGLARY, “MOTIONS NEAR HIS WAIST”**
- **ALAN GOMEZ – NO FIREARM SEEN, REPORTED; OBSERVING IN AND OUT OF HOUSE FOR AN HOUR, SHOT AS HE ATTEMPTED TO RETURN INSIDE AGAIN WITH NO CHANGE IN CONDITIONS**
- **KENNETH ELLIS III – PTSD VETERAN THREATENING SUICIDE, SHOT BY OFFICERS**

# BALTIMORE — SCENARIOS

- **FAILURE TO RESPOND TO CJS INPUT ON ILLEGAL STOPS AND SEARCHES**
- **LOW RATE OF ARREST OR EVIDENCE PROVES LACK OF FOUNDED SUSPICION**
- **DIRECTED TO MAKE UNSUPPORTED STOPS AS SUPPRESSION TECHNIQUE**
- **THE HOODED SWEATSHIRT AND A LEGAL KNIFE**
- **STRIP SEARCH OF WOMAN WITH A MISSING HEADLIGHT**
- **I'LL STRIP SEARCH YOU EVERY TIME I SEE YOU HERE**
- **TASER FOR FLEEING MISDEMEANOR THIEF**
- **TAKE-DOWN FOR FAILURE TO SHOW ID WHILE WALKING A DOG**

# TRAINING OF OFFICERS AND SUPERVISORS



- CORE DOJ P&P ISSUES
- ENHANCED
- POLICY SPECIFIC
- SCENARIO & ROLE PLAY
- MENTORING & COACHING
  - BODY CAMERAS FOR TRAINING
  - TEACHING
  - REVIEW AS PERFORMANCE & DISCIPLINE





# RETRAINING AND SUPPLEMENTAL TRAINING PROGRAMS

- **PROCEDURAL JUSTICE\* OF LEED OR OTHER TRAINING MODULES**
- **FAIRNESS IN POLICING—IMPLICIT BIAS**
- **MENTAL HEALTH ISSUES**
- **DE-ESCALATION TECHNIQUES**
- **OFFICER SAFETY EMPHASIS**
- **PROFESSIONALISM AND COMMITMENT TO COMPARABLE OUTCOMES**

**\*THE GOLDEN RULE**

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# COMMUNITY RELATIONSHIPS

- **EACH OFFICER AND SUPERVISOR**
- **TAUGHT, SUPERVISED, AND ACCOUNTED FOR**
- **CREATIVE AND VITAL**
- **OFFICER SUPPORT AND ENGAGEMENT**
- **UNION COLLABORATION**
- **DEPARTMENT CHANGE AND IMPROVEMENT**
- **TRANSPARENCY**

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# COMPLAINT PROCESS

- OPEN AND WELCOME
- TRANSPARENT
- COMPREHENSIVE/TRACKED
- DATA OUTCOME
- REVIEW BEYOND DISCIPLINE
- INTER DEPARTMENT COOPERATION
- OVERSIGHT

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# HOGWILD 2017

## WHAT DEVELOPERS WISHED CITY OFFICIALS KNEW ABOUT LAND DEVELOPMENT (LIFECYCLE OF A DEVELOPMENT PROJECT)

**HABIB ERKAN**  
SENIOR ASSOCIATE  
*DENTON NAVARRO ROCHA  
BERNAL HYDE & ZECH, P.C.*

**JAMES GRIFFIN**  
ATTORNEY  
*BROWN & ORTIZ*

**DEVIN "BUCK" BENSON**  
PARTNER  
*PULMAN, CAPPUCCIO, PULLEN, BENSON, & JONES, LLP*

**USED WITH PERMISSION OF THE SAN ANTONIO URBAN LAND INSTITUTE**

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# Municipality Goals & Objectives

- **Protect the health, safety, and welfare of the citizens of the City.**
  - Zoning
  - Subdivision
  - Building Code
- **Provide quality customer service**
  - Consistent and quality service
  - permit cycle time
- **Establish revenue neutral development fees.**
  - Permit fees
  - Impact fees

## Developer Goals & Objectives

- **Create resilient communities**
  - **Create value**
- **Respond to demand and market forces**
  - **Anticipate what the consumer wants and deliver**
- **Promote intelligent densification and urbanization**
  - **Market forces**
- **Integrate energy, resources and uses sustainably**
  - **Wisely utilize investors capital**



# **THEORETICAL SAMPLE PROJECT**

## **GARDEN-STYLE MULTI-FAMILY DEVELOPMENT**

- **LAND AREA: 15 ACRES**
  - OUTSIDE THE EARZ
  - PROPERTY HAS NO VESTED RIGHTS
  - DEVELOPMENT WILL COMPLY WITH THE 2010 TREE ORDINANCE
  - NO FLOODPLAIN ON PROPERTY
  - NO ENVIRONMENTAL/ENDANGERED SPECIES CONCERNS
  - ALL UTILITIES AVAILABLE AT THE PROPERTY FRONTAGE
  - MASTER DEVELOPMENT PLAN (MDP) NOT REQUIRED
  - NO EXISTING WATER WELLS ON THE PROPERTY
  - PROJECT WILL REQUIRE REZONING AND A PLAN AMENDMENT
- **DENSITY: 300 UNITS (20 UNITS PER ACRE) AMENITIES: LEASING OFFICE, CLUBHOUSE, POOL, DOG PARK, WALKING TRAILS**

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# GENERAL OVERALL TIMELINE

- **PROJECT INCEPTION (1 MONTH)**
  - **INITIAL CONTRACT DD (2 MONTHS)**
    - DUE DILIGENCE/ENTITLEMENTS (9 MONTHS)
    - INITIAL PLANNING/
    - RAISING CAPITAL / FINANCING (9 MONTHS)
      - PARTNERSHIP & LOAN DOCS (2 MONTHS)
        - COMPLETING DESIGN TEAM (1 MONTH)
          - DESIGN PROCESS (5 MONTHS)
            - BUILDING PERMITTING (3 MONTHS)
  - CLOSING ON THE LAND (14 MONTHS)
    - NEGOTIATE CONST. CONTRACT (1 MONTH)
- **CONSTRUCTION (18-24 MONTHS FOLLOWING SIGNED CONTRACT)**
- **OPERATION/MANAGEMENT**

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# PROJECT INCEPTION

## OWNER/DEVELOPER

- MARKET ANALYSIS

## PROJECT MANAGER

## ARCHITECT

## TRANSACTIONAL ATTORNEY

## ENTITLEMENT ATTORNEY

## LAND PLANNER

## CIVIL ENGINEER

**TOTAL TIME TO DATE = 1 MONTH**

**TOTAL COST TO DATE = \$20,000**



# INITIAL CONTRACT DUE DILIGENCE

## OWNER/DEVELOPER

- MARKET ANALYSIS

## PROJECT MANAGER

## ARCHITECT

## TRANSACTIONAL ATTORNEY

## ENTITLEMENT ATTORNEY

## LAND PLANNER

## CIVIL ENGINEER

**TOTAL TIME TO DATE = 3 MONTHS**

**TOTAL COST TO DATE = \$50,000**

# DUE DILIGENCE/ENTITLEMENTS

**OWNER/DEVELOPER**

**PROJECT MANAGER**

**LAND SURVEYOR**

**LAND PLANNER**

**BUILDING ARCHITECT**

**MUNICIPALITIES**

**UTILITY PURVEYORS**

**CIVIL ENGINEER**

**LANDSCAPE ARCHITECT**

**GEOLOGIST (PHASE 1 ESA)**

**GEOTECHNICAL ENGINEER**

**ATTORNEYS:**

**TRANSACTIONAL**

**ENTITLEMENT**

**PARTNERSHIP**

**FINANCE**

**TOTAL TIME TO DATE = 5 MONTHS**

**TOTAL COST TO DATE = \$445,000**

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# **DUE DILIGENCE / ENTITLEMENTS**

## **ITEMIZED COSTS (INCLUDES CITY FEES)**

<b>LAND PLANNER</b>	<b>\$10,000</b>
<b>ZONING CHANGE /PLAN CHANGE</b>	<b>\$25,000</b>
<b>SURVEYING</b>	<b>\$30,000</b>
<b>PLATTING</b>	<b>\$50,000</b>
• <b>FILO AT PROPOSED RATE</b>	<b>\$120,000</b>
<b>UTILITY SERVICE AGREEMENT</b>	<b>\$5,000</b>
<b>TRAFFIC IMPACT ANALYSIS</b>	<b>\$25,000</b>
<b>DRAINAGE STUDY</b>	<b>\$10,000</b>
<b>TREE PERMIT</b>	<b>\$10,000</b>
<b>PHASE I ENVIRONMENTAL STUDY</b>	<b>\$10,000</b>
<b>GEOTECHNICAL ANALYSIS</b>	<b>\$15,000</b>
<b>LEGAL</b>	<b>\$135,000</b>

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# INITIAL PLANNING/RAISING CAPITAL/FINANCING

**OWNER/DEVELOPER**

**PROJECT MANAGER**

**ATTORNEYS**

**FINANCE PROFESSIONALS**

**ARCHITECT**

**LAND PLANNER**

**CIVIL ENGINEER**

**TOTAL TIME TO DATE = 7 MONTHS**

**TOTAL COST TO DATE = \$675,000**

# PARTNERSHIP & LOAN DOCUMENTS

**OWNER/DEVELOPER**

**PROJECT MANAGER**

**ATTORNEYS**

**FINANCE PROFESSIONALS**

**TOTAL TIME TO DATE = 9 MONTHS**

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# COMPLETING THE DESIGN TEAM

**BUILDING ARCHITECT**

**LANDSCAPE ARCHITECT**

**CIVIL ENGINEER**

**MEP ENGINEER STRUCTURAL ENGINEER**

**FIRE PROTECTION ENGINEER**

**INTERIOR DESIGNER**

**TOTAL TIME TO DATE = 10 MONTHS**



# BUILDING PERMITTING

**OWNER/DEVELOPER**

**PROJECT MANAGER**

**MUNICIPALITIES**

**UTILITY PURVEYORS**

**A/E TEAM**

**CIVIL ENGINEER**

**MEP ENGINEER**

**LANDSCAPE ARCHITECT**

**BUILDING ARCHITECT**

**STRUCTURAL ENGINEER**

**FIRE PROTECTION ENGINEER**

**TAS INSPECTOR**

**CONSTRUCTION ATTORNEY**

**OTHER REGULATORY AGENCIES**

**TOTAL TIME TO DATE = 13 MONTHS**

**TOTAL COST TO DATE = \$2,000,000**

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# CLOSING ON THE LAND

## 15-ACRE, 300-UNIT GARDEN-STYLE MULTI-FAMILY PROJECT

**\*\*\*PERMIT ISSUED\*\*\***

**TOTAL TIME TO DATE = 15 MONTHS**

**TOTAL COST TO DATE = \$2,000,000**

- CANNOT CLOSE UNTIL ALL ENTITLEMENTS ARE SECURED
- LOANS CANNOT BE FUNDED UNTIL ALL PERMITS ARE ISSUED
- INTERIM CONSTRUCTION INTEREST = \$55,000 / MONTH AVG.



# CONSTRUCTION PERIOD

## 18 - 24 MONTHS

- **GENERAL CONTRACTOR**
- **SUBCONTRACTORS**
- **MUNICIPALITIES**
- **UTILITY PURVEYORS**
  - COORDINATION WITH CPS ENERGY FOR ELECTRIC AND GAS SERVICE
  - COORDINATION WITH ATT & TWC FOR COMMUNICATION SERVICES
  - PERMIT FROM SAWS (SAWS IMPACT FEES = \$750,000)
- **OTHER REGULATORY AGENCIES**
  - COORDINATION WITH TXDOT (DRIVEWAY AND/OR UTILITY PERMITS)
- **A/E TEAM**
- **OWNER/DEVELOPER**
- **PROJECT MANAGER**
- **SURVEYING**
- **MATERIALS TESTING**
- **REGULAR INSPECTIONS & SPECIAL INSPECTIONS**

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# 15-ACRE, 300-UNIT GARDEN-STYLE MULTI-FAMILY PROJECT

## IDEAL GOAL:

- ALL INSPECTIONS COMPLETE
- ALL CERTIFICATES OF OCCUPANCY ISSUED AHEAD OF SCHEDULED OPENING

**TOTAL TIME TO DATE = 35 MONTHS (ALMOST 3 YEARS!)**

**TOTAL COST TO DATE = \$30,000,000**

# 15-ACRE, 300-UNIT GARDEN-STYLE MULTI-FAMILY PROJECT

## DELAYED SCENARIO:

➤ CERTIFICATES OF OCCUPANCY **NOT** ISSUED FOR ANY NUMBER OF REASONS PRIOR TO SCHEDULED OPENING

➤ \$30,000,000 PROJECT X 7.0% PER YEAR / 365 DAYS

➤ COST OF DELAYED OPENING = **\$5,753.42 per day**

(DOES NOT INCLUDE ANY ADDITIONAL EXPENSES REQUIRED TO ADDRESS ANY UNRESOLVED ITEMS)



