

Date: 2/28/2012

THE SPECIAL COMMISSIONERS COURT SESSION OF BRAZORIA COUNTY, TEXAS

ORDER NO. VI.B.5.a.

RE: Consider amending order adopting procedures for the abatement of neighborhood nuisances

- 1. Brazoria County Commissioners Court has adopted an Order on procedures for the abatement of neighborhood nuisances;**
- 2. Brazoria County desires to amend the Order dated March 9, 2004; and**
- 3. The requirements made in the Order attached hereto are consistent with the general purposes of Chapter 343 of the Texas Health and Safety Code as well as Chapter 683 of the Texas Transportation Code;**

NOW, THEREFORE, IT IS HEREBY ORDERED by the Commissioners Court of Brazoria County, Texas that the Order attached hereto, entitled "Procedures for the Abatement of Neighborhood Nuisances Pursuant to Chapter 343, Texas Health and Safety Code and Chapter 683, Texas Transportation Code," the same being hereby incorporated fully by reference herein, be and is hereby adopted, effective immediately and supersedes all other Orders on Procedures for the Abatement of Neighborhood Nuisances.

**PROCEDURES FOR THE ABATEMENT OF NEIGHBORHOOD NUISANCES
PURSUANT TO CHAPTER 343, TEXAS HEALTH AND SAFETY CODE AND
CHAPTER 683, TEXAS TRANSPORTATION CODE**

Section 1. Scope and Purpose

- 1.1 These procedures are adopted by the Commissioners Court of Brazoria County pursuant to the Neighborhood Nuisance Abatement Act, codified as Chapter 343 of the Texas Health and Safety Code, as amended, and the Junked Vehicles, Public Nuisance Abatement Act, codified as Subchapter E, Chapter 683 of the Texas Transportation Code, as amended, and shall apply to the unincorporated areas of Brazoria County, Texas.
- 1.2 The procedures provided for herein are not intended, nor shall they be construed, to limit in any way other remedies, causes of action or right provided for by law.
- 1.3 It is the purpose of these procedures to protect and enhance the desirability and the aesthetic character of residential and commercial neighborhoods in the unincorporated areas of Brazoria County and to control and abate certain conditions which lead to neighborhood blight and are detrimental to the overall health, welfare, and safety of the citizens of Brazoria County.

Section 2. Definitions

As used in this Order, the words and terms defined in this section shall have the meaning ascribed, unless the context clearly indicates another meaning.

Abate means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.

Administrator means the Director of the Brazoria County Environmental Health Department of Brazoria County, Texas, or a county employee acting under his/her supervision and control.

Agricultural Land means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23 of the Tax Code.

Antique Vehicle means a passenger car or truck that is at least 25 years old.

Boat means a vehicle including a barge, airboat, motorboat, or sailboat, used for transportation on water.

Building means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other movable property.

Commissioners Court means the Commissioners Court of Brazoria County.

County means Brazoria County.

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 industrial by product.

Hearing Examiner means any board, commission, or official designated by the Commissioners Court to conduct a public hearing requested in accordance with this Order.

Junked Vehicle means a vehicle that is self-propelled and is:

- a. wrecked, dismantled or partially dismantled, or discarded; or
- b. inoperable and has remained inoperable for more than:
 - i. 72 consecutive hours, if the vehicle is on public property; or
 - ii. 30 consecutive days, if the vehicle is on private property; AND is:
- c. a motor vehicle that displays an expired license plate or registration insignia or invalid motor vehicle inspection certificate or does not display a license plate, registration insignia, or motor vehicle inspection certificate; or
- d. an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or
- e. a watercraft that does not have lawfully on board an unexpired certificate of number; and is not watercraft described in §31.055, Parks and Wildlife Code.

Motor Vehicle Collector means a person who:

- a. owns one or more antique or special interest vehicles; and
- b. acquires, collects, or disposes of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Neighborhood means a) a platted subdivision; or b) property contiguous to and within 300 feet of a platted subdivision.

Person means an individual, corporation, business trust, partnership, association, estate, any other legal entity and also the meaning assigned by section 311.005(2) of the Texas Government Code, as amended.

