



16TH ANNUAL

HOG WILD GOVERNMENT SEMINAR

AUSTIN

Shareholders
Charles Zech

2500 W. William Cannon
Suite 609 Austin, TX
78745

SAN ANTONIO

Shareholders
Lowell Denton
Patrick Bernal
Charles Zech

2517 North Main Avenue
San Antonio, TX 78212

RGV

Shareholders
Ric Navarro

701 East Harrison Ste. 100
Harlingen, TX 78550

Texas Gulf Coast

Shareholders
Lowell Denton 2228

Mechanic Street Suite 304
Galveston, TX 77550

Location:
Hilton Garden Inn 8101
Pat Booker Rd Live Oak,
Texas 78233

JULY 26, 2019

7:00-8:30am

Registration/Breakfast

8:30-9:00am

Welcome Back - Opening Remarks

Charlie Zech

9:00-10:00am

Sex and Drugs and Rock & Roll - Employee Discipline

Clarissa Rodriguez & Beverly Zech

10:00-10:30am

Taxman - Collecting your Hotel Occupancy Taxes

Allison Bastian

10:30-10:45am

Break

10:45-11:45am

Little Pink Houses for You and Me - Utilizing the civil and criminal options in your code, while still loving thy neighbor.

Adolfo Ruiz, Cameron Cox, Emily Barron & Cynthia Trevino

11:45-12:30pm

We Built This City - The Basics of Economic Development

Megan Santee, Charlie Zech, Diedre Goodchild & Jordan Matney

12:30-2:00pm

Lunch - It's the End of the World as We Know It (And I Feel Fine)

The 2019 Legislative Update

Scott Houston, TML Deputy Executive Director & General Counsel Bill Longley, TML Legislative Counsel

2:00-2:45pm

All Along the Watchtower - Board of Adjustment Basics, Variances and Appeals

Habib Erkan

2:45-3:15pm

Shop Around - Successful Procurement isn't a Miracle

Dan Santee & Julie Gohlke

3:15-3:45pm

Lawyers, Guns and Money - Limiting Your Liability

Patrick Bernal

3:45-4:00pm

Break

4:00-4:30pm

Stump the Gambler - You Have to Know When to Fold em'

Charlie Zech

4:30-6:00pm

Party at the End of the World - Closing Remarks/Reception



For more information please visit : <https://www.rampagelaw.com/Happenings/>



Employee Discipline

Your Presenters

Beverly Zech



Clarissa Rodriguez



Takeaways

- Setting a positive climate for employee discipline
- Industry standards for progressive discipline
- Review of better practices for discipline policies
- Basics of discipline counseling
- An easy way to document discipline



Positive Climate

Discipline vs Punitive Discipline

Very different practices

- Control (**self**) or act in accordance to rules
- Punishment

Positive Climate

Clear Expectations

- New hire orientation
- Clear policies, rules and regulations
 - City vs Department
- Sign off on new policies, rules and regulations



Positive Climate

Hot Stove Theory – Douglas McGregor

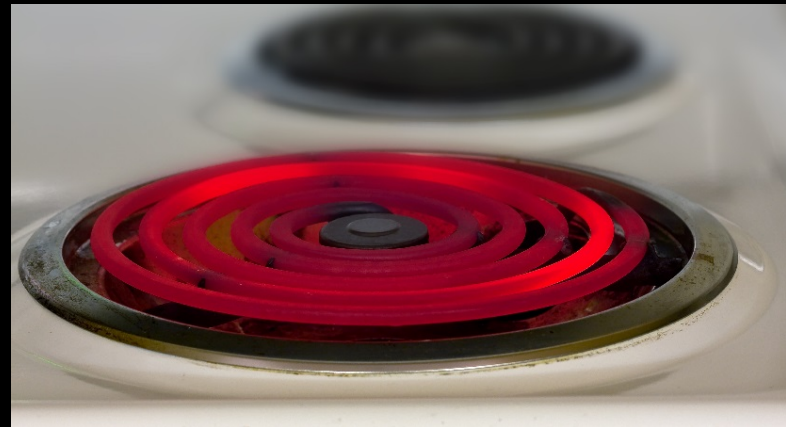
- Touch = BURN!
 - Cause and effect of offense
 - Immediate



Positive Climate

Hot Stove Theory – Douglas McGregor

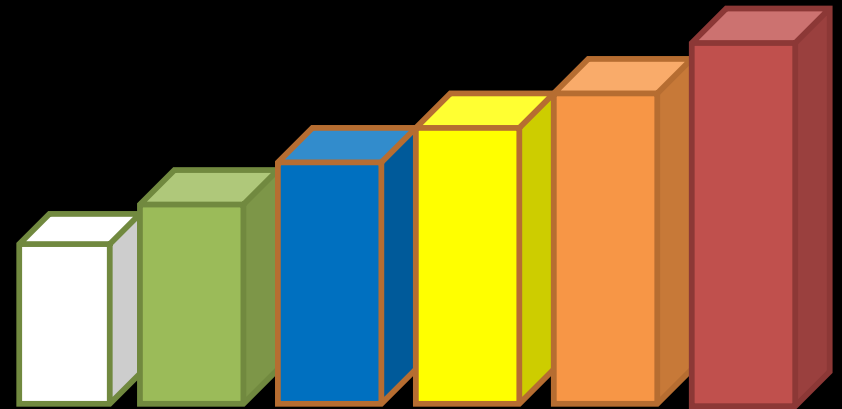
- Touch = BURN!
- Advanced Warning
- Consistency
- Impersonal



Progressive Discipline

Industry Standard

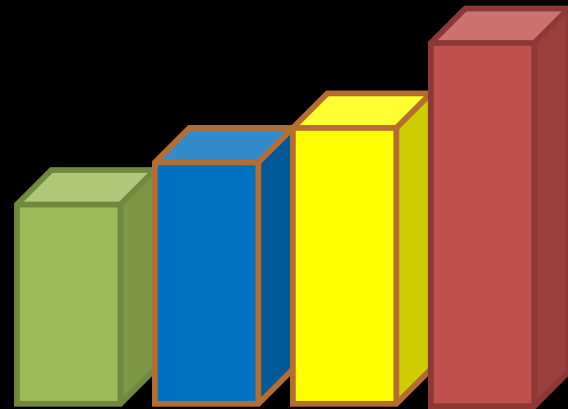
- 4 or 6 Steps
 - Informal Resolution
 - Oral Reminder
 - Written Reminder
 - Probation/Suspension
 - Final Written Reminder
 - Termination



Progressive Discipline

Industry Standard

- 4 Steps
 - Verbal Counseling
 - Written Warning
 - Suspension/PIP
 - Termination