# OPERATION / MANAGEMENT

**CONTRACTOR WARRANTY**

**OWNER/DEVELOPER**

**PROJECT MANAGER**

**ANNUAL FIRE INSPECTIONS**

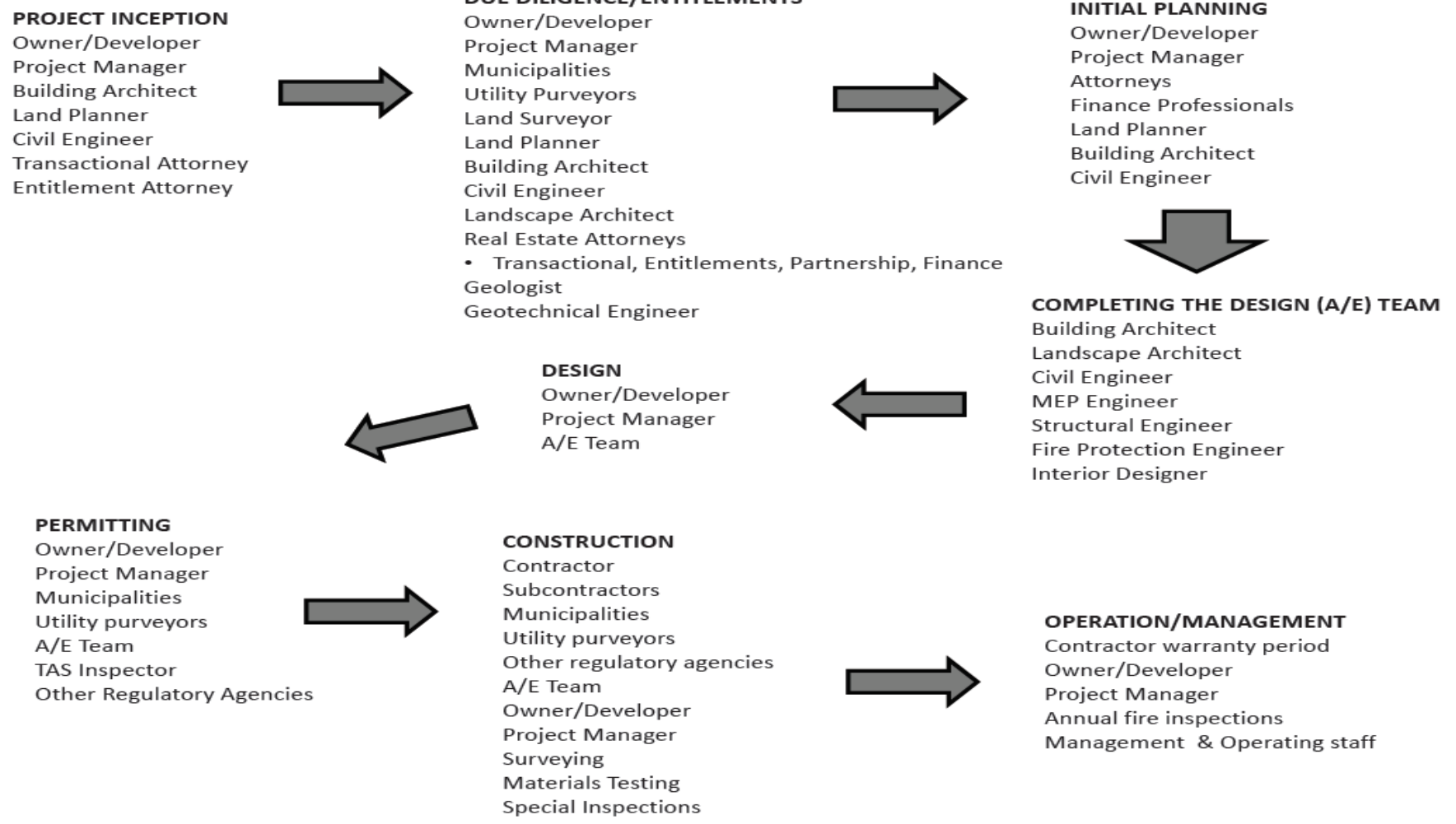
**MANAGEMENT & OPERATING STAFF**

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**On behalf of the San Antonio chapter of the Urban Land Institute (ULI), thank you for your attention and participation.**







# HOGWILD 2017

**NEXT UP**

**11:30 – 12:30**

Lunch Keynote Address:

## **Local Government Economic Growth & Trends**

Secretary of State's Office:  
Rolando Pablos, Secretary of State; or  
Coby Shorter, III Deputy Secretary

Location: Ballroom (3 - 16.1)

**Denton Navarro Rocha Bernal Hyde & Zech, P.C.**





# HOGWILD 2017

**LUNCH KEYNOTE ADDRESS:**  
**LOCAL GOVERNMENT ECONOMIC  
GROWTH & TRENDS**

**SECRETARY OF STATE'S OFFICE:**  
**ROLANDO PABLOS, SECRETARY OF STATE; OR**  
**COBY SHORTER, III DEPUTY SECRETARY**

**INTRODUCTION:**  
**DEAN MICHAEL J. HENNESSY, PH. D., COLLEGE OF LIBERAL ARTS**

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# HOG WILD 2017

**NEXT UP**

**12:45 – 1:45**

## TEACHING THEATER

**UAV DRONE USE IN LOCAL  
GOVERNMENT:  
GENERAL PANEL DISCUSSION ON  
USES, RULES & REGULATIONS**

**WADE MANESS, VIDEOGRAPHER  
CYNTHIA TREVINO, ASSOCIATE  
SCOTT OSBURN, ASSOCIATE**

## ROOM 3 – 13.1

**PRACTICAL ADVANTAGES TO  
A POLICE LEGAL ADVISOR**

**SCOTT TSCHIRHART  
SENIOR ASSOCIATE**

**LT. JAMES MURRAY  
ROSENBERG POLICE FORCE**

## ROOM 3 – 15.1

**CITIZEN LEGISLATION:  
HOME RULE INITIATIVES &  
REFERENDUMS**

**CHARLIE ZECH  
PARTNER | SHAREHOLDER**

**DAN SANTEE  
SENIOR ASSOCIATE**





# HOGWILD 2017

## UAV DRONE USE IN LOCAL GOVERNMENT

### A PANEL DISCUSSION OF USES, RULES & REGULATIONS

**CYNTHIA TREVINO**

**ASSOCIATE**

*DENTON NAVARRO ROCHA  
BERNAL HYDE & ZECH, P.C.*

**SCOTT OSBURN**

**ASSOCIATE**

*DENTON NAVARRO ROCHA  
BERNAL HYDE & ZECH, P.C.*

**WADE MANESS**

**VIDEOGRAPHER**

*CITY OF PFLUGERVILLE*

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# PART 1 – DRONE BASICS



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# WHAT ARE DRONES?

- **AN UNMANNED AERIAL VEHICLE OR “UAV”**
- **OPERATED BY REMOTE CONTROL**
- **MAY CARRY AUDIO AND VIDEO RECORDING EQUIPMENT**



# WHO CONTROLS AIRSPACE?

## FEDERAL AVIATION ACT (49 USC 40103)

- **FEDERAL GOVERNMENT CONTROLS “NAVIGABLE AIRSPACE”**

## NAVIGABLE AIRSPACE

- **THE AIRSPACE ABOVE THE MINIMUM ALTITUDES OF FLIGHT**
- **INCLUDES AIRSPACE NEEDED FOR TAKEOFF AND LANDING**
- **GENERALLY 500 TO 1,000 FEET – NEEDED FOR TAKEOFF/LANDING**
- **STATES RETAIN ABILITY TO CONTROL AIRSPACE BELOW “NAVIGABLE AIRSPACE”, WHICH IS 400 FEET AND BELOW**

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# HOW ARE DRONES REGULATED?

- **FEDERAL AVIATION ADMINISTRATION (FAA)**
- **TEXAS PRIVACY ACT - GOVERNMENT CODE CHAPTER 423**
- **CITY ORDINANCES – MORE ON THIS IN JUST A BIT**

# FAA REGULATIONS

- HAS AUTHORITY TO ISSUE CERTIFICATE OF AUTHORIZATION (COA) FOR PUBLIC AGENCY SEEKING TO OPERATE A DRONE
- PUBLIC AGENCY – ANY AGENCY THAT RECEIVES FEDERAL GOVERNMENT FUNDS
- COA ARE NOT ISSUED TO PRIVATE CITIZENS OR CIVILIAN BUSINESSES
- IF YOU USE A DRONE OUTDOORS AND IT WEIGHS BETWEEN .55 AND 55 POUNDS – YOU MUST REGISTER IT
- REGISTER ONLINE AT:  
[HTTPS://WWW.FAA.GOV/LICENSES\\_CERTIFICATES/AIRCRAFT\\_CERTIFICATION/AIRCRAFT\\_REGISTRY/UA/](https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/ua/)
- CIVIL AND CRIMINAL PENALTIES FOR FAILING TO REGISTER
- CIVIL FINE – UP TO \$27,500
- CRIMINAL PENALTY – UP TO 3 YEARS IMPRISONMENT AND FINE UP TO 250,000

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# IMPERMISSIBLE PLACE

- PLACE DEEMED IMPERMISSIBLE BY MUNICIPAL ORDINANCE
- PLACES DEEMED IMPERMISSIBLE BY CHAPTER 423
- CRITICAL INFRASTRUCTURE FACILITIES – IF COMPLETELY FENCED OFF OR HAS OTHER PHYSICAL BARRIER TO KEEP INTRUDERS OUT, SIGNS POSTED ON PROPERTY INDICATING ENTRY FORBIDDEN



# CRITICAL INFRASTRUCTURE FACILITY

- **A PETROLEUM OR ALUMINA REFINERY;**
- **AN ELECTRICAL POWER GENERATING FACILITY, SUBSTATION, SWITCHING STATION, OR ELECTRICAL CONTROL CENTER;**
- **A CHEMICAL, POLYMER, OR RUBBER MANUFACTURING FACILITY;**
- **A WATER INTAKE STRUCTURE, WATER TREATMENT FACILITY, WASTEWATER TREATMENT PLANT, OR PUMP STATION;**
- **A NATURAL GAS COMPRESSOR STATION;**
- **A LIQUID NATURAL GAS TERMINAL OR STORAGE FACILITY;**
- **A TELECOMMUNICATIONS CENTRAL SWITCHING OFFICE;**

# CRITICAL INFRASTRUCTURE FACILITY (CONT'D)

- **A PORT, RAILROAD SWITCHING YARD, TRUCKING TERMINAL, OR OTHER FREIGHT TRANSPORTATION FACILITY;**
- **A GAS PROCESSING PLANT, INCLUDING A PLANT USED IN THE PROCESSING, TREATMENT, OR FRACTIONATION OF NATURAL GAS;**
- **A TRANSMISSION FACILITY USED BY A FEDERALLY LICENSED RADIO OR TELEVISION STATION;**
- **A STEELMAKING FACILITY THAT USES AN ELECTRIC ARC FURNACE TO MAKE STEEL; OR**
- **A DAM THAT IS CLASSIFIED AS A HIGH HAZARD BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; OR**
- **ANY PORTION OF AN ABOVEGROUND OIL, GAS, OR CHEMICAL PIPELINE THAT IS ENCLOSED BY A FENCE OR OTHER PHYSICAL BARRIER THAT IS OBVIOUSLY DESIGNED TO EXCLUDE INTRUDERS**





# IMPERMISSIBLE PLACE - PENALTIES

- **CLASS B MISDEMEANOR - INTENTIONALLY OR KNOWINGLY**
  - 1. OPERATE A DRONE OVER CIF AND DRONE NOT HIGHER THAN 400 FEET ABOVE GROUND LEVEL**
  - 2. ALLOW DRONE TO MAKE CONTACT WITH CIF, PERSON OR OBJECT ON PREMISE OR WITHIN FACILITY**
  - 3. ALLOW DRONE TO FLY CLOSE ENOUGH TO INTERFERE WITH OPERATIONS OR CAUSE A DISTURBANCE**

# IMPERMISSIBLE USE

- IT AN OFFENSE TO USE A UAV TO RECORD A PERSON OR PRIVATELY OWNED PROPERTY WITH THE INTENT TO CONDUCT SURVEILLANCE
- TWO POSSIBLE CLASS C MISDEMEANOR OFFENSES
  1. CAPTURING AN IMAGE WITH INTENT TO CONDUCT SURVEILLANCE; OR
  2. CAPTURING AN IMAGE WITH INTENT TO CONDUCT SURVEILLANCE AND IN POSSESSION OF AN IMAGE
- DEFENSE TO PROSECUTION – YOU DESTROY THE IMAGE AS SOON AS YOU HAVE KNOWLEDGE IT WAS CAPTURED WITHOUT SHARING IT WITH ANYONE ELSE.
- NOTE – THE IMPERMISSIBLE USE IS IMAGES NOT FLYING THE DRONE

# HIGHLIGHTS OF THE 21 LEGAL PURPOSES

- **OF PUBLIC REAL PROPERTY OR A PERSON ON PUBLIC PROPERTY;**
- **WITH THE CONSENT OF THE OWNER OR LEGAL RESIDENT OF PRIVATE PROPERTY;**
- **FOR EDUCATIONAL PURPOSES;**
- **IN FAA-DESIGNATED TEST SITES OR RANGES;**
- **BY ANY BRANCH OF THE MILITARY;**
- **FOR MAPPING BY SATELLITE;**
- **IF THE IMAGE IS CAPTURED BY OR FOR AN ELECTRIC OR NATURAL GAS UTILITY FOR MAINTENANCE, ASSESSMENT, ROUTING, AND INSPECTIONS;**



