

# **ENVIRONMENTAL HEARINGS FLOWCHART**

## **Chapter 343, Health & Safety Code**

### **TJCTC SPRING 2017**

**A full list of abatable nuisances found on reverse side of this chart.** Separate from the below process, a criminal complaint may be filed under HSC 343.012. Procedure in those cases, is the same as in any criminal case. Fine of \$50-200 per day if the person hasn't abated within 30 days of the notice. If the defendant has a prior conviction, the offense is a jailable misdemeanor (no jurisdiction).

**Written notice of the existence of a public nuisance must 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 that person is not the owner, lessee, occupant, agent, or person in charge of the premises and the person responsible can be identified.

Notice is typically provided by a county environmental health official or another county employee employed to address public nuisances.

**The notice must state:**

- (1) the **specific condition** that constitutes a nuisance;
- (2) that **the person receiving notice shall abate the nuisance** before the:
  - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
  - (B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;
- (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;
- (4) that the **county may prohibit or control access** to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (6), (9), or (10); and
- (5) that **the person receiving notice is entitled to submit a written request for a hearing** before the:
  - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
  - (B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

**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.

**The court may assess, in an unappealable order:**

- (1) the **cost of abating the nuisance**, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;
- (2) the **cost of legal notification** by publication; and
- (3) an **administrative fee of not more than \$100** on the person receiving notice under Section 343.022

**The county is entitled to interest after 31 days, at 10% per year.**

**PUBLIC NUISANCES INCLUDE:**

- (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 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 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;
- (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;
- (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;
- (12) discarding refuse on property that is not authorized for that activity; or
- (13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.