

Texas Health & Safety Code Chapter 343

Rural Public Nuisance Enforcement

THSC Chapter 343 is a popular law that aims to eliminate public nuisances in unincorporated areas. However, I am not a big fan of this statute, as you'll probably surmise from my comments below. I encourage officers to use THSC Chapter 341 and Chapter 365 in its place, but of course that is a matter of local practice and preference.

Efficient use of Chapter 343 can be challenging for these reasons:

- (1) Confusing. There are thirteen violations in Chapter 343, but not all thirteen apply to the same unincorporated areas;
- (2) Redundant. Five of the thirteen listed public nuisances are better handled under other state criminal laws, such as Chapters 341 and 365;
- (3) Slow. A mandatory "built-in" 30-day warning must be given by the county before a Chapter 343 citation can be issued. Nothing that I know of stops an officer from issuing a warning when using Chapters 341 and 365, but here it's mandatory. That means two trips to every possible site of violation. Moreover, using this law exclusively may result in having to give a 30-day warning on a leaking sewage system, which should never happen. Chapter 343 can (possibly) complement Chapters 341 and 343 but never replace them.

When considering using this law, officers should think: limited

Chapter 343 is currently in force statewide, without having to be adopted by any local government. Our legislature first adopted it on behalf Texas in 1989 but initially limited it in the counties and nuisances it addressed. It has been subsequently modified to now apply to selected unincorporated areas in all counties in Texas.

The other two primary anti-dumping laws, THSC Chapters 341 and 365, were also adopted that year. As is true in all three cases, the only question is whether local governments are enforcing the provisions of these laws. Realistically, it's only been about 35 years since these provisions became law, practically "yesterday" in some jurisdictions.

Counties may use Chapter 343 to penalize and force abatement of public nuisances in **parts** of their unincorporated area. However, there are restrictions as to the exact locations in rural areas where its provisions apply, specifically:

1. If the location is in an incorporated area, this law cannot be used, regardless of the size of the city.
2. However, some of its provisions are applicable in the extra territorial jurisdictions of Home Rule cities and other provisions are not. For example, *Sec. 011(c) (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests* would be applicable. Should

a platted subdivision be located within the ETJ, those provisions of Chapter 343 would also be applicable.

3. This law does not apply to “agricultural land” (i.e., “land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code”). So, rural farmland is not subject to this law, although the farmhouse itself is likely included;
4. This law generally does not apply to facilities that are permitted by a state agency;
5. This law does not apply to facilities licensed or permitted under THSC Chapter 361 solid waste disposal act, such as a landfill located in the unincorporated area;
6. Some of its thirteen prohibitions may apply to all other unincorporated areas of Texas (excepting these limitations) and some are applicable to even more limited locations, such as platted subdivisions in unincorporated areas or within 300 feet of a public street.

All this can be confusing to both officers and the public. Officers are advised to carefully read the restrictions attached to each of the thirteen violations listed in this law, be sure that the violation happened at the location specified and then be aware that the location of the violation may well be an issue in court.

Required 30-day Warning Required Only Under this Law

Additionally, none of the thirteen public nuisances this law addresses become citable violations until a period of 30 days has passed after the county gives a warning notice to the person apparently violating Section 343.011(b).

Although the statute does not require such notice to be written, most county procedures and best practices require written form. When the violation involves clutter, having a built-in 30-day warning works fine. But when the nuisance involves sewage being discharged onto the surface, using a law that requires a 30-day pre-citation-and-abatement-notice warning may be the wrong thing to do. In sewage cases we urge officers to immediately apply the public health nuisance provisions found in Chapter 341.

When the legislature added THSC Sec. 343.011(c)(13) to this law to deal with a swage issue, it probably made an error. Chapter 341 already contained several immediately enforceable prohibitions against open sewage disposal systems, so use one of those, none of which require a 30-day warning before a citation can be issued.

Texas Health & Safety Code Chapter 343: Abatement of Public Nuisances Contents

Overview

Notice immediately that whereas Chapter 341 dealt with “Public HEALTH Nuisances,” Chapter 343 deals with “Public Nuisances.” The situations addressed by Chapter 343 are not identified by the legislature as those likely to immediately impact public health, so a mandatory

30-day grace period has been built into Chapter 343 as well as a less intense abatement process that doesn't include the local health authority.

