



## ENVIRONMENTAL CIRCUIT RIDER PROGRAM:



## JUSTICE OF THE PEACE MANUAL

FALL 2004



Houston-Galveston  
Area Council

PREPARED IN COOPERATION WITH THE HOUSTON-GALVESTON  
AREA COUNCIL AND THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY.



**ENVIRONMENTAL CIRCUIT RIDER PROGRAM:**

**JUSTICE OF THE PEACE MANUAL**

**FALL 2004**

**PREPARED FOR:**

**HOUSTON-GALVESTON AREA COUNCIL  
P.O. Box 22777  
HOUSTON, TEXAS 77227-2277  
(713) 627-3200**

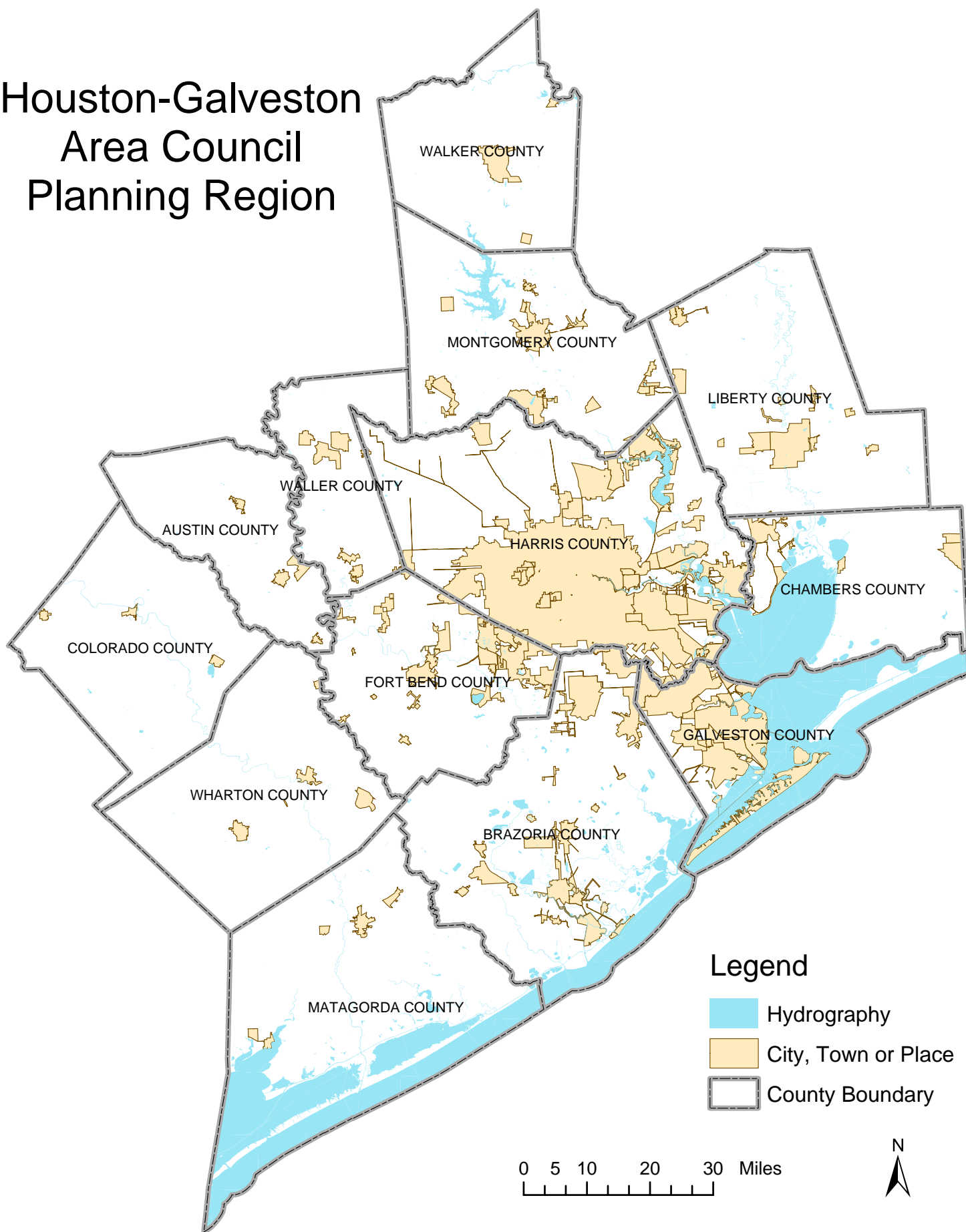
**IN COOPERATION WITH:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



H-GAC WOULD LIKE TO ACKNOWLEDGE CHUCK ROSENTHAL, HARRIS COUNTY DISTRICT  
ATTORNEY,  
FOR THE PROFESSIONAL GUIDANCE AND ASSISTANCE PROVIDED BY  
HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE

# Houston-Galveston Area Council Planning Region



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In this chapter:

...

