

THE STATE OF TEXAS

§
§
§
§
§

BEFORE THE COMMISSIONERS'

COURT OF

COUNTY OF MONTAGUE

MONTAGUE COUNTY, TEXAS

**AN ORDER ADOPTING TEXAS HEALTH AND SAFETY CODE,
CHAPTER 343; PROVIDING PROCEDURES FOR ABATEMENT OF
PUBLIC NUISANCES**

On the 12 day of June, 2000, the Commissioners' Court of Montague County, Texas met in regular session with the following members present and participating to wit:

- James O. Kittrell, Montague County Judge
- Jon Kernek, Commissioner, Precinct 1
- Jerry Clement, Commissioner, Precinct 2
- Tommy Sparks, Commissioner, Precinct 3
- Tommie Sappington, Commissioner, Precinct 4

WHEREAS, the Commissioners' Court of Montague County has determined that there are incidences of public nuisances in the unincorporated areas of the County;

WHEREAS, the County understands the technical criteria, legal requirements, and administrative procedures and duties associated with regulating public nuisances, does accept and will fully enforce Texas Health and Safety Code, Chapter 343; and

WHEREAS, the Commissioners' Court of Montague County has the authority to promulgate this Order pursuant to Texas Health and Safety Code, Section 343.021; premises considered,

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS' COURT OF MONTAGUE COUNTY, TEXAS:

SECTION 1. That this Order is adopted in accordance with Section 343.021 of the Texas Health and Safety Code, as amended, and shall be referred to as the PUBLIC NUISANCE ABATEMENT ORDER.

SECTION 2. Definitions.

2.1 For the purposes of this Order, when not inconsistent with the context, words used in the present Court include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall

- 2.2 For the purposes of this Order, the following words, terms, phrases and their derivations shall have the meaning given in this Section 2.2.
- (A) "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.
 - (B) "Agriculture land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.
 - (C) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
 - (D) "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.
 - (E) "Neighborhood" means:
 - (1) Platted subdivision; or
 - (2) Property contiguous to and within 300 feet of a platted subdivision.
 - (F) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the County Clerk of the County in which the subdivision is located.
 - (G) "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.
 - (H) "Public Street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.
 - (I) "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.
 - (J) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
 - (K) "Rubbish" means nondecayable waste from a public or private establishment or residence.

- (L) "Weeds" means all rank and uncultivated vegetable growth or matter that:
- (1) has grown to more than 36 inches in height; or
 - (2) may create an unsanitary condition or becomes a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.
- (M) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

SECTION 3. Public Nuisance.

3.1 Texas Health and Safety Code, Section 343.011

- (a) This section applies to the unincorporated area of a county.
- (b) A person may not cause, permit, or allow a public nuisance under this section.

3.2 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 accumulation rubbish, including newspaper, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, or premises in a neighborhood for ten (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 to 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 an 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;
 - (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.
- (c) This section does not apply to:
- (1) A site or facility that is permitted and regulated by a state agency; or
 - (2) Agricultural land.

SECTION 4. Offense.

4.1 Texas Health and Safety Code, Section 343.012

- (a) A person commits an offense if:
 - (1) The person violates Section 343.011(b); and
 - (2) The nuisance remains unabated after the 30th 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.

SECTION 5. Abatement Procedures.

- 5.1 Texas Health and Safety Code, Section 343.022.
 - (a) Any Montague County Constable shall be responsible for administration of the abatement program, but the removal or demolition of the nuisance maybe made by a person authorized by the persons administering the abatement program.
 - (b) The Montague County Constable must provide written notice 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:
 - (A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and
 - (B) the person responsible can be identified.
 - (c) The notice must state:
 - (1) The specific condition that constitutes a nuisance;
 - (2) That the person receiving notice shall the nuisance before the 31st day after the date on which the notice is served;
 - (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; and
 - (4) That the person receiving notice is entitled to submit, before the 31st day after the date on which the notice is served, a written request for a hearing.
 - (d) 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.
- (e) The abatement procedures must require a hearing before the County abates the nuisance if a hearing is requested. The hearing may be conducted before the Commissioners' Court or any board, commission, or official designated by the Commissioners' Court. The Commissioners' Court may designate a board, commission, or official to conduct each hearing. If a hearing is required it will be before the Montague County Judge.

SECTION 6. Injunction.

6.1 Texas Health and Safety Code, Section 343.013.

- (1) Under Section 343.013, an injunction may be sought.
 - (a) A county or district court may by injunction prevent or restrain a violation of this Chapter in the unincorporated area of the County.
 - (b) A county or person affected or to be affected by a violation under this Chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the Court grants the injunction, the Court may award the plaintiff reasonable attorney's fees and court costs.

SECTION 7. Assessment of Cost; Lien.

7.1 Texas Health and Safety Code, Section 343.023

- (a) Under Section 343.023 a County may:
 - (1) Assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or
 - (2) By resolution or order, assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 against the property on which the nuisance exists.
- (b) The County may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

- (c) To obtain a lien against the property to secure an assessment, the Commissioners' Court of the County must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the County Clerk of the County in which the property is located.
- (d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the County's lien attaches, if the mortgage was filed for record in the office of the County Clerk of the County in which the County files the notice of lien with the County Clerk.
- (e) The County is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.
- (f) The statement of costs or a certified copy of the statement of costs is prima facia proof of the costs incurred to abate the nuisance.

SECTION 8. Authority to Enter Premises.

8.1 Texas Health and Safety Code, Section 343.024

- (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.

SECTION 9. Enforcement

9.1 Texas Health and Safety Code, Section 343.025

- (a) A Court of competent jurisdiction in the County may issue any order necessary to enforce this Chapter.

00322

APPROVED AND ORDERED on this 12 day of June, 2000.

Jon Kernek
Jon Kernek,
Montague County Commissioner

Jerry Clement
Jerry Clement
Montague County Commissioner

Tommy Sparks
Tommy Sparks,
Montague County Commissioner

Tommie Sappington
Tommie Sappington,
Montague County Commissioner

James O. Kittrell
James O. Kittrell,
Montague County Judge

ATTEST:

Gayle Edwards
Gayle Edwards, Montague County Clerk