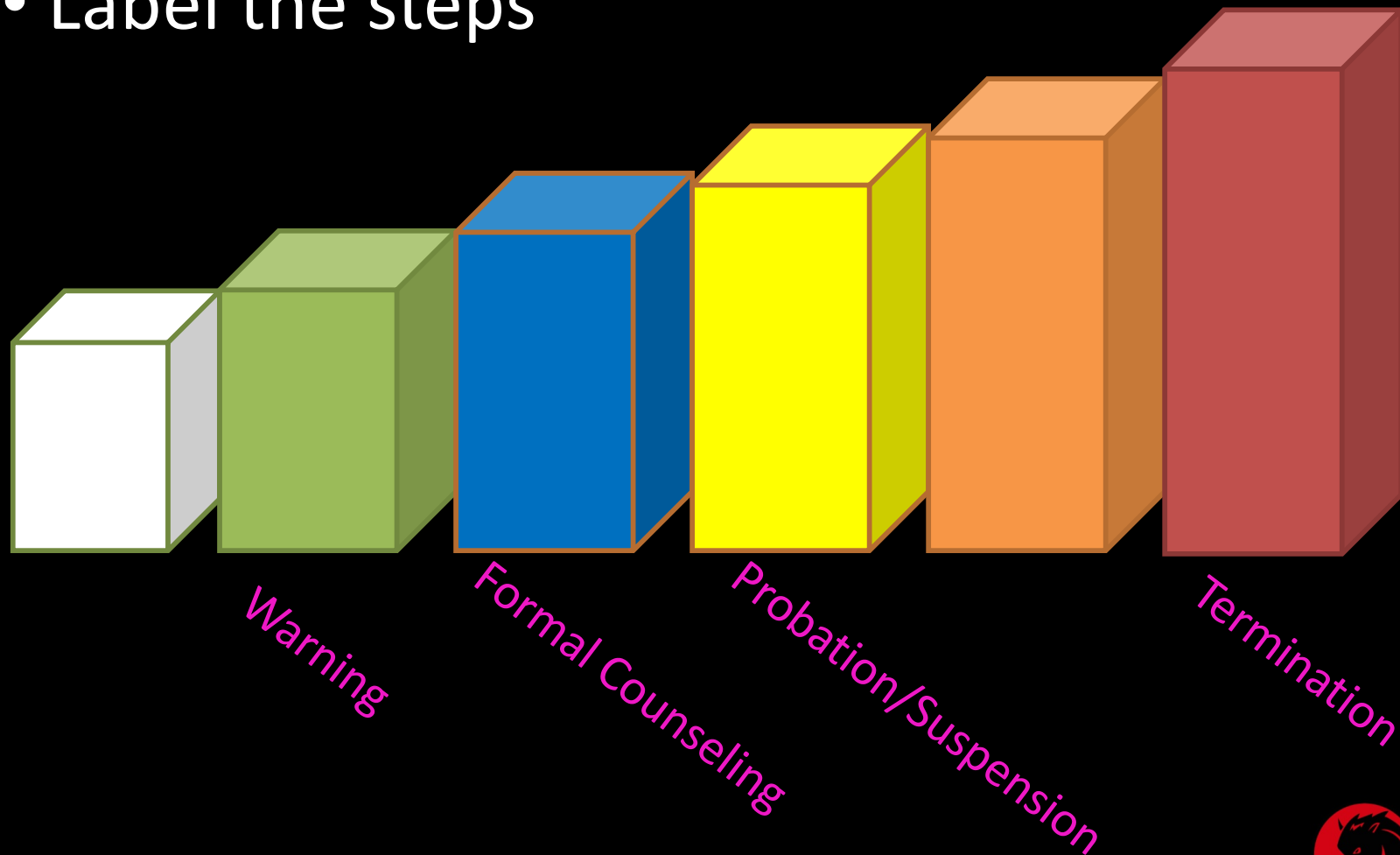
Issues with Industry Standard

- Confusing terminology
- Follow ALL steps? If not, which steps to use?
- Consistency with application
- Who can administer the steps?
- How long are employees accountable?