(5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.

**SUBCHAPTER B. NUISANCES AND GENERAL SANITATION**

**§ 341.011. Nuisance**

Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

...

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

...

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

### **§ 341.012. Abatement of Nuisance**

(a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

### **§ 341.013. Garbage, Refuse, and Other Waste**

(a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

## SUBCHAPTER F. PENALTIES

### **§ 341.091. Criminal Penalty**

(a) Misdemeanor fine of not less than \$10 or more than \$200.

(b) If prior conviction within a year, a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

## TEXAS HEALTH AND 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.

...

(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.

...

(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.

...

(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.

##### § 343.003. Effect of Chapter on Other State Law

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

## 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 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.

#### **§ 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 30<sup>th</sup> 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.

#### **§ 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.

#### **§ 343.025. Enforcement**

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

## FORMS

**AFFIDAVIT FOR PROBABLE CAUSE – SEC. 343.011 (b) (3), (5)– PUBLIC NUISANCE**  
(Unsanitary Conditions) & (Unsafe Structure)

**STATE OF TEXAS**

**COUNTY OF HARRIS**

I Philip Moore, being duly sworn, on oath state that I have good reason to believe and do believe and charge before making complaint, that:

On or about   Date  , 2003, in Harris County Texas Precinct   , the Defendant, Defendant Name, **did then and there:**

- (3) Unlawfully cause, permit, and allow a public nuisance, namely maintain that creates an unsanitary condition likely to attract and harbor mosquitos, rodents, vermin; or disease-carrying pests.
- (5) Unlawfully cause, permit, and allow a public nuisance, namely maintain a building in a manner that is structurally unsafe or that constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment.

I Philip Moore, am a Harris County Official with the Harris County Public Health and Environmental Services. I personally observed the property located at Address, Lot ?, Block ?, Subdivision Name, Section ?, City, State Zi owned by Defendant Name to cause, permit, and allow a public nuisance.

I personally notified the defendant by mail that was accepted on Date and that he/she would have to abate the nuisances. The nuisances have remained unabated until this date, which is more than thirty days from the date of said notice.

I know this Defendant to be responsible for the abatement of this nuisance because: (Choose One)

- (1) I know him/her by name and by sight and know him/her to be the owner of the property at the above address which is the location of the nuisances;
- (2) I know him/her by sight and have identified him/her by name from a Texas Driver's License photo that he/she showed to me, and because he/she told me that he/she was the owner and responsible for the property at the above address which are the nuisances' location;
- (3) I have checked the property records of Harris County for the above address, which are the nuisances' location, and learned that the Defendant is the owner of the said property.

**AFFIANT** \_\_\_\_\_

**SWORN TO AND SUBSCRIBED BEFORE ME ON** \_\_\_\_\_ **2003.**

\_\_\_\_\_  
**NOTARY PUBLIC, STATE OF TEXAS, CLERK OF THE COURT**

\_\_\_\_\_ Case No.

IN HARRIS COUNTY JUSTICE COURT  
PRECINCT

**THE STATE OF TEXAS**  
**VS.**

AFFIDAVIT NEIGHBORHOOD NUISANCE

Name  
Address  
City, State Zip

\_\_\_\_\_ File Date

**IN THE NAME AND BY AUTHORITY OF**

**THE STATE OF TEXAS**

Before me, the undersigned authority, this day personally appeared **Inspector's Name or Person**  
**Filing Charges**, who being sworn, deposes and says that **Defendant Name**  
\_\_\_\_\_, hereafter styled the defendant, heretofore on or about **Date** and before the  
filing of this complaint, in Precinct \_\_\_ of Harris County, Texas, did then and there unlawfully,  
knowingly, and intentionally allow weeds to grow on premises in a neighborhood if such weeds are  
located within 300 feet of another residence or commercial establishment, to wit: **Address, Lot ?,**  
**Block ?, Subdivision Name, City, State Zip**, contrary to law and against the peace and dignity of  
the State.

