

NUISANCES¹

Code enforcement related to nuisances provides many a trap for the unwary, the lazy and the well intentioned. Many an enforcement action has been derailed by a failure to follow the letter of the law. Accordingly, the purpose of this paper is to gather the applicable law as it relates to dangerous buildings and structures, junked vehicles, abandoned vehicles, and weeds. Understandably, there are few substantive Attorney General Opinions and even fewer recorded court opinions that focus on these issues. Accordingly, the paper is primarily a collected narrative of the applicable laws.

TEX. LOC. GVT CODE § 217.002 provides Type A General Law Municipalities the authority to “abate and remove a nuisance and punish by fine the person responsible for the nuisance.” Such cities have the right to define what constitutes a nuisance and the proper steps for the summary abatement of the nuisance. A Type B General Law Municipality “shall prevent . . . any nuisance within the limits of the municipality and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists.” TEX. LOC. GVT CODE § 217.022. Finally, Home Rule municipalities are permitted to define any nuisance within the limits of the municipality and within 5,000 feet outside such limits. TEX. LOC. GVT CODE § 217.042. All cities have the authority to both prevent and abate such nuisances.

While such general statements give Texas municipalities the ability to declare certain nuisances and to further take the steps necessary to remediate such nuisances, the specific laws governing nuisances can be found spread throughout Texas statutes.

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DANGEROUS BUILDINGS AND STRUCTURES

Basics

The regulation of dangerous and substandard buildings and structures by a municipality is well outlined by State statute. *See* TEX. LOC. GVT CODE § 214 Subchapter A. Section 214.001 requires a municipality to have passed an ordinance to exercise statutory authority in this matter. TEX. LOC. GVT CODE § 214.001(a). Without such an ordinance, a municipality has no power or authority to regulate dangerous buildings and structures. *Id.*

Once an ordinance regulating dangerous structures has been passed, municipalities have the authority to require the repair, removal, or demolition of the building, as well as requiring that the occupants of the building either vacate the premises or relocate. *Id.* A building subject to such action must be “dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare” or an unoccupied building, whether secured or not, that poses a danger to the public or could be used by children and vagrants. *Id.* at § 214.001(1)-(3).

The Process

The municipal ordinance must set minimum standards which, if followed, would allow for the continued use and occupancy of the building. *Id.* at § 214.001(b)(1). Second, the ordinance must provide adequate and sufficient notice to the owner of the building. *Id.* at § 214.001(b)(2). Notice requirements are set out in § 214.001(c). Finally, the ordinance must provide for a public hearing where a determination will be made whether the building meets the standards set out in the ordinance. *Id.* at § 214.001(b)(3).

The notice of a hearing sent to “an owner, lienholder, or mortgagee” is required to have a statement that the individual “will be required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably

perform the work.” *Id.* at § 214.001(c). At hearing, the property owner has the burden to show the scope of work needed as well as the time required to complete the project. *Id.* at § 214.001(l).²

When attempting to locate an owner, lienholder, or mortgagee, a municipality fulfills the statutory requirement of diligence by searching the “(1) county real property records of the county in which the building is located; (2) appraisal district records of the appraisal district in which the building is located; (3) records of the secretary of state; (4) assumed name records of the county in which the building is located; (5) tax records of the municipality; and (6) utility records of the municipality.” *Id.* at § 214.001(q). When a municipality sends a notice under the terms of this statute “to a property owner, lienholder, mortgagee, or registered agent and the United States Postal Service returns the notice as ‘refused’ or ‘unclaimed,’ the validity of the notice is not affected, and the notice is considered delivered.” *Id.* at § 214.001(r).