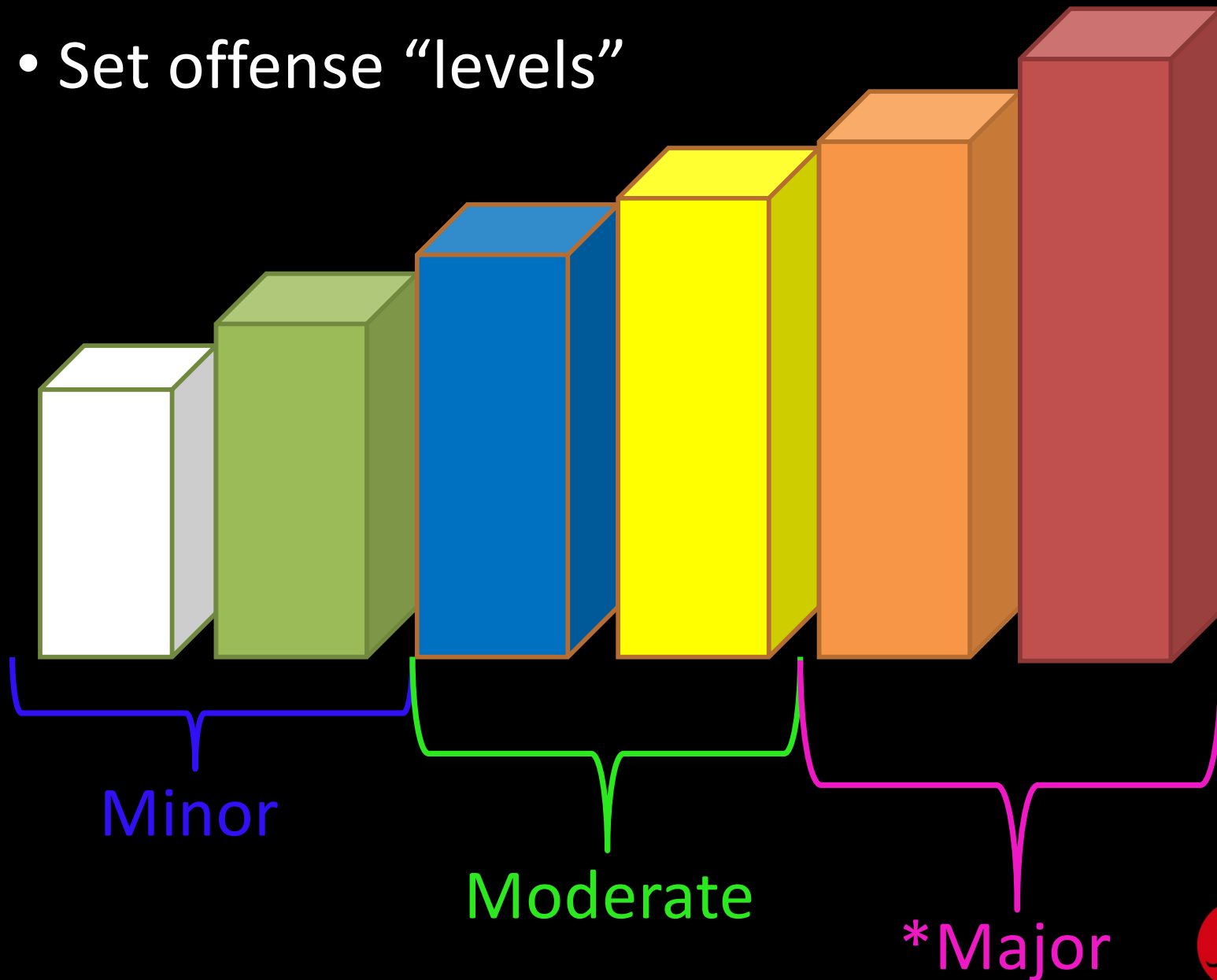
Better Practices

- Set steps that make sense for your organization
- Label the steps



Better Practices

- Set offense “levels”



Better Practices

- Set examples for each level
 - Minor
 - Tardiness
 - Moderate
 - Violation of a moderate policy/procedure
 - Major
 - Fighting
 - Insubordination
- Only guidelines and not all-inclusive

Better Practices

Set Clear Expectations

- What is done per each step in policy
- Who is authorized to administer which steps
- Easy documentation and filing systems
- Length of time of accountability*
- Grievance procedures



Better Practices

**Notable Exceptions - Time Accountability*

- Sex Harassment
- Discriminatory behavior
- Serious safety related actions/inactions



Counseling and Coaching

The Basics

- Previous *DOCUMENTED* issues?
- Focus on the action/behavior – NOT the person
- Opportunity to tell their side of story
- PIP
- Scheduled follow-ups
- Be clear: disciplinary action and next steps
- Documentation*

Documentation

A simple plan





Record of Progressive Discipline

Employee Name: _____ Date Discipline Administered: _____

Discipline History

Has this employee received other disciplinary actions for the same issue?

No: _____ Yes: _____ (If yes, what step(s) and when?)

Previous step and date of discipline administered: _____

Previous step and date of discipline administered: _____

Previous step and date of discipline administered: _____

Has this employee received discipline for other issues?

No: _____ Yes: _____ (If yes, what step(s) and when?)

Previous step and date of discipline administered: _____

Previous step and date of discipline administered: _____

Previous step and date of discipline administered: _____

Information Regarding Offense/Performance/Work Habit Issue

Date of Offense or Performance/Work Habit Issue: _____ Time: _____

Location: _____

Summary of Offense or Performance/Work Habit Issue: _____

Individuals Involved: _____

Potential Witnesses: _____

Discipline Administered



All items in the "Discipline Administered" section should be based on your progressive discipline policy. This is ONLY an example.

Discipline Step (Check One)	Category of Offense (Circle One)	Additional Requirements/Information
<input type="checkbox"/> Informal Resolution	Minor	
<input type="checkbox"/> Warning	Minor / Moderate	
<input type="checkbox"/> Formal Counseling	Moderate	
<input type="checkbox"/> Probation or Suspension ___ Days of Suspension	Moderate / Major	Formal Probation document required
<input type="checkbox"/> Termination	Major	

Applicable Policies, Procedures or Performance/Work Habits Expectations

Employee's View of Issue

Improvement Plan (Be specific)

Follow-up/review date with employee (if applicable): _____

Employee Signature: _____ Date: _____
(Signature acknowledges this record of Progressive Discipline was presented to employee)

Supervisor/Dept. Manager/Director/
City Manager Signature: _____ Date: _____

Helpful Information

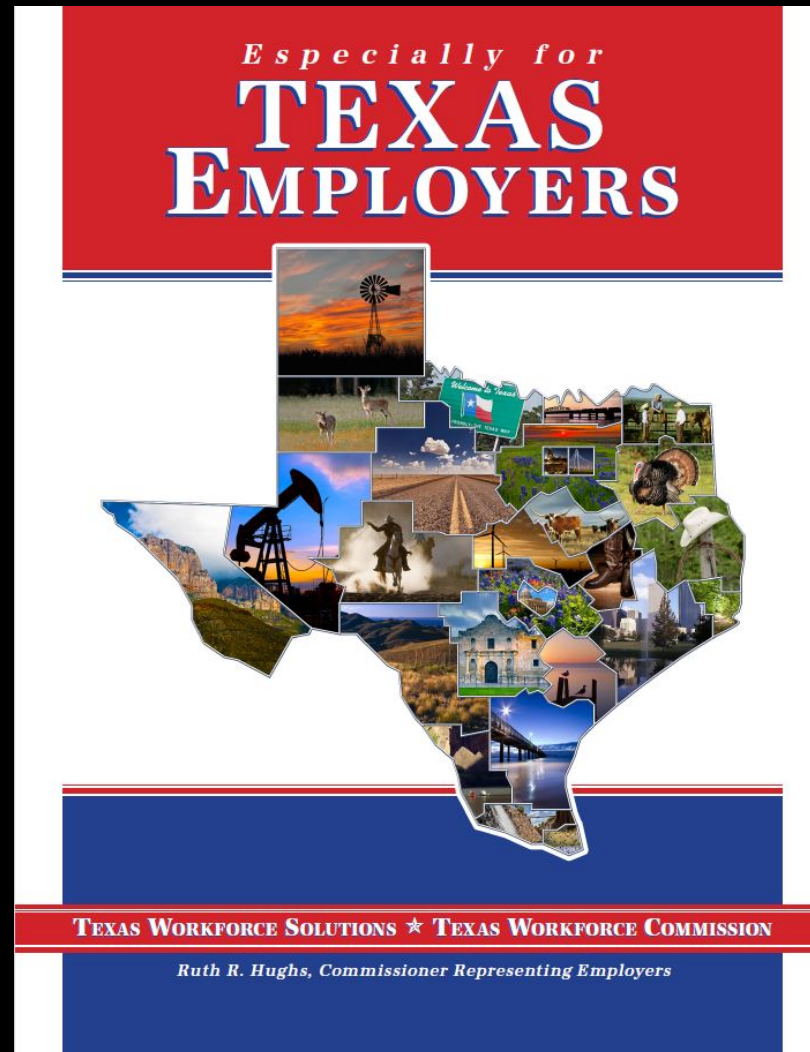
TML - Texas Municipal League

Call Before You Fire!