Platted Subdivision means a subdivision that has its approved or unapproved plat recorded or unrecorded with the county clerk of the county in which the subdivision is located; or is an unrecorded subdivision in Brazoria County, Texas.

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.

Public Street means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is opened to the public for vehicular or pedestrian traffic.

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.

Refuse means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

Rubbish means nondecayable waste from a public or private establishment or residence.

Special Interest Vehicle means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Weeds means all rank and uncultivated vegetable growth or matter that:

- a. has grown to more than thirty-six (36) inches in height; or
- b. may create an unsanitary condition or may become a harborage for rodents, vermin, or other disease carrying pests, regardless of the height of the weeds.

Section 3. Public Nuisance is

- 3.1 Keeping, storing, or accumulating refuse on premises in a neighborhood unless such refuse is entirely contained in a closed receptacle;
- 3.2 Keeping, storing, or accumulating rubbish, including newspapers, abandoned and/or junked vehicles, abandoned and/or junked boats, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for ten (10) days or more, unless the rubbish or object is completely enclosed within a building or is not visible from a public street;

- 3.3 Maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
- 3.4 Allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
- 3.5 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;
- 3.6 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 (4) feet high and that has a latched and locked gate; and
 - b. A cover over the entire swimming pool that cannot be removed by a child;
- 3.7 A junked vehicle, including part of a junked vehicle, visible from a public place or public right-of-way if it is:
 - a. detrimental to the safety and welfare of the public;
 - b. tending to reduce the value of private property;
 - c. inviting vandalism;
 - d. creating a fire hazard;
 - e. an attractive nuisance creating a hazard to health and safety of minors; or
 - f. producing urban blight adverse to the maintenance and continuing development of municipalities;
- 3.8 Maintaining a flea market in a manner that constitutes a fire hazard;
- 3.9 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;
- 3.10 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.

3.11 Discarding refuse on property that is not authorized for that activity.

3.12 This section does *not* apply to:

a. a site or facility that is:

1. permitted and regulated by a state agency; or
2. licensed or permitted under Chapter 361 of the Texas Health & Safety Code; or

b. agricultural land; or

c. a vehicle or vehicle part:

1. that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
2. that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property; if the vehicle or vehicle part and the outdoor storage area, are:
 - i. maintained in an orderly manner;
 - ii. not a health hazard; and
 - iii. screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

Section 4. Public Nuisances Prohibited

4.1 A person may not cause, permit, or allow a public nuisance, as that term is defined in this Order, on any premises.

Section 5. Investigation

5.1 The Commissioners Court of Brazoria County hereby appoints the Director of the Brazoria County Environmental Health Department, a regular salaried full-time County employee, to administer this program and the abatement procedures prescribed in this Order.

- 5.2 A complaint to abate a public nuisance under these procedures may be initiated by any person by contacting the Brazoria County Environmental Health Department either by telephone, in writing or in person. A Brazoria County Environmental Health Department inspector may also initiate a complaint based upon his/her own personal observations.
- 5.3 The Administrator's Department shall make a written record of all complaints received.
- 5.4 The Administrator shall assign the complaint to a Department investigator for inspection and enforcement if warranted. In order to administer these procedures, the Administrator or any other county official, agent, or employee charged with the enforcement of health, environmental safety, or fire laws may enter any premises in the unincorporated areas of the County at a reasonable time to inspect, investigate, or abate a nuisance, or to enforce Chapter 343 of the Texas Health and Safety Code, as amended or Subchapter E, Chapter 683 of the Texas Transportation Code. Before entering the premises, the Administrator, official, agent, or employee must exhibit proper identification to the occupant, manager or other appropriate person.
- 5.5 If the Department investigator determines that a public nuisance does not exist, he/she will recommend closure of the complaint. The Administrator shall make a final determination on the closure of complaints.
- 5.6 If the Department investigator or Administrator determines that a public nuisance exists, he/she shall serve Notice to Abate the Public Nuisance on the owner, and, if applicable, the lessee, occupant, agent, executor, administrator, trustee, or person in charge of the premises on which the public nuisance exists. Notice must also be provided to any person responsible for causing the public nuisance. This Notice to Abate the Public Nuisance shall comply with and be served as provided in Section 6 of this Order.
- 5.7 After the expiration of 30 days from the date on which the County's Notice to Abate the Public Nuisance is served, the Department investigator shall inspect the premises described in the complaint.
- 5.8 If it is determined that the public nuisance has been abated, the Administrator shall make a record of the findings and take no further action thereon.
- 5.9 If it is determined that the public nuisance has not been abated and a hearing has been requested, the Administrator shall follow the procedures set out in Section 9 of this Order.
- 5.10 If the Administrator determines that the nuisance has not been abated, but there has been no request for a hearing, the Administrator shall follow the procedures set out in Section 7 or 8 of this Order.

