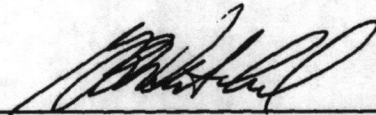


Order approving adoption of "Matagorda County Neighborhood Nuisance Abatement Procedures" under Section 343.021 et seq. of the Texas Health and Safety Code

BE IT REMEMBERED, that on this 14th day of April, 2003, the Commissioners' Court of Matagorda County, Texas met in **Regular Session**, with a quorum in attendance, a motion was duly made by Commissioner Pruett and seconded by Commissioner Carroll with all others concurring, this court does hereby approve adopting the "Matagorda County Neighborhood Nuisance Abatement Procedures" under Section 343.021 *et seq.* of the Texas Health and Safety Code, per Procedures attached hereto and made a part hereof.

PASSED IN OPEN COURT this 14th day of April, 2003.



**GREG B. WESTMORELAND, County Judge
Matagorda County, Texas**



Motion Id: 14-546
Motion Date: 04/14/03

MATAGORDA COUNTY
NEIGHBORHOOD NUISANCE ABATEMENT PROCEDURES

Section 1.01 Scope.

The following Abatement Procedures (Procedures) are adopted by the Commissioners Court of Matagorda County, Texas pursuant to the Neighborhood Nuisance Abatement Act, codified as Chapter 343 of the Health & Safety Code of the State of Texas. These Procedures shall apply to the unincorporated areas of Matagorda County, Texas.

The Procedures provided for herein are not intended nor shall they be construed to limit in any way, other remedies, causes of action, rights or penalties provided for by law. It is the intent of the Commissioners Court that these Procedures may be pursued and enforced independently or concurrently with action for injunctions, actions for damages, criminal proceedings, all other claims, suits and proceedings provided for by law.

Section 1.02 Purpose.

It is the purpose of these Procedures to protect and enhance the desirability and the aesthetic character of residential and commercial neighborhoods in unincorporated areas of Matagorda County and to control and abate those certain conditions which lead to neighborhood blight and which are detrimental to the overall health, welfare and safety of the citizens of Matagorda County.

Section 1.03 Definitions.

- A. "Abate" means to eliminate by removal, repair, rehabilitation or demolition.
- B. "Building" means a structure built for the support, shelter or enclosure of a person, animal, chattel, machine, equipment or other movable property.
- C. The "Administrator" means the Director of Matagorda County's Environmental Health Department who is a regularly salaried, full-time county employee.
- D. "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.
- E. "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.

- F. "Neighborhood" means:
1. a platted subdivision; or
 2. property contiguous to and within 300 feet of a platted subdivision.
- G. "Owner" means:
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.
- H. "Person" has the meaning assigned to that term by subdivision (2) of Section 311.05 of the Government Code as it presently exists or may hereafter be amended.
- I. "Platted Subdivision" means a subdivision that has its approved or unapproved plat recorded with the County Clerk of Matagorda County, Texas.
- J. "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.
- K. "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 open to the public for vehicular or pedestrian traffic.
- L. "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.
- M. "Refuse" means garbage, rubbish, paper and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.
- N. "Rubbish" means non-decayable waste from a public or private establishment or residence.

- O. "Weeds" means all rank and uncultivated vegetable growth or matter that:
1. has grown to more than thirty-six (36) inches in height; or
 2. may create an unsanitary condition or become a harborage for rodents, vermin or other disease carrying pests regardless of the height of the weeds.

Section 2.01 Public Nuisances in Matagorda County.

A public nuisance is:

- A. Keeping, storing or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
- B. Keeping, storing or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires and cans, on premises in a neighborhood 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;
- C. Maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin or disease-carrying pests;
- D. Allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
- E. 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;
- F. Maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:
 1. a fence that is at least four (4) feet high and that has a latched gate that cannot be opened by a child; or
 2. a cover over the entire swimming pool that cannot be removed by a child.
- G. Maintaining a flea market in a manner that constitutes fire hazard.
- H. Discarding refuse or creating a hazardous visual obstruction on:
 1. County-owned Land; or

2. Land or easement owned or held by a special district that has the County Commissioners Court as its governing body.
- I. Discarding refuse on the smaller of:
1. the area that spans 20 feet on each side of a utility line; or
 2. the actual span of the utility easement.
- J. This section does not apply to a site or facility that is permitted and regulated by a state agency.