# HIGHLIGHTS OF THE 21 LEGAL PURPOSES (CONT'D)

- **WITH THE CONSENT OF THE INDIVIDUAL WHO OWNS OR LAWFULLY OCCUPIES THE REAL PROPERTY;**
- **PURSUANT TO A VALID SEARCH WARRANT;**
- **BY LAW ENFORCEMENT IN IMMEDIATE PURSUIT OF SOMEONE THEY HAVE REASONABLE SUSPICION TO BELIEVE HAS COMMITTED A FELONY OFFENSE, OR TO DOCUMENT A FELONY CRIME SCENE, AND A LIST OF OTHER INSTANCES WHEN LAW ENFORCEMENT MIGHT WANT TO USE AERIAL PHOTOGRAPHY;**
- **AT HAZARDOUS MATERIAL SPILLS;**
- **FOR FIRE SUPPRESSION;**
- **TO RESCUE AN INDIVIDUAL;**
- **BY A REAL ESTATE BROKER SO LONG AS NO INDIVIDUALS ARE DEPICTED;**

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# HIGHLIGHTS OF THE 21 LEGAL PURPOSES (CONT'D)

- **OF REAL PROPERTY OR OF A PERSON ON REAL PROPERTY THAT IS WITHIN 25 MILES OF THE US BORDER;**
- **AT A HEIGHT OF NO MORE THAN 8 FEET OFF THE GROUND IN A PUBLIC PLACE, IF THE IMAGE WAS CAPTURED WITHOUT AMPLIFICATION;**
- **PIPELINE INSPECTIONS;**
- **FOR PORT SECURITY;**
- **LAND SURVEYING BY REGISTERED PROFESSIONAL LAND SURVEYOR**
- **ENGINEERING BY PROFESSION ENGINEER – PROVIDED NO INDIVIDUAL IS IDENTIFIABLE**

# ADDITIONAL PENALTIES

- **CAPTURING AN IMAGE WITH INTENT TO CONDUCT SURVEILLANCE AND**
- **DISCLOSED, DISPLAYED, DISTRIBUTED OR USED THE IMAGES IN ANY WAY**
- **POSSESSION OF THE IMAGE – CLASS C MISDEMEANOR**
- **DISCLOSURE, DISPLAY, DISTRIBUTION OR OTHER USE – CLASS B MISDEMEANOR**
- **EACH IMAGE IS A SEPARATE OFFENSE**
- **CIVIL REMEDY FOR VICTIM OF IMAGES CAPTURED – UP TO \$10,000**



# ADDITIONAL PENALTIES

Offense	Offense Level	Punishment Range
Illegal Use of Unmanned Aircraft to Capture Image with Intent to Conduct Surveillance	Class C Misdemeanor	\$0 - \$500
Possession of Image from Illegal Use of Unmanned Aircraft	Class C Misdemeanor	\$0 - \$500
Disclosure or Distribution of Image from Illegal Use of Unmanned Aircraft	Class B Misdemeanor	Up to 180 days in Jail and up to \$2,000

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# PART 2

# PRACTICAL APPLICATION



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# THINGS TO CONSIDER

- **HOW TO BALANCE USE WITH PRIVACY ISSUES**
- **FIRST RESPONDERS – POLICE/FIRE**
- **PUBLIC WORKS**
- **PRIVACY ISSUES**
- **INSURANCE**
- **TORT CLAIMS**
- **TEXAS PUBLIC INFORMATION ACT**

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# LAW ENFORCEMENT

## THINGS TO CONSIDER:

- **WHAT IS THE OVERALL PURPOSE OF INFORMATION COLLECTED?**
- **WHAT DOES LEA INTEND TO DO WITH THE INFORMATION COLLECTED?**
- **HOW WILL LEA ENSURE THAT THE INFORMATION IS PROPERLY STORED AND DESTROYED IN ACCORDANCE WITH LEGAL REQUIREMENTS AND RECORD RETENTION POLICY?**
- **WHAT TO DO WITH THE “CARTMAN” OF THE DEPARTMENT?**
- **ADDITIONAL RESOURCE:**

**[HTTPS://WWW.POLICEFOUNDATION.ORG/WP-CONTENT/UPLOADS/2016/11/UAS-REPORT.PDF](https://www.policefoundation.org/wp-content/uploads/2016/11/UAS-REPORT.PDF)**

# LAW ENFORCEMENT

- RULES FOR LAW ENFORCEMENT – DEPARTMENT OF PUBLIC SAFETY RULES AND GUIDELINES

[HTTPS://WWW.EFF.ORG/DOCUMENT/TEXAS-DEPARTMENT-PUBLIC-SAFETY-UNMANNED-AIRCRAFT-REGULATIONS](https://www.eff.org/document/texas-department-public-safety-unmanned-aircraft-regulations)

- LEA – MUST REPORT NOT EARLIER THAN JAN 1 OR LATER THAN JAN 15 OF EACH ODD-NUMBERED YEAR USE OF DRONE DURING PRECEDING 24 MONTHS, IF CITY OR COUNTY HAS POPULATION GREATER THAN 150,000
- REASONABLE EXPECTATION OF PRIVACY – PUBLIC V. PRIVATE SPACE
- *CALIFORNIA V. CIRAOLLO* (1986) – SCOTUS RULED PICTURES AT 1,000 FT - NO 4<sup>TH</sup> AMENDMENT VIOLATION
- *FLORIDA V. RILEY* (1989) – SCOTUS RULED PICTURES AT 400 FT- NO 4<sup>TH</sup> AMENDMENT VIOLATION
- *U.S. V. JONES*- GPS TRACKING
- *KYLLO V. U.S.* (2001) – THERMAL IMAGING
- *JOFFE V. GOOGLE* (2013) – DATA INTERCEPTION

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# DOES TPIA APPLY?

- **ANSWER, YES AND NO**
- **AN IMAGE CAPTURED IN VIOLATION OF CHAPTER 423 OR CAPTURED BY DRONE INCIDENTAL TO LAWFUL IMAGE CAPTURE**
- **IS NOT SUBJECT TO DISCLOSURE, INSPECTION OR COPYING UNDER CHAPTER 522 (THE ACT)**
- **MAY NOT BE USED AS EVIDENCE IN CRIMINAL OR JUVENILE PROCEEDING, CIVIL ACTION OR ADMINISTRATIVE PROCESS**
- **IS NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS OF LEGAL COMPULSION; BUT**
- **MAY BE USED AS EVIDENCE TO PROVE VIOLATION AND SUBJECT TO DISCOVERY, SUBPOENA OR OTHER MEANS OF LEGAL COMPULSION**



# ORDINANCE TIPS

- **FAA SUGGESTIONS – THESE HAVE NOT YET BEEN ADOPTED**
  - CERTIFICATION PROCESS FOR ISSUANCE OF PERMIT
  - MINIMUM OPERATION AGE OF 18
  - MAXIMUM DRONE WEIGHT OF 55 POUNDS
  - OPERATION IN DAYLIGHT HOURS ONLY
  - NO IMAGE CAPTURING CAPABILITY
- **OTHER TIPS**
  - DESIGNATE “FLY ZONES”
  - DESIGNATE “PROHIBITED AREAS” – EMERGENCY OPERATION OR MANAGEMENT AREAS, LIMIT AROUND HOSPITALS OR SCHOOLS
  - PROHIBIT EQUIPPING WITH FIREARM, EXPLOSIVES OR WEAPONS
  - FROM A MOVING VEHICLE

# THE END

**OUR HOUR IS UP – WE WILL STOP DRONING ON!!**



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# HOGWILD 2017

## PRACTICAL ADVANTAGES TO A POLICE LEGAL ADVISOR

**SCOTT TSCHIRHART**  
SENIOR ASSOCIATE  
*DENTON NAVARRO ROCHA  
BERNAL HYDE & ZECH, P.C.*

**LT. JAMES MURRAY**  
ROSENBERG POLICE DEPARTMENT

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# TRENDS IN POLICE LEGAL ADVISORS

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# MANAGING DAY TO DAY OPERATIONS

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# POLICIES AND PROCEDURES

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# TRAINING

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# PUBLIC INFORMATION ACT/MEDIA ISSUES

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# RISK MANAGEMENT/LITIGATION

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# F-5 ISSUES

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# HOGWILD 2017

## CITIZEN LEGISLATION: HOME RULE INITIATIVES & REFERENDUMS

**CHARLIE ZECH**

**PARTNER | SHAREHOLDER**

*DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.*

**DAN SANTEE**

**SENIOR ASSOCIATE**

*DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.*

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# INITIATIVE AND REFERENDUM DEFINED

- **THE RIGHT OF THE CITIZENS TO ORIGINATE LEGISLATION BY SUBMITTING IT TO THE VOTERS**
- **THE RIGHT OF THE CITIZENS TO SUBMIT A QUESTION TO THE VOTERS ON WHETHER LEGISLATIVE ACTION TAKEN BY A GOVERNMENTAL BODY SHOULD STAND**

# **SUBJECT MATTER WHICH MAY BE INITIATED AND REFERRED**

**A MATTER IS PROPER FOR INITIATIVE AND REFERENDUM IF:**

- (1) THE SUBJECT MATTER OF THE PROPOSED ORDINANCE IS LEGISLATIVE IN CHARACTER; AND**
- (2) IT HAS NOT BEEN WITHDRAWN OR EXCLUDED BY GENERAL LAW OR THE CHARTER, EITHER EXPRESSLY OR BY NECESSARY IMPLICATION, FROM THE OPERATIVE FIELD OF INITIATIVE OR REFERENDUM.**

# LEGISLATION VS. ADMINISTRATIVE/EXECUTIVE

- **LEGISLATIVE MATTERS ARE THOSE “OF A GENERAL, OR PERMANENT, CHARACTER”; AND A LEGISLATIVE ORDINANCE IS ONE “ORIGINATING OR ENACTING A PERMANENT LAW OR LAYING DOWN A RULE OF CONDUCT OR COURSE OF POLICY FOR THE GUIDANCE OF THE CITIZENS OR THEIR OFFICERS AND AGENTS.”**
- **ADMINISTRATIVE OR EXECUTIVE ORDINANCES, ON THE OTHER HAND, “ARE ONLY TRANSITORY, OR TEMPORARY, OR ROUTINE ... IN THEIR PURPOSE AND EFFECT,” AND “AN ORDINANCE WHICH SIMPLY PUTS INTO EXECUTION PREVIOUSLY-DECLARED POLICIES, OR PREVIOUSLY-ENACTED LAWS, IS ADMINISTRATIVE OR EXECUTIVE IN CHARACTER.”**



# LEGISLATION VS. ADMINISTRATIVE/EXECUTIVE

***DENMAN V. QUIN*, 116 S.W.2D 783 (1938)**

**SAN ANTONIO COURT OF CIVIL APPEALS**

**“AN ORDINANCE ORIGINATING OR ENACTING A PERMANENT LAW OR LAYING DOWN A RULE OF CONDUCT OR COURSE OF POLICY OF THE CITIZENS OR THEIR OFFICERS AND AGENTS IS LEGISLATIVE IN CHARACTER AND REFERABLE, BUT AN ORDINANCE MERELY EXECUTING PREVIOUSLY-DECLARED POLICIES OR PREVIOUSLY ENACTED LAWS IS ADMINISTRATIVE IN CHARACTER...”**

# LEGISLATION VS. ADMINISTRATIVE/EXECUTIVE

***CITY OF PHARR V. TIPPITT – ZONING AND LAND USE DESIGNATIONS –  
LEGISLATIVE***

***CITY OF AUSTIN (1976) – STREET NAME CHANGE – LEGISLATIVE***

***BALLI (2001) – CITY OF SEGUIN – ORDINANCE AUTHORIZING SALE OF CITY-  
OWNED LAND AND CITY'S LANDFILL PERMIT - LEGISLATIVE***

# LEGISLATION VS. ADMINISTRATIVE/EXECUTIVE

**FAWCETT (1924, WASHINGTON): CHANGING THE NAME OF A STREET –**  
***LEGISLATIVE***

**MILLER (1928, NEW YORK): CHANGING THE ADDRESS NUMBER OF**  
**BUILDINGS – *LEGISLATIVE***



# **SUBJECT MATTER WITHDRAWN BY CASE LAW:**

- **TEXAS CASES HAVE HELD THAT THE PEOPLE OF A MUNICIPALITY COULD NOT VALIDLY EXERCISE A DELEGATED LEGISLATIVE POWER THROUGH INITIATIVE PROCEEDINGS, IT WILL BE FOUND THAT AUTHORITY TO ACT WAS EXPRESSLY CONFERRED UPON THE MUNICIPAL GOVERNING BODY EXCLUSIVELY, OR THERE WAS SOME PRELIMINARY DUTY SUCH AS THE HOLDING OF HEARINGS, ETC., IMPOSSIBLE OF PERFORMANCE BY THE PEOPLE IN AN INITIATIVE PROCEEDING, BY STATUTE OR CHARTER MADE A PREREQUISITE TO THE EXERCISE OF THE LEGISLATIVE POWER.**
- **ORDINANCES WHICH MUST REST UPON MINUTE INVESTIGATION OF FACTS AND FIGURES, OR APPLICATION OF EXPERT, SKILLED, OR TECHNICAL KNOWLEDGE, OR UPON AUDITS, OR UPON CLOSE AND CAREFUL STUDY OR ASCERTAINMENT OR ADJUSTMENT OF MASSES OF FACTS AND FIGURES, SUCH AS THE ELEMENTS ENTERING INTO MATTERS OF RATE MAKING, CANNOT BE EFFICIENTLY INITIATED OR PASSED UPON BY THE PUBLIC EN MASSE, HOWEVER INTELLIGENT AND PATRIOTIC THEY MAY BE.**



