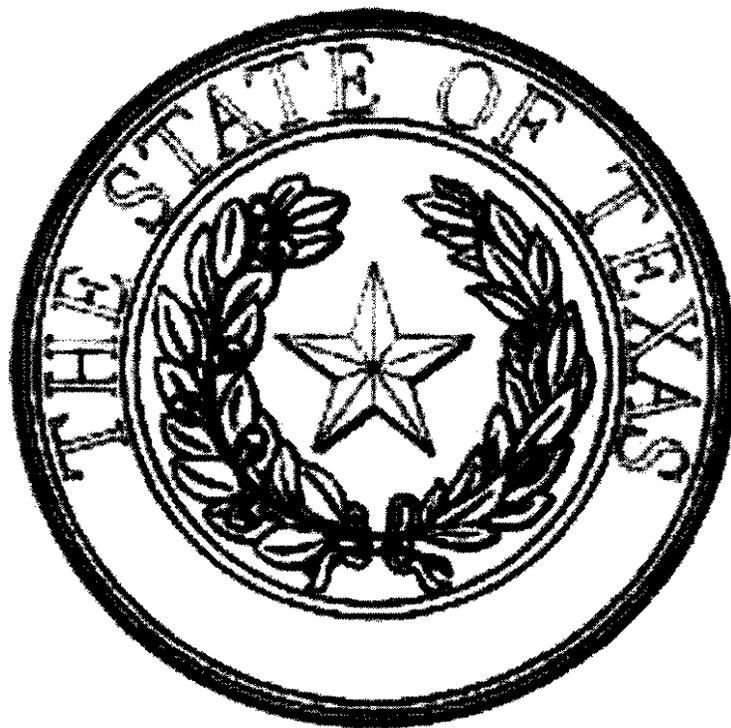


PUBLIC NUISANCE ABATEMENT POLICY

FOR

HENDERSON COUNTY



Proposal No. 2

Presented on February 5, 2004

Respectfully Submitted By: Judge David H. Holstein

PUBLIC NUISANCE ABATEMENT PROCEDURES FOR HENDERSON COUNTY

IN ACCORDANCE WITH SECTION 343.022 OF THE TEXAS HEALTH AND SAFETY CODE THE FOLLOWING PROCEDURES ARE HEREBY ADOPTED BY HENDERSON COUNTY COMMISSIONERS' COURT, TO-WIT:

- I. The remedies and procedures provided for herein are available only where a public nuisance sought to be abated has previously been the subject of criminal prosecution under Chapter 343.
- II. The public nuisance abatement procedures for Henderson County, Texas shall be administered by the Henderson County Fire Marshal.
- III. At any time the Henderson County Fire Marshal or any officer working under the authorization of the Henderson County Fire Marshal believes a public nuisance exists as defined by the Texas Health & Safety Code Chapter 343, or at any time a complaint is presented to the Henderson County Fire Marshal by a concerned individual, property owners association, or home owners association, then the Henderson County Fire Marshal or an authorized representative of the Henderson County Fire Marshal shall investigate the complaint and where appropriate provide the notices required by Chapter 343, Subchapter C, of the health and Safety Code. Any complaint filed by a concerned individual, a property owners association, or a home owners association with the Henderson County Fire Marshal shall be filed on the "Henderson County Public Nuisance Complaint Form" attached hereto as Exhibit "A".
- IV. After the Henderson County Fire Marshal has determined there exists a violation of Chapter 343 of the Texas Health And Safety Code, a written notice must be delivered to the owner, lessee, occupant, agent, or person in charge of the premises; and the person responsible for causing a public nuisance on the premises when that person is not the owner, lessee, occupant, agent, or person in charge of the premises and the person responsible can be identified. Said notice must be in the general form as the "Henderson County Public Nuisance Violation Notice" as attached hereto in Exhibit "B" and must state:
 - A. The specific condition that constitutes a nuisance;
 - B. That the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served;
 - C. That failure to abate the nuisance may result in:
 1. Abatement by the Henderson County,
 2. Assessment of costs by Henderson County to the person responsible for causing the nuisance when that person can be identified; and
 3. A lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property; and

