



County Attorney  
FORT BEND COUNTY, TEXAS

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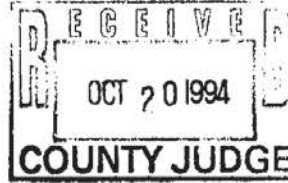
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BEN W. "Bud" CHILDERS  
COUNTY ATTORNEY

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October 19, 1994



The Honorable Roy L. Cordes, Jr.  
County Judge  
Fort Bend County, Texas

RE: Public Nuisance Abatement

Dear Judge Cordes:

Enclosed are the proposed Public Nuisance Abatement Order, Resolution and Procedures. Fort Bend County Sanitarian Jeff Garrett stated that the County needs to have the authority to demolish buildings under the provisions of the Texas Health and Safety Code. Chapter 343 of the code gives counties broader powers in abating nuisances similar to litter abatement.

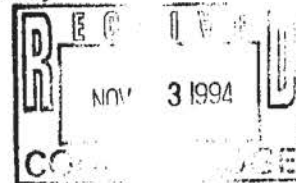
The Commissioners' Court previously approved Litter Abatement procedures resembling the enclosed procedures in 1993. The procedures provide that a Fort Bend County Sanitarian be appointed as Director.

Very truly yours,

Portia Poindexter  
First Assistant County Attorney

/s/nuisance.let:3170

cc: Commissioner R. L. O'Shieles  
Commissioner Grady Prestage  
Commissioner Alton Pressley  
Commissioner Bob Lutts  
Jeff Garrett, Health Department



THE STATE OF TEXAS §  
COUNTY OF FORT BEND §

**ORDER ADOPTING PROCEDURES OF FORT BEND COUNTY  
FOR THE ABATEMENT OF PUBLIC NUISANCE**

On this 1 day of November, 1994, the Commissioners' Court of Fort Bend County, Texas, being convened at a regular meeting of the Court, upon motion of Commissioner Gutts, seconded by Commissioner Presley, duly put and carried,

**WHEREAS**, Section 343.021, Texas Health and Safety Code and a "Resolution to Abate a Public Nuisance authorizing the County to abate a public nuisance; and,

**WHEREAS**, the County desires to adopt Public Nuisance Abatement Procedures; and,

**WHEREAS**, the County desires to appoint a Fort Bend County Sanitarian as the Public Nuisance Abatement Director to administer the procedures; and,

**WHEREAS**, the procedures attached hereto entitled "Fort Bend County Public Nuisance Abatement Procedures" are consistent with the general purpose of Section 343.022, Texas Health and Safety Code.

**NOW, THEREFORE, BE IT ORDERED, ADJUDGED and DECREED** by the Commissioners' Court of Fort Bend County that the procedures attached hereto, entitled "Fort Bend County Public Nuisance Abatement Procedures" are adopted, a Fort Bend County sanitarian is appointed Public Nuisance Abatement Director, and the officials of Fort Bend County are directed to perform such duties as are required of them under said procedures.

**FORT BEND COUNTY**

Roy L. Cordes, Jr.  
Roy L. Cordes, Jr., County Judge

ATTEST:  
Dianne Wilson  
Dianne Wilson, County Clerk

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

**RESOLUTION TO ABATE A PUBLIC NUISANCE**

On this the 1 day of November, 1994, at the regular meeting of Commissioners' Court of Fort Bend County, Texas acting as the governing body of Fort Bend County, Texas, upon motion of Commissioner Sutton, seconded by Commissioner Pressley, duly put and carried:

**WHEREAS**, Section 343.011, Texas Health and Safety Code prohibits a person from causing, permitting or allowing a Public Nuisance on any premises within the county; and,

**WHEREAS**, the Commissioners' Court of Fort Bend County, Texas, desires to protect the health, safety and welfare of the residents of Fort Bend County; and,

**WHEREAS**, the Commissioners' Courts of Fort Bend County, Texas, is authorized to adopt abatement procedures that are consistent with the general purpose of Chapter 343, Texas Health and Safety Code.