However, in its defense, Chapter 343 is can be very useful in that it also **provides county governments with optional powers to abate nuisances themselves and set liens** in situations where violators won't clean up their property voluntarily or as directed by a Justice Court, *provided that* the county adopts a set of procedures designed to provide maximum protection to the property holder (see Chapter 343 Subchapter C).

This statute also contains potentially useful citizen suit provisions whereby parties other than local governments can bring civil actions against persons who refuse to abate public nuisances. So, if a neighbor, Homeowners Association, or other affected party wanted to seek an injunction to stop the creation of a public nuisance by a person, they have the same rights to do so as the county [see Section 343.013(b)].

This law has evolved over time

Originally limited to Harris County, since 1989 Chapter 343 has slowly been modified and made applicable in selected unincorporated areas of all Texas counties. It's initial focus was to provide a way of abating nuisance buildings in rural Harris County.

In 2001 the potential usefulness of this statute was increased by the 77th legislature, which expanded places in unincorporated areas where trash, waste and many other abandoned items cannot be stored to include within 300 feet of any public street throughout the unincorporated area of all counties. However, Chapter 365 can also enforce these situations as illegal dumping.

The 80th legislature added a new waste-related nuisance: "discarding refuse on a property that is not authorized for that activity." Since this is essentially the definition of *illegal dumping*, why not simply use the more flexible THSC Chapter 365 for dumping violations listed under Chapter 343?

As mentioned above, this law requires that a potential violator be given 30 days following formal notice from the county to abate a public nuisance before a citation can be issued. **No other place in Texas environmental law imposes such a mandatory waiting period prior to an offense being created.** An earlier attempt by the legislature to decrease this time to 10 business days from the current 30 days was not successful. Again, using Chapters 365 and 341 reduce the waiting period to zero days in most cases.

Important definitions

The definitions contained in Sec. 343.002 are all important; however, in reading them, please take note of the following:

"building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other removable property;

“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;

“neighborhood” means: a platted subdivision; or property contiguous to and within 300 feet of a platted subdivision;

“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;

"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.

“refuse” means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses; and,

“rubbish” means nondecayable waste from a public or private establishment or residence.

"weeds" means all rank and uncultivated vegetable growth or matter that:

- (a) has grown to more than 36 inches in height; or
- (b) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

The (b) definition of “weeds” here means that it can be very short indeed, much shorter than in most city ordinances. After all, how tall does a weed have to be to harbor a rat or mosquitoes?

Like Chapter 341, this law establishes a positive responsibility on each of us not to permit the nuisances defined here:

Sec. 343.011(b) a person may not cause, permit, or allow a public nuisance under this section.

Note: this section does NOT contain language “... *When notified to cease by law authorities.*” The initial position of Chapter 343 is that every person already has an ongoing legal duty to eradicate public nuisances on property he or she controls. If a person does not do so and violates one of the specific thirteen provisions, a process of enforcement then takes place with reference to that specific violation. That focused process includes a 30-day warning to the person responsible before a Justice Court gets involved.

But a JP won't get involved in the process until a citation has been issued, which can't happen under this law until 30 days following the county giving the violator notice.

Consequently, by the time a deputy, constable, or other authorized individual shows up to issue a 30-day warning notice, the person possessing the property has already been violating Sec. 343.011(b) by ignoring his or her responsibility to keep his property free of public nuisances. No doubt the guy's wife had also been nagging him long before the deputy showed up to give formal notice.

It was the ignoring of his wife AND the state law that triggered the enforcement process.

Also notice that the owner or possessor of the property where the public nuisance is allowed to exist is not the *only* person responsible. If a neighbor "causes" a public nuisance on someone's property, the neighbor is also responsible.

In the case of THSC Sec. 343.011(c)(2) – cluttered properties in platted subdivisions – there is an additional ten-day grace time beyond the 30-day initial notice. Although grace periods to clean up are given under this law, it's still the responsibility of a person owning or controlling property also to keep it free of public health nuisances, as his bride has been telling him.