# PETITION REQUIREMENTS

## ELECTION CODE CHAPTER 277

### WHAT INFORMATION IS NEEDED FOR A VALID PETITION?

- **Signature of Petitioner**
- **Signer's printed name**
- **Signer's date of birth or voter registration #**
- **Signer's residential address**
- **Date of signing**

**BE AWARE: ANY REQUIREMENTS FOR SIGNATURE VALIDITY (PER YOUR CITY CHARTER) ARE EFFECTIVE ONLY IF THE CHARTER PROVISIONS OR ORDINANCE WAS IN EFFECT BEFORE SEPTEMBER 1, 1985.**

# PETITION REQUIREMENTS

## ELECTION CODE CHAPTER 277

### WHAT MUST THE CITY SECRETARY PROVIDE TO PETITIONERS?

THE CITY SECRETARY IS NOT REQUIRED TO PROVIDE A FORM TO PETITIONERS, UNLESS YOUR LOCAL CHARTER STATES THAT THIS REQUIREMENT IS NECESSARY. ADDITIONALLY, THE STATE OF TEXAS DOES NOT PROVIDE A PETITION FORM. IT MAY BE BEST PRACTICE, HOWEVER, TO PROVIDE A SUGGESTED FORM TO PETITIONERS WHO ASK FOR ONE. THOUGH, THE SUGGESTED FORM MUST BE IN ENGLISH AND SPANISH IF THE CITY SECRETARY DOES IN FACT PROVIDE ONE.<sup>1</sup>

<sup>1</sup> THIS IS NECESSARY TO SATISFY THE VOTING RIGHTS ACT AND IS NOT NECESSARY FOR A PETITION FORM SUPPLIED PRIVATELY.





# PETITION REQUIREMENTS ELECTION CODE CHAPTER 277

**DOES THE CITY SECRETARY NEED TO ADVISE THE PETITIONERS?**

**NO. THE CITY SECRETARY HAS NO LEGAL DUTY TO ADVISE OR CIRCULATE A PETITION. HOWEVER, THE SECRETARY SHOULD, BUT IS NOT REQUIRED TO, LET THE PETITIONERS/CIRCULATORS KNOW ABOUT THE ELECTION CODE REQUIREMENTS WHEN CONSULTED BEFORE A PETITION IS FILED.**

# PETITION REQUIREMENTS

## ELECTION CODE CHAPTER 277

### MAY A SIGNATORY REMOVE HIS OR HER SIGNATURE FROM A PETITION?

**YES. BUT NOT ON OR AFTER THE DATE THE PETITION IS RECEIVED BY THE FILING AUTHORITY IN YOUR CITY.**

### HOW CAN A SIGNATURE BE REMOVED?

**HE OR SHE MAY DELETE THE SIGNATURE FROM THE PETITION OR FILE AN AFFIDAVIT WITH THE APPROPRIATE AUTHORITY THAT HE OR SHE WISHES TO HAVE HIS OR HER SIGNATURE REMOVED FROM THE PETITION. AN AFFIDAVIT WITHDRAWAL SENT BY MAIL IS CONSIDERED TO BE FILED ON THE DATE THE APPROPRIATE AUTHORITY RECEIVES IT.**

# PETITION REQUIREMENTS

## ELECTION CODE CHAPTER 277

### MAY A PETITIONER CHANGE THE PETITION AFTER FILING?

**GENERALLY NO, A PETITIONER MAY NOT AMEND, SUPPLEMENT, OR MODIFY A PETITION ONCE IT'S BEEN FILED WITH THE APPROPRIATE AUTHORITY.**

**EXCEPTION: HOWEVER, IF A DEADLINE IS SPECIFIED FOR THE FILING OF THE PETITION THEN THE PETITIONER MAY FILE ONE SUPPLEMENTARY PETITION BY THAT DEADLINE DATE. TO DO SO THOUGH, THE ORIGINAL PETITION MUST CONTAIN 10% OR MORE SIGNATURE THAN THE MINIMUM REQUIREMENT AND BE RECEIVED BY THE APPROPRIATE AUTHORITY NO LATER THAN THE 10TH DAY BEFORE THE DATE OF THE DEADLINE.**



# PETITION REQUIREMENTS

## ELECTION CODE CHAPTER 277

### HOW CAN THE CITY SECRETARY DETERMINE A FORGED SIGNATURE?

**GENERALLY, REJECTION OF A SIGNATURE BECAUSE OF FORGERY SHOULD BE DONE ON A CLEAR CUT BASIS. HOWEVER, IF THERE IS SUSPICION OF FORGERY BY THE CITY SECRETARY BECAUSE OF EVIDENCE THAT A SIGNATURE IS NOT GENUINE, THEN THE SECRETARY MAY COMPARE THE SUBMITTED SIGNATURE WITH THE SIGNATURE ON THE VOTER REGISTRATION APPLICATION ON FILE.**

# PETITION REQUIREMENTS

## ELECTION CODE CHAPTER 277

**WHO MAKES THE DECISION OF WHETHER TO ACCEPT A SUSPECTED FORGED SIGNATURE?**

**THE DECISION TO ACCEPT OR REJECT A SIGNATURE IS VESTED IN WHICHEVER AUTHORITY IS DESIGNATED TO DO SO. HOWEVER, IT IS BEST PRACTICE TO REPORT THE MATTER TO THE DISTRICT ATTORNEY OR COUNTY ATTORNEY FOR FURTHER INVESTIGATION OF POSSIBLE CRIMINAL CONDUCT.**

# SPECIFIC CHARTER PROCESSES

- **HOW TO CALCULATE PETITION SIGNATURE REQUIREMENTS**
  - **% OF VOTES CAST AT LAST REGULAR ELECTION**
  - **% OF REGISTERED VOTERS**
- **PETITIONERS' COMMITTEES**
- **TIME LINES**
- **AMENDMENT OF PETITION AFTER FILING**
- **LEGALITY OR CONSTITUTIONALITY OF INITIATIVE**

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# LAWYER'S ROLE

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# HOG WILD 2017

2:00 – 2:45

**NEXT UP**

## TEACHING THEATER

**DENIAL OR LIMITATION OF SERVICES/ACCOMMODATIONS FOR THE PUBLIC /CONSTITUENTS: ANSWERS & BEST PRACTICES/POLICIES**

**CLARISSA RODRIGUEZ**  
ASSOCIATE

## ROOM 3 – 13.1

**TEXAS CERTIFIED PUBLIC MANAGER (CPM) PROGRAM**

**DR. HOWARD R. BALANOFF**  
DIRECTOR OF TSU WILLIAM P. HOBBY CENTER

**COLLETTE JAMISON**  
SAN MARCOS ASSISTANT CITY MANAGER

**ALAN BOJORQUEZ**  
CHAIRMAN OF TX CENTER FOR MUNICIPAL ETHICS

## ROOM 3 – 15.1

**THE FUTURE OF ECONOMIC DEVELOPMENT**

**TIM CHASE**  
HUTTO EDC PRESIDENT AND CEO





# HOGWILD 2017

## DENIAL OR LIMITATION OF SERVICES/ACCOMMODATIONS FOR THE PUBLIC /CONSTITUENTS: ANSWERS & BEST PRACTICES/POLICIES

**CLARISSA M. RODRIGUEZ**

**SENIOR ASSOCIATE**

***DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.***

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# AMERICANS WITH DISABILITIES ACT TITLE II

- **APPLIES TO EVERY GOVERNMENTAL ENTITY!!**
  - STATE/LOCAL GOVERNMENT
  - DEPARTMENT, AGENCY, SPECIAL PURPOSE DISTRICT OR OTHER INSTRUMENTALITY OF A STATE OR LOCAL GOVERNMENT (E.G. EDC)
- **NO EXEMPTIONS**
- **EQUALITY IN PARTICIPATION**
- **BENEFITS**
- **FLEXIBILITY FOR ACCESSIBILITY**
- **NO ACCESS REQUIREMENTS IF UNDUE BURDEN**
  - FINANCIAL OR ADMINISTRATIVE

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# REHABILITATION ACT (RA) & ARCHITECTURAL BARRIERS ACT (ABA)

## ● RA

- PROGRAMS RECEIVING FEDERAL ASSISTANCE
- NO DISCRIMINATION BASED ON DISABILITY IN LOCAL GOVERNMENT OR PUBLIC ACCOMMODATIONS
- WHO?
  - EMPLOYEES
  - PROGRAM ACCESSIBILITY
  - HEARING/VISION DISABILITIES
  - NEW CONSTRUCTION/ALTERATIONS

## ● ABA

- BUILDING AND FACILITIES DESIGNED, CONSTRUCTED OR ALTERED WITH FEDERAL FUNDS
  - NEW/ALTERED BUILDINGS
  - NEW LEASED FACILITIES
- LEASED BY FEDERAL AGENCY
- COMPLIANCE WITH FEDERAL STANDARDS FOR PHYSICAL ACCESSIBILITY

# DISABLED & DISABILITY

## “QUALIFIED INDIVIDUAL WITH A DISABILITY”

- AN INDIVIDUAL WITH A DISABILITY WHO, WITH OR WITHOUT REASONABLE MODIFICATIONS TO RULES, POLICIES, OR PRACTICES, THE REMOVAL OF ARCHITECTURAL, COMMUNICATION, OR TRANSPORTATION BARRIERS, OR THE PROVISION OF AUXILIARY AIDS AND SERVICES, MEETS THE ESSENTIAL ELIGIBILITY REQUIREMENTS FOR RECEIPT OF SERVICES OR THE PARTICIPATION IN PROGRAMS OR ACTIVITIES PROVIDED BY A PUBLIC ENTITY.

## “DISABILITY” FOR AN INDIVIDUAL –

- A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE ACTIVITIES OF SUCH INDIVIDUAL;
- A RECORD OF SUCH AN IMPAIRMENT; OR
- BEING REGARDED AS HAVING SUCH AN IMPAIRMENT.



# WHAT ARE TITLE II REQUIREMENTS/PROHIBITIONS?

## ANSWER:

- EQUALITY IN PARTICIPATION AND BENEFITS
- MAINSTREAM SETTING
- ELIGIBILITY CRITERIA AND MEDICAL INQUIRIES
- SAFETY CONSIDERATIONS
- SURCHARGES
- REASONABLE MODIFICATIONS
- PERSONAL SERVICES AND DEVICES
- MAINTENANCE OF ACCESSIBLE FEATURES

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# WHAT IS ACCESS UNDER THE ADA?