**DEFINITIONS**

For the purposes of this Resolution:

A. As defined in Section 343.011:

(b) 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 accumulating rubbish, including newspapers, **abandoned vehicles**, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood **for 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 of 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 on 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; or

(7) maintaining a flea market in a manner that constitutes a fire hazard.

B. As defined in Section 343.002:

(1) "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.

(2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "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.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "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.

(6) "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.

(7) "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.

(8) "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.

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

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height; or

(B) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" mean 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.

**NOW, THEREFORE, BE IT RESOLVED** that the Commissioners' Court of Fort Bend County, Texas, hereby **ORDERS**:

1. That a public nuisance shall not be caused, permitted or allowed for more than 30 days on any premises within the county following written notice by the county; and,

2. That the county shall provide for the removal or demolition of the public nuisance on any premise within the county according to Section 343.022; and,

3. That a person who owns the property from which the public nuisance is removed or upon which the public nuisance is demolished shall be assessed the reasonable costs incurred by the county in removing or demolishing the public nuisance.

**IT IS FURTHER ORDERED** that prior to taking action to remove or demolish the public nuisance, the Commissioners' Court or its designated director shall send a written notice to the owners, lessee, occupant, agent or person in charge of the premises on which the public nuisance is found in violation of this Order.

The written notice shall state:


- a. That a hearing may be held at the request of the owner, lessee, occupant, agent or person in charge of the premise if the request is made before the 31st day after the date on which the notice is served:
- b. That failure to abate the nuisance may result in abatement by the county, assessment of costs and a lien against the property on which the nuisance exists.

**PASSED AND APPROVED** this 1 day of November, 1994.

**FORT BEND COUNTY, TEXAS**

By: Roy L. Cordes, Jr.  
Roy L. Cordes, Jr., County Judge

**ATTEST**  
Dianne Wilson  
 Dianne Wilson, County Clerk



THE STATE OF TEXAS           §  
COUNTY OF FORT BEND       §

**FORT BEND COUNTY NUISANCE ABATEMENT PROCEDURES**

**1.01 Scope.**       The following Abatement Procedures (Procedures) are adopted by the Commissioners' Court of Fort Bend 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 Fort Bend County, Texas.

The procedures provided for herein are not intended or 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 actions for injunctions, actions for damages, criminal proceedings, all other claims, suits and proceedings provided for by law.

**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 Fort Bend 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 Fort Bend County.

**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 "Director" is the Program Administrator of the Nuisance Abatement Program 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 the Owner, Lessee, Occupant, Agent or person in charge of the premises.

H. "Person" has the meaning assigned to that term by subdivision (2) of Section 311.005 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 Fort Bend 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 nondecayable waste, including vegetable matter and animal and fish carcasses.

N. "Rubbish" means nondecayable 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 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.

**2.01 Public Nuisance in Fort Bend County.** A public nuisance:

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 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; or

G. Maintaining a flea market in a manner that constitutes a fire hazard.

H. This section does not apply to a site or facility that is permitted and regulated by a state agency.

### **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.

### **3.02**

A. The Commissioners Court of Fort Bend County hereby appoints a **Fort Bend County Sanitarian**, a regularly salaried full-time County employee, as the Public Nuisance Abatement Director, ("Director") to administer this program and the abatement procedures herein prescribed.

Any abatement procedure including removal or demolition of any nuisance may be made by any person authorized by the Director.

**3.03 Abatement Procedures**

**A. Filing of complaint:**

1. A complaint of the violation of the County's Public Nuisance Ordinance under these procedures may be initiated by any person by written complaint filed with the Director.