800-532-6655

Free Reference Material

Texas Workforce Commission



The image shows the cover of a report titled "Especially for TEXAS EMPLOYERS" from the Texas Workforce Commission. The cover features a large map of Texas filled with various small images representing different aspects of the state's economy and culture, such as a windmill, a cowboy, a city skyline, and a bridge. The text "Especially for TEXAS EMPLOYERS" is prominently displayed at the top in white on a red background. At the bottom, it reads "TEXAS WORKFORCE SOLUTIONS ★ TEXAS WORKFORCE COMMISSION" and "Ruth R. Hughes, Commissioner Representing Employers".

Especially for
**TEXAS
EMPLOYERS**

TEXAS WORKFORCE SOLUTIONS ★ TEXAS WORKFORCE COMMISSION

Ruth R. Hughes, Commissioner Representing Employers

Questions





TAXMAN:

How to Collect Your Hotel Occupancy Taxes

Allison Bastian, Attorney

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

Rio Grande Valley office

“

If you drive a car, I'll tax the street;
If you try to sit, I'll tax your seat;
If you get too cold, I'll tax the heat;
If you take a walk , I'll tax your feet.

TAXMAN, GEORGE HARRISON





1966

George Harrison

Paul: *Meh*

John: *Meh*

6th song by GH

1st on Revolver

4/4 time

D Major



COLLECTIONS

Texas Tax Code § 351

Sec. 351.004. Tax Collection.

(a) The municipality may bring suit against a person who is required to collect the tax imposed by this chapter and pay the collections over to the municipality, and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed, as applicable, as provided by the court's order.

Besides that...

In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for:

- (1) the municipality's reasonable attorney's fees;
- (2) the costs of an audit conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:
 - (A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
 - (B) the municipality has not received a disbursement from the comptroller as provided by Section [156.2513](#) related to the person's concurrent state tax delinquency described by Section [351.008](#);
- (3) a penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; and
- (4) interest under Section [351.0042](#).

Besides that...

In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for:

- (1) the municipality's reasonable **attorney's fees;**
- (2) the costs of an audit conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:
 - (A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
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Besides that...

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- (2) the costs of an **audit** conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:
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- (4) interest under Section [351.0042](#).

And...

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- (1) the municipality's reasonable **attorney's fees**;
- (2) the costs of an **audit** conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:
 - (A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
 - (B) the municipality has not received a disbursement from the comptroller as provided by Section [156.2513](#) related to the person's concurrent state tax delinquency described by Section [351.008](#);
- (3) a **penalty equal to 15 percent** of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; and
- (4) **interest** under Section [351.0042](#).

it's all too much

by george horroca



THE EARL OF...
The Beatles
Yellow Submarine
BY GEORGE HORROCA
ILLUSTRATED BY...



“Ask” letter

DEMAND LETTER



All You
Need is
Love



**Amount due
Deadline to respond
New owner
"Or else..."**



Demand!



Besides *that...*

(a-1) If a person required to file a tax report under this chapter does not file the report as required by the municipality, the municipality may determine the amount of tax due under this chapter by:

(1) conducting an audit of each hotel in relation to which the person did not file the report as required by the municipality; or

(2) using the tax report filed for the appropriate reporting period under Section [156.151](#) in relation to that hotel.

(a-2) If the person did not file a tax report under Section [156.151](#) for that reporting period in relation to that hotel, the municipality may estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year under this chapter or Section [156.151](#). An estimate made under this subsection is prima facie evidence of the amount of tax due for that period in relation to that hotel.

(b) Except as provided by Subsection (b-1), a municipality must bring suit under this section not later than the fourth anniversary of the date the tax becomes due.

(b-1) The limitation provided by Subsection (b) does not apply and a municipality may bring suit under this section at any time if:

(1) with intent to evade the tax, the person files a false or fraudulent report with the municipality; or

(2) the person has not filed a report for the tax with the municipality.

(c) A municipality by ordinance may authorize misdemeanor punishment for a violation of an ordinance adopted under this chapter.

(d) The remedies provided by this section are in addition to other available remedies.

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(c) A municipality by ordinance may authorize misdemeanor punishment for a violation of an ordinance adopted under this chapter.

(d) The remedies provided by this section are in addition to other available remedies.

Harlingen Code of Ordinances



Sec. 42-28. - Tax levied; rates; exceptions.

(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such costs of occupancy is at a rate as established in the city fee schedule in chapter 18 per day, such tax to be equal to seven percent of the consideration paid by the occupant of such room, space, or facility to such hotel, exclusive of other occupancy taxes imposed by other governmental agencies, all as allowed by Texas Tax Code ch. 351...

Sec. 42-32. - Violations and penalties.

If any person required by the provision of this article to collect a tax imposed herein, make reports as required herein, and pay to the tax collector the tax imposed herein, shall fail to collect such tax, or fail to file such report, or fail to pay such tax, or file a false report, such person shall, upon conviction, be deemed guilty of a misdemeanor.

Sale of Hotel?

Sec. 351.0041. Collection Procedures on Purchase of Hotel

- (a) If a person who is liable for the payment of a tax under this chapter is the owner of a hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt by a person designated by the municipality to provide the receipt showing that the amount has been paid or a certificate showing that no tax is due.
- (b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a hotel may request that the person designated by the municipality to provide a receipt under Subsection (a) issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The person designated by the municipality shall issue the certificate or statement not later than the 60th day after the date that the person receives the request.

(d) If the person designated by the municipality to provide a receipt under Subsection (a) fails to issue the certificate or statement within the period provided by Subsection (c), the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

**If all
else fails,
litigation
under
TTC 351**



Calstar Properties v. Fort Worth

City brought action for delinquent hotel occupancy taxes against prior owner of hotel and lender who had foreclosed on hotel.

Prior owner brought cross-claim against lender for failure to withhold an amount sufficient to pay the taxes.

City was entitled to pursue collection of unpaid hotel occupancy taxes from prior owner of hotel as well as from lender who purchased hotel at foreclosure sale.

Doctrine of election of remedies did not bar city, which had collected part of delinquent taxes from lender, from collecting the remainder from prior owner of hotel.

Calstar Properties, L.L.C. v. City of Fort Worth,
139 S.W.3d 433 (Tex. App.—Fort Worth 2004,
no pet.)



King George Hotel v. City of Houston

1992-Appeal by owner of King George Hotel of temporary injunction granted in favor of Houston enjoining owner from operating hotel until owner paid outstanding HOT.

Owner transferred KGH to son for no consideration. Houston brought new action against new owner (son) to impose liability of dad and injunction on any more transfers.