4. That the person receiving notice is entitled to submit, before the 31st day after the date on which the notice is served, a written request delivered to the Henderson County Judge for a hearing before the Commissioners' Court.
- V. The notice given by the Henderson County Fire Department must be made as follow:
 - A. by service in person or by registered or certified mail, return receipt requested; or
 - B. if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two (2) times within ten (10) consecutive days.
 - VI. Upon a timely written request delivered to the Henderson County Judge before the 31st day after the date on which the notice is served, a hearing shall be scheduled before either the Henderson County Texas Commissioners' Court; or a designated a board, commission, or official which the Henderson County Texas Commissioners' Court may appoint, who will serve as the Commissioners' Court's authorized agent and adjudicate the hearing.
 - VII. Upon a finding the public nuisance exists, and has not been timely abated, Henderson County Commissioner's may abate the nuisance by demolition or removal; or may authorize a third party to abate the nuisance by demolition or removal and:
 - A. assess the cost of abating the public nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; of the Health and Safety Code; or
 - B. assess the cost of abating the public nuisance, the cost of legal notification, and an administrative fee of not more than \$100 against the property on which the public nuisance exists; or
 - C. accept a financial donation which can be applied towards the cost of abating the public nuisance, the cost of legal notification, and an administrative fee of not more than \$100 and waive any assessments concerning the respective public nuisance case against both the person receiving notice under Section 343.022; of the Health and Safety Code and the property on which the public nuisance exists.
 - VIII. Henderson County may not make an assessment against property unless the owner or owner's agent receives notice of the public nuisance in accordance with Section 343.022. of the Health and Safety Code.
 - IX. To obtain a lien against the property to secure an assessment, the Henderson County Texas Commissioners' Court must file a notice that contains a statement of cost, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the County Clerk of Henderson County.

- X. Henderson County lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the County Clerk before the date on which the county files the notice of lien with the County Clerk.
- XI. Henderson County is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.
- XII. The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.
- XIII. Henderson County officials, agents, or employees charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce these procedures.
- XIV. Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.
- XV. A court of competent jurisdiction in Henderson County, Texas may issue any order necessary to enforce these procedures authorized pursuant to Chapter 343 of the Health & Safety code.
- XVI. Nothing contained herein shall be construed or applied in a manner to conflict with State Law, and to the extent of any conflict between this policy and State Law, State Law will be controlling.

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Background

- In the jurisdiction of four counties and four cities in TNRCC Region Five during the 18 months between September 1997 and December 1998, litter abatement officers found 250 large dump sites (more than 100 lbs.), 496 medium sites (five to 100 lbs.), and 1,537 small sites (less than five lbs.). These officers documented that 612 of these sites were cleaned up. TNRCC Region Five covers 23 counties.
- Questionnaire responses associated with the Town Hall Meetings conducted by TNRCC during 1998 noted that the illegal disposal of waste and litter and waste along roadways and streams as one of the three environmental issues of greatest concern in the East Texas Area.

Note—Disclaimer

This handout is an accumulation of various regulations that could be used to mitigate environmental and nuisance crimes. Please refer to the appropriate actual statutes and regulations published in such places as Vernon's Statutes or the website of the Texas Legislature—this handout is not a substitute for these regulations.

Health and Safety Code CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.002. Definitions.

In this chapter:

- (1) "**Abate**" means to eliminate by removal, repair, rehabilitation, or demolition.
- (2) "**Building**" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (3) "**Garbage**" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (4) "**Neighborhood**" means:
 - (A) a platted subdivision; or
 - (B) property contiguous to and within 300 feet of a platted subdivision.
- (5) "**Platted subdivision**" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (6) "**Premises**" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.
- (7) "**Public street**" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.
- (8) "**Receptacle**" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.
- (9) "**Refuse**" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (10) "**Rubbish**" means nondecayable waste from a public or private establishment or residence.
- (11) "**Weeds**" means all rank and uncultivated vegetable growth or matter that:
 - (A) has grown to more than 36 inches in height; or
 - (B) may create an unsanitary condition or become a harborage for rodents,

vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "**Flea market**" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 2, eff. Sept. 1, 1991.

Sec. 343.003. Effect of Chapter on Other State Law.

