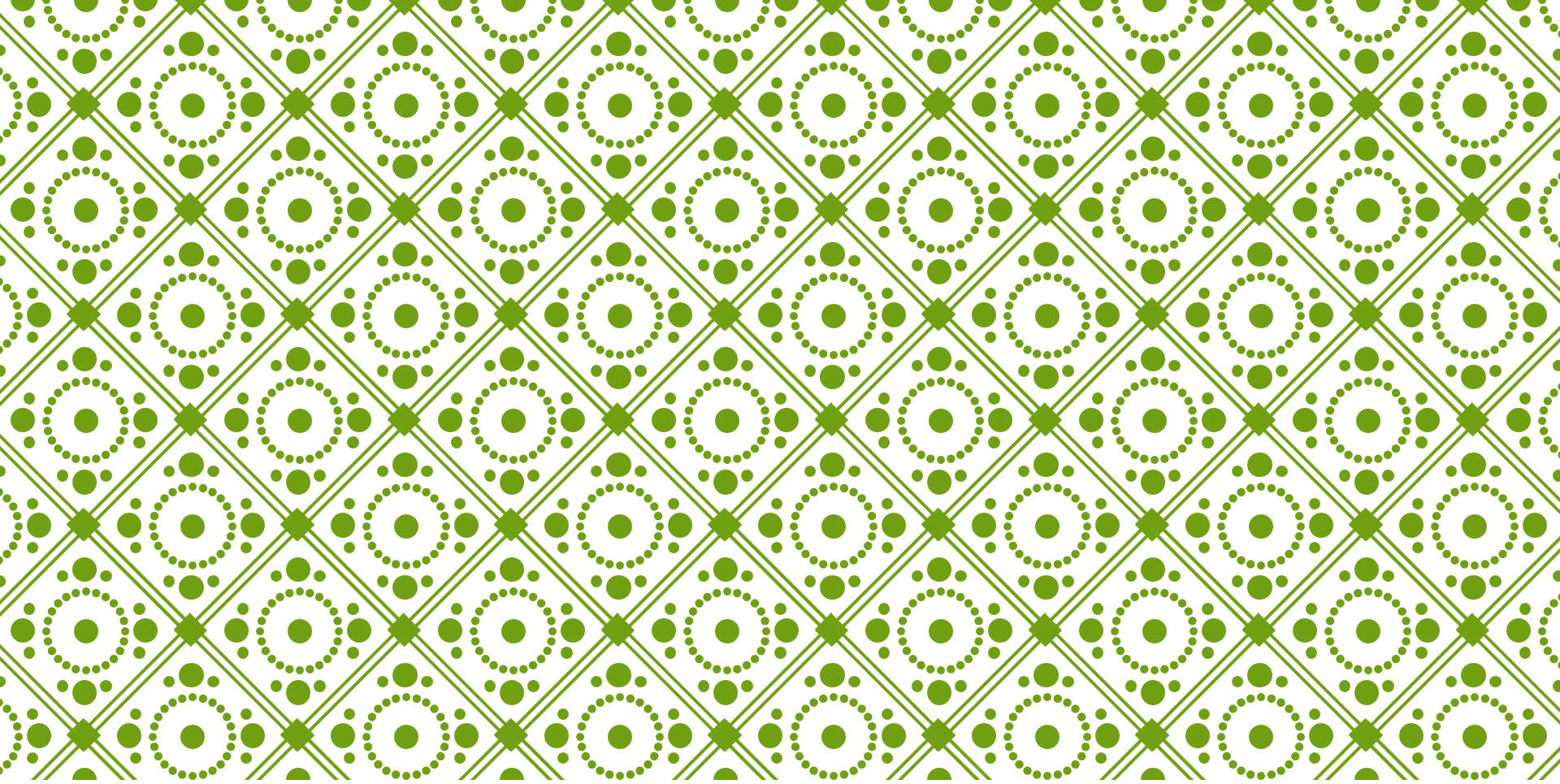


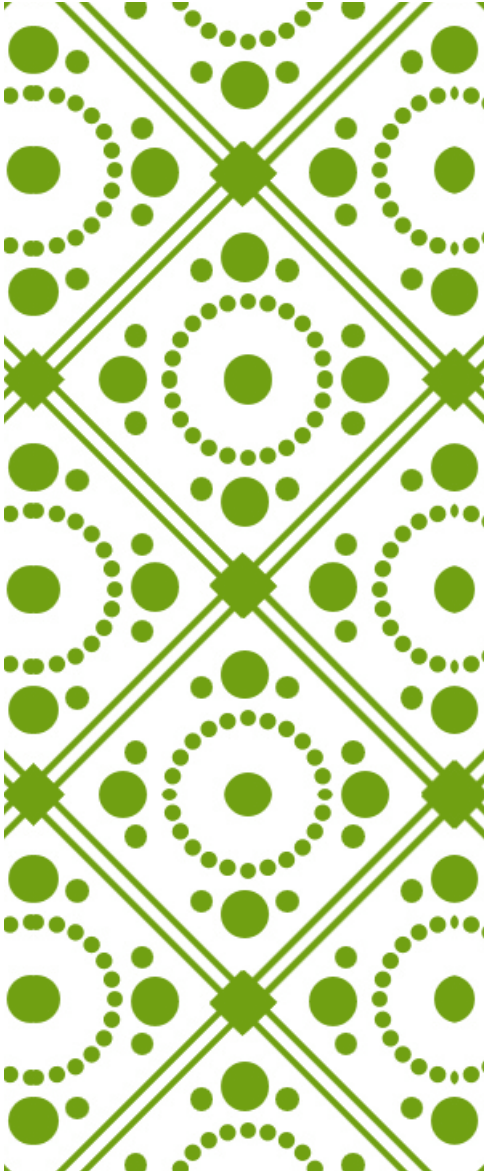


**CYNTHIA X. TREVINO** IS AN ASSOCIATE. MRS. TREVINO EARNED HER BACHELOR OF ARTS DEGREE IN PSYCHOLOGY FROM TEXAS A&M UNIVERSITY AT SAN ANTONIO IN 2009, AND HER JURIS DOCTOR FROM ST. MARY'S UNIVERSITY SCHOOL OF LAW IN 2013. SHE WAS ADMITTED TO THE STATE BAR OF TEXAS IN 2013. SHE HAS 10 YEARS OF LEGAL EXPERIENCE, 6 YEARS OF MUNICIPAL LEGAL EXPERIENCE AND 8 YEARS OF ECONOMIC DEVELOPMENT LEGAL EXPERIENCE. SHE IS EXPERIENCED IN LOCAL GOVERNMENT AND MUNICIPAL LAW, TEXAS PUBLIC INFORMATION ACT, OPEN MEETINGS ACT, ORDINANCE AND RESOLUTIONS DRAFTING, AND MUNICIPAL PROSECUTION, WITH EXPERTISE IN LAND USE, EMINENT DOMAIN, ECONOMIC DEVELOPMENT, ANNEXATION, AND REAL ESTATE TRANSACTIONS. MS. TREVINO IS ADMITTED TO PRACTICE BEFORE THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS.



# **FROM COMPLAINT TO PROSECUTION**

**CYNTHIA TREVINO**  
**DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.**



# CRIMINAL JURISDICTION

MUNICIPAL COURTS HAVE EXCLUSIVE ORIGINAL JURISDICTION WITHIN THE CITY'S TERRITORIAL LIMITS IN ALL CRIMINAL CASES THAT ARISE UNDER THE CITY'S ORDINANCES.

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TEXAS CODE OF CRIM. PRO., ART. 4.14; SEE ALSO TEX. GOV'T CODE, § 29.003

# MUNI COURT BASICS

- Fine only
- \$2,000.00 in all cases arising under municipal ordinances governing zoning regulations
- Ordinance usually stipulates maximum fine amount
- City Council normally allows Judge discretion on the imposition of fine amount

# MUNI COURT BASICS

- City Charter may not increase maximum fine amount
- Special provisions for imposition of maximum fine amount for Type B general law cities. See Tex. Local Gov't Code, § 54.002
- Section 211.012(b) does authorize imprisonment however municipal court cannot impose.

# MUNI COURT BASICS — CULPABLE MENTAL STATE

- Culpable mental state (knowingly, intentionally, recklessly, criminal negligence)
- Culpable mental state - required for cases with fines over \$500

# CAN THE CULPABLE MENTAL STATE BE WAIVED?

- Waiver language no longer compliant with state law
- See Texas Penal Code 6.02(f)  
“An offense defined by municipal ordinance ... may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23 [Penal Code] (i.e., \$500).”

# CAN THE CULPABLE MENTAL STATE BE WAIVED?

- What if the zoning ordinance imposes \$500 maximum fine?
- Is proof of culpable mental state still required?
- Yes, probably. Prosecutors have differing opinions on this matter.