As in the case of Chapter 341, this law can become the basis for widespread public education in a community. For many Texans, simply informing them as to the requirements of the law is sufficient to achieve compliance. Maybe some pictures and laws posted in local beauty shops would help get the word out.

What a "Public Nuisance" is Under Chapter 343

This law generally applies to only the unincorporated parts of a county, and even this is further restricted in some of its provisions.

Consequently, each of the thirteen public nuisances defined have their own area where they are in force. The areas where they apply are easy to determine by carefully reading the subsections, but officers using this law need to be very certain of *exactly where* the violation is taking place. The difference between a violation under Chapter 343 and behavior that is perfectly fine may be a matter of a few feet. This is one of the things making this law difficult to apply and explain to residents.

This law describes thirteen situations that are nuisances. Several of these will probably be helpful in controlling illegal dumping in your community, but, again, if illegal dumping is the problem, why not simply use the law designed for that violation, THSC Chapter 365?

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;

Note: this section applies to “refuse,” which has a wide definition, on “premises” (virtually all private property, as defined), in “neighborhoods,” (platted subdivisions and contiguous property within 300 feet of a platted subdivision). For instance, many small neighborhoods located in the unincorporated area near Lake Texoma in Grayson County are covered by this law, as are the residents' practices in keeping, storing, or accumulating refuse. There is no requirement for the plat to have ever been approved by the commissioners' court. Note the definition of “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;

Note: this section, like the one before it, also applies to neighborhoods located in unincorporated areas as well as all locations within 300 feet of a public street anywhere in the unincorporated areas of the county, except land classified as “agricultural.” As a great deal of rural dumping occurs within 300 feet of a public street somewhere in a county, this section can be effectively used to reduce visible waste throughout unincorporated areas of Texas. Tolerance of trash-heaps and abandoned things in rural areas and neighborhoods reduces property values and can be controlled through this section of the law (or by simply applying Chapter 365). The additional ten days to be added to the thirty-day notice period applies to this violation only. Simply moving waste to an unobservable location, however, does not allow the new location to be a public health nuisance under Chapter 341. Complying with one law may constitute a crime under another. This can be difficult to explain.

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

Note: here the term “premises” does not simply apply to private property located in unincorporated “neighborhoods,” but includes private property in most rural locations (excepting agricultural land). For example, the owner of an illegal tire dump is probably always in violation of this law, even though his property is located outside a platted subdivision (if that dump is not located in some other excluded area). The mosquitoes that breed in the water trapped in his dumped tires have no problem swarming to the backyards of the homes located nearby. This also goes for the rats and rattlesnakes that may regularly roam from their homes in the tire pile. The point behind this, and many other such provisions in state law that impose some limit on how we use our personal property, is this: we are free to use our property in any way we wish, if

we don't commit a crime or violate the rights of our neighbors to peacefully use their own property. Of course, the mess might be legal under Chapter 343 but constitute a "public health nuisance" as defined by Chapter 341. In this case, the officer would simply write the citation for the Chapter 341 violation immediately (no 30-day notice is required on Chapter 341 public health nuisance violations). Note also the possibility of a commissioners court acting under its powers in THSC Chapter 365.017 to force the clearing of dumped material on rural private property.

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

Note: limited to selected places within "neighborhoods." When you read the law itself, note the definition of "weed." It is doubtlessly stricter than that applying inside your own city as it prohibits weeds of any height if they are tall enough to be an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests. Once this restriction becomes known to residents of platted subdivisions, they will have a new reason to squabble over their neighbors. Or maybe even seek an injunction against them.

(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;

Note: this law applies to a "building" (as defined) anywhere in the unincorporated area of any county in Texas (except excluded areas). It is not just applicable to dilapidated structures in rural neighborhoods, although it can be effectively used to address these "near-dumps" too. For example, if a rural building is partially destroyed by fire, or abandoned, and is liable to become an unsafe playing location for kids the owner would be in violation of this law for allowing this nuisance to remain unabated following a 30-day notice period.