Father and son: "Value of purchase price is zero so they cannot be liable to the extent of the value of the purchase price."

Court: "City has probable right of recovery."

Father and son: "No evidence to support injunction prohibiting future transfers."

Court: "Conduct of father and son shows intent to frustrate City efforts to fix liability and collect the tax."



Conroe v. TPProperty, LLC

Tourism Promotion Services Agreement, which provided for French Quarter to manage the expenditure of a portion of the City's hotel occupancy taxes collected from the guests of the Hotel, for marketing and promoting tourism in the Lake Conroe area ("HOT Agreement"). In April 2007, French Quarter entered into these two agreements with the City and purchased the Hotel.

FQ brought breach of contract claims against city. City filed plea to the jurisdiction and also filed counterclaims. The 284th District Court, Montgomery County, denied plea to the jurisdiction. City Appealed.

Agreement that provided for hotel owner to manage the expenditure of a portion of the city's hotel occupancy taxes collected from the guests of the hotel, for marketing and promoting tourism in the area, was not a contract to provide services directly to city, and, thus, city did not waive its immunity from suit by entering into agreement.

City of Conroe v. TPProperty LLC, 480 S.W.3d 545, 550
(Tex. App.—Beaumont 2015, no pet.)



Conroe v. TPProperty, LLC

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(Tex. App.—Beaumont 2015, no pet.)



AKAL IX Management v. McKinney

October 2012—AKAL files for reorganization (bankruptcy). AKAL listed the City in its schedules as holding a claim in the amount of \$37,251—the amount of the unpaid hotel taxes as of the bankruptcy filing date.

August 2013--McKinney objected to the amount set forth in AKAL's schedules and asserted a claim in the amount of \$97,302.15—reflecting taxes due pre-petition and post-petition through May 31, 2013.

September 2013--AKAL includes this amount as an allowed claim in its Amended Plan of Reorganization.

October 23, 2013--Bankruptcy court confirmed AKAL's Plan and the Plan became effective on November 23, 2013.

AKAL IX Mgmt., LLC v. City of McKinney, 05-15-01242-CV, 2016 WL 3902734, at *1 (Tex. App.—Dallas July 14, 2016, no pet.)



AKAL IX Management v. McKinney

December 2014—McKinney filed suit against AKAL seeking to recover unpaid hotel taxes from June 1, 2013 through November 25, 2013 (the post–petition, pre–confirmation taxes) and taxes due after November 25, 2013 (the post–bankruptcy taxes). AKAL responded claiming McKinney’s claim for post-petition, pre-confirmation taxes was discharged in bankruptcy.

July 2015 — TC granted McKinney’s MPSJ and ordered McKinney recover \$87,776.59 for unpaid hotel occupancy tax, applicable penalties, and audit fees for June 1, 2013, through April 30, 2015, plus reasonable attorney’s fees and hotel occupancy tax and penalties owing after April 30, 2015, the amount of which would be determined by the trier of fact.

September 2015 — TC entered a final judgment incorporating its grant of the City’s motion for partial summary judgment and the parties’ stipulation to unpaid hotel occupancy tax and penalties in the amount of \$11,296.16 accruing after April 30, 2015, and to reasonable attorney’s fees in the amount of \$33,596.90. In addition, the trial court conditionally awarded appellate attorney fees. AKAL appealed.

AKAL IX Mgmt., LLC v. City of McKinney, 05-15-01242-CV, 2016 WL 3902734, at *1–2 (Tex. App.—Dallas July 14, 2016, no pet.)

AKAL IX Management v. McKinney

AKAL argues the City failed to assert its post-petition, pre-confirmation claim in the bankruptcy proceeding and therefore the claim was not allowed under the Plan and was discharged by confirmation of the Plan.

The City's claim for post-petition, pre-confirmation taxes and penalties related to a tax, which is an allowed administrative expense under the Code. No proof of claim or request for payment was required as a condition of the City's claim being an allowed administrative expense.

AKLA also argues the City's post-petition, pre-confirmation claim for taxes and penalties was discharged by the confirmation of its Plan.

Because the City's claim for post-petition, pre-confirmation taxes, penalties, and audit fees was an allowed administrative expense under both the Code and the Plan, it was not discharged in AKAL's bankruptcy proceeding.

AKAL IX Mgmt., LLC v. City of McKinney, 05-15-01242-CV, 2016 WL 3902734, at *3 (Tex. App.—Dallas July 14, 2016, no pet.)

**Consult your
local counsel!**



The End



DNRB_Z

Denton Navarro Rocha Bernal & Zech, P.C.
attorneys & counselors at law • rampagelaw.com

CHAPTER 54
WHERE ARE YOU?
BIG HAMMER

CHAPTER 54

- The authority for a municipality to enforce an ordinance through civil litigation in district court is found in Section 54.012 of the Texas Local Government Code.

CHAPTER 54 RELIEF

- Chapter 54 of the Texas Local Government Code allows for temporary (emergency) relief as well as permanent (long term) relief where the court either prohibits an owner from maintaining their property in violation of the City's ordinances or requires them to take certain affirmative action to bring their property into compliance with the City's ordinances.

TYPES OF ORDINANCE FOR ENFORCEMENT

- The types of ordinances that can be enforced in district court include:
-
- Public health and safety regulations relating to the construction and maintenance of buildings and other structures
- **Zoning**
- Land subdivision
- Nuisance conditions defined as accumulations of refuse, vegetation or other matter that creates breeding grounds for insects and rodents
- Interior configuration and design
- Illumination or visibility of business premises that provide sexual stimulation (commonly referred to as sexually oriented businesses)



Board of Adjustments

An exploration of the board of adjustment's role in municipal government, its authority and its rules of operation

Authority - Generally

- Pursuant to Texas Local Government Code Sec. 211.009 a board of adjustment may:
 - hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of TLGC chapter 211 subchapter A or an ordinance adopted under chapter 211; and
 - hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so; and
 - authorize in specific cases a variance from the terms of a zoning ordinance; and
 - hear and decide other matters authorized by an ordinance adopted under this subchapter

Authority - Hear and Decide Appeals

- The appeal must be related to a decision enforcing a zoning related determination; and
- The appeal must be made from the decision of an city administrative officer in the enforcement of a zoning related decision.
 - A zoning related decision is a decision on the meaning or application of a regulation contained in, or adopted pursuant to Texas Local Government Code chapter 211, subchapter A.
- To prevail on an appeal the applicant must prove by a preponderance of the evidence that the decision of the administrative official was in error.
- Based on its findings the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination.

