

ALCOHOLIC BEVERAGE CODE

TITLE 3. LICENSES AND PERMITS

SUBTITLE C. PROVISIONS APPLICABLE TO PERMITS AND LICENSES

CHAPTER 81. COMMON NUISANCE

Sec. 81.001. DEFINITION. In this chapter, "common nuisance" means a common nuisance as defined by Section 125.001, Civil Practice and Remedies Code, or by Section 101.70(a) of this code.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. 2605), Sec. 1, eff. June 15, 2007.

Sec. 81.002. APPLICABILITY OF CHAPTER. This chapter applies only to a permit or license that authorizes the retail sale or service of alcoholic beverages for on-premises consumption of alcoholic beverages, other than a permit or license held with a food and beverage certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. 2605), Sec. 1, eff. June 15, 2007.

Sec. 81.003. SUBMISSION OF INFORMATION BY CERTAIN OFFICIALS. For the purposes of Section 81.004 or 81.005, the district or county attorney of the county or the city attorney of the city in which the premises are located may provide information to the commission indicating that the holder of, or applicant for, a permit or license covering the premises has used or can reasonably be expected to use or allow others to use the premises in a manner that constitutes a common nuisance.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. 2605), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 265, eff. December 1, 2020.

Sec. 81.004. APPLICATION FOR ORIGINAL OR RENEWAL PERMIT OR LICENSE. The commission may deny an application for an original or renewal permit or license as provided by Section 11.43 if the

commission finds that, at any time during the 12 months preceding the permit or license application, a common nuisance existed on the premises for which the permit or license is sought, regardless of whether the acts constituting the common nuisance were engaged in by the applicant or whether the applicant controlled the premises at the time the common nuisance existed. The commission may issue an original or renewal permit or license if it is found that the applicant did not control the premises at the time the common nuisance existed and the applicant has taken reasonable measures to abate the common nuisance.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. 2605), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 266, eff. December 31, 2020.

Sec. 81.005. CANCELLATION OR SUSPENSION OF PERMIT OR LICENSE. (a) The commission or administrator may suspend for not more than 60 days or cancel a permit or license if the commission or administrator finds, after notice and hearing, that the permit or license holder used or allowed others to use the permitted or licensed premises in a manner that constitutes a common nuisance.

(b) If the commission or administrator receives information from an official under Section 81.003, the commission or administrator shall consider the information and, if the commission or administrator finds the information sufficient to indicate that cancellation or suspension under Subsection (a) may be appropriate, provide notice and hold a hearing under that subsection to determine whether to suspend or cancel the permit or license.

(c) Notwithstanding Section 11.64, the commission or administrator may not give a permit or license holder the opportunity to pay a civil penalty rather than have the permit or license suspended.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. 2605), Sec. 1, eff. June 15, 2007.

Sec. 81.006. ORDER IMPOSING ADDITIONAL CONDITIONS ON PERMIT

OR LICENSE HOLDER. (a) The commission may, after notice and hearing, issue an order imposing any condition on a permit or license holder that is reasonably necessary to abate a common nuisance on the premises.

(b) The commission may suspend for not more than 60 days or cancel the permit or license of a permit or license holder who violates an order issued under this section. The commission may offer the permit or license holder the opportunity to pay a civil penalty rather than have the permit or license suspended.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. 2605), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 267, eff. December 31, 2020.

Sec. 81.007. TEMPORARY ORDER DURING PENDENCY OF PROCEEDING.

(a) Before holding a hearing and making a determination under Section 81.004 or 81.005, the commission may, if there is evidence showing a reasonable likelihood that a common nuisance exists on the premises for which the permit or license is held or sought, issue an order imposing any condition on the permit or license holder or the applicant for the permit or license that is reasonably necessary to abate a common nuisance on the premises. An order issued under this section is effective until:

(1) the expiration of the time for appealing the determination under Section 81.004 or 81.005; or

(2) if the determination is appealed, until all appeals are finally decided.

(b) A hearings officer may issue an order under this section on the hearings officer's own motion or the motion of a person listed in Section 81.003 or, for an original or renewal permit or license application, any individual entitled to protest the issuance of the original or renewal permit or license.

(b-1) If an individual who is entitled to protest the issuance of the original or renewal permit or license files a motion for a temporary order under this section, the commission may not issue a temporary order without conducting a hearing.

(c) The commission may impose any sanction on a person who violates an order issued under Subsection (a) that is necessary to secure compliance with the order.

(d) A hearing under this section must be held not later than the 10th day after the date notice is served on all interested parties. Failure to hold a hearing in the time prescribed by this subsection does not invalidate an order issued under this section.

(e) A person who requests an order under this section may not be required to post security for costs in connection with the application or any hearing conducted as a result of the application.

Added by Acts 2007, 80th Leg., R.S., Ch. 896 (H.B. [2605](#)), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 268, eff. December 31, 2020.