Section 6. Notice Requirements

6.1 Each Notice to Abate the Public Nuisance must contain the following information:

- a. The specific condition that constitutes a public nuisance;
- b. The street address or other general description of the property on which the public nuisance exists;
- c. That the person receiving a junk vehicle nuisance notice must abate the nuisance not later than the 10th day after the date on which the notice was personally delivered or mailed;
- d. Any request for a hearing pertaining to junk vehicle nuisance must be made before the 10-day period expires;
- e. That the person receiving a notice must abate the public nuisance, other than a junk vehicle, before the 31st day after the date on which the notice is served;
- f. That the owner, lessee, occupant, agent or person in charge of the premises is entitled to submit, before the 31st day after the date on which the notice is served, a written request for a hearing which should contain the name and address of the person to be notified of the date, time and place of hearing;
- g. That said Request for Hearing may be given to the Administrator by hand delivery to his office or by certified mail, return receipt requested, addressed to the Director of the Brazoria County Environmental Health Department, Angleton, Texas;
- h. That the owner, lessee, occupant, agent, or person in charge of the premises is entitled to appear at the scheduled hearing and is entitled to present evidence, examine witnesses, and argue on the owner's behalf;
- i. That failure to abate the public nuisance may result in abatement by the County, assessment of costs, and the attachment of a lien to the property on which the public nuisance exists;
- j. That Section 343.012 of the Texas Health and Safety Code, as amended, provides that a person commits a misdemeanor (punishable by a fine of not less than \$50 or more than \$200 for the first offense) if the public 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;
- k. That Section 683.073 of the Texas Transportation Code provides that a person commits a misdemeanor punishable by a fine not to exceed \$200.00 if the person maintains a junk vehicle public nuisance and the Court shall order abatement and removal of the nuisance on conviction; and

1. Each day a violation occurs is a separate offense. If it is shown at trial of the defendant that the defendant has been previously convicted of an offense under the Health & Safety Code, the defendant may be punished with a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both. The Court shall order abatement of the nuisance if the defendant is convicted of an offense under Section 343.012 of the Texas Health & Safety Code, as amended.
- 6.2 The Notice to Abate the Public Nuisance shall be served on the owner, lessee, occupant, agent, executor, administrator, trustee and/or person in charge of the premises in the following manner:
- a. in person or by regular mail and registered or certified mail, return receipt requested; or
 - b. if personal service cannot be obtained or the address of the owner, lessee, occupant, agent, executor, administrator, trustee, or person in charge of the property is unknown, by posting a copy on the premises on which the public nuisance exists *and* by publishing the notice in a newspaper with general circulation in the county, two times within 10 consecutive days.
 - c. The procedures for the abatement and removal of a junked vehicle public nuisance must provide not less than 10 days notice of the nature of the nuisance. The notice must be personally delivered or sent by both regular mail and certified mail, return receipt requested to:
 1. the last known registered owner of the property on which the nuisance is located;
 2. each lien holder of record of the property on which the nuisance is located; and
 3. the owner or occupant of:
 - i. the property on which the nuisance is located; or
 - ii. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
 - d. 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, personally delivered.
 - e. If notice is returned undelivered, action to abate a junked vehicle nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Section 7. Procedures for the Abatement and Removal of Junked Vehicles

- 7.1 If the Administrator determines a junked vehicle or part of a junked vehicle has not been abated and a hearing has not been requested, then the Administrator shall:

