

**SUBJECT:** Municipal enforcement of health and safety laws and ordinances

**COMMITTEE:** Urban Affairs — favorable, without amendment

**VOTE:** 8 ayes — Carter, Bailey, Callegari, Edwards, Ehrhardt, Hill, E. Jones, Najera  
0 nays  
1 absent — Burnam

**WITNESSES:** For — Paul Bounds, Code Enforcement Association of Texas/City of Fort Worth; Larry Casto, Texas Municipal League/City of Dallas; Becky Haskin, Fort Worth City Council; *Registered but did not testify:* Jim Campbell, City of San Antonio; Cary Grace, City of Houston; Shanna Igo, Texas Municipal League  
  
Against — None

**BACKGROUND:** Local Government Code, secs. 54.033, 54.034, 54.035, 54.038, and 54.039 outline how municipal building and safety commissions must function. Chapter 54, subchapter C deals with municipalities' quasi-judicial enforcement of health and safety ordinances. Secs. 214.001 and 214.0012 contain municipal-notice provisions regarding substandard building violations posing imminent danger to public health and safety.  
  
Transportation Code, sec. 683.075 governs municipal notices for violations relating to junked vehicles.  
  
In 1997, the 75th Legislature enacted SB 1722 by West, changing the notice provisions in Local Government Code, sec. 214.001 regarding municipal regulation of substandard housing.  
  
Government Code, sec. 552.115 makes exceptions to the confidentiality of birth and death records. Health and Safety Code, sec. 342.006 sets forth notice requirements for municipal sanitation violations.

**DIGEST:** HB 1833 would allow home-rule cities to change several existing procedures and, in some cases, adopt new ones to deal with property owners found in violation of various health and safety statutes and ordinances.

The bill would recognize personal delivery as valid service of notice for code enforcement regarding sanitation, building and safety, substandard buildings, dangerous structures and junked vehicles. It would recognize refused or unclaimed notices sent by certified mail as valid for purposes of enforcing codes against deteriorated or substandard buildings and lots posing health hazards.

The bill would require a city to exercise due diligence to determine the identity and address of a property owner or lienholder to whom the city had to issue a notice for deteriorated or substandard buildings and lots posing health hazards before taking remedial action. It would define due diligence as a search of county property records, appraisal district records, records of the secretary state if the property owner or lienholder was a business, county assumed-name records, and municipal tax and utility records.

HB 1833 would grant municipal officials access to birth and death records and indexes for purposes of enforcing state statutes or ordinances. The officer or designee would have to sign a confidentiality agreement requiring that:

- ! the information not be disclosed outside or within the office except for purposes of enforcing the statute or ordinance;
- ! the information be labeled as confidential and kept securely; and
- ! the number of copies or notes taken of the information be controlled, and all copies or notes not destroyed or returned remain confidential.

The bill would allow alternative hearing procedures, including civil fines, for property owners found in violation of health and safety and junked-vehicle ordinances. Such procedures would have to provide a hearing for the person charged with violating the ordinance and would have to provide for the period during which the period would be held, the appointment of a hearing officer, and the amount and disposition of penalties, costs, and fees.

A municipal court could enforce the order of a hearing officer to compel the attendance of a witness or the production of a document. A person who issued a citation or summons as part of such a hearing would not have to attend the hearing. A person charged with violating an ordinance who failed to appear at the hearing would be considered to admit guilt for the violation. The hearing officer would have to issue an order stating whether the person charged with the violation was liable and the amount of any penalty, cost, or fee. The order would have to be filed with the city clerk or secretary, who would have to keep the order in a separate index and file. The order could be recorded on microfilm or microfiche or by data processing techniques.

An order issued against a person charged with violating an ordinance could be enforced by filing a civil suit for collection of a penalty and by obtaining an injunction against conduct that violated the ordinance. A person found to have violated an ordinance could appeal the determination by filing a petition in municipal court within 30 days of the date the hearing officer filed the determination. An appeal would not stay enforcement and collection of the judgment unless the person posted a bond with the appropriate agency before filing the appeal.

HB 1833 would specify that a building and standards commission appointed to hear a case would have to include one more panels, each composed of at least five members, and that a majority of the panel members (rather than at least four members, as in current law) would have to hear the case. A majority vote of the members of a commission panel, rather than the vote of four members, would be necessary to take action.

The bill also would allow cities to remove dangerous structures on property acquired through public auction.