## ANSWER: BENEFITS

- PROGRAMS
- SERVICES
- ACTIVITIES (EMPLOYMENT, TRANSPORTATION, RECREATION, HEALTH CARE, SOCIAL SERVICES, COURTS, VOTING, TOWN MEETINGS)
- DOES NOT REQUIRE CITIES MAKE EACH FACILITY, OR EVEN EACH PART OF A PARTICULAR FACILITY, ACCESSIBLE.
  - THE REQUIREMENT IS THAT THOSE WITH DISABILITIES MUST HAVE AN EQUALLY EFFECTIVE OPPORTUNITY TO PARTICIPATE OR BENEFIT FROM CITY PROGRAMS, SERVICES, AND ACTIVITIES.
  - INCLUDES EFFECTIVE COMMUNICATIONS: AUXILIARY AIDS AND SERVICES TO PARTICIPATE IN CIVIC LIFE

## ***BEST PRACTICE: SELF EVALUATION***

# UNDUE BURDEN FACTORS

- **WHAT IS UNDUE BURDEN?**
  - **ANSWER:** UNDUE BURDEN MEANS SIGNIFICANT DIFFICULTY OR EXPENSE.
- **WHAT FACTORS TO WE CONSIDER?**



# UNDUE BURDEN FACTORS

## ANSWER:

- (1) THE NATURE AND COST OF THE ACTION NEEDED UNDER THIS PART;**
- (2) THE OVERALL FINANCIAL RESOURCES OF THE SITE OR SITES INVOLVED IN THE ACTION; THE NUMBER OF PERSONS EMPLOYED AT THE SITE; THE EFFECT ON EXPENSES AND RESOURCES; LEGITIMATE SAFETY REQUIREMENTS THAT ARE NECESSARY FOR SAFE OPERATION, INCLUDING CRIME PREVENTION MEASURES; OR THE IMPACT OTHERWISE OF THE ACTION UPON THE OPERATION OF THE SITE;**
- (3) THE GEOGRAPHIC SEPARATENESS, AND THE ADMINISTRATIVE OR FISCAL RELATIONSHIP OF THE SITE OR SITES IN QUESTION TO ANY PARENT CORPORATION OR ENTITY;**
- (4) IF APPLICABLE, THE OVERALL FINANCIAL RESOURCES OF ANY PARENT CORPORATION OR ENTITY; THE OVERALL SIZE OF THE PARENT CORPORATION OR ENTITY WITH RESPECT TO THE NUMBER OF ITS EMPLOYEES; THE NUMBER, TYPE, AND LOCATION OF ITS FACILITIES; AND**
- (5) IF APPLICABLE, THE TYPE OF OPERATION OR OPERATIONS OF ANY PARENT CORPORATION OR ENTITY, INCLUDING THE COMPOSITION, STRUCTURE, AND FUNCTIONS OF THE WORKFORCE OF THE PARENT CORPORATION OR ENTITY.**



# SMALL ENTITIES OR “GRANDFATHERED”

- ARE MUNICIPALITIES EXEMPT OR “GRANDFATHERED”
  - **ANSWER:** NO
- WHO MAKES THE DETERMINATION ABOUT UNDUE BURDEN?
  - **ANSWER:** HEAD OF PUBLIC ENTITY OR DESIGNEE
    - MUST HAVE WRITTEN STATEMENT OF REASONING OF CONCLUSION
    - TAKE ANY ACTION POSSIBLE TO ENSURE ACCESS TO BENEFITS AND SERVICES ASIDE FROM BURDEN
- ARE SMALL MUNICIPALITIES EXEMPT OR “GRANDFATHERED”
  - **ANSWER:** NO
    - MUNICIPALITIES WITH LESS THAN 50 EMPLOYEES NOT REQUIRED TO COMPLY WITH SELF EVALUATIONS AND DESIGNATING GRIEVANCE PROCEDURE FOR ADA COMPLAINTS

***BEST PRACTICE: DO NOT ASSUME ANYTHING- NO GENERAL EXEMPTION SO BE ON THE UP AND UP FOR COMPLIANCE***



# PROGRAM ACCESSIBILITY

- **WHAT IS THIS?**

- **ANSWER:**

- REMOVING PHYSICAL BARRIERS TO SERVICES, PROGRAMS AND ACTIVITIES

- **BEST PRACTICE:**

- ALTERING EXISTING FACILITIES, CONSTRUCTING NEW FACILITIES;
    - RELOCATION THE PROGRAM/SERVICE TO A FACILITY THAT IS ALREADY IN COMPLIANCE
    - PROVIDING BENEFIT IN ANOTHER MANNER TO COMPLY WITH ADA.





# ACCESSIBILITY ISSUES

- **WHAT ARE THE TYPES OF ACCESSIBILITY ISSUES THAT MAY ARISE?**

- **ANSWER:**

- ACCESSIBLE PARKING
- INCLUDES VAN ACCESSIBLE PARKING SPACES
- ACCESSIBLE ROUTE
- ACCESSIBLE ENTRANCE
- CURB RAMPS
- ALTERNATE SERVICES
- LIBRARY SERVICES
- PARKS AND RECREATION PROGRAMS
- TEMPORARY EVENTS

**BEST PRACTICE: EVALUATE ON A CASE BY CASE BASIS, CONSIDERING UNDUE BURDEN AND IF COMPLAINT MADE**

# BUILDINGS AND CONSTRUCTION

- **WHICH BUILDINGS MUST BE IN COMPLIANCE WITH THE ADA DESIGN GUIDELINES?**

- **ANSWER:** GENERALLY, ANY NEW CONSTRUCTED FACILITY BUILT AFTER JANUARY 26, 1992 MUST BE IN STRICT COMPLIANCE WITH FEDERAL AND STATE BUILDING ACCESSIBILITY CODES, STATUTES, AND REGULATIONS:
  - ADDITIONALLY, ALTERATIONS MADE TO A HISTORICALLY SIGNIFICANT PROPERTY MUST BE IN COMPLIANCE WITH FEDERAL AND STATE BUILDING CODES.

- **WHEN DO PUBLIC ROADS AND SIDEWALKS HAVE TO COMPLY WITH ADA DESIGN GUIDELINES?**

- **ANSWER:** NEWLY BUILT OR ALTERED ROADS, STREETS, SIDEWALKS, OR WALKWAYS MUST HAVE RAMPS WHEREVER THERE ARE CURBS OR OTHER BARRIERS TO ENTRY FROM A PEDESTRIAN WALKWAY.

- **WHAT ABOUT EXISTING ROADS AND SIDEWALKS?**

- **ANSWER:** CHANGING EXISTING ROADS/SIDEWALKS NOT REQUIRED.

**BEST PRACTICE: CONSTRUCT NEW ROADWAYS AND SIDEWALKS IN ACCORDANCE WITH ADA STANDARDS. CREATE A COMPREHENSIVE PLAN OF UPDATING ROADWAYS AND SIDEWALKS THAT PROVIDE ACCESS IN THE ENTIRETY.**

# BUILDINGS AND CONSTRUCTION

- **WHAT ARE NEW CONSTRUCTION REQUIREMENTS?**

- **ANSWER:** ALL NEW BUILDINGS AND FACILITIES COMPLY WITH ADA STANDARDS FOR ACCESSIBLE DESIGN

- **WHAT ABOUT ALTERATIONS?**

- **ANSWER:** ALL ALTERATIONS MUST COMPLY, UNLESS TECHNICALLY NOT FEASIBLE
  - REPLACEMENT OF FIXTURE OR ELEMENT (LAVATORY, TOILET, PIECE OF DOOR HARDWARE)
  - REPLACEMENT OR NEW ELEMENT COMPLY WITH ADA STANDARDS IF MINIMUM REQUIREMENTS NOT MET
  - PRIMARY FUNCTION AREAS (MEETING ROOMS, OFFICES, ETC)

- **WHAT ABOUT ADDITIONS?**

- **ANSWER:** EXPANSION, EXTENSION OR INCREASE IN FLOOR AREA IS NEW CONSTRUCTION & PATH OF TRAVEL

**BEST PRACTICE: ALWAYS ASSUME YOU WILL BE REQUIRED TO COMPLY WITH ADA FOR AND CHANGES FOR ACCESSIBILITY. BUDGET FOR THESE ISSUES IN YOUR PLANS.**



# WHAT IS TECHNICALLY NOT FEASIBLE?

- **ANSWER:**

- COST IS **NOT** A TRIGGER OF TECHNICALLY NOT FEASIBLE

WITH RESPECT TO AN **ALTERATION** OF A BUILDING OR A FACILITY, THAT IT HAS LITTLE LIKELIHOOD OF BEING ACCOMPLISHED BECAUSE EXISTING STRUCTURAL CONDITIONS WOULD REQUIRE REMOVING OR ALTERING A LOAD BEARING MEMBER WHICH IS AN ESSENTIAL PART OF THE STRUCTURAL FRAME;

- OR BECAUSE OTHER EXISTING PHYSICAL OR SITE
- CONSTRAINTS PROHIBIT MODIFICATIONS OR
- ADDITION OF ELEMENTS, SPACES, OR FEATURES
- WHICH ARE IN FULL AND STRICT COMPLIANCE WITH
- THE MINIMUM REQUIREMENTS.

# HISTORIC BUILDINGS

- **DO I HAVE TO RETROFIT A HISTORIC BUILDING?**
  - **ANSWER:** STRUCTURAL CHANGES THAT WOULD THREATEN OR DESTROY THE HISTORICAL SIGNIFICANCE OF THE PROPERTY OR WOULD FUNDAMENTALLY CHANGE THE PROGRAM BEING OFFERED AT THE HISTORIC FACILITY NEED NOT BE UNDERTAKEN.
    - INCLUDES VISUAL MATERIALS
    - NO NEED WHERE DESTROY/THREATEN HISTORICAL SIGNIFICANCE OR CHANGE PROGRAM
    - ALTERATIONS MUST COMPLY WITH NEW BUILDING STANDARDS; MINIMAL STANDARDS ONLY IF ALTER HISTORICAL SIGNIFICANCE
    - CONSIDER ALTERNATIVES TO STRUCTURAL CHANGES WITHOUT UNDUE BURDEN

**BEST PRACTICE: EVALUATE HISTORIC BUILDING OR OFFER IN ALTERNATIVE ACCESSIBLE MANNER OR LOCATION**

# COMMUNICATION

- **HOW DO WE COMPLY WITH EFFECTIVE COMMUNICATION UNDER THE ADA?**
  - **ANSWER:** HOW DO WE COMPLY WITH EFFECTIVE COMMUNICATION UNDER THE ADA?
    - INCLUDES JOB APPLICANTS
    - BRAILLE
    - LARGE PRINT
    - AUDIO CASSETTES
    - INTERPRETERS
    - ASSISTIVE LISTENING SYSTEMS
      - COURT, PUBLIC MEETINGS, INTERROGATIONS PRIORITIES
    - TTY SYSTEM

**BEST PRACTICE: ENSURE EVERYONE HAS ACCESS AND IF REQUESTED, DO WHAT YOU CAN TO TAKE ACTION THAT DOESN'T RESULT IN UNDUE BURDEN, BUT ENSURES BENEFITS TO DISABLED**



# 911, DISPATCH & TTY

- **WHAT SERVICES ARE REQUIRED FOR DISABLED?**
  - **ANSWER:** INCLUDES JOB APPLICANTS
    - IF YOU PROVIDE DISPATCH SERVICES OR EMERGENCY TELEPHONE SERVICES:
      - 911
      - TTY CALLS
      - MUST HAVE EQUAL ACCESS FOR RESPONSE TIME, RESPONSE QUALITY, HOURS OF OPERATION, ETC
    - IF YOU DON'T:
      - INQUIRE WITH THE OTHER ENTITY ABOUT ACCESSIBILITY SERVICES
      - DOCUMENT WHAT THEY HAVE AND ARE PROVIDING

**BEST PRACTICE: ENSURE EVERYONE TRAINED IN TTY AT DISPATCH, WITH EQUAL ACCESS AND ADEQUATE NUMBER OF EQUIPMENT- REGARDLESS OF IF YOU PROVIDE OR NOT.**

# LAWS, ORDINANCES, REGULATIONS

- **DO OUR LAWS, ORDINANCES OR REGULATIONS HAVE TO COMPLY?**
- **ANSWER: YES**
  - MAKE REASONABLE MODIFICATIONS TO POLICIES, PROCEDURES, AND PROCEDURES BUT CONSIDER
  - NOT REQUIRED TO CHANGE IF DIRECT THREAT
- **HOW DO WE DEAL WITH SERVICE ANIMALS?**
  - MUST ALLOWS EXCEPT IF NOT HOUSEBROKEN OR OUT OF CONTROL AND CAN'T BE CONTROLLED
- **WHAT DO WE DO IF SOMEONE INSISTS THEY ARE DISABLED BECAUSE THEY NEED TO SMOKE?**
  - NO RESTRICTIONS OR PROHIBITIONS ON SMOKING UNDER TITLE II

**BEST PRACTICE: IF PROBLEMATIC OR RECEIVE A COMPLAINT, REVISE OR AMEND ORDINANCE OR REGULATIONS**

# LAW ENFORCEMENT COMPLIANCE

- **TO WHAT EXTENT DO WE HAVE TO COMPLY WITH ADA FOR LAW ENFORCEMENT PURPOSES?**
- **ANSWER: YES**
  - CAVEAT: TO THE FULLEST EXTENT BASED ON VARIOUS CONSIDERATIONS
  - INCLUDES CITIZEN INTERACTIONS, DETENTION, ARREST PROCEDURES AND 911/DISPATCH
  - DEFERENCE FOR PUBLIC SAFETY
  - DOESN'T APPLY TO SITUATIONS WHERE SCENE IS NOT SECURE OR WHERE EXISTING THREAT TO HUMAN SAFETY
    - ONCE TRAFFIC STOP/PRE-ARREST/ARREST IS SECURE AND NO THREAT TO HUMAN SAFETY, ADA COMPLIANCE REQUIRED
  - TITLE II DOES NOT APPLY TO INDIVIDUAL OFFICERS
  - CANNOT DISCRIMINATE AGAINST SOMEONE WHO IS ASSOCIATED WITH A DISABILITY



# COMMON LAW ENFORCEMENT PROBLEMS

## Q&A

- **WHAT DO WE DO ABOUT THREATENING BEHAVIOR DUE TO A DISABILITY?**
- **HOW DO WE ARREST & TRANSPORT SOMEONE WITH A WHEELCHAIR?**
- **HOW DO WE EFFECTIVELY COMMUNICATE WITH A BLIND OR VISUALLY IMPAIRED PERSON?**
- **HOW DO WE HANDLE ACCESSIBILITY FOR JAILS AND HOLDING CELLS?**
- **HOW DO WE HANDLE DEAF OR VISUALLY IMPAIRED SITUATIONS?**