Power to Authorize Variances

- The statute provides the Board may authorize, in specific cases, a variance from zoning regulations if:
 - the variance is not contrary to the public interest;
 - due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship; and
 - by granting the variance the spirit of the ordinance is observed and substantial justice is done.

Authority to hear special exceptions

- The power to grant special exceptions must be specifically provided for in the ordinance.
- Difference between special exception and variance:
'special exceptions' are uses permitted expressly by the ordinance, under conditions there specified, while 'variances' are defined as suspensions of a literal enforcement of the ordinance. Thus the difference is said to be that a 'variance' is a permission to use land in a manner forbidden by the ordinance, while the 'special exception' allows the landowner to use his land in a manner specifically provided in the ordinance. Apparently, then, any specified type of use which is to be allowed under certain conditions by the Board of Adjustment is a 'special exception' as distinguished from a 'variance.'

W. Texas Water Refiners, Inc. v. S & B Beverage Co., Inc., 915 S.W.2d 623, 627 (Tex. App.—El Paso 1996, no writ)

Board of Adjustment Procedures

Composition of the Board

- The board consist of at least five members.
 - City Council may authorize each of its members and the mayor to appoint one member of the board.
 - A general law type A city' council may act as a board of adjustment.
- Board members serve two year terms
- By ordinance or charter two alternate appointees may sit in the absence of a appointed member of the board.
- If the board consist of five member at least four must be present for there to be a quorum of the board.
- The board may neither reverse an administrative decision; nor grant a variance without the affirmative vote of at least 75 percent of its members.

Removal of a Board Member

- A member may only be removed for cause, on a written charge after a public hearing.

Board of Adjustments Procedures continued . . .

- Rules. The board by majority vote shall adopt rules
 - Adopted rules must be consistent with enabling ordinance
 - Effective September 1, 2019, the rules must be approved by City Council.
- Meetings. Meetings are held as called by the presiding officer or at other times as determined by the board.
 - All meeting of the board shall be open to the public.
- Administration of oaths. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses.
- Minutes. The board shall keep minutes of its proceedings
 - Record vote of each member on each question or the fact that a member is absent or fails to vote.
 - The board shall keep records of its examinations and other official actions.

Board of Adjustments Procedures Continued...

- Who may appeal an administrative decision? (effective Sept. 1, 2019)
 - A decision not related to a specific, application, address or project:
 - A person aggrieved by the decision; or
 - Any officer, department, board or bureau of the City affected by the decision.
 - A decision related to a specific, application, address or project:
 - A person who filed the application that is the subject of the decision;
 - The owner of the property subject of the decision; or
 - An aggrieved person who owns property within 200 feet of the property that is the subject of the decision.
 - A member of the governing body who served on the board of adjustment may not bring an appeal.

When must an appeal be made? (effective Sept. 1, 2019)

- Not later than
- Who may request a variance from a zoning regulation?
 - The owner of the real property.
- Who may request a special exception?
 - The owner of the real property.

Board of Adjustments Procedures Continued...

Appeals of administrative decisions

- The appellant must file the appeal with the Board, effective September 1, 2019, not later than the 20th day after the decision is made.
- Upon receipt of the appeal, the official from whom the appeal is taken shall immediately transmit to the board all of the papers constituting the record of the action that is appealed.
- The appeal stays all proceedings unless the official certifies such stay would cause immanent peril to life or property.
- The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties of interest.
- The board shall decide the appeal at the next meeting of which notice can be provided following the appeal and not later than the 60th day after the date the appeal is filed. Effective 09-01-19
- A party may appear at the appeal hearing or by agent or attorney.
- The board shall decide the appeal within a reasonable time.


Board of Adjustments Procedures Continued...

Variations.

- The statute does not set out procedures for the Board to hear variance requests.
- In formulating rules for hearing variance requests the Board may wish to consider:
 - Requiring the applicant to submit a written request: describing the property; describing the section of the code for which the variance is sought; describing the extent of the variance sought; and addressing each of the hardships the board is required to find before authorizing a variance.

Board of Adjustments Procedures Continued...

Establishment of Board Rules of Procedures

- Setting a deadline for an applicant to submit an appeal after an administrative appeal is rendered
 - Establishing written applications for appeals and request for variance; that require the applicant to clearly articulate the basis for the appeal or variance request; and consider limiting testimony to matters presented in the application
 - Setting time limits for the Applicant's argument, staff's response and applicant's rebuttal
 - Setting procedures for citizen input
 - Adopt rules for appointment of officers (i.e. chairperson, vice chairperson)
 - Adopt rules for making findings of facts in each case
- 

Judicial Review

- How to request judicial review.
 - Present a verified petition to the county court, county court at law or district court;
 - State in the petition the decision of the board is illegal in whole or in part; and
 - specify the grounds of the illegality.
- Who can request judicial review.
 - A person aggrieved by a decision of the board;
 - A taxpayer
 - An officer, department, board or bureau of the municipality.

Judicial Review continued

- When must the petition be presented.
 - Within 10 days after the date the decision is filed in the board's office.
 - The 10 day clock starts when the board Approves its minutes, files them in its office, and posts them online for public access. E. Cent. Indep. Sch. Dist. v. Bd. of Adjustment for City of San Antonio, 387 S.W.3d 754, 761 (Tex. App.—El Paso 2012, pet. denied)

Judicial Review continued

- Writ of certiorari
 - A writ of certiorari orders a lower court to deliver its record in a case so that the higher court may review it.
 - Upon presentation of the petition the court may grant a writ of certiorari directed at the board. The writ must indicate
 - The time by which the board's return must be made and served on the petitioner (must be after 10 days and may be extended by the court).
- The board's return.
 - Must be verified;
 - Must concisely state any pertinent and material facts that show the grounds of the decision under appeal.
 - Must include sworn or certified copies of documents as required by writ.

Judicial Review Continued...

- The hearing
 - The court decides if a hearing is necessary
 - May take evidence
 - May appoint a referee
 - Referee shall make a report of his or her findings of fact and conclusion of law, which shall constitute part of the court's proceedings.
- The hearing
 - Court may reverse or affirm, in whole or part, or may modify a decision of the Board.
 - Costs may not be assessed against the board unless the court determines the board acted with gross negligence, in bad faith or with malice in making its decision.

Conflicts issues

- Can the office of the city attorney represent the city and the board?
 - Texas disciplinary rules of professional conduct rule 1.06
 - A lawyer shall not represent opposing parties to the same litigation.
 - A lawyer shall not represent a person if the representation of that person:
 - involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or (2)
 - reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

Questions?

Habib H. Erkan Jr.


Habib.erkan@rampage-sa.com

Denton Navarro Rocha Bernal & Zech, P.C.