Section 3.01 Public Nuisances Prohibited.

A person may not cause, permit or allow a public nuisance as described in Section 2.01 of these Procedures on any premises.

Section 3.02 Administration Procedures.

A. The Commissioners Court of Matagorda County hereby appoints the Director of the Matagorda County Environmental Health Department as Administrator, to administer this program and the Procedures herein prescribed. Any abatement procedure including removal or demolition of any nuisance may be made by any person authorized by the Administrator.

Section 3.03 Abatement Procedures.

A. Filing of Complaint

1. A complaint to abate a public nuisance under these Procedures may be initiated by any Person by written complaint filed with the Administrator.
2. The Administrator or his authorized representative is authorized to initiate abatement procedures on behalf of the County by written complaint.
3. The Administrator shall make a record of all complaints received.

B. Initial Investigation/Notice to Abate.

1. The Administrator shall investigate the complaint and make a determination as to whether a public nuisance does exist.
 - a) If the Administrator determines that a public nuisance does not exist, then the Administrator shall close the matter and take no further action thereon.

- b) If the Administrator determines that a public nuisance does exist, the Administrator shall determine legal ownership of the premises and shall serve Notice to Abate the Public Nuisance on the Owner of the premises upon which the public nuisance exists. This Notice to Abate shall comply with and be served on the Owner as provided in Section 3.05 below.

C. Investigation Determination.

After the expiration of 31 days from the date on which the County's Notice to Abate the Public Nuisance is served, the Administrator shall inspect the premises described in the complaint.

1. If the Administrator determines that the public nuisance has been abated, the Administrator shall make a record of his findings and take no further action thereon.
2. If the Administrator determines that the public nuisance has not been abated and a hearing has not been requested, then the Administrator shall do the following:
 - a) Estimate the cost to abate the public nuisance;
 - b) Forward the estimate of the cost to Commissioners Court;
 - c) The Commissioners Court shall determine whether or not to order the abatement of the public nuisance. In the event the Commissioners Court orders the abatement the Court shall assess against the Owner or the property on which the nuisance exists the costs of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100.00.
3. If the Administrator determines that the public nuisance has not been abated and that a hearing has been requested, the Administrator shall set a hearing date and send a Notice of Hearing to the Owner requesting the hearing. The Notice of Hearing will be sent to the Owner at the Owner's address as stated in the Request for Hearing. Such notice will be sent in the same manner as used for serving the Notice to Abate the Public Nuisance. The Notice of Hearing shall state the date, time and place of the hearing.

Section 3.04 Hearing.

A. Hearing Officer.

1. Hearings conducted pursuant to these procedures shall be conducted by a Hearing Officer.

2. The Hearing Officer will be the Justice of the Peace of the Precinct in which the public nuisance is located.

B. Conduct of the Hearing.

1. An Owner receiving a Notice to Abate a Public Nuisance under these procedures is entitled to a hearing before the Hearing Officer.
2. The Owner and/or their representative(s) shall be entitled to attend the hearing, present testimony and other evidence, examine witnesses, and argue on their behalf.
3. The Administrator and/or his representative shall have the right to attend the hearing, present testimony and other evidence, examine witnesses, and argue on the County's behalf.
4. Any other interested person may appear and present testimony and other evidence.
5. The Hearing Officer shall be allowed to question any person testifying.
6. All persons testifying at the hearing shall be under oath.
7. The Hearing Officer shall assess the testimony fairly and impartially and in accordance with law.
8. The Hearing Officer shall make a written determination as to whether a public nuisance exist and sign such written determination. A copy of the written determination shall be sent to the Administrator.
9. Upon the receipt of the copy of the written determination of the Hearing Officer, the Administrator shall, within three (3) working days, send by certified mail, return receipt requested, a copy of the written determination of the Hearing Officer to the Owner at the address stated in the Request for Hearing.