# COMMON LAW ENFORCEMENT PROBLEMS

## Q&A

- **WHAT ARE APPROPRIATE MODIFICATIONS FOR POLICIES, PRACTICES AND PROCEDURES UNDER THE ADA?**
- **DO ALL POLICE STATIONS HAVE TO BE ACCESSIBLE?**
- **WHAT ABOUT NEW BUILDINGS OR ALTERATIONS TO POLICE FACILITIES?**
- **WHAT PRECAUTIONS SHOULD WE TAKE WHEN IT COMES TO SOMEONE WITH HIV/AIDS OR SOME OTHER DISEASE TRANSMITTED VIA BLOODBORNE PATHOGEN?**

# TRAFFIC STOPS, SECURING A SCENE & ARRESTS

- **DOES THE ADA APPLY TO INVESTIGATION OR TRAFFIC STOPS?**
  - **ANSWER:** NO, IT DOES NOT APPLY TO INVESTIGATION PRE-ARREST ACTIVITIES
    - NOT TO “ON THE STREET RESPONSES TO REPORTED DISTURBANCES OR SIMILAR INCIDENTS”
- **WHAT DO WE DO IF A SCENE IS IN JEOPARDY?**
  - **ANSWER:** DOES NOT APPLY “PRIOR TO THE OFFICER’S SECURING THE SCENE AND ENSURING THERE IS NO THREAT TO HUMAN LIFE.”
- **WHO DETERMINES THE SCENE IS SECURE?**
  - **ANSWER:** OFFICERS ON SCENE

**BEST PRACTICE: SECURE & ENSURE SO NO THREAT TO HUMAN SAFETY FIRST, THEN ACCOMMODATE.**



# IMMEDIATE THREAT & ARRESTS

- **WHAT IS AN “IMMEDIATE THREAT?”**

- **ANSWER:** NO CLEAR ANSWER; DEPENDS ON FACTS

- DELEON V. CITY OF ALVIN
  - DEAF WOMAN AND HER BROTHER
- HOBART V. CITY OF STAFFORD
  - MENTAL HEALTH COMMITMENT ARREST
- SALINAS V. CITY OF NEW BRAUNFELS
  - DISABLED SUSPECT IN RESPONSE TO 911 CALL FOR DEATH OF HER BOYFRIEND

- **HOW DO WE APPROACH ARRESTS, & POST-ARREST (CUSTODY)?**

- **ANSWER:** NO CLEAR ANSWER; DEPENDS ON FACTS

- SCHMIDT V. TEXAS
  - CHRONIC BREATHING PROBLEMS DWI ARREST AND BREATHALYZER TEST
- MORAN V. PFLUGERVILLE
  - DIABETES, ARREST, TAKEN TO ER AND SUBSEQUENTLY HIT BY A CAR

# DETENTION OF INMATES

- **WHAT ARE THE LIMITATIONS AND REQUIREMENTS FOR INMATES/DETAINEES?**

- **ANSWER:**

- **DO NOT PLACE INMATES OR DETAINEES WITH DISABILITIES IN INAPPROPRIATE SECURITY CLASSIFICATIONS BECAUSE NO ACCESSIBLE CELLS OR BEDS ARE AVAILABLE;**
- **DO NOT PLACE INMATES OR DETAINEES WITH DISABILITIES IN DESIGNATED MEDICAL AREAS UNLESS THEY ARE ACTUALLY RECEIVING MEDICAL CARE OR TREATMENT;**
- **DO NOT PLACE INMATES OR DETAINEES WITH DISABILITIES IN FACILITIES THAT DO NOT OFFER THE SAME PROGRAMS AS THE FACILITIES WHERE THEY WOULD OTHERWISE BE HOUSED; AND**
- **DO NOT DEPRIVE INMATES OR DETAINEES WITH DISABILITIES OF VISITATION WITH FAMILY MEMBERS BY PLACING THEM IN DISTANT FACILITIES WHERE THEY WOULD NOT OTHERWISE BE HOUSED.**

**BEST PRACTICE: ENSURE DISABLED DETAINEES/INMATES ARE NOT EXCLUDED IN PARTICIPATION IN OR DENIED BENEFITS BASED ON THEIR DISABILITY.**

# CONSTITUTIONAL RIGHTS CONSIDERATIONS

- IS DENIAL OF MEDICAL CARE TO PRETRIAL DETAINEES A VIOLATION OF CONSTITUTIONAL RIGHTS?
  - **ANSWER:** DEPENDS ON FACTS
    - STANDARD IS “DELIBERATE INDIFFERENCE TO SERIOUS ILLNESS OR INJURY”
- WHAT IS “DELIBERATE INDIFFERENCE?”
  - **ANSWER:**
    - SUBJECTIVE KNOWLEDGE OF FACTS FROM WHICH AN INFERENCE OF THE SUBSTANTIAL RISK OF SERIOUS HARM COULD BE DRAWN
    - AN INFERENCE WAS DRAWN BY THE OFFICER
    - OFFICER’S RESPONSE TO THE RISK INDICATES HE SUBJECTIVELY INTENDED FOR THE HARM TO OCCUR
      - NEGLIGENCE OR GROSS NEGLIGENCE NOT ENOUGH



# LAW ENFORCEMENT BEST PRACTICES

**BEST PRACTICE:** EVALUATE PENALTY ORDINANCES, POLICIES OR PROCEDURES WITHIN YOUR DEPARTMENT TO ENSURE ACCOMMODATIONS ARE AVAILABLE.

**BEST PRACTICE:** PRE-ARRESTS, ARRESTS: EVALUATE THE SCENE, SECURE THE SCENE, EVALUATE THREAT OR HARM TO HUMANS, THEN ACCOMMODATE.

**BEST PRACTICE:** TRAIN ALL OFFICERS TO ENSURE THEY UNDERSTAND AND ARE FAMILIAR WITH THE POLICIES FOR EVALUATING THE FACTS, SECURING A SCENE, PRE-ARREST, ARREST AND POST-ARREST PROCEDURES.

- *NO INTENTIONAL DISCRIMINATION PERMITTED.*
- *SELF EVALUATION*

# OVERALL BEST PRACTICES

- **SELF EVALUATION**
  - REQUIRED TO KEEP ON FILE FOR THREE YEARS
  - PINPOINT FACILITIES, PROGRAMS, SERVICES, POLICIES PROCEDURES TO MODIFY OR RELOCATE TO ENSURE COMPLIANCE
- **ESTABLISH GRIEVANCE PROCEDURE FOR ADA COMPLIANT**
  - REQUIRED FOR CITIES/ENTITIES WITH OVER 50 EMPLOYEES
- **ESTABLISH TRANSITION PLAN FOR ADA COMPLIANCE**
  - DESIGNATE SOMEONE (OTHER THAN CM) TO COORDINATE COMPLIANCE
  - ASSIST WITH BUDGETING, EVALUATING RELOCATION EFFORTS AND MODIFICATION
  - ESTABLISH REMEDIAL MEASURES TO BRING IN COMPLIANCE
  - PLAN AVAILABLE TO PUBLIC
  - ADA NOTIFICATION TO PUBLIC

# RESOURCES

- **WHERE CAN I FIND MORE INFORMATION OR HELP?**
  - **ADA HOME PAGE: WWW.ADA.GOV**
    - **WWW.ADA.GOV/SMTOWN**
    - **HTTPS://WWW.ADA.GOV/LAWENFMODPOLICY.PDF**
  - **ADA HOTLINE: 800-514-0301**
  - **DEPARTMENT OF JUSTICE- CIVIL RIGHTS DIVISION- DISABILITY RIGHTS SECTION**
    - **HTTPS://WWW.JUSTICE.GOV/CRT/DISABILITY-RIGHTS-SECTION**
  - **DNRBHZ**



# QUESTIONS?

Clarissa M. Rodriguez

Thanks to Matthew Longoria, San Antonio Office Law Clerk

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# HOGWILD 2017

## TEXAS CERTIFIED PUBLIC MANAGER (CPM) PROGRAM

**DR. HOWARD R. BALANOFF**  
**DIRECTOR**  
TSU WILLIAM P. HOBBY CENTER

**COLLETTE JAMISON**  
**SAN MARCOS**  
ASSISTANT CITY MANAGER

**ALAN BOJORQUEZ**  
**CHAIRMAN**  
TX CENTER FOR MUNICIPAL ETHICS

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**HOGWILD 2017**

# THE FUTURE OF ECONOMIC DEVELOPMENT

**TIM CHASE**  
**HUTTO EDC PRESIDENT AND CEO**

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# HOG WILD 2017

**3:00 – 4:00**

**NEXT UP**

## **TEACHING THEATER**

**STUMP THE CLIENT:  
A LEGAL EDUCATION  
GAME**

**GEORGE HYDE**

**PARTNER | SHAREHOLDER**

## **ROOM 3 – 13.1**

**HOW TO MAKE  
PERSONNEL POLICY  
MANUALS WORK FOR YOU**

**RICARDO NAVARRO**

**PARTNER | SHAREHOLDER**

## **ROOM 3 – 15.1**

**LOCAL GOVERNMENT CIVIL  
REMEDIES TOOL BOX**

**JAMEENE WILLIAMS**

**ASSOCIATE**





# HOGWILD 2017

## STUMP THE CLIENT:

*A legal trivia education game illustrating the legal complexities when operating a local government!*

**GEORGE HYDE**

**PARTNER | SHAREHOLDER**

***DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.***

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# HOGWILD 2017

# HOW TO MAKE PERSONNEL POLICY MANUALS WORK FOR YOU

**RICARDO NAVARRO**

**PARTNER | SHAREHOLDER**

***DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.***

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**HOGWILD 2017**

# CIVIL REMEDIES TOOLBOX

**JAMEENE WILLIAMS**

**ASSOCIATE**

***DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.***

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# INTRODUCTION

- **MOST ORDINANCES ARE CONSIDERED CRIMINAL OFFENSES PUNISHABLE BY FINE UP TO \$500 PER THE TEXAS PENAL CODE AND TEXAS LOCAL GOVERNMENT CODE**
- **ORDINANCES GOVERNING FIRE SAFETY, ZONING OR PUBLIC HEALTH AND SANITATION ARE PUNISHABLE BY FINE UP TO \$2,000**
- **ORDINANCES GOVERNING DUMPING OF REFUSE ARE PUNISHABLE BY FINE UP TO \$4,000**

- **UNLESS YOU GET COMPLIANCE AS A BONUS THROUGH THE MUNICIPAL COURT PROSECUTION PROCESS, YOU ONLY GET MONEY.**
- **CITIES HAVE TO RESORT TO TAKING FURTHER LEGAL ACTION TO COMPEL COMPLIANCE WITH CITY ORDINANCES.**



# SOURCES OF CIVIL REMEDIES

## COURT ORDERED RECEIVERSHIP

### 3 DIFFERENT STATUTORY SOURCES:

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# **SEC. 214.0031 LOCAL GOVERNMENT CODE HAZARDOUS PROPERTY RECEIVERSHIP**

- **HOME RULE CITIES OR AN ELIGIBLE NON-PROFIT HOUSING ORGANIZATION CAN FILE**
- **MUST BE A "SERIOUS AND IMMINENT PUBLIC HEALTH AND SAFETY HAZARD"**
- **APPLIES TO ABANDONED HOMES, VACANT LOTS, AND RENTAL PROPERTIES, BUT NOT OWNER-OCCUPIED SINGLE FAMILY HOMES.**
- **RECEIVER CAN BE AN INDIVIDUAL, NONPROFIT HOUSING ORGANIZATION OR OTHER ENTITY WITH REHABILITATION EXPERIENCE AND APPROPRIATE CAPACITY AND RESOURCES**
- **IF OWNER DOES NOT REIMBURSE THE RECEIVER, COURT CAN ORDER PUBLIC OR PRIVATE SALE**
- **NO DEMOLITION ALLOWED FOR MULTIFAMILY UNITS OF FOUR OR MORE**

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# **SEC. 214.003 LOCAL GOVERNMENT CODE COMMUNITY RECEIVERSHIP (HOME RULE CITIES ONLY)**

- **CAN ONLY BE BROUGHT BY HOME RULE CITIES ONLY**
- **BROUGHT AGAINST OWNER WHO IS NOT IN SUBSTANTIAL COMPLIANCE WITH CITY ORDINANCES REGARDING FIRE PROTECTION, STRUCTURAL INTEGRITY, ZONING OR DISPOSAL OF REFUSE**
- **COURT CAN APPOINT AN INDIVIDUAL OR NONPROFIT TO REHAB THE PROPERTY TO MINIMUM CODE STANDARDS**
- **IF NO REIMBURSEMENT BY OWNER, RECEIVERSHIP CAN PETITION COURT TO SELL PROPERTY AT PUBLIC AUCTION**
- **DEMOLITION IS ALLOWED**