MAILING ADDRESS OF DEFENDANT:

\_\_\_\_\_  
Affiant: **Inspector Name** (713) 439-6263  
Harris County Public Health & Environmental Services  
2223 West Loop South  
Houston, Texas 77027

Sworn to and subscribed before me on \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Court, Justice of the Peace Precinct \_\_\_ Harris County, Texas.

## Cases

## Public Nuisance Cases

### Constitutionality of Public Nuisance Statutes

**Kobos v. State**, 822 S.W.2d 779 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1992)

This is an appeal from a conviction for allowing a public nuisance in violation of Health and Safety Code Sections 343.011 & 343.012, (Junked or Abandoned Vehicles), in which Kobos claimed that the statute was unconstitutionally vague. Specifically, Kobos claimed that the terms “unused, discarded or abandoned” were vague because men of common intelligence may differ in their interpretations. Testimony indicated that Kobos used some of the vehicles on his property for spare parts. In finding that the statute was not vague and that Kobos violated the statute, the court of appeals held that motor vehicles were not manufactured for use as a spare parts inventory, but were intended for use as a method of transportation.

### Authority to Enter Premises

**Watts v. State**, 56 S.W.3d 694 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2001), *reversed on other grounds*, 99 S.W.3d 604 (Tex.Crim.App. 2003)

In this water pollution case, wherein there existed a pool of sewage on Watts’ property that was being channeled into a drainage ditch, Watts claimed that all evidence obtained during the search and seizure on his property should have been suppressed. Officers and inspectors entered the property, searched the area, and removed a soil sample without a search warrant or Watts’ consent. The trial court denied the motion to suppress evidence, holding that Section 343.024 of the Health and Safety Code, entitled “Authority to Enter Premises,” authorized the State to enter the premises to inspect and investigate the nuisance caused by the standing sewage on the property.

The Court of Appeals first noted that law enforcement authorities were merely attempting to contact Watts when the pool of sewage was first observed. Law enforcement agents have the same right as any other person to enter onto residential property and walk up to the front door. The officers did not enter the property with the purpose of conducting a search. Citing Section 343.024, the Court of Appeals stated that the legislature has authorized county officials charged with the enforcement of health, environmental, safety, or fire laws to enter any premises in an unincorporated area of the county at a reasonable time to inspect, investigate, or abate a public nuisance. Thus, the sewage sample was taken under the “plain view” exception as the officers were lawfully on the property, and it was immediately apparent to the inspectors and officers that they had evidence before them. “A search conducted to promote public health under chapter 343 of the Health and Safety Code is not invalidated simply because the fruits of the search and seizure resulted in a prosecution under the Water Code.”

# **ILLEGAL DUMPING OF LITTER AND SOLID WASTE**

**Texas Health and Safety Code 365**

# ELEMENTS

# TEXAS HEALTH AND SAFETY CODE

## CHAPTER 365. LITTER

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 365.001. Short Title

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

#### § 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.

### SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

#### § 365.011. Definitions

In this subchapter:

...

- (3) “Commercial purpose” means the purpose of economic gain.

...

(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.

...

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

...

(34) "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 ...; and

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

## **§ 365.012. Illegal Dumping; Criminal Penalties**

### **(a) Elements – Disposal Offense**

- (1) a person
- (2) *intentionally or knowingly or recklessly* \*
- (1) disposes or allows or permits
- (2) the disposal of litter or other solid waste
- (3) at a place that is not an approved solid waste site,
- (6) including a place on or within 300 feet of a public highway, on a right of way, on other public or private property
- (7) or into inland or coastal water of the state.

\* (Only applies to felony offenses)

### **(b) Elements – Receiving Offense**

- (1) a person
- (2) *intentionally or knowingly or recklessly* \*
- (3) receives litter or other solid waste for disposal
- (4) 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).

\* (Only applies to felony offenses)

### **(c) Elements – Transport Offense**

- (1) a person
- (2) *intentionally or knowingly or recklessly* \*
- (3) transports litter or other solid waste
- (4) to a place that is not an approved solid waste site
- (5) for disposal at the site.