C. Post Hearing Action.

1. If the hearing results in a determination that a public nuisance does not exist, the Administrator shall take no further action thereon.
2. If the hearing results in a determination that a public nuisance exists, publication costs and payment of the Hearing Officer's fees, if any, will be assessed as costs. In addition, the Administrator, upon the expiration of 31 days from date of mailing of the Hearing Officer's determination to the Owner will determine whether or not the public nuisance has been abated.

3. If the public nuisance has been abated, then the Administrator shall make a record thereof and take no further action thereon other than to collect the costs of the hearing from the Owner.
4. If the public nuisance has not been abated or if the Hearing Officer's fee has not been paid, then the Administrator shall do the following:
 - a) Estimate the cost to abate the public nuisance;
 - b) Forward the estimate of the cost to the Commissioners Court; and
 - c) The Commissioners Court shall determine whether or not to order the abatement of the public nuisance. In the event the Commissioners Court orders the abatement the Court shall assess against the Owner or the property on which the nuisance exists the costs of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100.00.

Section 3.05 Notice Requirement.

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

1. The person to whom the notice is sent;
2. The specific condition that constitutes a nuisance;
3. The street address or other general description of the property on which the nuisance exists;
4. That the person receiving the notice shall abate the nuisance before the 31st day after the date on which the notice is served;
5. That failure to abate the nuisance may result in abatement by the County of Matagorda, assessment of costs and other permissible charges to the person responsible for causing the nuisance when the person can be identified and/or the attachment of a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
6. That Section 343.012 of the Health and Safety Code provides that a person commits a misdemeanor offense (punishable by a fine of not less than \$50 or than \$200 for the first offense and by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months or both for a defendant previously convicted of an offense under Section 343.012 of the Health and Safety Code) if the public nuisance

remains unabated after the 31st day after the date on which the person receives notice from a County official, agent or employee to abate the nuisance;

7. 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;
 8. That the request for hearing must contain the name and address of the person to be notified of the date, time and place of the hearing; and
 9. That the Owner or their representative is entitled to appear at the scheduled hearing and is entitled to present evidence, examine witnesses and argue on their behalf.
- B. The Notice to Abate Public Nuisance shall be served on the Owner in the following manner: (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 Owner is unknown, by posting a copy on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in Matagorda County, two times within ten (10) consecutive days.

Section 3.06 Administrator Duties.

In addition to the duties set forth above the Administrator shall do the following:

- A. If an Owner fails or refuses to abate a nuisance and the Commissioners Court determines to abate the same pursuant to these Procedures, then 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 nuisance shall be in compliance with any applicable federal, state and local laws, rules and procedures.
- B. Upon completion of such abatement, the Administrator shall calculate the cost that the County incurred in abating the nuisance.
- C. If the Commissioners Court has ordered assessment of such costs against the property on which the nuisance exists, the Administrator shall request the Court Attorney's office to prepare 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, and record same in the Official Public Records of Real Property of Matagorda County. The amount of the statement of costs shall be the amount of the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100.00 against the property on which the nuisance exists. The County is entitled to accrued interest on the amount specified in the lien beginning on the 31st day after the date of the assessment against the property at the rate of six (6%) percent a year. The original lien documents shall be returned to the Administrator after recording.

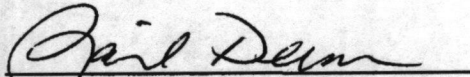
D. If the Commissioners Court has ordered assessment of such costs against the Owner of the premises on which the nuisance exists, then the Administrator will request the County Attorney's Office to proceed to collect such cost of abating the nuisance, the cost of legal notification by publication and an administrative fee of \$100.00 from said Owner. The County may file suit to recover same if the County determines that the same is necessary and that it is economically feasible to do so.

Section 3.07 Effective Date.