Following a public hearing where a building is found to violate the ordinance, the city may order the building “be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time” or the occupants be relocated within a similar timeframe. *Id.* at § 214.001(d). If the owner fails to comply with such an order, then the municipality must make a “diligent effort” to locate all persons with an interest in the property, including each mortgagee and lienholder, and give each notice of the order. *Id.* This notice must be sent by certified mail, return receipt requested or by using the U.S. Postal Service’s signature confirmation service. *Id.* Each notice must contain a reasonable description or identification of the property, although the description need not be a legal description. *Id.* at § 214.001(d)(1). This notice must provide a description of the building and property, a description of the current violations, and “a statement

² For a condominium in a city of over 1.9 million people, notice is sufficient if given to a unit owner and to the registered agent of the condominium owners’ association. *Id.* at § 214.001(b-1).

that the municipality will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time.” *Id.* at § 214.001(d)(1)-(3).

As an alternative to this procedure, municipalities may make the “diligent effort” before the hearing, thereby affording any interested individual the opportunity to comment at the public hearing. *Id.* at § 214.001(e). Additionally, municipalities should file notice of hearing in the Official Public Records of Real Property in the county where the property is located. *Id.* This notice must contain the name and address of the owner if known, a description of the property and the hearing. *Id.* This filing of notice is binding on subsequent interest holders, and protects the integrity of the process should the property sell. *Id.*

Once an order is issued, the municipality has 10 days to file a copy of the order with the city secretary or clerk and publish notice of the decision in a newspaper of general circulation in the area. *Id.* at § 214.001(f). This newspaper notice must include the address and description of the property, the date the hearing was held, a statement detailing the results of the order, and instructions for where anyone interested can locate a complete order. *Id.* at § 214.001(f)(2)(A)-(D).

Any owner or interest holder in a property who wants to contest a city’s order may file a petition in the district court within 30 days of the order. *Id.* at § 214.0012(a). After the petition is filed, the district court “may issue a writ of certiorari directed to the municipality to review the order of the municipality.” *Id.* at § 214.0012(b). Such review incorporates the “substantial evidence rule.” *Id.* at § 214.0012 (f). The municipal proceedings are not stayed while a petition is pending before the district court. *Id.* at § 214.0012(e). While an owner or other interest holder

is prohibited from recovering costs and legal fees from the municipality in such an action, the municipality is permitted to recover attorney's fees and costs. *Id.* at § 214.0012(g)-(h).

Remedial Time Period

Under the terms of this statute, the owner, lienholder, or mortgagee of the building has 30 days after the hearing to secure the building or “repair, remove, or demolish the building.” *Id.* at § 214.001(h). An extended period is permitted if the owner shows at the hearing that the necessary work could not be completed within 30 days. *Id.* at § 214.001(h)(2) and (i). In such a case, the city may grant no more than 90 days to complete the work unless the owner establishes that 90 days is insufficient to finish the work required and the owner has submitted a detailed timeline for completion of the project. *Id.* at § 214.001(j)(1)-(2). An owner who asks for and is granted more than 90 days to complete the renovation project must give regular progress reports to the appropriate authorities and the city may obtain a bond sufficient to cover the amount of repairing, removing or demolishing the building if the property's value is over \$100,000. *Id.* at § 214.001(k).

In the event the building is “not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time,” the municipality may do the work at its own expense. *Id.* at § 214.001(m). The costs to the municipality constitute a lien on the property, which must be filed with the county clerk. If the statutory notice requirements are met, such lien constitutes a “preferred lien subordinate only to tax liens.” *Id.* at § 214.001(n) and (o).

The Texas Legislature has passed additional legislation specific to the preservation of substandard buildings as historic property. These provisions are detailed in Texas Local Government Code § 214.00111. This section, which does not apply to single family dwellings, essentially allows for the delay in demolishing a historic building or structure for 90 days while a

different use, alternative buyer, or a receiver may be located for the building. *Id.* at § 214.00111(g).

