

IN THE POTTER COUNTY COMMISSIONERS COURT
POTTER COUNTY TEXAS

**ORDER AUTHORIZING THE ABATEMENT OF PUBLIC NUISANCES
IN THE UNINCORPORATED AREAS OF POTTER COUNTY**

I. FINDINGS. The Potter County Commissioners Court finds that certain public nuisances, as defined in Chapter 343, Texas Health & Safety Code, are a hazard to public health and safety, and a detriment to the value of property not only on which the nuisance occurs, but also of neighboring property. While civil and criminal remedies exist under Chapter 343, there is no mechanism for Potter County to take direct action to abate a nuisance unless these abatement procedures are adopted. Further, the public is harmed by having to bear the costs of cleaning up nuisance sites. Therefore, it is in the best interests of the citizens of Potter County to adopt these abatement procedures.

II. DEFINITIONS.

1. "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.
2. "Agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.
3. "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
4. "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.
5. "Junked vehicle" means a vehicle that is self-propelled and inoperable and:
 - a) does not have lawfully attached to it an unexpired license plate or a valid motor vehicle inspection certificate;
 - b) is wrecked, dismantled or partially dismantled, or discarded; or
 - c) has remained inoperable for more than 45 consecutive days.A junked vehicle for the purposes of this order does **not** include a vehicle stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard.
6. "Neighborhood" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located, and property contiguous to and within 300 feet of such a subdivision.
7. "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.
8. "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.
9. "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.
10. "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
11. "Rubbish" means nondecayable waste from a public or private establishment or residence.
12. "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.

III. PROHIBITION AGAINST PUBLIC NUISANCES.

A person may not cause, permit, or allow a public nuisance. A public nuisance is the presence of at least one of the following conditions on land that is not agricultural land in the unincorporated areas of Potter County:

(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 or junked vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street 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;

IV. EXCEPTIONS AND VARIANCES.

The Commissioners Court may:

(1) describe the circumstances in which a special exception to the application of section III. is available to a person and may grant the special exception in a specific case if the Commissioners Court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section III., and

(2) authorize in a specific case not covered by a special exception a variance from the terms of section III. if the Commissioners Court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of section III. would result in an unnecessary hardship.

V. CRIMINAL PENALTY.

a. Pursuant to section 343.012, Texas Health & Safety Code, a person commits an offense if:
(1) the person violates Section III. above; 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.

VI. INJUNCTION.

The Potter County Attorney is authorized to seek an injunction on behalf of Potter County to prevent or restrain a violation of this order.

VII. ENTRY ON PREMISES.

a. A Potter County official, agent, or employee 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.

VIII. ABATEMENT PROCEDURES.

In addition to the remedies of sections V. and VI. above, abatement of a public nuisance may be sought under the following procedure.

a. These abatement procedures shall be administered by the Road & Bridge

Superintendent. The removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.

b. Prior to abatement, written notice of the existence of a public nuisance must be given by the Potter County Sheriff, Potter County Attorney, or other designate of the Commissioners Court 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 abate 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 Potter 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. A hearing is required before the abatement of the nuisance if requested. The hearing may be conducted before the commissioners court or any official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

IX. ASSESSMENT OF COSTS; LIEN.

a. The cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100 shall be assessed on the person receiving notice under section VIII. In the alternative, provided the owner or owner's agent receives notice of the nuisance, the Commissioners Court by resolution or order, may assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100 against the property on which the nuisance exists.

b. To obtain a lien against the property to secure an assessment, the Commissioners Court 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 Potter County Clerk.

c. Potter 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 Potter County Clerk before the date on which Potter County filed the notice of lien.

d. Potter County is entitled to accrue interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

X. EFFECT OF ORDER; SEVERABILITY.

This Order does not affect a right, remedy, or penalty under other state law. If any provision of this Order is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and will in no way be affected, impaired, or invalidated.

ORDERED THIS THE 13th DAY OF DECEMBER, 2004.

ATTEST:



Mrs. Sue Daniel
Mrs. Sue Daniel, County Clerk

POTTER COUNTY, TEXAS

By: Arthur Ware
Arthur Ware, Potter County Judge