\* (Only applies to felony offenses)

## **Punishment Range**

### **(d) CLASS C MISDEMEANOR –**

If litter or other solid waste  
weighs 5 pounds or less  
or has a volume of 5 gallons or less

(e) CLASS B MISDEMEANOR –

If litter or other solid waste  
weighs more than 5 pounds but less than 500 pounds  
or has a volume of more than 5 gallons  
but less than 100 cubic feet

(f) CLASS A MISDEMEANOR –

- (1) If litter or other solid waste  
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) If 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) STATE JAIL FELONY –

- (1) If litter or other solid waste  
weighs 1,000 pounds or more or  
has a volume of 200 cubic feet or more;
- (2) If litter or other solid waste  
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) If litter or other solid waste  
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.

(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.

**§ 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.

**§ 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.

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING -- NON-COMMERCIAL (A)**  
(Transportation/Disposal/Receipt) [§365.012(a),(b)&(c), H&S Code]  
**NCIC CODE 5533/06**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

transport          litter          or          other          solid          waste,          namely,  
\_\_\_\_\_, having an aggregate  
weight of 500 pounds or more but less than 1,000 pounds, or a volume of 100 cubic feet or more  
but less than 200 cubic feet, to a place that was not an approved solid waste site for disposal at  
the site.

It is further presented that in Harris County, Texas, (DEFENDANT), hereafter styled the  
Defendant, heretofore on or about (DATE) did then and there unlawfully

dispose, allow or permit the disposal of litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of 500 pounds or more  
but less than 1,000 pounds, or a volume of 100 cubic feet or more but less than 200 cubic feet,  
at a place that was not an approved solid waste site.

It is further presented that in Harris County, Texas, (DEFENDANT), hereafter styled the  
Defendant, heretofore on or about (DATE) did then and there unlawfully

receive litter or other solid waste, namely, \_\_\_\_\_  
\_\_\_\_\_, having an aggregate weight of 500 pounds or more but less than 1,000  
pounds, or a volume of 100 cubic feet or more but less than 200 cubic feet, for disposal at a  
place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_ ; Cause No. \_\_\_\_\_ ; CCCL No. \_\_

SERVICE OF PROCESS: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)  
**REVISED 09/01/01**

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING -- NON-COMMERCIAL (B)**  
(Transportation/Disposal) [§365.012(a)&(c), H&S Code]  
**NCIC CODE 5533/00**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

transport          litter          or          other          solid          waste,          namely,  
\_\_\_\_\_,  
having an aggregate weight of more than five pounds but less than 500 pounds, or a volume of  
more than five gallons but less than 100 cubic feet, to a place that was not an approved solid  
waste site for disposal at the site.

It is further presented that in Harris County, Texas, (DEFENDANT), hereafter styled the  
Defendant, heretofore on or about (DATE) did then and there unlawfully

dispose, allow or permit the disposal of litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of more than five  
pounds but less than 500 pounds, or a volume of more than five gallons but less than 100 cubic  
feet, at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ County Crim Ct at Law \_\_

SERVICE OF PROCESS: \_\_\_\_\_

WITNESSES

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)

**REVISED 09/01/01**

## FORMS

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING -- NON-COMMERCIAL (C)**  
(Transportation/Disposal) [§365.012(a)&(c), H&S Code]  
**NCIC CODE 5533/00**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

transport          litter          or          other          solid          waste,          namely,  
\_\_\_\_\_,  
having an aggregate weight of five pounds or less, or a volume of five gallons or less, to a place  
that was not an approved solid waste site for disposal at the site.

It is further presented that in Harris County, Texas, (DEFENDANT), hereafter styled the  
Defendant, heretofore on or about (DATE) did then and there unlawfully

dispose, allow or permit the disposal of litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of five pounds or  
less, or a volume of five gallons or less, at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ Justice Court No. \_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

WITNESSES

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)

**REVISED 10/08/03**

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING** (Transportation, Disposal and Receipt)  
**Commercial Purpose** [§365.012(a),(b)&(c) H & S Code]  
**NCIC CODE 5533/06**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

for a commercial purpose, transport litter or other solid waste, namely, \_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of more than five  
pounds but less than 200 pounds, or a volume of more than five gallons but less than 200 cubic  
feet, to a place that was not an approved solid waste site for disposal at the site.

for a commercial purpose, dispose, allow or permit the disposal of litter or other solid waste,  
namely, \_\_\_\_\_, having an aggregate  
weight of more than five pounds but less than 200 pounds, or a volume of more than five gallons  
but less than 200 cubic feet, at a place that was not an approved solid waste site.

for a commercial purpose, receive litter or other solid waste, namely,  
\_\_\_\_\_, having an aggregate weight of more than five  
pounds but less than 200 pounds, or a volume of more than five gallons but less than 200 cubic  
feet, for disposal at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ County Crim Ct at Law \_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ (Complainant)
2. \_\_\_\_\_ (Field Investigator)

**REVISED 09/01/01**

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING -- NON-COMMERCIAL SJF**  
(Transportation/Disposal/Receipt) [§365.012(a),(b)&(c), H&S Code]  
**NCIC CODE 5533 07**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

intentionally or knowingly transport litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of 1,000 pounds or more, or a  
volume of 200 cubic feet or more, to a place that was not an approved solid waste site for  
disposal at the site.