Case of Interest

In *City of Waco v. Roddey*, the court held that the owner's procedural due process was violated where the city published notice in the local newspaper but failed to send direct notice to the owner, an heir of the property, whose name and address were known to the city. *City of Waco v. Roddey*, 613 S.W.2d 360, 365 (Tex.App.—Waco 1981, writ dismissed). The court ruled that the property owner was entitled to notice of the pending demolition via personal service or certified mail where his name, address, and phone number were known by the city. *Id.*

In *Saturn Capital Corp. v. City of Houston*, the purchaser of a piece of property sold at a tax sale sought to recover the amount of the demolition lien purchaser had paid the city under protest. The purchaser alleged that the demolition lien had been extinguished when the property was sold at the tax sale. Here, the court held that because the purchaser bought the property at a properly conducted tax sale, the demolition lien held by the city was extinguished and the purchaser took the property free and clear from that demolition lien. *Saturn Capital Corp. v. City of Houston*, 246 S.W.3d 242, 245 (Tex.App.—Houston[14th Dist.] 2007, pet. denied). The court reasoned that “a demolition lien is subordinate to a tax lien,” as outlined in Tex. Loc. Gov't Code Ann. §214.001(o) (Vernon 1999). Additionally, the court found that the city's efforts to collect on the demolition lien after the properly conducted tax sale equated to an attempt to gather an illegal fee. *Id.*

In *Wu v. City of San Antonio*, the city of San Antonio's Dangerous Structure Determination Board found that the property in issue constituted a public nuisance which violated the City's code and thereby ordered that the building be demolished as well as the pool

filled. *Wu v. City of San Antonio*, 216, S.W.3d 1, 3 (Tex.App.—San Antonio 2006, no pet.). The property owner appealed according to the procedure in Chapter 214 of the Texas Local Government Code. *Id.* An appeal hearing under this provision is based on a “substantial evidence” standard of review. *Id.* The court noted the difficulty faced by a reviewing court because the court must determine whether reasonable support exists for the administrative ruling while at the same time respecting the administrative ruling as the primary fact finder. *Id.* at 4.

The court noted that the landowner had the burden of proof to show that the administrative ruling was not supported by substantial evidence. *Id.* at 5. Applying these rules to the facts at hand, the court held that the landowner failed to bear his burden of showing that the administrative ruling should be reversed. *Id.* The court pointed to the evidence presented by the City’s building inspector who testified regarding the condition of the building, the lack of documented repair work completed by the landowner, and the fact the landowner failed to contest the finding that the building was a nuisance but rather focused his appeal on the allegation that the building could be repaired instead of demolished. *Id.* at 6.

In *Perkins v. San Antonio*, the court clarified its ruling in *Wu* regarding the “substantial evidence” rule. *Perkins v. City of San Antonio*, 293 S.W.3d 650 (Tex.App.—San Antonio 2009, reh’g overruled). On this issue in *Perkins*, the landowner alleged that the trial court failed to allow him the right to present evidence under the substantial evidence rule. *Id.* at 652-653. The court noted the different range of standards when examining administrative rulings and then noted that the type of review applied in *Wu* was a substantial evidence de novo review. *Id.* at 653. The court then pointedly admits it was mistaken to rely on “the standard contained in section 212.202(a) of the Texas Labor Code” because that standard is only applicable to decisions of the Texas Workforce Commission. *Id.* An administrative ruling by a Dangerous

Structure Determination Board is governed instead by section 214.0012 of the Texas Local Government Code. *Id.* Accordingly, the court disapproved of its ruling in *Wu* regarding the applicable standard of review. *Id.* at 654. Therefore, the proper standard of review is one of “pure substantial evidence” review, which mandated that the trial court only look to the factual record preserved from the administrative hearing. *Id.* Thus, the landowner’s appeal on this issue was denied. *Id.*

JUNK VEHICLES

The Basics

Section 683, Subchapter E of the Texas Transportation Code sets forth the applicable law on junked vehicles. 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 continued development of municipalities; and
7. is a public nuisance.

Tex. Transp. Code § 683.072.