(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 and locked gate;
and

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

(7) maintaining on any property in a neighborhood in a county with a population of more than 1.1 million 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;

(8) maintaining a flea market in a manner that constitutes a fire hazard;

(9) 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;

Note: dumping refuse by an individual in easements is certainly covered by this statute, although the provisions of the Texas litter abatement act (THSC Chapter 365) could be more easily used. If the county refused to cut weeds at a rural intersection and these weeds were creating a "hazardous visual obstruction," I suppose that the county government itself would be in violation of this section. **This could more easily be enforced by THSC Chapter 365, except for the "hazardous visual obstruction" bit.**

(10) 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;

Note: under this definition, a landowner who dumps on his or her own property under a power-line easement would, in addition to any other dumping laws, be in violation of this provision. THSC Chapter 365 does not allow general dumping on one's own property either, so **this could be enforced by THSC Chapter 365 without having to be concerned about the distances cited.**

(11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;

This could be enforced by THSC Chapter 365.

(12) discarding refuse on property that is not authorized for that activity;

Note: this is actually a good definition of the term illegal dumping, although the prohibited actions in THSC Chapter 365 also includes six other dumping-related crimes. Why not simply use THSC Chapter 365 for the dumping violations instead of this and numbers (9), (10), and (11) to the degree illegal dumping is the actual violation? **This could be enforced by THSC Chapter 365, although the phrase "discarding refuse on property that is not authorized for that activity" is a great definition of illegal dumping.**

(13) surface discharge from an on-site sewage disposal system as defined by section 366.002.

Note: this provision duplicates public health nuisances defined in Chapter 341 and is more cumbersome to use. One might also question the wisdom of trying to deal with sewage with a law that requires a statutory 30-day notice period. This provision was probably added by legislative staff drafters who were unaware of Chapter 341's extensive provisions dealing with sewage issues. It seems out of place here, especially given Chapter 343's avoidance of sewage issues up to this point. **Because of the mandatory 30-day warning, this provision should never be cited over Chapter 341.**

However, remember that according to the provisions of this statute, the thirteen nuisance situations under Chapter 343 do not constitute a violation even if located on unincorporated land that is:

- (1) a site or facility regulated by a state agency;
- (2) a place licensed or permitted under the Texas solid waste disposal act; or,
- (3) land qualifying as "agricultural" for tax appraisal purposes.

Chapter 341 contains none of these location restrictions and no mandatory warning, hence its popularity. Chapter 341 can be used virtually anywhere in the state without fear that the violation alleged happened a few feet elsewhere.

Thus, under Chapter 343, a dilapidated barn on agricultural land would not constitute a nuisance whereas a dilapidated house trailer on a small rural plot may meet the criteria.

Generally, in Texas, persons engaged in agricultural activities have more latitude to operate in "near-nuisance" circumstances than do others but remain subject to THSC Sec. 341 as far as public health nuisances are concerned and most other environmental criminal laws.

Variances

Under THSC Sec. 343.0111, a commissioners' court has the power to grant a variance to a classification of public nuisance, if the court follows mandated procedures recording the logic of their decision. **I know of no case where the commissioners' court has issued such a variance, but the fact that this power is available is another point reinforcing the support that the state legislature has given to local government in dealing with public nuisances.**

Penalties for Violations

There are criminal penalties for committing an offense under this law. Persons causing, permitting, or allowing nuisances to exist are responsible for eliminating them. However, if a person is unwilling to obey the law voluntarily, the JP imposes a fine and orders abatement.

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.*

Thus, under Chapter 343, a person has committed an offense if:

- (1) the person causes, permits, or allows a public nuisance to exist;
- (2) a county official, agent, or employ provides the person notice of the nuisance; and,
- (3) the person fails to remedy by the 30th day after receiving the notice.

This seems overly generous to me, since before getting to the “warning” step the guy has already ignored both state law prohibiting public nuisances and, no doubt, the urgings of his wife and maybe the rest of the family.

Since I am old and live in the country, I hereby grant you cosmic permission to ask old men whose property contains public nuisances ... which are often also Public HEALTH Nuisances because they are a habitat for mosquitoes and rats ... just why they are willing to approach infirmity and death with leaving this cleanup burden on the rest of their families? This doesn't sound very “Texan” to me. I just seems fundamentally rude and self-serving.