2. The Director shall make a record of all complaints received.

3. The Director or the Precinct Deputy shall investigate the complaint and make a determination as to whether there is a violation of the Public Nuisance Ordinance.

a. If the Director or the Precinct Deputy determines that there is no violation of the Public Nuisance Ordinance, then the Director shall close the matter and take no further action thereon.

b. If the Director or the Precinct Deputy determines that there is a violation of the Public Nuisance Ordinance, the Director shall serve Notice to Abate Public Nuisance on the owner of the property, lessee, occupant, agent or person in charge of the premises where the public nuisance is located. This Notice to Abate Public Nuisance shall comply with, and be served as provided in, §343.022 Texas Health and Safety Code or §3.03 below.

4. After the expiration of thirty (30) days from the date on which the County's Notice to Abate Public Nuisance is served, the Director or Precinct Deputy shall inspect the premises described in the complaint.

a. If the Director or Precinct Deputy determines that the public nuisance has been abated, the Director shall make a record of his findings and take no further action thereon.

b. If the **Director or Precinct Deputy** determines that the public nuisance has not been abated and that a hearing has been requested, the **Director** shall set a hearing date and send a **Notice of Hearing** to the person and address stated in the **Request for Hearing** or by serving the owner in the same manner as used for serving the **Notice to Abate Public Nuisance**. The **Notice of Hearing** shall state the date, time and place of the hearing.

1. If the hearing results in a determination that there is no violation of the **Public Nuisance Ordinance**, the **Director** shall send notice to that effect to the person and address designated in the **Request for Hearing** and take no further action thereon.

2. If the hearing results in a determination that there is a violation of the **Public Nuisance Ordinance**, the **Director** shall send written notice of such determination to the person and address designated in the **Request for Hearing** by certified or registered mail, return receipt requested. The notice shall include the costs of publication and the hearing officers fee, if any.

3. Within a reasonable time after the receipt of the determination in item 2 by the person designated in the **Request for Hearing**, the **Director or Precinct Deputy** shall determine whether or not the public nuisance has been abated.

(a) If the public nuisance has been abated, then the **Director** shall make a record thereof and take no further action thereon.

(b) If the public nuisance has not been abated, then:

(i) The **Director** will estimate the cost to abate the public nuisance.

(ii) The **Director** will calculate the costs: publication, hearing officers' fee (if any) and \$100 administrative fee as provided in § 343.023 .

(iii) The **Director** will forward the estimate of the cost to **Commissioners Court**.

(iv) The Commissioners' Court shall determine whether or not to order the abatement of the public nuisance and assess the costs of abatement of the public nuisance, plus an administrative fee of \$100.00, on the owner of the premises on which the public nuisance is located.

c. If the Director determines that the public nuisance has not been abated and a hearing has not been requested, then the Director shall do the following:

(1) Request that the County Engineering Department determine ownership of the premises on which the public nuisance is located.

(2) If the County Engineering Department's determination of ownership reflects an owner other than the person shown on the Notice to Abate Public Nuisance, the Director shall serve a Notice to Abate Public Nuisance on the person as shown on the Determination of Ownership and disregard all action taken theretofore and proceed with the procedures herein as if no prior action had been taken on the complaint subsequent to the service of the Notice to Abate the Public Nuisance.

(3) If the Determination of Ownership shows the owner to be the person served with the Notice to Abate Public Nuisance, then the Director 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 and assess the costs of abatement of the public nuisance, plus an administrative fee of \$100.00, on the owner of the premises on which the public nuisance is located

**3.03 NOTICE REQUIREMENTS****A. Each Notice to Abate Public Nuisance must contain the following information:**

1. The specific condition that constitutes a violation of the Public Nuisance Ordinance.
2. The street address or other general description of the property on which the public nuisance is located.
3. That the person receiving the notice must abate the public nuisance not later than the 30th day after the date on which the notice is served.
4. That failure to abate may result in removal or demolition by the County, assessment of costs, and the attachment of a lien to the property on which the public nuisance exists.
5. That §343.012 of the Texas Health and Safety Code provides that a person commits a misdemeanor (punishable by a fine of up to \$200 for the first offense and by a fine of not less than \$200 or more than \$1000, confinement in jail for not more than six months or both for a defendant previously convicted of an offense under § 343.012 of the Health and Safety Code) if the public nuisance remains after the 30th day after the date on which the notice is received from a county official, agent, or employee to abate the public nuisance.
6. That the owner, lessee, occupant, agent, or person in charge of the premises is entitled to submit, not later than the 30th day after the date on which the notice is received, 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 the hearing; and,
7. 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 owner's behalf.