2517 N. Main

San Antonio, TX 78212

(210) 227-3243



SHOP AROUND SUCCESSFUL PROCUREMENT ISN'T A MIRACLE

T. Daniel Santee, Partner

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

Julie Gohlke, Purchasing and Asset Manager

City of Schertz



WHAT IS IT EXACTLY

YOU DO IN PROCUREMENT?

memegenerator.com

Speaker Credentials

- ▶ Julie Gohlke is Purchasing & Asset Manager for the City of Schertz, Texas where she and her team manage end to end procurements as well as daily activities related to purchasing tools, training, processes and solutions - this includes purchasing compliance activities, contract management, audit activities, and continuous improvement activities.
- ▶ Before working for City of Schertz, Julie spent nearly ten years with the University of Texas at San Antonio doing state procurement and has experience with federal and private sector procurement as well giving her more than twenty years of purchasing experience.
- ▶ Dan is the self-appointed Black Friday and Prime Day shopper for the Santee family. Before the internet, Dan was an avid couponer specializing in BOGO and bundling.
- ▶ Dan has also represented cities and advised them on procurement legal issues for over twenty years.

Definition according to the majority (Wikipedia)

- ▶ Procurement is the act of acquiring, buying goods, services or works from an external source, often via a tendering or bid process. It is favorable that the goods, services or works are appropriate and that they are procured at the best possible cost to meet the needs of the acquirer in terms of quality and quantity, time, and location.
- ▶ Government procurement, or public procurement, is the procurement of goods, services or constructions on behalf of a public authority, such as a government agency. With 10 to 20% of GDP, government procurement accounts for a substantial part of the global economy.



If we always bought lowest price in our lives...



The usual starting point

- ▶ Local Government Code Chapter 252: Purchasing and Contracting Authority of Municipalities
- ▶ Sec. 252.002. Municipal Charter controls in case of conflict
- ▶ Applies generally to an expenditure exceeding \$50,000.00
 - ▶ **Competitively bid;**
 - ▶ **Use the reverse auction procedure (2155.62 Government Code); or**
 - ▶ **Comply with Subchapter H, Chapter 271**

WHAT Can I Buy



- ▶ Typical Friday afternoon telephone call scenarios from our work life:
 - ▶ “Hey, just letting you know that our favorite widget broke so we are going to buy another one from that same vendor, thanks!”
 - ▶ “I know a guy, who knows a guy that said if we go through him directly to acquire the widget it will be cheaper and faster for everyone and nobody needs to know.”
 - ▶ “You will be proud of me, I found the same widget on BuyBoard so I am going to order it.”
 - ▶ “Just verifying that the Council/Commission/Board doesn’t need to approve my widget purchase I already completed, right?”
 - ▶ “If this widget is not available anymore, can I just hire a widget designer to make me one?”
 - ▶ “I want to order the replacement widget plus some extra widgets just in case the main widget breaks again...but I will order them at different times so we don’t have to do all this approval stuff...we cool?”
 - ▶ “Just so you know I broke and replaced a widget, was there a process I was supposed to follow? They said I should call and ask.”

Our favorite widget broke so we are going to buy another one from that same vendor.

- ▶ Scenario 1 questions that might need to be answered:
 - ▶ What kind of widget did you break?
 - ▶ Is it solely a good or will it be services that include a good
 - ▶ How much does it cost to replace this widget?
 - ▶ Where the cost falls may determine the process
 - ▶ Do you have funds identified in your budget to replace this widget?
 - ▶ This seems obvious...but it isn't
 - ▶ Is this widget readily available from multiple vendors or manufacturers?
 - ▶ If it isn't a sole source procurement, the same vendor might not be possible
 - ▶ Does this widget replacement constitute an emergency?
 - ▶ If it does, then it is far more likely it can be purchased immediately
 - ▶ Does the replacement of the widget require an engineer?
 - ▶ Let's just pray that it NEVER requires an engineer and leave it at that



I know a guy, who knows a guy...

- ▶ Scenario 2 questions that might need to be answered:
 - ▶ Has your guy been vetted as a vendor with the entity?
 - ▶ Has your guy been vetted and approved via BuyBoard or similar?
 - ▶ Can your guy explain why using him would be cheaper and faster?



I found the same widget on BuyBoard so I am going to order it

- ▶ Scenario 3 questions that might need to be answered:
 - ▶ Has our entity submitted the paperwork necessary to access BuyBoard, or similar?
 - ▶ Do you have the funds available in your budget?
 - ▶ Have you verified the specifications?

Online Shopping

What we order



What we receive



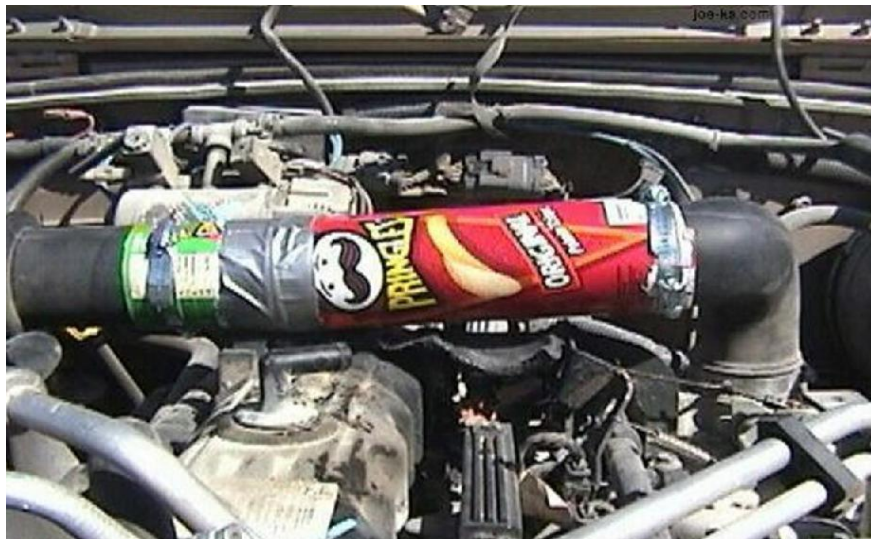
The Council/Commission/Board doesn't need to approve my widget purchase I already completed...right?

- ▶ Scenario 4 question that might need to be answered:
 - ▶ What does your Charter say? (For Home Rule Municipalities)
 - ▶ Does the widget require a bid award?
 - ▶ Does the widget require an RFP or RFQ?
 - ▶ Does the widget require a budget amendment?
 - ▶ Does the widget fall below the threshold in your governing statute that requires approval?
 - ▶ Does the widget fall below the threshold in your local regulations?



