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Legal Q&A

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What is a “citation”?

A citation is given in lieu of arrest by a peace officer. TEX. CODE CRIM. PRO. Art. 14.06(b); TEX. TRANSP. CODE §§ 543.002-543.005. When an alleged offender signs a citation, he or she has agreed to appear in court on the date listed on the citation. TEX. TRANSP. CODE § 543.005. If the person fails to appear in court on that day, a warrant may be issued for his or her arrest. In the case of a Class C misdemeanor, the warrant is issued for failure to appear. TEX. PENAL CODE § 38.10.

Who may issue a citation?

Since a citation is issued in lieu of an arrest, the most common interpretation is that only a peace officer certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is authorized by statute to issue a true citation. Peace officers are granted the power to issue citations in lieu of arrest by Texas Code of Criminal Procedure Article 14.06(b) and Texas Transportation Code Sections 543.002-543.005. Thus, the most conservative advice is that no one but a certified peace officer may issue a citation compelling an individual to appear in court on a certain day. That advice holds true for a violation of either state law or a city ordinance.

The TML Legal Services Department gives only the most conservative advice. In this case, that advice is to allow only TCLEOSE-certified peace officers to issue citations. However, city officials should be aware that an argument can be made that Texas Local Government Code Chapter 51 allows for the designation by ordinance of code enforcement officers, animal control officers, or other designated city employees to issue citations for code violations. On this matter, as with others, TML attorneys defer to the advice of local legal counsel.

What non-citation enforcement options are available to enforce city ordinance violations?

Many cities give certain employees, including code enforcement officers and animal control officers, the power to issue a “notice of violation” on behalf of the city in cases where there is an alleged ordinance violation. The notice usually includes information such as: (1) the text of the ordinance being violated; (2) the conduct that violates the ordinance; and (3) how to come into compliance. The notice serves as a warning to the alleged violator, letting him know that he is in violation of the ordinance. Typically, it also provides for a period of time in which he may rectify the situation. In addition, a notice of violation will often include a warning that, if the situation is not brought into code compliance within a certain period of time, a complaint will be filed in municipal court.

What is a “complaint”?

A complaint is a sworn allegation charging the accused with the commission of an offense under either a state law or a city’s ordinance. Subsequent to receiving a sworn complaint regarding an ordinance violation, the court may issue a summons requiring the alleged violator to appear before the court. TEX. CODE OF CRIM. PROC. Arts. 45.014(a) and 15.03(a). If the alleged violator does not appear on the date listed in the summons, a warrant may be issued for his arrest. TEX. CODE OF CRIM. PROC. Art. 45.026.

Who may file a complaint in municipal court?

As a general rule, anyone may file a complaint in municipal court alleging a violation of a state law or a city ordinance. TEX. CODE OF CRIM. PROC. Art. 21.011. Under Texas Code of Criminal Procedure Article 45.019, in order to be acted on by the court, a complaint must be sworn to by an “affiant.” An affiant is any credible person who is acquainted with the facts of the alleged offense. The complaint may be sworn before any officer authorized to give oaths. TEX. CODE OF CRIM. PROC. Article 45.019.

Is a city required to have a code enforcement officer?

No. Under Texas Occupations Code Section 1952.003, a city may engage in code enforcement activities without employing a registered code enforcement officer. Under the broad ordinance enforcement powers granted in Texas Local Government Code Section 54.001, cities may designate individuals to issue notices of violation and subsequently make complaints before the municipal court. Some cities call these individuals “code enforcement officials.”

Who may use the title of “code enforcement officer”?

In order to be called a “code enforcement officer,” an individual must be registered under Texas Occupations Code Chapter 1952. TEX. OCC. CODE § 1952.101. The code enforcement officer certification program is administered by the Texas Department of State Health Services (DSHS). Requirements to register as a code enforcement officer include at least one year of full-time code enforcement experience, passing an examination administered by the DSHS, and taking continuing education classes after registration. TEX. OCC. CODE § 1952.102.