This chapter does not affect a right, remedy, or penalty under other state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

Sec. 343.011. Public Nuisance.

- (a) This section applies only to the **unincorporated area of a county**
- (b) **A person may not cause, permit, or allow a public nuisance under this section.**
- (c) **A public nuisance is:**
 - (1) keeping, storing, or accumulating refuse on premises in a **neighborhood** unless the refuse is entirely contained in a closed receptacle;
 - (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a **neighborhood** for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
 - (3) maintaining **premises** in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
 - (4) allowing weeds to grow on premises in a **neighborhood** if the weeds are located within 300 feet of another residence or commercial establishment;
 - (5) maintaining a **building** in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;
 - (6) maintaining on abandoned and unoccupied property in a **neighborhood** a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

- (B) a cover over the entire swimming pool that cannot be removed by a child;
- (7) maintaining a **flea market** in a manner that constitutes a fire hazard;
- (8) discarding refuse or creating a hazardous visual obstruction on
 - (A) county-owned land; or
 - (B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body; or
- (9) discarding refuse on the smaller of:
 - (A) the area that spans 20 feet on each side of a utility line; or
 - (B) the actual span of the utility easement.
- (d) This section does **not apply** to:
 - (1) a site or facility that is:
 - (A) permitted and regulated by a state agency; or
 - (B) licensed or permitted under Chapter 361; or
 - (2) agricultural land.
- (e) In Subsection (d), "agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 3, eff. Sept. 1, 1991.,

Amended by Acts 1995, 74th Leg., ch. 771, Sec. 2, eff. Aug. 28, 1995. 1999, 76th Leg HB 1159

Sec. 343.0111 SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION

- (a) The commissioners court of a county by order may:
 - (1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and
 - (2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the commissioners court makes the same findings

in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Added by Acts 1995, 74th Leg., ch. 771, Sec. 3, eff. Aug. 28, 1995.

Amended by Act 1999, 76th Leg HB 1159

Sec. 343.012. Criminal Penalty.

(a) A person commits an offense if:

(1) the person violates Section 343.011(b); and

(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 4, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 771, Sec. 4, eff. Aug. 28, 1995.

Sec. 343.013. Injunction.

(a) A county or district court may by injunction prevent or restrain a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the

injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. Authority to Abate Nuisance.

A county may abate a nuisance under this chapter by demolition or removal if the county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 343.022. Abatement Procedures.

(a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.

(b) The abatement procedures must require that written notice be given to:

- (1) the owner, lessee, occupant, agent, or person in charge of the premises; and
- (2) the person responsible for causing a public nuisance on the premises when:
 - (A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and
 - (B) the person responsible can be identified.

(c) The notice must state:

- (1) the specific condition that constitutes a nuisance;
- (2) that the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served;
- (3) that failure to abate the nuisance may result in:
 - (A) abatement by the county;
 - (B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
 - (C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property; and
- (4) that the person receiving notice is entitled to submit, before the 31st day after the date on which the notice is served, a written request for a hearing.

(d) The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested;
or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) The abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 123, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 771, Sec. 5, eff. Aug. 28, 1995.

Sec. 343.023. Assessment of Costs; Lien.

(a) A county may:

(1) assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement

of costs is prima facie proof of the costs incurred to abate the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 5, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 771, Sec. 6, eff. Aug. 28, 1995.

Sec. 343.024. Authority to Enter Premises.

(a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 6, eff. Sept. 1, 1991.

Sec. 343.025. Enforcement.

A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989

Health and Safety Code CHAPTER 365. LITTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 365.001. Short Title.

This chapter may be cited as the Texas Litter Abatement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.002. Water Pollution Controlled by Water Code.

The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.003. Litter on Beaches Controlled by Natural Resources Code.

The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.004. Disposal of Garbage, Refuse, and Sewage in Certain Areas Under Control of Parks and Wildlife Department.

The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.005. Venue and Recovery of Costs.

(a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 125, eff. Sept. 1, 1991.

SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. Definitions.