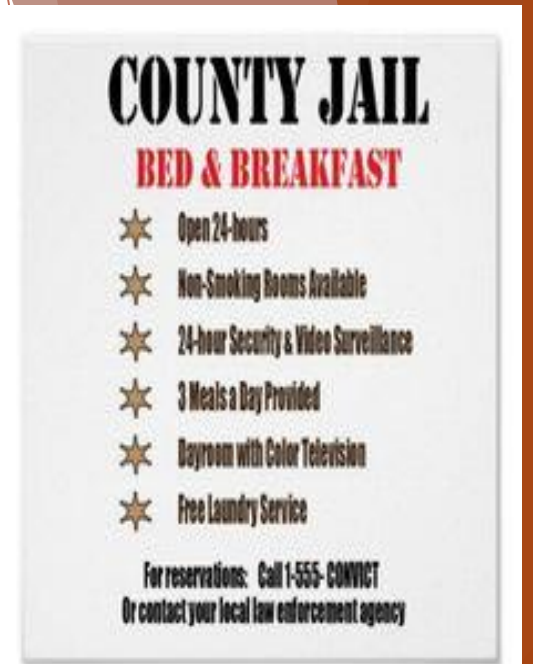
If this widget is not available anymore, can I hire a widget designer to make one?

- ▶ Scenario 5 question that might need to be answered:
 - ▶ Would this then be a professional services contract?
 - ▶ Do you need to go through an RFQ process to select your widget designer?



I want to order multiple widgets but I will order them at different times so I don't have mess with all the nonsense

- ▶ Once received sequential purchasing question related to breaking a lighting contract into two components to keep each under 50k.
- ▶ They were serious...because they believed it would far too much trouble to actually have specifications created by a qualified professional so it could be bid.
- ▶ It is only for the airport so how critical can lighting be????
- ▶ The answer is no, just no...more accurately...you should not do that if you do not want to risk going to jail. LGC 252.062



I broke and replaced an expensive widget,
was there a process I was supposed to follow?



Bonus Round: Legislative Update

- ▶ **HB 793(P. King/Creighton) - Boycotting Israel:** modifies the provisions of H.B. 89 (2017) - which provides that neither a state agency nor a political subdivision may enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract - by providing that: (1) “company” does not include a sole proprietorship; and (2) the law applies only to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees; and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (Effective immediately.) . Government Code Section 2270.002

Bonus Round: Legislative Update

- ▶ **HB 985 (Parker/Hancock) - State-Funded Public Works Contracts:** provides that: (1) a governmental entity, including a city, awarding a public work contract funded with state money, including the issuance of debt guaranteed by the state, may not: (a) prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or (b) discriminate against a person described by (1) based on the person's involvement in the agreement, including the person's: (i) status or lack of status as a party to the agreement; or (ii) willingness or refusal to enter into the agreement; and (2) the bill may not be construed to: (a) prohibit activity protected by the National Labor Relations Act, including entering into an agreement with a collective bargaining organization relating to the project; or (b) permit conduct prohibited under the National Labor Relations Act. (Effective September 1, 2019.) Government Code Section 2269.0541

Bonus Round: Legislative Update

- ▶ **HB 1999 (Leach/Creighton) - Construction Liability Claims**
- ▶ Subtitle F, Title 10, Government Code, is amended by adding Chapter 2272
- ▶ applies only to a claim:
 - ▶ (1) for:
 - ▶ (A) damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work; or
 - ▶ (B) indemnity or contribution for damages described by Paragraph (A);
 - ▶ (2) asserted by a governmental entity with an interest in the public building or public work affected by the alleged construction defect; and
 - ▶ (3) asserted against a contractor, subcontractor, supplier, or design professional.

Bonus Round: Legislative Update

- ▶ **SB 1928 (Fallon/Krause) - Professional Services:** this bill: (1) defines “claimant” to mean a party, including a plaintiff or third-party plaintiff, seeking recovery for damages, contribution, or indemnification; (2) provides that, in any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, a claimant shall be required to file with the complaint an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who: (a) is competent to testify; (b) holds the same professional license or registration as the defendant; and (c) practices in the area of practice of the defendant and offers testimony based on the person’s knowledge, skill, experience, education, training, and practice; and (3) provides for certain exceptions to (2). (Effective immediately.)
CPRC 150.001

Bonus Round: Legislative Update

- ▶ **HB 2868 (Phelan) - Interior Design Services:** adds to the Professional Procurement Services Act services provided by a person lawfully engaged in interior design, regardless of whether such person is a registered interior designer under state law, with the result that a city must procure the services based on qualifications. (Effective September 1, 2019.) Government Code Section 2254.002(2)

QUESTIONS?

(SAVE THE HARD ONES FOR STUMP THE GAMBLER)

T. Daniel Santee, Partner

DENTON NAVARRO ROCHA BERNAL & ZECH P.C.

2517 N. Main Avenue

San Antonio, Texas 78212

(210) 227-3243

daniel.santee@rampage-sa.com

Julie Gohlke, M.A., CTPM

Purchasing and Asset Manager, City of Schertz

1400 Schertz Parkway

Schertz, Texas 78154

(210) 619-1163

jgohlke@Schertz.com



LAWYERS, GUNS AND MONEY – LIMITING YOUR LIABILITY

PATRICK BERNAL

1. Liability of City versus employee

a. Employee liability may not be covered by insurance or ordinance

b. Who is most vulnerable to liability?

1. First Responders
2. Police officers
3. Code enforcement officers
4. Medical service providers



OTHER CITY EMPLOYEES

1. What are your protections?
 - a. Course and scope of employment = insured
 - b. Beware of Ultra Vires

2. Doing your job: can I be personally liable?

- Four Square
- Civil v. Criminal
- State v. Federal laws



DIFFERENCES BETWEEN CIVIL AND CRIMINAL

CIVIL



1. Money, money, money

1. Prosecution

2. fines

3. Jail

4. No attorney client relationship with City Attorney!



CRIMINAL

Civil state law defenses

1. Official Immunity
2. Using discretion in the course and scope of employment in good faith



Civil federal law defenses

1. Qualified Immunity
2. Did you violate a clearly established law?
3. If so, was your conduct objectively reasonable ?



EXAMPLE

1. Supervisor greets with hugs and kisses on the cheek and rubs shoulders and necks.
2. Employee that cringes but didn't file a complaint is later fired for reasons that she disagrees with.
3. Supervisor played a role in causing the employee to be fired.
4. Employee files with EEOC and TWC
5. Sues City for hostile work environment and supervisor for assault

Four Square analysis – You're the Supervisor

1. Civil or Criminal?

2. For the criminal part, can you seek legal advice from the city attorney protected by the a/c privilege?

3. State or Federal?





HOW TO AVOID LIABILITY