It is further presented that in Harris County, Texas, (DEFENDANT), hereafter styled the  
Defendant, heretofore on or about (DATE) did then and there unlawfully

intentionally or knowingly dispose, allow or permit the disposal of litter or other solid waste,  
namely, \_\_\_\_\_, having an aggregate  
weight of 1,000 pounds or more, or a volume of 200 cubic feet or more, at a place that was not  
an approved solid waste site.

It is further presented that in Harris County, Texas, (DEFENDANT), hereafter styled the  
Defendant, heretofore on or about (DATE) did then and there unlawfully

intentionally or knowingly receive litter or other solid waste, namely,  
\_\_\_\_\_,  
\_\_\_\_\_, having an aggregate weight of 1,000 pounds or  
more, or a volume of 200 cubic feet or more, for disposal at a place that was not an approved  
solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_; Cause No. \_\_\_\_\_; DISTRICT COURT NO.  
\_\_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

WITNESSES

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)

**REVISED 09/01/01**

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING - SJF** (Transportation, Disposal and Receipt)  
**Commercial Purpose** [§365.012(a),(b)&(c) H & S Code]  
**NCIC CODE 5533 07**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

for a commercial purpose, intentionally or knowingly transport litter or other solid waste, namely, \_\_\_\_\_, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, to a place that was not an approved solid waste site for disposal at the site.

for a commercial purpose, intentionally or knowingly dispose, allow or permit the disposal of litter or other solid waste, namely, \_\_\_\_\_, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, at a place that was not an approved solid waste site.

for a commercial purpose, intentionally or knowingly receive litter or other solid waste, namely, \_\_\_\_\_, having an aggregate weight of 200 pounds or more, or a volume of 200 cubic feet or more, for disposal at a place that was not an approved solid waste site.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ DISTRICT COURT NO. \_\_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)

**REVISED 09/01/01**

DEFENDANT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

REGISTERED AGENT: \_\_\_\_\_  
\_\_\_\_\_

OFFENSE DATE: \_\_\_\_\_, 20\_\_  
AGENCY: \_\_\_\_\_

ALLEGATION: **ILLEGAL DUMPING - SJF** (Transportation, Disposal and Receipt)  
**Barrel or Drum** [§365.012(a),(b)&(c) H & S Code]  
**NCIC CODE 5533 07**

**(USE APPLICABLE PARAGRAPH OR PARAGRAPHS)**

for a commercial purpose, intentionally or knowingly transport litter or other solid waste, namely, \_\_\_\_\_, to a place that was not an approved solid waste site for disposal at the site, and the litter or other solid waste was contained in a closed barrel or drum.

for a commercial purpose, intentionally or knowingly dispose, allow or permit the disposal of litter \_\_\_\_\_ or \_\_\_\_\_ other \_\_\_\_\_ solid \_\_\_\_\_ waste, \_\_\_\_\_ namely, \_\_\_\_\_, at a place that was not an approved solid waste site, and the litter or other solid waste was contained in a closed barrel or drum.

for a commercial purpose, intentionally or knowingly receive litter or other solid waste, namely, \_\_\_\_\_, for disposal at a place that was not an approved solid waste site, and the litter or other solid waste was contained in a closed barrel or drum.

CASE FILED: \_\_\_\_\_, 20\_\_

Cause Number \_\_\_\_\_ DISTRICT COURT NO. \_\_\_\_\_

SERVICE OF PROCESS: \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_ (Complainant)

2. \_\_\_\_\_ (Field Investigator)

**REVISED 09/01/01**

## **CASE SUMMARY**

## Illegal Dumping Cases

### Constitutionality of the Dumping Statute

***Acosta v. State***, 972 S.W.2d 95 (Tex.App.—El Paso 1998)

Acosta contended that the statutory definition of “solid waste” was unconstitutionally vague. Specifically, since the statutory definition excepts “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,” Acosta argued that the exception for dirt and rock rendered the definition unconstitutionally vague because the phrase “used to fill land” is undefined and susceptible to varying interpretations.