- a. estimate the cost to abate the public nuisance;
 - b. forward the estimate of the cost to Commissioners Court.
- 7.2 Commissioners Court shall determine whether or not to:
- a. Order the abatement of the public nuisance;
 - b. Assess the costs of abating the public nuisance;
 - c. Assess the cost of legal notification by publication, if utilized;
 - d. Assess an administrative fee of \$100 on the owner of the premises on which the public nuisance exists; and/or
 - e. assess the cost on the premises on which the public nuisance exists.
- 7.3 The County shall be entitled to interest beginning on the 31st day after the date of assessment against the property at the rate of 10% per year.
- 7.4 A vehicle is prohibited from being reconstructed or made operable after removal;
- 7.5 A public hearing is required before removal of the public nuisance if the person receiving notice of a public nuisance requests a hearing not later than the date by which the nuisance must be abated and removed;
- 7.6 A notice identifying the vehicle part or part of the vehicle shall be given to the Texas Department of Transportation not later than the fifth day after the date of removal;
- 7.7 The relocation of a junked vehicle that is a public nuisance to another location in Brazoria County after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceedings if the junked vehicle constitutes a public nuisance at the new location.
- 7.8 Junked Vehicle Disposal:
- a. A junked vehicle, including a part of a junked vehicle, may be removed to a scrapyard, a State-licensed recycler, a motor vehicle demolisher, a State-permitted landfill, or a suitable site operated by a municipality or county.
 - b. A municipality or county may operate a disposal site if its governing body determines that commercial disposition of junked vehicles is not available or is inadequate. A municipality or county may:
 - 1. finally dispose of a junked vehicle or vehicle part; or

2. transfer it to another disposal site if the disposal is scrap or salvage only.

Section 8. Procedures for Abatement of all Nuisances Other than Junked Vehicles

- 8.1 If the Administrator determines that the public nuisance has not been abated and a hearing has not been requested, then the Administrator may present to Commissioners Court the Administrator's request to abate the public nuisance.
- 8.2 Commissioners Court shall, by resolution or order, determine whether or not to:
 - a. Order the abatement of the public nuisance;
 - b. Assess the costs of abating the public nuisance;
 - c. Assess the cost of legal notification by publication, if utilized;
 - d. Assess an administrative fee of \$100 on the owner of the premises on which the public nuisance exists; and/or
 - e. assess the cost on the premises on which the public nuisance exists.
- 8.3 The County shall be entitled to interest beginning on the 31st day after the date of assessment against the property at the rate of 10% per year.

Section 9. Public Hearing before Hearing Examiner

- 9.1 A person receiving a Notice to Abate the Public Nuisance under this Order is entitled to a public hearing before a Hearing Examiner. Such a request may be perfected on public nuisance notices other than junked vehicle notices by submission of a written request to the Administrator within 31 days of receipt of the Notice to the Director of the Brazoria County Environmental Health Department.
- 9.2 A person receiving a notice to abate the Junk Vehicle Public Nuisance under this order is entitled to a public hearing not earlier than eleven (11) days after the date of service of notice.
- 9.3 If a hearing has been requested, the Administrator shall set a hearing date and send a Notice of Hearing to the person requesting the hearing, all parties with an ownership interest in the subject property, and/or any other party that has access to or use of the subject property or by serving the owner in the same manner as used for serving the Notice to Abate the Public Nuisance in Section 6.2 of this Order. The Notice of Hearing shall state the date, time, and place of the hearing and shall be provided at least ten (10) days notice prior to the date of the

hearing. The ten-day notice requirement may be waived by the person filing the request for hearing if such waiver is in writing and signed by the person filing the Request for Hearing.

- 9.4 The owner and/or his representative present at the hearing shall be entitled to present testimony and other evidence, examine witnesses, and argue on the owner's behalf.
- 9.5 Any interested person, including the Administrator and Investigator, may appear and present testimony and other evidence.
- 9.6 All persons testifying at the hearing shall be under oath.
- 9.7 The Hearing Examiner shall be allowed to question any person testifying.
- 9.8 The Hearing Examiner shall assess the testimony fairly and impartially and in accordance with the law.
- 9.9 The Hearing Examiner shall make a written determination as to whether a public nuisance exists and sign such written determination. A copy shall be sent to the Administrator. Upon the receipt of the copy of the written determination, the Administrator or designated representative shall hand deliver or send by certified mail, return receipt requested and regular mail, a copy of the written determination of the Hearing Examiner to all parties that participated in the hearing. If mailed, it shall be mailed to the address designated in said request.
- 9.10 At the hearing, a junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- 9.11 If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:
 - a. description
 - b. vehicle identification number; and
 - c. license plate number.