Section 683.074 permits a municipality to adopt procedures for the abatement and removal of a junked vehicle as a public nuisance. The procedures adopted by a municipality must prohibit such a vehicle from being reconstructed or made operable after the removal;

require a public hearing before removal of the public nuisance; and require that notice identifying the vehicle to be given to the Department not later than the 5th day after the date of removal.³ *Id.* at 683.074(b)(1)-(3). Texas law defines a “junk vehicle” as a vehicle that is:

1. self-propelled and inoperable and:
 - a. does not have lawfully attached to it;
 - i. an unexpired license plate; or
 - ii. 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.

Tex. Transp. Code § 683.071.

Notice

A municipality must provide not less than 10 days notice of the nature of the nuisance prior to abatement and removal of the public nuisance. *Id.* at § 683.075. This provides the property owner the opportunity to invoke the protections of the statute/ordinance to contest the nuisance finding. The notice must be sent certified mail with a 5 day return request 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 in 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.

Id. at § 687.075(a). It is imperative that all interested parties be notified to avoid the problem of confiscating and destroying a vehicle that someone has a legal interest in. The notice to the

³ Department is defined as the Texas Department of Transportation. *See* Texas Transportation Code 683.001.

affected parties must include information that the nuisance be abated and removed within 10 days after the date on which the notice was mailed and that any requirement for a hearing be made before the expiration of the same 10 day period. *See* § 683.075(b)(1)-(2).⁴

Hearing

The governing body of the municipality or official designated by the governing body shall conduct hearings related to junked vehicles. *Id.* at § 683.076(a). If such a hearing is requested, the hearing cannot be held earlier than the 11th day after the date of the service of notice to afford interested parties sufficient time to prepare. *Id.* at § 683.076(b). At the hearing, there is a presumption that the vehicle is inoperable. *Id.* at § 683.076(c). This overcomes a significant burden for the municipality to prove the working condition of the vehicle, and instead shifts this burden to the owner. Otherwise, the city maintains the burden to meet the statutory requirements prior to abating the nuisance.

Exceptions to the Junked Vehicle Statutes

Texas law sets forth that the authority of a municipality to abate a nuisance does not apply when the vehicle in question “is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property, or they are stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junk yard, or is an antique⁵ or special interest vehicle⁶ stored by a motor vehicle collector⁷ on a

⁴ 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. *Id.* at 683.075(c). If notice is returned to the municipality as undelivered, any action to abate the nuisance must wait until the 11th day following the return of notice. Section 683.075(d).

⁵ “Antique vehicle” is defined as a passenger car or truck that is at least 35 years old. *Id.* at § 683.077(b)(1).

⁶ “Special interest vehicle” is defined as a motor vehicle of any age that has not been changed from original manufactured specifications and, because of its historic interest, is being preserved by a hobbyist. *Id.* at § 683.077(b)(3).

⁷ “Motor vehicle collector” refers to a person who owns one or more antique or special interest vehicles and acquires, collects or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle

collector's property, if the vehicle and the outdoor storage area are maintained in an orderly manner, not a health hazard and are screened from ordinary public view by appropriate means, including a fence, rapidly growing trees or shrubbery. *Id.* at § 683.077(a).

Disposal of Junked Vehicle

A junked vehicle may be removed to a scrap yard, a vehicle demolisher, or a suitable site operated by a municipality or county. *Id.* at § 683.078(a). A municipality may operate a disposal site if its governed body determines the commercial disposition junked vehicle is not available or is inadequate. *Id.* at 683.078(b). On its receipt of notice of removal, the department must immediately cancel the certificate of title issued for the vehicle.

The procedures may provide that the relocation of a junked vehicle that is a public nuisance to another location in the same municipality or county after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

ABANDONED VEHICLES

The Basics

Under Texas law, a motor vehicle is abandoned if the motor vehicle:

1. is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
2. has remained illegally on public property for more than 48 hours;
3. has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;

for personal use to restore and preserve an antique or special interest vehicle for historic interest. *Id.* at § 683.077(b)(2).