Acosta testified that he and his son used his pickup truck to take dirt from a home under construction to another construction site. Acosta and his son did not place the dirt and rock directly on a construction area in order to make the land suitable for the construction of surface improvements. According to Acosta, he and his son merely left the dirt and rock near some that was already there. In affirming the conviction, the Court of Appeals stated, “[w]e do not find that a person of ordinary intelligence would mistake the specific statutory exception for fill dirt as an open invitation to dump dirt and rock at any convenient construction site.”

### Constitutionality of Strict Liability

***Ex parte Weise***, 23 S.W.3d 449 (Tex.App.—Houston [1<sup>st</sup> Dist.] 2000), *reversed on other grounds*, 55 S.W.3d 617 (Tex.Crim.App. 2001)

In this appeal, the Court of Appeals addressed the issue of whether a statute prohibiting the dumping of trash is unconstitutional for not requiring proof of a culpable mental state. The Court of Appeals noted that the illegal dumping statute *was* devoid of express language that prescribes a culpable mental state, and for various other reasons held that it was constrained to hold that a culpable mental state of at least “recklessly” was required under the statute.

## **APPENDICES**

**THE STATE OF TEXAS**                      §    **IN THE \_\_\_\_\_ DISTRICT COURT**

**COUNTY OF HARRIS**                      §    **OF HARRIS COUNTY, TEXAS**

The State of Texas:                      §    **To:**  
By serving its registered agent:

**GREETINGS:**

You are hereby commanded to appear in the \_\_\_\_\_ District Court of Harris County, in the Courthouse in the City of Houston, Texas, at or before ten o'clock a.m. on the Monday following the expiration of 20 days after the date this summons is served upon you, then and there to answer the State of Texas on a charge of \_\_\_\_\_, charged in the accompanying certified copy of the information, which was filed in said Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, numbered \_\_\_\_\_ and styled The State of Texas vs. \_\_\_\_\_ on the docket of said Court.

**TO OFFICER SERVING:**

Herein fail not but of this writ make due return showing how and when you executed the same. Issued \_\_\_\_\_, 20\_\_\_\_.

WITNESS: CHARLES BACARISSE, Clerk of said Court, and seal thereof at office in the City of Houston, Texas this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_

Deputy

**THE STATE OF TEXAS**

**§ IN THE COUNTY CRIMINAL COURT AT**

**COUNTY OF HARRIS**

**§ LAW NO.\_\_\_\_ OF HARRIS COUNTY**

The State of Texas:

**§ To:**

By serving its registered agent:

**GREETINGS:**

You are hereby commanded to appear in the County Criminal Court at Law No. \_\_\_\_ of Harris County, in the Courthouse in the City of Houston, Texas, at or before ten o'clock a.m. on the Monday following the expiration of 20 days after the date this summons is served upon you, then and there to answer the State of Texas on a charge of \_\_\_\_\_, charged in the accompanying certified copy of the information, which was filed in said Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, numbered \_\_\_\_\_ and styled The State of Texas vs. \_\_\_\_\_ on the docket of said Court.

**TO OFFICER SERVING:**

Herein fail not but of this writ make due return showing how and when you executed the same. Issued \_\_\_\_\_, 20\_\_.

WITNESS: CHARLES BACARISSE, Clerk of said Court, and seal thereof at office in the City of Houston, Texas this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By\_\_\_\_\_

Deputy

No. \_\_\_\_\_  
**IN THE COUNTY CRIMINAL COURT**  
AT LAW NO. \_\_\_\_\_  
**OF HARRIS COUNTY, TEXAS**

**SUMMONS**

**THE STATE OF TEXAS**

**v.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issued** \_\_\_\_\_, 20\_\_\_\_

**CHARLES BACARISSE**

**District Clerk of**

**Harris County, Texas**

**By:** \_\_\_\_\_  
**Deputy Clerk**

No. \_\_\_\_\_

**IN THE \_\_\_\_\_ DISTRICT COURT  
OF HARRIS COUNTY, TEXAS**

**SUMMONS**

**THE STATE OF TEXAS**

**v.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issued** \_\_\_\_\_, **20**\_\_\_\_

**CHARLES BACARISSE**

**District Clerk of  
Harris County, Texas**

**By:** \_\_\_\_\_  
**Deputy Clerk**