Section 10. Post-Hearing Procedures

- 10.1 If the Hearing Examiner determines that a nuisance exists, the Administrator shall inspect the subject premises to determine whether the public nuisance has been abated 30 days after the party ordered to abate the nuisance receives the Hearing Examiner's determination.
- 10.2 If the public nuisance has been abated, then the Administrator shall make a record thereof and take no further action thereon.

10.3 If the public nuisance has not been abated, the Administrator will estimate the cost to abate the public nuisance and forward the estimate to the Commissioners Court.

10.4 The Commissioners Court shall determine whether:

- a. to order the abatement of the public nuisance and the assessment of a lien; and/or
- b. to dismiss the proceedings.

10.5 The Commissioners Court Order determining the final disposition shall be entered in the Minutes of Commissioners Court. A copy of such Commissioners Court Order shall be sent by the Administrator by certified mail, return receipt requested and regular mail to all parties who attended the hearing.

Section 11. Additional Duties of the Administrator

11.1 If the responsible parties fail or refuse to abate a public nuisance and the Commissioners Court determines to abate the same pursuant to this Order, the Administrator shall proceed to let a county contract for such abatement. The procedure for letting such contract shall be substantially the same as that for letting county construction contracts. The abatement of the public nuisance shall be in compliance with any applicable federal, state, and local laws, rules, procedures, and ordinances. Upon completion of such abatement, the Administrator shall calculate the costs that the County incurred in abating the nuisance.

11.2 If the Commissioners Court has ordered assessment of such costs against the property on which the nuisance exists, the Administrator shall prepare the lien documents and, after such documents are reviewed by the Brazoria County Criminal District Attorney's Office, record same in the Official Public Records of Real Property of Brazoria County. The amount of Lien shall be the amount of the cost of removal, the cost of legal notification by publication, an administrative fee of \$100, plus interest beginning on the 31st day after the date of the assessment. The original lien documents shall be returned to the Administrator after recording. The County is authorized by Section 343.023 of the Texas Health & Safety Code, as amended, to collect 10% interest per year on assessments pursuant to these procedures.

11.3 If the Commissioners Court has ordered assessment of such costs against the owner of the premises on which the nuisance exists or other responsible parties, the Administrator will request the Brazoria County Criminal District Attorney's Office to proceed to collect the amount of the costs of removal, the cost of legal notification by publication, if said procedure was utilized, an administrative fee of \$100 plus interest beginning on the 31st day after the date of the assessment, from said owner. The Brazoria County Criminal District Attorney's Office may file suit to recover same if the Brazoria County Criminal District Attorney's Office determines that the suit is necessary and economically feasible.

11.4 Upon satisfaction of any judgment or order issued pursuant to this order, the Administrator is authorized to sign any release or other document, upon review and approval by the Brazoria

County Criminal District Attorney's Office, to confirm that said orders or judgments have been complied with. This includes, but is not limited to, releases of liens filed in the Official Public Records of Real Property of Brazoria County.

Section 12. Violations and Penalties

- 12.1 This Order adopts and incorporates all applicable penalty provisions related to public nuisance, which includes, but is not limited to, those found in Chapter 343 of the Texas Health and Safety Code.
- 12.2 A person who violates this Order commits an offense under Chapter 343 of the Texas Health and Safety Code. An offense under this Chapter 343 is a Class "C" Misdemeanor and is punishable by fine.
- 12.3 If it is shown on the trial of the person responsible for the public nuisance that he or she has been previously convicted of an offense under these regulations or Chapter 343 of the Texas Health and Safety Code, the person may be punished by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.
- 12.3 Each day a violation occurs is a separate offense.
- 12.4 The abatement of a nuisance shall be ordered if a person is convicted of an offense under Chapter 343 of the Health and Safety Code.
- 12.5 In order to prevent, restrain, abate, or otherwise remedy a violation of these regulations, the County may institute a civil suit in the appropriate court for injunctive relief.