

# Public Nuisance Houston's New Weapon?

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# Public Nuisance

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- An act or omission which obstructs or causes inconvenience or damage in the exercise of rights common to all.
- Restatement (Second) of Torts: “[a] public nuisance is an unreasonable interference with a right common to the general public.
- Key element is the “interference” must be to a public right; this requires proof that the injury is common to the general public.

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- Conduct was quasi-criminal in nature.
- “[A] criminal interference with a right common to all members of the public” –
- Conduct considered quasi-criminal when unreasonable under the circumstances and could cause injury to someone who is exercising a common, societal right.
- Today, conduct lowered to “unreasonable interference” with a public right

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- The factors regarding unreasonableness include:
  - a significant interference with public health, safety, peace comfort or convenience;
  - conduct proscribed by statute;
  - and continuing, long-lasting nature and the defendant knows it has a “significant effect” on this ongoing harm

# Defined

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- Health and Safety Code Section 343.011
- Houston, Code of Ordinances, Sec. 10-451
- Texas Clean Air Act

# Conduct

- “Unreasonable interference” with a “public right”
- A “public right” is "collective in nature.”
- Courts have been "reluctant to recognize a public right so broad and undefined that the presence of any potentially dangerous instrumentality in the community could be deemed to threaten it.“
- Must establish defendants actually caused the nuisance. Liability precluded if injuries are too remote or unforeseeable, or if the harm is caused by the superseding conduct of others.
- Defendants must exercise control over what causes the nuisance

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