The bill would take effect September 1, 2001, and would apply to notices issued on or after that date.

**SUPPORTERS  
SAY:**

HB 1833 would address persistent problems that cities face in enforcing health and safety codes against owners of property that poses public hazards, some of which pose imminent danger. The bill would apply several remedies now in portions of the Local Government Code.

Several provisions would expedite identification and location of delinquent, concealed, absentee, or deceased property owners and their survivors, if any. Some property owners who allow apartments and lots to deteriorate merely refuse to accept certified mail. HB 1833 would apply basic standards of process service to code-violation notices by permitting personal delivery. Refused or unclaimed notices returned in the mail would be considered valid. These provisions would close a loophole allowing property owners to circumvent notice requirements, thereby prolonging public nuisances and unsafe living conditions.

Before municipalities may take unilateral remedial action against substandard or hazardous property, officials must exercise due diligence in identifying and locating property owners responsible for correcting code violations. HB 1833 would define due diligence more specifically in terms of the records that the city would have to search.

Some property owners may have died or relocated to nursing homes or other facilities, unbeknownst to tenants, relatives, or city officials. This often occurs in low-income neighborhoods. In those cases, the next of kin may have inherited or become responsible for the property at issue. Under HB 1833, city officials who have owners' names but no valid addresses for notice would have access to birth and death records and indexes. Access would be limited to identifying property owners or others whom municipalities must notify in enforcing a state statute or ordinance and would subject to strict confidentiality agreements.

Access to vital statistics maintained by cities, counties, and the state would give city officials an important new tool to locate property owners or other responsible parties. They could not go "fishing" for data in cases that did not involve notice to property owners, and they would have to have a name before searching for data. Using the information for purposes other than that delineated in the statute would subject city officials to civil liability. It also would be punishable as a third-degree felony (punishable by two to 10 years' imprisonment and a maximum \$10,000 fine) under Penal Code, sec. 39.06, prohibiting misuse of government documents that are public information.

Current law related to enforcement proceedings for health and safety code violations does not cover every possible violation. Questions have arisen

about the breadth and vagueness of the 1997 statute regarding alternative adjudication proceedings. Administrative hearings for owners of structures violating health and safety codes, including cases of imminent danger, and removal of junked vehicles would give municipalities civil remedies they do not have now, including fines, to deal with these problems. Cities would not have to resort to criminal prosecution in city courts, which are ill-suited for addressing negligence and eradicating public nuisances and hazards. Code violations would be decriminalized similar to parking tickets.

The bill would clarify the size, quorum, and voting requirements for building and standards commission panels to facilitate quorums and avoid delays.

When municipalities have exhausted attempts to contact owners of dangerous structures, they may auction them to the public for back taxes. If no one bids on the property, ownership reverts to the municipality. HB 1833 would allow officials to dispose of structures unilaterally on such so-called “bid off” property.

**OPPONENTS  
SAY:**

HB 1833 would exceed the scope of the 1997 legislation, which was justified because it dealt primarily with buildings and property posing imminent danger to the public. This bill would give city officials too much power to deal with mere nuisances.

Allowing city officials access to confidential birth and death records would raise concerns about privacy invasion and conflicts of interest. This is especially true given that many cities maintain vital statistics themselves. The language allowing access for enforcement of “a state statute or an ordinance” could create a potentially large loophole. The likelihood that a district attorney would prosecute a city official for an alleged violation of confidentiality under the Penal Code is remote, leaving few if any checks and balances on overreaching of governmental authority. More protections of private information are needed, and city officials should have to exercise due diligence or pursue other data sources first, such as deeds and other property ownership documents.

The alternative hearing mechanism would create a new layer of quasi-judicial bureaucracy for property owners to deal with. Allowing civil fines without caps could tempt some cities to try to generate new revenue through

such fines. Violators would have to incur additional expenses for legal representation and bonding to appeal to municipal court.

OTHER  
OPPONENTS  
SAY:

Using birth and death records for property-code violations should be a last resort only. City officials should have to document that they had exhausted all other options before seeking privileged information.

NOTES:

Two amendments may be proposed relating to accountability management of access to vital statistics. One would require that only mayors could sign confidentiality agreements. The other would require city officials to exhaust all other sources before seeking access to birth and death records and indexes.

The companion bill, SB 1544 by West, has been referred to the Senate Intergovernmental Relations Committee.