In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

- (4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.
- (5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.
- (6) "Litter" means:
- (A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or
 - (B) nondecayable solid waste, except ashes, that consists of:
 - (i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;
 - (ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and
 - (iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.
- (7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.
- (8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:
- (A) is opened to the public for vehicular traffic;
 - (B) is used as a public recreational area; or
 - (C) is under the state's legislative jurisdiction through its police power.
- (9) "Solid waste" has the meaning assigned by Section 361.003.
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Health and Safety Code CHAPTER 361. SOLID WASTE DISPOSAL ACT

SUBCHAPTER A. GENERAL PROVISIONS

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

Sec. 361.003. Definitions.

- (34) This subdivision expires on delegation of the Resource Conservation

and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

- (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;
- (ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
- (iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

Amended by Acts 1993, 73rd Leg., ch. 740, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.111, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.206, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 286, Sec. 1, eff. May 26, 1997.

Sec. 365.012. Illegal Dumping; Criminal Penalties.

(a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(b) A person commits an offense if the person receives litter or other solid waste for

disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

Note that changes marked by underlines and strikeouts for paragraphs (d) through (o) are effective September 1, 2001:

(d) An offense under this section is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five [45] pounds or less or has a volume of five [43] gallons or less.

(e) An offense under this section is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five [45] pounds but less than 500 pounds or has a volume of more than five [43] gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if: (1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or (2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five [43] gallons but less than 200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies: (1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more; (2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or (3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) [(h)] On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) [(h)] The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) [(h)] This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) [(h)] This section does not apply to an individual's disposal of litter or other solid waste if: (1) the litter or waste is generated on land the individual owns; (2) the litter or waste is not generated as a result of an activity related to a commercial purpose; (3) the disposal occurs on land the individual owns; and (4) the disposal is not for a commercial purpose.

(m) [(h)] A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 740, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 828, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(28), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 286, Sec. 2, eff. May 26, 1997.

Amended by Acts 2001, 77th Leg (HB 631).

Sec. 365.013. Rules and Standards; Criminal Penalty.

(a) The Texas Natural Resource Conservation Commission shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.112, eff. Sept. 1, 1995.

Sec. 365.014. Application of Subchapter; Defenses; Presumptions.

(a) This subchapter does not apply to farmers:

(1) in handling anything necessary to grow, handle, and care for livestock; or

(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably

could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 740, Sec. 3, eff. Sept. 1, 1993.

Sec. 365.015. Injunction; Venue; Recovery of Costs.

(a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.016. Disposal of Litter in a Cave; Criminal Penalty.

(a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.017. Regulation of Litter in Certain Counties.

(a) The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

Added by Acts 1993, 73rd Leg., ch. 828, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 439, Sec. 1, eff. June 9, 1995.

SUBCHAPTER C. SPECIAL PROVISIONS

Sec. 365.031. Litter, Garbage, Refuse, and Rubbish in Lake Sabine.

The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.033. Discarding Refuse in Certain County Parks; Criminal Penalty.

(a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial

of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.034. County Regulation of Litter Near Public Highway; Criminal Penalty.

(a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway in the county;

(2) provide for the removal and disposition of litter accumulated near a public highway in violation of an order adopted under this section; and

(3) provide for the assessment against a person who owns the property from which litter is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the litter.

(b) Before the commissioners court takes any action to remove or dispose of litter under this section, the court shall send a notice by certified mail to the record owners of the property on which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the litter was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 126, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.162, eff. Sept. 1, 1991

Water Code

CHAPTER 7. ENFORCEMENT

On Site Sewage Facility Violations

Sec. 7.174. Violation of Sewage Disposal System Permit Provision.

(a) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person **before** the owner of the system obtains a **permit** to construct, alter, repair, or extend the on-site sewage disposal system as required by Subchapter D, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a **Class C misdemeanor**. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.253. Defenses Available to Person Responsible for Solid Waste Violations.**Transportation Code CHAPTER 683 Abandoned Motor Vehicles****SUBCHAPTER E. JUNKED VEHICLES: PUBLIC NUISANCE; ABATEMENT****Sec. 683.071. Definition.**

In this subchapter, "junked vehicle" means a vehicle that is self-propelled and inoperable and:

(1) does not have lawfully attached to it:

(A) an unexpired license plate; or

(B) a valid motor vehicle inspection certificate;

(2) is wrecked, dismantled or partially dismantled, or discarded; or

(3) has remained inoperable for more than 45 consecutive days.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.072. Junked Vehicle Declared to be Public Nuisance.

A junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way:

(1) is detrimental to the safety and welfare of the public;

(2) tends to reduce the value of private property;

(3) invites vandalism;

(4) creates a fire hazard;

(5) is an attractive nuisance creating a hazard to the health and safety of minors;

(6) produces urban blight adverse to the maintenance and continuing development of municipalities; and

(7) is a public nuisance.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.073. Offense.

(a) A person commits an offense if the person maintains a public nuisance described by **Section 683.072**.

(b) An offense under this section is a **misdemeanor punishable by a fine not to exceed \$200**.

(c) The court shall order abatement and removal of the nuisance on conviction.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.074. Authority to Abate Nuisance; Procedures.

(a) A municipality or county may adopt procedures that conform to this subchapter for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance.

(b) The procedures must:

(1) prohibit a vehicle from being reconstructed or made operable after removal;

(2) require a public hearing before removal of the public nuisance; and

(3) require that notice identifying the vehicle or part of the vehicle be given to the department not later than the fifth day after the date of removal.

(c) An appropriate court of the municipality or county may issue necessary orders to enforce the procedures.

(d) Procedures for abatement and removal of a public nuisance must be administered by regularly salaried, full-time employees of the municipality or county, except that any authorized person may remove the nuisance.

(e) A person authorized to administer the procedures may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

(f) On receipt of notice of removal under Subsection (b)(3), the department shall immediately cancel the certificate of title issued for the vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.075. Notice.

(a) The procedures for the abatement and removal of a public nuisance under this subchapter must provide not less than 10 days' notice of the nature of the nuisance and must be sent by certified mail with a five-day return requested to:

(1) the last known registered owner of the nuisance;

(2) each lienholder of record of the nuisance; and

(3) the owner or occupant of:

(A) the property on which the nuisance is located; or

(B) if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(b) The notice must state that:

(1) the nuisance must be abated and removed not later than the 10th day after the date on which the notice was mailed; and

(2) any request for a hearing must be made before that 10-day period expires.

(c) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered.

(d) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.076. Hearing.

(a) The governing body of the municipality or county or a board, commission, or official designated by the governing body shall conduct hearings under the procedures adopted under this subchapter.

(b) If a hearing is requested by a person for whom notice is required under Section 683.075(a)(3), the hearing shall be held not earlier than the 11th day after the date of the service of notice.

(c) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

(d) If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:

(1) description;

- (2) vehicle identification number; and
- (3) license plate number.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.077. Inapplicability of Subchapter.

(a) Procedures adopted under Section 683.074 may not apply to a vehicle or vehicle part:

- (1) that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
- (2) that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - (A) maintained in an orderly manner;
 - (B) not a health hazard; and
 - (C) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(b) In this section:

- (1) "Antique vehicle" means a passenger car or truck that is at least 35 years old.
- (2) "Motor vehicle collector" means a person who:
 - (A) owns one or more antique or special interest vehicles; and
 - (B) acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.
- (3) "Special interest vehicle" means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 683.078. Junked Vehicle Disposal.

- (a) A junked vehicle, including a part of a junked vehicle, may be removed to a scrapyard, a motor vehicle demolisher, or a suitable site operated by a municipality or county.
- (b) A municipality or county may operate a disposal site if its governing body determines that commercial disposition of junked vehicles is not available or is inadequate. A municipality or county may:
 - (1) finally dispose of a junked vehicle or vehicle part; or

(2) transfer it to another disposal site if the disposal is scrap or salvage only.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995

Water Code (not Class C)

Sec. 7.145. Intentional or Knowing Unauthorized Discharge.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with an order issued or a rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.146. Discharge From Point Source.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant from a point source in violation of Chapter 26 or of a rule, permit, or order of the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.147. Unauthorized Discharge.

(a) A person commits an offense if the person discharges or allows the discharge of any waste or pollutant into any water in the state that causes or threatens to cause water pollution unless the waste or pollutant is discharged in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section may be prosecuted without alleging or proving any culpable mental state.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(B) or Section 7.187(2)(D) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(C).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.152. Intentional or Knowing Unauthorized Discharge and Knowing Endangerment.