4. has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours;
5. has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a controlled access highway (*Id.* at § 683.002(a)(1)-(5); or
6. is considered an abandoned motor vehicle under § 644.153(r).

A law enforcement agency may take into custody an abandoned motor vehicle, watercraft, or outboard motor found on public or private property. *Id.* at § 683.011(a). A law enforcement agency may use agency personnel, equipment, and facilities or contract for other personnel, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle, watercraft, or outboard motor taken into custody by the agency under this subchapter. *Id.* at § 683.011(b).

Notice

A law enforcement agency shall send notice of abandonment to:

1. the last known registered owner of each motor vehicle, watercraft, or outboard motor taken into custody by the agency or for which a report is received under § 683.031; and
2. each lienholder recorded under Chapter 501 for the motor vehicle or under Chapter 31, Parks and Wildlife Code, for the watercraft or outboard motor.

Id. at § 683.012(a)(1)-(2). The notice must be sent by certified mail not later than the 10th day after the date the agency takes the abandoned motor vehicle into custody or receives the report under § 683.031 and § 683.012(b); specify the year, make, model, and identification number of the item; give the location of the facility where the item is being held; inform the owner and

lienholder of the right to claim the item not later than the 20th day after the date of the notice on payment of towing, preservation, and storage charges or garagekeeper's charges and fees under § 683.032 and, if the vehicle is a commercial motor vehicle impounded under § 644.153(q), the delinquent administrative penalty and costs; and state that failure of the owner or lienholder to claim the item during the period specified is a waiver by that person of all right, title, and interest in the item; and consent to the sale of the item at a public auction. Tex. Transp. Code § 683.012(b)

Notice by publication in one newspaper of general circulation in the area where the motor vehicle, watercraft, or outboard motor was abandoned is sufficient notice under this section if:

1. the identity of the last registered owner cannot be determined;
2. the registration has no address for the owner; or
3. the determination with reasonable certainty of the identity and address of all lienholders is impossible.

Id. at § 683.012(c). Notice by publication must be published in the same period notice by certified mail and contain all of the information so required. *Id.* at § 683.012(d)(1).

Fees

A law enforcement agency that takes into custody an abandoned motor vehicle is entitled to reasonable storage fees for not more than 10 days, beginning on the day the item is taken into custody and ending on the day the required notice is mailed and beginning on the day after the day the agency mails notice and ending on the day accrued charges are paid and the vehicle, watercraft, or outboard motor is removed. *Id.* at § 683.013(1)-(2).

Auction or Use

If an abandoned motor vehicle is not claimed under § 683.012, the owner or lienholder waives all rights and interests in the item and consents to the sale of the item by public auction. *Id.* at § 683.014(a)(1). Law enforcement may sell the item at a public auction or use the item as provided by § 683.016 and § 683.014(a)(2). Proper notice of the auction shall be given. *Id.* at § 683.014(b). A garagekeeper who has a garagekeeper's lien shall be notified of the time and place of the auction. *Id.* The purchaser of a motor vehicle takes title free and clear of all liens and claims of ownership and shall receive a sales receipt from the law enforcement agency. *Id.* at § 683.014(c)(1)-(2). Also, the purchaser is entitled to register the motor vehicle and receive a certificate of title. *Id.* at § 683.014(c)(3).

A law enforcement agency is entitled to reimbursement from the proceeds of the sale of an abandoned motor vehicle for the cost of the auction, towing, preservation, and storage fees resulting from the taking into custody, the cost of notice or publication as required by § 683.012 and § 683.015(a)(1)-(3). After deducting the reimbursement allowed under Subsection (a), the proceeds of the sale shall be held for 90 days for the owner or lienholder of the vehicle. *Id.* at § 683.015(b).