# **PUBLIC NUISANCE ABATEMENT OF HABITUAL CRIMINAL ACTIVITY**

## **CH. 125 CIVIL PRACTICE AND REMEDIES CODE**

- **TO REMEDIATE HABITUAL CRIMINAL ACTIVITY, I.E. MURDER, DRUGS, GAMBLING, PROSTITUTION, SEXUAL ASSAULT, DISCHARGING FIREARMS AND ALCOHOL VIOLATIONS.**
- **BROUGHT BY DA, COUNTY ATTORNEY OR CITY ATTORNEY**
  - COURT CAN ORDER OWNER TO TAKE STEPS TO PREVENT THE ACTIVITIES AND CLOSE THE PROPERTY FOR 1 YEAR
  - FOR MULTI FAMILY COURT CAN APPOINT RECEIVER FOR UP TO 1 YEAR
  - IF NO PRIVATE OR STATE LAWSUIT I FILED, RESIDENTS CAN PETITION DA, CITY ATTY OR COUNTY ATTY TO MEET ABOUT BRINGING A NUISANCE CLAIM IF AT LEAST 10% OF REGISTERED VOTERS IN THE ELECTION PRECINCT SIGN THE PETITION OR 20% IN THE ADJACENT PRECINCT
  - GOVERNMENT RETAINS DISCRETION AS TO WHETHER TO FILE THE LAWSUIT
- **CPRC CH. 125 PUBLIC NUISANCE**
  - CAN ONLY BE BROUGHT TO STOP HABITUAL GANG ACTIVITY

# **CH. 379E LGC LAND BANKS**

**CITIES CAN ADOPT AN URBAN LAND BANK PLAN WITH PERMISSION OF OTHER TAXING ENTITIES AND ASK FORECLOSURE OFFICER TO SELL OR DONATE PROPERTIES TO THE LAND BANK FOR THE DEVELOPMENT OF AFFORDABLE HOUSING (LIMITED TO LARGE CITIES, I.E. DALLAS/HOUSTON BASED ON BRACKET DESCRIPTIONS)**

# CHAPTER 54 LGC

## CIVIL CODE ENFORCEMENT

- **CITY MAY BRING AN ADMINISTRATIVE OR CIVIL ACTION AGAINST AN OWNER WHOSE PROPERTY IS NOT IN COMPLIANCE WITH HEALTH AND SAFETY RELATED CODE AND ORDINANCES.**
- **ACTION CAN BE BROUGHT IN DISTRICT COURT OR MUNICIPAL COURT IF THE COURT IS A COURT OF RECORD AND THE CITY HAS CONFERRED PROPER JURISDICTION ON THEIR COURT TO CONDUCT CIVIL INJUNCTION PROCEEDINGS**



# CHAPTER 54 LGC, CONT'D

## CIVIL CODE ENFORCEMENT

- **CAN OBTAIN CIVIL PENALTIES FOR CONDUCT CONSTITUTING CLASS C MISDEMEANOR IN THE AMOUNT OF \$1,000 PER DAY (\$5000 PER DAY MAX FOR POINT SOURCE EFFLUENT LIMITATIONS OF DISCHARGE OF A POLLUTANT INTO A SEWER SYSTEM OWNED BY CITY)**

# CHAPTER 54 CONT'D

## ORDINANCES ENFORCEABLE UNDER CH. 54:

- MATERIALS OR METHODS USED TO CONSTRUCT A BUILDING OR OTHER STRUCTURE, I.E., FOUNDATION, STRUCTURAL ELEMENTS, ELECTRICAL WIRING OR APPARATUS, PLUMBING AND FIXTURES, ENTRANCES OR EXITS
- FIRE SAFETY OF A BUILDING
- ZONING
- LAND SUBDIVISIONS OR CONSTRUCTION OF BUILDINGS, I.E., STREET WIDTH AND DESIGN, LOT SIZE, BUILDING WIDTH, ELEVATION, SETBACK REQUIREMENTS, UTILITY SERVICE SPECS OR REQUIREMENTS
- DANGEROUSLY DAMAGED OR DETERIORATED STRUCTURES OR IMPROVEMENTS
- ACCUMULATIONS OF REFUSE, VEGETATION OR OTHER MATTER CREATING A BREEDING AND LIVING PLACE FOR INSECTS AND RODENTS





# CHAPTER 54 CONT,D

- INTERIOR CONFIGURATION, DESIGN, ILLUMINATION OR VISIBILITY OF BUSINESS PREMISES EXHIBITING FOR VIEWING BY CUSTOMERS WHILE ON THE PREMISES LIVE OR MECHANICALLY OR ELECTRONICALLY DISPLAYED ENTERTAINMENT INTENDED TO PROVIDE SEXUAL STIMULATION OR SEXUAL GRATIFICATION
- POINT SOURCE EFFLUENT LIMITATION OR DISCHARGE OF POLLUTANTS INTO SEWER SYSTEM
- FLOOD PLAIN CONTROL AND ADMINISTRATION
- ANIMAL CARE AND CONTROL
- WATER CONSERVATION MEASURES AND WATERING RESTRICTIONS
- BUILDING CODES OR THE CONDITION, USE, OR APPEARANCE OF PROPERTY IN THE CITY





# CHAPTER 54, CONT'D

- **INJUNCTION CAN ALLOW FOR REPAIR, DEMOLITION, ABATEMENT, BY OWNER OR CITY AND CITY CAN ATTACH LIEN AGAINST PROPERTY TO RECOVER EXPENSES (LIEN IS INFERIOR TO PREVIOUSLY RECORDED MORTGAGE LIEN BUT SUPERIOR TO ALL OTHER PREVIOUSLY RECORDED LIENS)**



# CHAPTER 54, CONT'D

## BUILDING AND STANDARDS COMMISSION

- CITY CAN ALSO CREATE A SPECIAL BUILDINGS AND STANDARDS COMMISSION TO HEAR AND DETERMINE CASES CONCERNING VIOLATIONS OF CERTAIN ORDINANCES (SUBSTANTIAL REQUIREMENTS FOR CREATING AND OPERATING A B & S COMMISSION)



# CHAPTER 54, CONT'D

- **IF OWNER APPEALS ORDER OF B & S COMMISSION TO DISTRICT COURT AND LOSES, COURT SHALL AWARD ATTORNEYS FEES AND OTHER COSTS AND EXPENSES IT INCURS. FOR REGULAR CH. 54 CIVIL SUIT, ATTORNEYS FEES FOR CITY IS NOT AUTOMATIC BUT CAN BE AWARDED BY COURT IN THE COURT'S DISCRETION.**



# CHAPTER 54, CONT'D

- **B & S ORDERS CAN ORDER REPAIRS WITH FIXED TIME PERIOD; DECLARE BUILDING SUBSTANDARD; IMMEDIATE REMOVAL OF PERSONS OR PROPERTY FOUND ON PRIVATE PROPERTY, ENTER ON PROPERTY TO SECURE PROPERTY AND ANY OTHER NECESSARY ACTION TO ALLEVIATE OR REMEDY VIOLATION' DIRECT PEACE OFFICERS INCLUDING SHERIFFS AND CONSTABLES TO ENFORCE AND CARRY OUT THE ORDERS OF THE COMMISSION PANEL**

# BEST PRACTICE NOTE:

- **COMMISSION ORDER IS FINAL, **UNLESS** OWNER FILES AN APPEAL IN DISTRICT COURT CHALLENGING THE DECISION WITHIN 30 DAYS FROM THE DATE THE ORDER IS PERSONALLY DELIVERED, MAILED CERTIFIED OR MAILED WITH SIGNATURE CONFIRMATION**
- **CITY SHOULD HOLD OFF ON EXECUTING B & S ORDER FOR 30 DAYS IN CASE ORDER IS APPEALED**

# ALTERNATE ADJUDICATION PROCESS

- **SIMPLER THAN FORMAL B & S COMMISSION, BUT MUST PROVIDE FOR NOTICE, CONDUCT OF PROCEEDINGS, PERMISSIBLE ORDERS, PENALTIES AND JUDICIAL REVIEW SIMILAR TO HOW B & S COMMISSION OPERATES)**





# ADMINISTRATIVE PROCESS BY ORDINANCE

- **ADMINISTRATIVE HEARING (MUST APPOINT A HEARING OFFICER, SET PENALTIES, COSTS AND FEES)**
- **SUBPOENAS ENFORCEABLE BY MUNICIPAL COURT, CITY CAN FILE CIVIL SUIT TO COLLECT PENALTIES AND FEES AND TO GET AN INJUNCTION TO PROHIBIT OR COMPEL CONDUCT, APPEAL OF HEARING OFFICER ORDER BY VIOLATOR IS TO MUNICIPAL COURT, NOT DISTRICT COURT)**



# CH. 214 LGC

- **PRIMARILY DEALS WITH DANGEROUS STRUCTURES**
- **ALLOWS FOR THE ENFORCEMENT OF ORDINANCES THAT REQUIRE THE VACATION, RELOCATION OF OCCUPANTS, SECURING, REPAIRING, REMOVAL, OR DEMOLITION OF A BUILDING THAT IS DILAPIDATED, SUBSTANDARD OR UNFIT FOR HUMAN HABITATION, HAZARD TO PUBLIC HEALTH, SAFETY OR WELFARE; UNOCCUPIED OR UNSECURED**
- **ORDINANCE MUST PROVIDE (SPECIFIC) MINIMUM STANDARDS FOR USE AND OCCUPANCY OF ALL BUILDINGS, NOTICE AND A PUBLIC HEARING**





# CH 214 CONT'D

- **ORDER ISSUED AFTER HEARING MUST REQUIRE THE OWNER/LIENHOLDER OR MORTGAGEE TO SECURE, REPAIR, REMOVE OR DEMOLISH THE BUILDING WITHIN 30 DAYS UNLESS MORE TIME NEEDED, IN WHICH CASE ORDER MUST ESTABLISH SPECIFIC TIME SCHEDULES FOR COMPLETION OF COMPLIANCE OR OWNER MUST PREPARE A DETAILED REMEDIATION PLAN**
  - CITY CAN DO WORK ITSELF IF NO COMPLIANCE AND ATTACH LIEN
  - HEARING CAN BE HELD BY CIVIL MUNICIPAL COURT (A COURT WITH CIVIL JURISDICTION UNDER GOVERNMENT CODE
  - IF AN OWNER, LIENHOLDER, OR MORTGAGEE SUES THE CITY TO OVERTURN AN ORDER OF THE CITY UNDER CH. 214 PROCEEDING AND LOSES, CITY MAY RECOVER ATTORNEYS FEE AND COSTS (COURT'S DIRECTION)
  - CITY CAN FOLLOW ADDITIONAL PROCESS TO SECURE UNOCCUPIED STRUCTURE OR ONE THAT IS OCCUPIED BY PERSONS THAT DO NOT HAVE RIGHT TO POSSESSION OF THE PROPERTY BUT MUST PROVIDE OPPORTUNITY FOR A PUBLIC HEARING BEFORE SECURING BUILDING



# BEST PRACTICE NOTE:

- **PROCESS WORKS BEST WHEN PROCESS CHOSEN BY CITY IS CLEAR AND WELL PLANNED OUT. ALL DEPARTMENTS INVOLVED MUST COMMUNICATE WITH ONE ANOTHER AND COORDINATE IN THE PROCESS OF ENFORCING RELEVANT ORDINANCES**
- **JUST HAVING ORDINANCE IS NOT ENOUGH FOR COURT TO UPHOLD CIVIL ACTION. CITY MUST PROVE CASE AND PROVIDE GOOD EVIDENCE TO SUPPORT THE HEALTH AND SAFETY RISKS CAUSED BY THE SUBSTANDARD PROPERTY. CAN'T ASSUME JUDGE OR JURY WILL UNDERSTAND OR SIDE WITH THE CITY. HAVE TO CONVINCED COURT AND JURY THAT ITS NECESSARY TO USE THE POWER OF THE STATE TO FORCE SOMEONE TO DO SOMETHING TO THEIR PRIVATE PROPERTY**
- **MUST HAVE EXCELLENT RECORD KEEPING: PHOTOS, NOTICES OF VIOLATIONS WITH ACCURATE REFERENCES TO UP TO DATE ORDINANCES, STAFF WITH KNOWLEDGE OF ORDINANCES AND REQUIRED PROCEDURES**
- **STRONGER THE CASE AND THE MORE CITY CAN SHOW OWNER'S DEFIANCE IS SO UNREASONABLE THAT CITY HAS NO CHOICE BUT TO SUE OR ORDER ABATEMENT, THE HIGHER CHANCES ARE THAT CITY WILL BE AWARDED CIVIL PENALTIES**



# CH. 211 LGC ZONING

- **CITY CAN SUE IN COUNTY OR DISTRICT COURT TO PREVENT ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR, CONVERSION, MAINTENANCE OR USE OF PROPERTY IN VIOLATION OF ZONING ORDINANCE, INCLUDING SIGNS; RESTRAIN, CORRECT OR ABATE THE VIOLATION; PREVENT THE OCCUPANCY OF THE BUILDING, STRUCTURE OR LAND; OR PREVENT ANY ILLEGAL ACT, CONDUCT, BUSINESS, OR USE ON OR ABOUT THE PREMISES**

# CH. 212 SUBDIVISION REGULATIONS

- **CITY CAN SUE TO ENJOIN THE VIOLATION OR THREATENED VIOLATION OF REGULATIONS GOVERNING SUBDIVISION OF LAND AND RECOVER DAMAGES IN THE AMOUNT NECESSARY TO COVER CITY'S COSTS ASSOCIATED WITH BRINGING PROPERTY INTO COMPLIANCE**
- **CITY CAN SUE TO ENJOIN VIOLATIONS OR THREATENED VIOLATIONS OF REGULATIONS GOVERNING PROPERTY DEVELOPMENT**
- **REGULATIONS ENFORCEABLE INSIDE CITY AND WITHIN ETJ**