The first conviction, which would normally occur in a Justice Court, would cost the violator \$50 to \$200 and court costs. Upon this conviction, the judge has a positive duty under this law to order the abatement of the public nuisance. This provision is missing from the penalties for a public health nuisance under Chapter 341. In that law it takes the local health authority, maybe a local prosecutor, and a higher court to force the abatement of a public health nuisance.

Second and subsequent offenses can become more expensive for the violator: \$200 to \$1,000 and up to **six months in jail** for each subsequent violation, no matter how long after the initial conviction they occur. Sounds tough, but forcing this issue into the county court system is probably a good route to having the case dismissed by overworked prosecutors and judges.

A better approach is probably to keep the violator appearing before the same JP for continued violations. With each appearance the JP can move up the per-day scale from \$50 to \$200, eventually pricing the cost of maintaining the public nuisance too large a burden for the violator to willingly absorb, hard head and all.

The statute is unclear as to whether a separate 30-day notice must proceed second and subsequent citations in situations where the violator doesn't abate the nuisance. Maybe this is another reason to use Chapter 341 when possible.

The secret to final victory is to keep the pressure on, involve the commissioner for that precinct, and get the newspapers to run stories intended to educate the public. But be patient. After all, this criminal law is only about 35 years old, and it takes a while for news to get around.

Affected Parties Can Sue

A county can sue for enforcement under THSC Sec. 343.013(a). An unusual and potentially very useful provision of this law is the civil injunctive powers that affected parties have in these situations.

Sec. 343.013. Injunction.

(a) a county or district court may by injunction prevent, restrain, abate, or otherwise remedy 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.*

(c) a county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of section 343.011(c)(1), (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

(1) the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

(2) the owner of the premises knew about the nuisance and has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner.

(d) in granting relief under subsection (c), the court:

(1) may not, in a suit brought under section 343.011(c)(10), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from accessing the property but may prohibit a continued or future violation.

Thus, the Property Owner's Association or an individual neighbor in a platted subdivision at Lake Texoma in Grayson County, for example, can seek an injunction preventing another property owner from continuing a public nuisance under this law, such as refusing to tear down a fire-damaged house or improperly storing waste or having weeds that are high enough to harbor rats or mosquitos, according to the definition.

Property owner associations in Texas have no problem with filing liens on owners who fail to pay small annual assessments, and in some situations, lots are even seized and sold for unpaid taxes and assessments. It would probably be an easy step in many cases for an association to take advantage of THSC Sec. 343.013(b) and seek a court order to stop a resident from maintaining a defined nuisance to the detriment of the community.

The court can order the loser to pay the costs of the winners in these suits. In this section of the law, the Texas state legislature has provided citizens with the tools to be used to protect themselves from public nuisances in unincorporated areas.

County Abatement Powers Under THSC Chapter, Subchapter C

County governments can act to abate a public nuisance themselves if the responsible person fails to take care of the problem. **This power is optional and does not have to ever be adopted or used.** Moreover, once a set of these defined procedures have been adopted by the county, their use is entirely at the discretion of the commissioners' court. Many of the of the procedures described in Subchapter C are designed to safeguard the rights of the property during the process.

The primary step for a county to take before beginning a program of nuisance abatement is to adopt abatement procedures defined in Subchapter C that are consistent with the general purpose of Chapter 343. Speak with your county attorney to determine if your county has adopted such procedures. Probably fifty counties, large and small, have done so over the past few years, so there are great examples of good procedures available.

Sometimes the opportunity to adopt this optional provision is confused with the error of thinking a county must "adopt" the whole of Chapter 343 before undertaking simple enforcement of Subchapters A and B. This is incorrect. Counties can use Subchapters A and B immediately, even if they never adopt procedures under Subchapter C. But if a county plans to use processes to abate a nuisance without the consent of the property holder, the county's procedures will have to closely follow Subchapter C.

The bottom line on Chapter 343, from my perspective, is to consider using Chapters 341 and 365 first. They seem more fit-for-purpose than Chapter 343. However, the facts (1) that JP's

order the abatement (not the case under Chapter 341), (2) that affected parties have the same suit powers as counties in seeking to stop a violation, and (3) that Subchapter C provides counties with a good process to force abatement and setting liens can make this a useful law in some circumstances.