- See *Aguirre v. State*, 22 S.W.3d 463, 473 (Tex. Crim. App. 1999); *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 538 (5th Cir. Tex. 2008).



# MUNI COURT BASICS - BURDEN OF PROOF

- Common Myth for Code Cases – lesser standard of proof exists.
- The Standard: Beyond a reasonable doubt
- Every element of the alleged crime must be proved

# MUNI COURT BASICS – THE COMPLAINT

- **STATUTORY BEGINNING AND ENDING**

“In the name and by the authority of the State of Texas” “Against the peace and dignity of the State or Contrary to the Ordinance of the City”

- **ELEMENTS OF OFFENSE**

“Owner/Occupant; specified zone; action/violation; section of code”

\*\*notice may be an element – check the code\*\*

- **LOCATION OF OFFENSE**

- “within the corporate limits of the City”

- **CULPABLE MENTAL STATE**

“did then and there intentionally, knowingly”

# MUNI COURT BASICS – THE COMPLAINT

- **MANNER AND MEANS OF OFFENSE**

“without a permit” “operation of commercial business in residential zone” “number or type of animal”

- **DATE OF OFFENSE**

“statute of limitation – must be within 2 years of offense”

- **SWORN AND SIGNED**

“Code Officer signs and affirms”

- **COURT SEAL**

# THINGS TO CONSIDER BEFORE FILING A CRIMINAL CASE

- Who is complaining and why
- Evaluate the facts
- Verify the zone and the alleged violation
- Determine if filing a criminal complaint will make an impact?
- Will it get the desired result?

# PRACTICE TIPS

- Compliance is the goal
- Get everyone on the same page
- City Legal Team & City Staff develop a plan
- Explain Code Officers Role – will be a witness, will need to monitor case for compliance
- Reminder - Verify the zone and alleged offense

# PRACTICE TIPS

- Did I mention - Verify the zone and alleged offense
- Verify the property owner
- Individual or corporate defendant
- Evidence, evidence, evidence

READY, SET,  
GO

- Issue citation
- File at-large complaint
- Defendant appears in court and enters a plea
- Guilty/Not Guilty/No Contest

\*\*Remember citations are issued in lieu of arrest. See Crim. Proc. Code Ann. § 14.06.

## THINGS TO CONSIDER

- Defendant pleads and pays the fine. Case closed.
- Compliance is not gained.



## THINGS TO CONSIDER

- Gain compliance without protracted civil litigation
- Each day a violation exists is a separate violation
- May result in a criminal conviction which frequently gains defendant's attention
- Provides an alternate means of enforcement
- May be a good way to prime a civil action

# QUESTIONS

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