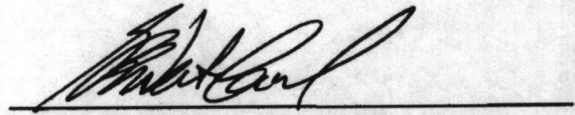
These procedures shall be effective as of 4-14, 2003.

Passed in open court, this the 14 day of April, 2003.

Attest:



GAIL DENN
County Clerk
Matagorda County, Texas



GREG B. WESTMORELAND
County Judge
Matagorda County, Texas



**MATAGORDA COUNTY NUISANCE ABATEMENT PROGRAM
SITE POSTING
NOTICE TO ABATE NUISANCE**

To: _____, all owners, heirs, lessees, occupants, agents, and persons in charge of the premises and persons responsible for causing a public nuisance on the premises hereafter collectively called "Owner" in charge of a property located at _____, Matagorda County, Texas, more particularly described as _____

Matagorda County, Texas.

The following conditions constitute a public nuisance under Chapter 343 of the Health and Safety Code of the State of Texas:

- (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 accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires and cans on the premises in a neighborhood 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) Maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitos, rodents, vermin, or other disease-carrying pests.
- (4) Allowing weeds to grow on premises in a neighborhood if such weeds are located within 300 feet of another residence or commercial establishment.
- (5) Maintaining a building in a manner that is structurally unsafe or that 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 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 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 County Commissioners Court as its governing body.

(9) Discarding refuse on the smaller of:

- (A) the area that spans 30 feet on each side of a utility line; or
- (B) the actual span of the utility easement.

You are in violation of numbers _____, _____, _____, _____, _____, and _____ of the Code. The specific conditions on the property which constitutes a nuisance are: _____

You shall abate the nuisance before the 31st day after the date on which this notice is served. Failure to abate the nuisance may result in: (1) abatement by the county; (2) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and (3) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property.

The above cited statute provides that a person commits a misdemeanor offense (punishable by a fine of not less than \$50 or more than \$200 for a first offense) if that person causes, permits, or allows a public nuisance remains unabated 31 days after the date on which the person receives notice from a County official, agent, or employee to abate the nuisance.

You or your agent, lessee, occupant or person in charge of the premises may submit, not later than the 31st day after this notice is served, a written request for a hearing to the Justice of the Peace of the Precinct in which any part of the property on which a hearing is requested exists. The request must contain the name and address of the person to be notified of the date, time, and place of the hearing. At such scheduled hearing you or your lessee, occupant, agent, person in charge of the premises, or other representative may appear and present evidence, examine witnesses and argue on your or their behalf. A hearing request does not preclude the filing of a civil suit or criminal prosecution.

Ed Schulze, Director
Matagorda County Environmental Health
2200 7th Street, 1st Floor
Bay City, Texas 77414
Phone: (979) 244-2717
Fax: (979) 245-5661

Use this form for newspaper notice if personal service cannot be obtained:

MATAGORDA COUNTY NUISANCE ABATEMENT PROGRAM
NEWSPAPER
CITATION BY PUBLICATION

NOTICE TO ABATE NUISANCE

To: _____, all owners, heirs, lessees, occupants,
agents, and persons in charge of the premises and persons responsible for causing a public
nuisance on the premises hereafter collectively called "Owner" in charge of a property
located at _____, Matagorda County, Texas, more
particularly described as _____

Matagorda County, Texas.

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 - (A) County owned land or
 - (B) Land or easements owned or held by a special district that has the County Commissioners Court as its governing body.
- (9) Discarding refuse on the smaller of:
 - (A) the area that spans 30 feet on each side of a utility line; or
 - (B) the actual span of the utility easement.

_____ is in violation of numbers _____, _____, _____, _____, and _____ of the Code.

_____ is in violation of numbers _____, _____, _____, _____, and _____ of the Code.

_____ is in violation of numbers _____, _____, _____, _____, and _____ of the Code.

The specific conditions on the property which constitutes a nuisance are: _____