After the period, proceeds unclaimed by the owner or lienholder shall be deposited in an account that may be used for the payment of auction, towing, preservation, storage, and notice and publication fees resulting from taking other vehicles into custody if the proceeds from the sale of the other items are insufficient to meet those fees. *Id.* at § 683.015(c). If the vehicle is a commercial motor vehicle impounded under § 644.153(q), the Department of Public Safety is entitled from the proceeds of the sale to an amount equal to the amount of the delinquent administrative penalty and costs.

The law enforcement agency that takes an abandoned motor vehicle into custody that is not claimed under § 683.012 may use the vehicle for agency purposes. *Id.* at § 683.016(a). The law enforcement agency shall auction the vehicle as provided by this subchapter if the agency discontinues use of the vehicle.⁸ *Id.* at § 683.016(b).

WEEDS OR OTHER UNSANITARY MATTER

The Basics

A municipality may require a lot owner within the municipality to “keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter.” Tex. Health and Safety Code § 342.004. The municipality has the authority prosecute in municipal court the lot owner or occupant of property who does not comply with this ordinance.

Notice

A municipality must give notice to the property owner personally in writing, or by letter addressed to the owner at the owner’s address as recorded in the appraisal district’s records. Tex. Health and Safety Code § 342.006(b). If it is impossible to provide personal service, then the notice requirements can be satisfied by at least one publication, or by posting notice on or near the front door of each building on the property, or “posting notice on a placard attached to a stake driven into the ground on the property to which the violation relates.” Tex. Health and Safety Code § 342.006 (3). Notice is not affected if the notice is returned to the United States Postal Service as “refused” or “unclaimed”. Tex. Health and Safety Code § 342.006(c). The notice should state that if the owner commits a second violation of the same kind or nature which also poses a danger to the public before the first anniversary of the date of the notice, then the municipality may correct the violation at the owner’s expense and assess the expense against the

⁸ This section does not apply to an abandoned vehicle on which there is a garagekeeper's lien and does not apply to a vehicle that is taken into custody by a law enforcement agency located in a county with a population of 2.4 million or more and removed to a privately owned storage facility.

property without further notice. Tex. Health and Safety Code § 342.006(d). If the land owner does not comply with the notice within 7 days the municipality may “do the work or make the improvements; and pay for the work done or improvements made and charge the expenses to the owner of the property.” Tex. Health and Safety Code § 342.006 (a).

Assessment of Lien

The governing body of a municipality may assess the expenses incurred on the work done or the improvements made. Tex. Health and Safety Code § 342.007(a). To obtain the lien against the property, the mayor, municipal health authority, or municipal official must file an expense statement with the county clerk. Tex. Health and Safety Code § 342.007 (b). Included in the statement is the name of the land owner, and the legal description of the property. Tex. Health and Safety Code § 342.006(b). The lien is a security for expenditures made and interest at the rate of 10% on the amount due from the date of payment by the municipality. Tex. Health and Safety Code § 342.007(c). This lien is inferior only to tax liens and liens for street improvements. Tex. Health and Safety Code § 342.007(d).

Abatement

A municipality may, without notice, abate weeds that “have grown higher than 48 inches and are an immediate danger to the health, life, or safety of any person.” Tex. Health and Safety Code § 342.008(a)(1)-(2). The municipality has ten days to notify the property owner of the abatement using the notice procedures discussed above. Tex. Health and Safety Code § 342.008(b). This notice should include an identification of the property, a description of the violations, a statement that the municipality abated the weeds and an explanation of the property owner’s right to request an administrative hearing concerning the municipality’s abatement of the weeds. Tex. Health and Safety Code § 342.008(c).

Administrative Hearing

If the property owner files a written request for a hearing within 30 days after the date of the abatement of the weeds, the municipality shall conduct an administrative hearing. Tex. Health and Safety Code § 342.008 (d). The hearing must be conducted no later than the 20th day after the date of the request is filed. The owner has the right to testify, present witnesses or offer written information relating to the abatement of the weeds. Tex. Health and Safety Code § 342.008(e).