(a) A person commits an offense if the person, acting intentionally or knowingly, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action knowingly places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency.

(b) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(c) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(G) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(I) or both.

(d) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.153. Intentional or Knowing Unauthorized Discharge and Endangerment.

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(D) or Section 7.187(2)(F) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(E) or Section 7.187(2)(G) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(E). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(F).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.154. Reckless Unauthorized Discharge and Endangerment.

(a) A person commits an offense if the person, acting recklessly with respect to the person's conduct, discharges or allows the discharge of a waste or pollutant into or adjacent to water in the state and by that action places another person in imminent danger of death or serious bodily injury, unless the discharge is made in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(b) An offense under this section is punishable for an individual under Section 7.187(1)(C) or Section 7.187(2)(D) or both. If an offense committed by an individual under this section results in death or serious bodily injury to another person, the individual may be punished under Section 7.187(1)(D) or Section 7.187(2)(F) or both.

(c) An offense under this section is punishable for a person other than an individual under Section 7.187(1)(D). If an offense committed by a person other than an individual under this section results in death or serious bodily injury to another person, the person may be punished under Section 7.187(1)(E).

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.186. Separate Offenses.

Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.187. Penalties.

A person convicted of an offense under this subchapter is punishable by:

(1) a fine, as imposed under the section creating the offense, of:

(A) not more than \$1,000;

(B) not less than \$1,000 or more than \$50,000;

(C) not less than \$1,000 or more than \$100,000;

(D) not less than \$1,000 or more than \$250,000;

(E) not less than \$2,000 or more than \$500,000;

(F) not less than \$5,000 or more than \$1,000,000;

(G) not less than \$10,000 or more than \$1,500,000; or

(H) not more than twice the amount of the required fee;

(2) confinement for a period, as imposed by the section creating the offense, not to exceed:

(A) 30 days;

(B) 90 days;

(C) 180 days;

(D) one year;

(E) two years;

(F) five years;

(G) 10 years;

(H) 15 years;

(I) 20 years; or

(J) 30 years; or

(3) both fine and confinement, as imposed by the section creating the offense.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.188. Repeat Offenses.

If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.189. Venue.

Venue for prosecution of an alleged violation under this subchapter is in:

(1) the county in which the violation is alleged to have occurred;

(2) the county where the defendant resides;

(3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; or

(4) Travis County.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Sec. 7.190. Disposition of Fines.

A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 2, eff. Sept. 1, 1997.

Ordinary Misdemeanor Punishments

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS (Penal Code)

Sec. 12.21. Class A Misdemeanor.

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.22. Class B Misdemeanor.

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.23. Class C Misdemeanor.

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Art. 4.11. (Code of Criminal Procedure) [60] [106] [96] Jurisdiction of Justice Courts.

- (a) Justices of the peace shall have original jurisdiction in criminal cases:
- (1) punishable by fine only or punishable by:
 - (A) a fine; and
 - (B) as authorized by statute, a sanction not consisting of confinement or imprisonment; or
 - (2) arising under Chapter 106, Alcoholic Beverage Code, that do not include confinement as an authorized sanction.
- (b) The fact that a conviction in a justice court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the justice court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 449, Sec. 1, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 533, Sec. 1, eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 1013, Sec. 38, eff. Sept. 1, 1997.

Art. 4.12. [60a] Misdemeanor cases; precinct in which defendant to be tried in justice court.

A misdemeanor case to be tried in justice court shall be tried in the precinct in which the offense was committed, or in which the defendant or any of the defendants reside, or, with the written consent of the State and each defendant or his attorney, in any other precinct within the county; provided that in any misdemeanor case in which the offense was committed in a precinct where there is no qualified justice precinct court, then trial shall be had in the next adjacent precinct in the same county which may have a duly qualified justice precinct court, or in the precinct in which the defendant may reside; provided that in any such misdemeanor case, upon disqualification for any reason of all justices of the peace in the precinct where the offense was committed, such case may be tried in the next adjoining precinct in the same county, having a duly qualified justice of the peace.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 4.13. [61] [107] [97] Justice may forfeit bond.