# CH. 683 TRANSPORTATION CODE ABANDONED AND JUNKED VEHICLES

## ABANDONED VEHICLES

A MOTOR VEHICLE IS ABANDONED IF THE MOTOR VEHICLE:

- (1) IS INOPERABLE, IS MORE THAN FIVE YEARS OLD, AND HAS BEEN LEFT UNATTENDED ON PUBLIC PROPERTY FOR MORE THAN 48 HOURS;
- (2) HAS REMAINED ILLEGALLY ON PUBLIC PROPERTY FOR MORE THAN 48 HOURS;
- (3) HAS REMAINED ON PRIVATE PROPERTY WITHOUT THE CONSENT OF THE OWNER OR PERSON IN CHARGE OF THE PROPERTY FOR MORE THAN 48 HOURS;
- (4) HAS BEEN LEFT UNATTENDED ON THE RIGHT-OF-WAY OF A DESIGNATED COUNTY, STATE, OR FEDERAL HIGHWAY FOR MORE THAN 48 HOURS;
- (5) HAS BEEN LEFT UNATTENDED FOR MORE THAN 24 HOURS ON THE RIGHT-OF-WAY OF A TURNPIKE PROJECT CONSTRUCTED AND MAINTAINED BY THE TEXAS TURNPIKE AUTHORITY DIVISION OF THE TEXAS DEPARTMENT OF TRANSPORTATION OR A CONTROLLED ACCESS HIGHWAY; OR
- (6) IS CONSIDERED AN ABANDONED MOTOR VEHICLE UNDER SECTION [644.153](#)(R) (AN IMPOUNDED COMMERCIAL VEHICLE)

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# ABANDONED VEHICLES: LAW ENFORCEMENT CAN SEIZE AND SELL IT

- **A LAW ENFORCEMENT AGENCY MAY TAKE INTO CUSTODY AN ABANDONED MOTOR VEHICLE, AIRCRAFT, WATERCRAFT, OR OUTBOARD MOTOR FOUND ON PUBLIC OR PRIVATE PROPERTY, BUT MUST SEND NOTICE WITHIN 10 DAYS OF TAKING IT INTO CUSTODY**
- **(B) A LAW ENFORCEMENT AGENCY MAY USE AGENCY PERSONNEL, EQUIPMENT, AND FACILITIES OR CONTRACT FOR OTHER PERSONNEL, EQUIPMENT, AND FACILITIES TO REMOVE, PRESERVE, STORE, SEND NOTICE REGARDING, AND DISPOSE OF AN ABANDONED MOTOR VEHICLE, AIRCRAFT, WATERCRAFT, OR OUTBOARD MOTOR TAKEN INTO CUSTODY BY THE AGENCY UNDER THIS SUBCHAPTER.**

# ABANDONED VEHICLES, CONT.

- **LAW ENFORCEMENT AGENCY IS ENTITLED TO STORAGE FEES FOR NOT MORE THAN 10 DAYS**
- **IF VEHICLE IS NOT CLAIMED, OWNER WAIVES ALL RIGHTS TO VEHICLE AND LAW ENFORCEMENT AGENCY CAN AUCTION IT OFF AND IS ENTITLED TO REIMBURSEMENT OF FEES**
- **AGENCY MUST HOLD REMAINING FUNDS FOR 90 DAYS FOR OWNER TO CLAIM**
- **AFTER THAT, FUNDS IN EXCESS OF \$1,000 CAN BE TRANSFERRED TO CITY'S GENERAL FUND TO BE USED BY THE AGENCY OR THE VEHICLE CAN BE USED FOR AGENCY PURPOSES**



# JUNKED VEHICLES

- **JUNKED VEHICLE MEANS A VEHICLE THAT:**
- **IS SELF-PROPELLED; AND IS WRECKED, DISMANTLED OR PARTIALLY DISMANTLED; DISCARDED; OR INOPERABLE AND HAS REMAINED INOPERABLE FOR MORE THAN 72 CONSECUTIVE HOURS IF THE VEHICLE IS ON PUBLIC PROPERTY; OR 30 CONSECUTIVE DAYS, IF THE VEHICLE IS ON PRIVATE PROPERTY.**
- **"JUNKED VEHICLE" INCLUDES A MOTOR VEHICLE, THAT DISPLAYS AN EXPIRED LICENSE PLATE OR DOES NOT DISPLAY A LICENSE PLATE**
- **ALSO INCLUDES AN AIRCRAFT, OR WATERCRAFT IF CERTAIN CRITERIA ARE MET**
- **CITY CAN ADOPT AN ORDINANCE WITH MORE INCLUSIVE DEFINITION**

# JUNKED VEHICLES, CONT

- **STATE LAW HAS DECLARED JUNKED VEHICLES TO BE A PUBLIC NUISANCE**
- **CRIMINAL OFFENSE UNDER STATE LAW; CITY CAN ESTABLISH CRIMINAL OFFENSE UNDER CITY ORDINANCE SO LONG AS ORDINANCE'S PENALTY CONTRARY TO STATE LAW, IN WHICH CASE MAY BE PREEMPTED**
- **CITY CAN ABATE/REMOVE JUNKED VEHICLE AFTER REQUIRED NOTICE IS GIVEN**
- **OWNER HAS RIGHT TO REQUEST A HEARING**
- \* **CITY SHOULD PROVIDE A HEARING WHETHER THE OWNER REQUESTS ONE OR NOT**

# CH. 250 LGC - GRAFFITI REMOVAL

- **CITY CAN REMOVE GRAFFITI AND CHARGE PROPERTY OWNER IN ACCORDANCE WITH A FEE SCHEDULE ADOPTED BY ORDINANCE AFTER PROVIDING NOTICE TO THE PROPERTY OWNER AND ASSESS EXPENSES AGAINST THE PROPERTY BY LIEN**



# CH. 243 LGC - SEXUALLY ORIENTED BUSINESSES

- **CITY CAN RESTRICT THE LOCATION OR PERMISSIBLE ACTIVITIES ON SOBS WITHIN CERTAIN DISTANCES FROM SCHOOLS, REGULAR PLACES OF RELIGIOUS WORSHIP, RESIDENTIAL NEIGHBORHOODS, OR OTHER SPECIFIED LAND USE THE CITY FINDS TO BE INCONSISTENT WITH THE OPERATION OF AN SOB. CITIES CAN ALSO RESTRICT THE DENSITY OF SOBS.**
  - **CITIES CAN REQUIRE OWNERS AND OPERATORS OF SOBS TO OBTAIN A LICENSE OR PERMIT TO OPERATE AND MAY REVOKE OR SUSPEND LICENSES OR PERMITS FOR NONCOMPLIANCE**
  - **CITY CAN SUE VIOLATORS IN DISTRICT COURT FOR INJUNCTIVE RELIEF TO PROHIBIT VIOLATIONS. ADDITIONALLY, VIOLATION OF SOB ORDINANCES IS A CLASS A MISDEMEANOR OFFENSE**



# CH. 341 HEALTH & SAFETY CODE - SANITATION AND ENVIRONMENTAL QUALITY

- **GOVERNS PUBLIC NUISANCES CAUSED BY CONDITIONS THAT ARE BREEDING PLACES FOR FLIES IN POPULOUS AREAS; UNSANITARY RESTAURANTS, FOOD MARKET, BAKERIES, ETC., UNSANITARY STATE OR LOCAL GOVERNMENTAL BUILDINGS, SEWAGE, AND OTHER ORGANIC WASTE IMPROPERLY STORED SO AS TO CREATE CONDITIONS FOR TRANSMISSION OF DISEASE, VEHICLES TRANSPORTING GARBAGE, HUMAN EXCRETA, ETC., COLLECTIONS OF WATER IN WHICH MOSQUITOS ARE BREEDING IN THE CITY LIMITS, FAT RENDERING AND BONE BOILING PLANTS, CONDITIONS THAT HARBOR RATS, LICE AND MITES AND OTHER SIMILAR CONDITIONS**
  - **REQUIRES SANITARY CONDITIONS FOR DRINKING WATER, AND PUBLIC WATER SUPPLIES AND BODIES OF WATER, FIRE HYDRANTS, AND OTHER PUBLIC WATER AND SEWER INFRASTRUCTURE**
  - **CITY ATTORNEY OR TEXAS ATTORNEY GENERAL AS ASSISTANT TO CITY ATTORNEY CAN SUE IN DISTRICT COURT FOR INJUNCTION TO STOP VIOLATIONS**

# CH. 342 HEALTH & SAFETY CODE

- **CITIES CAN REGULATE CONDITIONS INVOLVING UNWHOLESOME MATTER, STAGNANT WATER OR ANY OTHER CONDITION THAT MAY PRODUCE DISEASE AS WELL AS WEEDS, BRUSH, AND OTHER PUBLIC NUISANCES**
- **CITY CAN ABATE NUISANCE AND ATTACH LIEN TO RECOVER EXPENSES AFTER 7 DAYS NOTICE AND TIME TO CORRECT**
- **CITY CAN ABATE DANGEROUS WEEDS (OVER 2 FEET HIGH AND IMMEDIATE DANGER TO HEALTH, LIFE OR SAFETY OR ANY PERSON) WITHOUT NOTICE IF NECESSARY BUT MUST PROVIDE A PUBLIC HEARING ON THE ABATEMENT WITHIN 20 DAYS OF A REQUEST FROM THE PROPERTY OWNER FOR A HEARING WITHIN 30 DAYS OF THE ABATEMENT**





# CASES OF INTEREST

- **JAMESTOWN PARTNERS, L.P. V. CITY OF FORT WORTH - SUCCESSFUL CH. 54 INJUNCTION AND CIVIL PENALTIES**
- **SUBSTANDARD AND DILAPIDATED VACANT APARTMENT COMPLEX OWNER WAS BROUGHT BEFORE THE CITY'S BUILDING AND STANDARDS COMMISSION WHICH ENTERED ORDERS DECLARING THE PROPERTY TO SUBSTANDARD AND A THREAT TO PUBLIC SAFETY. AFTER THAT THE CITY ENTERED INTO A "COMPLIANCE AGREEMENT" WHICH WAS ALLOWED UNDER THE CITY'S BUILDING CODE. THE AGREEMENT PROVIDED THAT THE OWNER WOULD FENCE THE PROPERTY, SECURE THE BUILDINGS, APPLY TO CHANGE THE ZONING DESIGNATION AND REDUCE THE NUMBER OF UNITS IN THE BUILDINGS, AND TO USE PART OF THE PROPERTY FOR A COMMUNITY CENTER AND A POLICE STATION. THE BUILDING CODE PROVIDED THAT THE CITY'S ENTERING INTO A COMPLIANCE AGREEMENT DID NOT PRECLUDE THE CITY FROM PURSUING ANY OTHER CIVIL REMEDIES TO GET COMPLIANCE, INCLUDING FILING A CIVIL SUIT UNDER CH. 54. COURT NOTED, HOWEVER, THAT SUCH AGREEMENTS COULD BE OF NO BENEFIT TO A PROPERTY OWNER IF WHILE THE AGREEMENT IS IN EFFECT THE CITY COULD STILL SUE THE OWNER TO FORCE COMPLIANCE. THE COURT HELD THOUGH THAT THE TERMS OF THE AGREEMENT WERE CLEAR THAT THE CITY COULD DO BOTH SO THE COURT HAD TO INTERPRET THE AGREEMENT AS IS. IDEA OBVIOUSLY IS THAT THE PARTIES KNEW THE TERMS OF THE AGREEMENT WHEN THEY SIGNED IT, SO WHEN THINGS GO BAD, THE AFFECTED PARTY CAN'T COMPLAIN.**



# CASES OF INTEREST

- **WHALLON V. CO HOUSTON (2015)**
- **B & S COMMISSION PROCEEDINGS DO NOT BAR CITY FROM SUING OWNER TO RECOVER ATTORNEYS FEES AND COSTS UNDER OTHER PART OF CH. 54 UNDER RES JUDICATA. PROCEDURES ARE DIFFERENT, AVAILABLE RECOVERY IS DIFFERENT**

# BIBLIOGRAPHY AND SOURCES

- **THE COMMUNITY DEVELOPMENT CLINIC AT THE UNIVERSITY OF TEXAS SCHOOL OF LAW**
- **TEXAS CITY ATTORNEYS ASSOCIATION**
- **TEXAS LOCAL GOVERNMENT CODE**
- **TEXAS HEALTH AND SAFETY CODE**
- **TEXAS CIVIL PRACTICE AND REMEDIES CODE**
- **SEVERAL OTHER TEXAS STATUTES AND RESOURCE MATERIALS**

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**HOGWILD 2017**

**NEXT UP**

**4:00 – 6:00**

**Networking Reception and Educational  
Rewards Raffle**

**Rewards include Education Scholarships for Local  
Governments and more!**

Location: Ballroom (3 - 16.1)

**Denton Navarro Rocha Bernal Hyde & Zech, P.C.**