**B. The Notice to Abate Public Nuisance shall be served on the owner in the following manner: (1) in person or by registered or certified mail, return receipt requested; or (2) if the owner cannot be located or identified, 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.

**3.04 HEARING**

**A. Hearing Officer**

1. Hearings conducted pursuant to these procedures shall be conducted by a Hearing Officer.
2. The Hearing Officer shall be the **Justice of the Peace** of the Precinct in which the public nuisance or a portion thereof exists.
3. If the premises on which the public nuisance exists is situated in two or more precincts, the Commissioners' Court shall determine which County Commissioner shall act.

**B. Conduct of the Hearing**

1. A person receiving a Notice to Abate Public Nuisance under these procedures is entitled to a hearing before the Hearing Officer.
2. The owner and/or his representative present at the hearing shall be entitled to present testimony and other evidence, and examine witnesses and argue on the owner's behalf.
3. The **Director** and/or his representative shall have the right to attend the hearing and/or testify.
4. Any 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 the law.
8. The Hearing Officer shall make a written determination as to whether the Public Nuisance Ordinance is violated and sign such

written determination. A copy of the written determination shall be sent to the Director.

9. Upon the receipt of the copy of the written determination of the Hearing Officer, the Director shall hand deliver, or send by certified mail, return receipt requested, a copy of the written determination of the Hearing Officer to the person and address designated to be notified in the Request for Hearing.

**3.05 DUTIES**

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

A. If an owner fails or refuses to abate the public nuisance and the Commissioners' Court determines to abate the same pursuant to these procedures, then the Director shall proceed to let a county contract for such abatement/demolition or request the Road and Bridge Department of the Precinct in which the public nuisance is found to abate the public nuisance. 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 and procedures.

B. Upon completion of such abatement, the Director shall calculate the cost that the County incurred in abating the public nuisance.

1. If Commissioners' Court has ordered assessment of such costs against the property on which the public nuisance is located, the Director shall request the County Attorney to prepare the lien documents and to record same in the Official Public Records of Real Property of Fort Bend County. The amount of the lien shall be the amount of the cost of abatement plus an administrative fee of \$100.00. The original lien documents shall be returned to the Director after recording.

2. If Commissioners' Court has ordered assessment of such costs against the owner of the premises on which the public nuisance accumulates, then the Director will request the County Attorney to



proceed to collect such costs together with an administrative fee of \$100.00 from said owner. The County Attorney may file suit to recover same if the County Attorney determines that the same is necessary and that it is economically feasible to do so.

**Effective Date**

3.06 These procedures shall be effective as of November 1, 1994.

**PUBLIC NUISANCE ABATEMENT DIVISION OF RESPONSIBILITIES****Public Nuisance Abatement Director:**

1. Oversees and administers the Public Nuisance Abatement Program and Procedures.
2. Keeps records of total number of complaints of public nuisance violations.
3. Manages the bid contract to remove.
4. Pursue funding.
5. Investigate public nuisance complaints.
6. Issue Notice of Violations when public nuisance violations exist.
7. Determine if the public nuisance has been removed within thirty (30) days.
8. File criminal complaints when public nuisance is not removed.

**Precinct Deputies:**

Assist the Public Nuisance Abatement Director

**County Engineer's Department:**

Determine ownership of property

**County Attorney's Office:**

1. Provide assistance in hearings.
2. File liens on real property or file suit against owner to recover costs.

**District Attorney:**

1. Provide guidance in filing of criminal complaints.
2. Prosecute appropriate criminal complaints.