A justice of the peace shall have the power to take forfeitures of all bonds given for the appearance of any party at his court, regardless of the amount.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Developing an Enforcement Case for the Justice Court

Jurisdiction

In criminal cases, the power of a court to hear and decide a case involving a particular offense of crime.

Where there is no jurisdiction, the court has no power to act and any action taken is void.

Jurisdiction of Justice Court

Criminal matters of misdemeanor cases punishable by fine only.

Cannot authorize punishment by imprisonment in jail.

If penalty carries fine and/or jail time . . . beyond jurisdiction of court.

Venue

Not the same definition as jurisdiction.

In a criminal case, the geographic place where a case may be tried.

Justice court has jurisdiction to try a case arising outside its precinct, but the legislature has authority to limit the venue of the court to its precinct.

Where to File (Art. 4.12 CCP)

In the precinct in which the offense was committed or in which the defendant/s reside.

With written consent of the State and each defendant or their attorney, in any of the precinct within the county.

Complaint (Art. 45.018 CCP)

A sworn allegation charging the accused with a commission of an offense.

Must be in writing.

Must commence "In the name and by the authority of the State of Texas".

Must state the name of the accused, if known.

If unknown, include a reasonable definite description of the accused.

Must show the accused committed an offense against the law of this State or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this State.

Must state the date the offense was committed.

Must bear the signature or mark of the affiant.

Must conclude with the words "Against the peace and dignity of this State".

Must allege that the offense was committed in the County in which the complaint was made.

Must be sworn to before any officer authorized to administer oaths.

Must state in plain and intelligible words the offense with which the accused is charged.

Misdemeanor case must be filed within two years from the date on which the offense was committed, excluding the day the offense was committed and the day the complaint was filed.

After two years, the offense is barred by limitation and there can be no prosecution.

The date on which the offense is alleged to have been committed may not be later than the date on which the complaint is filed.

Must allege culpable mental state

Penal Code offenses

Intentionally

Knowingly

Recklessly

Criminal Negligence

Must state that the affiant, in addition to having good reason to believe, does believe that the alleged offense has been committed (probable cause).

Must provide enough information to allow a magistrate to answer the question, "What makes you think that the defendant committed the offense charged?"

After complaint has been reduced to writing and signed and sworn to by complainant, the justice shall file it and issue a warrant for the arrest of the accused.

Summons (Art. 15.03 CCP)

Magistrate may issue a warrant of arrest or a summons.

Shall be same form as warrant, except is shall summon the defendant to appear before the magistrate at a stated time and place.

Jurisdiction of Justice Courts

Developing an Enforcement Case Author

David W. Pareya

Justice of the Peace

McLennan County

Judge Pareya is a Justice of the Peace of Precinct Three, McLennan County, in West, Texas. He has held that position for the past 21 year. As a faculty member of Southwest Texas State University's Justice Court Training Center, he has trained judges, constables and court personnel for the past 15 years. Judge Pareya is the Past President of the Justices of the Peace and Constable's Association of Texas and past Secretary/Treasurer of the Association for the past 10 years. He also serves on numerous state and count boards and committees.

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HEALTH & SAFETY CODE

CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

§ 343.002. DEFINITIONS. In this chapter:

- (1) "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.
- (2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (4) "Neighborhood" means:
 - (A) a platted subdivision; or
 - (B) property contiguous to and within 300 feet of a platted subdivision.
- (5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.
- (7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.
- (8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.
- (9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (10) "Rubbish" means nondecayable waste from a public or private establishment or residence.
- (11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height;
or

(B) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, § 2, eff. Sept. 1, 1991.

§ 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW. This chapter does not affect a right, remedy, or penalty under other state law.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

§ 343.011. PUBLIC NUISANCE. (a) This section applies only to the unincorporated area of a county.

(b) A person may not cause, permit, or allow a public nuisance under this section.

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire[0] hazard[0];

(6) maintaining on abandoned and unoccupied property

in a neighborhood a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining a flea market in a manner that constitutes a fire[0] hazard[0];

(8) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body; or

(9) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency;

or

(B) licensed or permitted under Chapter 361; or

(2) agricultural land.

(e) In Subsection (d), "agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, § 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, § 2, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 523, § 1, eff. Sept. 1, 2001.

§ 343.0111. SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION. (a) The commissioners court of a county by order may:

(1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special

conditions a literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Added by Acts 1995, 74th Leg., ch. 771, § 3, eff. Aug. 28, 1995.
Amended by Acts 1999, 76th Leg., ch. 752, § 2, eff. Sept. 1, 1999.

§ 343.012. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person violates Section 343.011(b); and
(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, § 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, § 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, § 3, eff. Sept. 1, 1999.

§ 343.013. INJUNCTION. (a) A county or district court may by injunction prevent or restrain a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

§ 343.021. AUTHORITY TO ABATE NUISANCE. A county may abate a nuisance under this chapter by demolition or removal if the county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 343.022. ABATEMENT PROCEDURES. (a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.

(b) The abatement procedures must require that written notice be given to:

(1) the owner, lessee, occupant, agent, or person in charge of the premises; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and

(B) the person responsible can be identified.

(c) The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served;

(3) that failure to abate the nuisance may result in:

(A) abatement by the county;

(B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

(C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property; and

(4) that the person receiving notice is entitled to submit, before the 31st day after the date on which the notice is served, a written request for a hearing.

(d) The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) The abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners

court. The commissioners court may designate a board, commission, or official to conduct each hearing.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, § 123, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, § 5, eff. Aug. 28, 1995.

§ 343.023. ASSESSMENT OF COSTS; LIEN. (a) A county may:

(1) assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, § 5, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, § 6, eff. Aug. 28, 1995.

§ 343.024. AUTHORITY TO ENTER PREMISES. (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to

inspect, investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, § 6, eff. Sept. 1, 1991.

§ 343.025. ENFORCEMENT. A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

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HEALTH & SAFETY CODE

CHAPTER 365. LITTER

SUBCHAPTER A. GENERAL PROVISIONS

§ 365.001. SHORT TITLE. This chapter may be cited as the Texas Litter Abatement Act.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.002. WATER POLLUTION CONTROLLED BY WATER CODE. The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or

365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1991, 72nd Leg., ch. 14, § 125, eff. Sept. 1, 1991.

SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

§ 365.011. DEFINITIONS. In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

(4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

(6) "Litter" means:

(A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or

(B) nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(8) "Public highway" means the entire width between

property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

(9) "Solid waste" has the meaning assigned by Section 361.003.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, § 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 11.111, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, § 30.206, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 286, § 1, eff. May 26, 1997.

§ 365.012. ILLEGAL DUMPING; CRIMINAL

PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under this section is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(e) An offense under this section is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or

(2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than

200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:

(1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;

(2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or

(3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns; and

(4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, § 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 828, § 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 17.01(28), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 286, § 2, eff. May 26, 1997; Acts 2001, 77th Leg., ch. 995, § 1, eff. Sept. 1, 2001.

§ 365.013. RULES AND STANDARDS; CRIMINAL PENALTY. (a) The Texas Natural Resource Conservation Commission shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.161, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, § 11.112, eff. Sept. 1, 1995.

§ 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS. (a) This subchapter does not apply to farmers:
(1) in handling anything necessary to grow, handle, and care for livestock; or
(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, § 3, eff. Sept. 1, 1993.

§ 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS. (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.161, eff. Sept. 1, 1991.

§ 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY. (a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.161, eff. Sept. 1, 1991.

§ 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES. (a) The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

Added by Acts 1993, 73rd Leg., ch. 828, § 4, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 439, § 1, eff. June 9, 1995.

SUBCHAPTER C. SPECIAL PROVISIONS

§ 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE. The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

§ 365.034. COUNTY REGULATION OF LITTER NEAR PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway in the county;

(2) provide for the removal and disposition of litter accumulated near a public highway in violation of an order adopted under this section; and

(3) provide for the assessment against a person who owns the property from which litter is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the litter.

(b) Before the commissioners court takes any action to remove or dispose of litter under this section, the court shall send a notice by certified mail to the record owners of the property on which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the

property from which the litter was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Added by Acts 1991, 72nd Leg., ch. 14, § 126, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.162, eff. Sept. 1, 1991.