

COMMISSIONERS COURT ORDER NO. 2017-1

**PUBLIC NUISANCE & JUNKED VEHICLE ABATEMENT
ORDER AND PROCEDURES**

**AN ORDER ADOPTING TEXAS PUBLIC HEALTH AND SAFETY CODE
CHAPTER 343 AND TEXAS TRANSPORTATION CODE CHAPTER 683,
SUBCHAPTER E TO PROVIDE PROCEDURES FOR ABATEMENT OF
PUBLIC NUISANCES AND JUNKED VEHICLES IN JEFF DAVIS
COUNTY, TEXAS**

WHEREAS, the Commissioners Court of Jeff Davis County has determined that there are incidences of public nuisances and junked vehicles within the unincorporated areas of the County; and

WHEREAS, these neighborhood blights create health, safety, and fire hazards, as well as decrease property values; and

WHEREAS, in 2011 the Rock House Fire burned over 314,000 total acres, the majority in Jeff Davis County; and

WHEREAS, Jeff Davis County desires to prevent or abate dangerous conditions that would increase wildfire threats in the future; and

WHEREAS, the abatement of nuisances in Jeff Davis County would serve the public purposes of minimizing fire risk, abating health and safety hazards, and increasing community attractiveness, and

WHEREAS, the County understands the technical criteria, legal requirements, and administrative procedures and duties associated with regulating public nuisances, and has made the decision to enforce Texas Health and Safety Code Chapter 343 and Texas Transportation Code Chapter 683, Subchapter E., by instituting a program to abate nuisances in Jeff Davis County; and

WHEREAS, the Commissioners Court has the authority to promulgate this Order pursuant to Texas Health & Safety Code §343.021 and Texas Transportation Code §683.074;

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF JEFF DAVIS COUNTY, TEXAS:

Section 1. Authority/Findings of Fact

- 1.1 This Order is adopted in accordance with Section 343.021 of the Texas Health and Safety Code and Section 683.074 of the Texas Transportation Code, and shall be referred to as the PUBLIC NUISANCE & JUNKED VEHICLE ABATEMENT ORDER AND PROCEDURES.
- 1.2 The recitals set out above constitute Findings of Fact of the Jeff Davis Commissioners Court and are incorporated into this Order for all purposes.

Section 2. Definitions

- 2.1 For the purposes of this Order, when not inconsistent with the context, words used in the present tense include the future tense, words used in the plural include the singular, words in the singular include the plural, and the use of any gender shall be applicable to all genders. Words not defined in this section shall be given their common and ordinary meaning.
- 2.2 For the purposes of this Order, the following words, terms, phrases, and their derivations shall have the following meaning:
 - (A) “Abate” means to eliminate or remedy by removal, repair, rehabilitation, or demolition.
 - (B) “Antique auto” means a passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least 35 years old.
 - (C) “Administrator” means the individual appointed by the Commissioners Court to administer the nuisance abatement program, or a county employee acting under his/her supervision and control.
 - (D) “Agricultural land” means land that has a current tax appraisal exemption under Subchapter C or D of Texas Tax Code Chapter 23.

- (E) “Building” means a structure build for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (F) “Collector” means the owner of one or more antique autos or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.
- (G) “Commissioners Court” means the Jeff Davis County Commissioners Court.
- (H) “Demolisher” means a person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.
- (I) “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.
- (J) “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.
- (K) “Hearing examiner” means the Hearing Examiner or County Judge.
- (L) “Junked vehicle” means a vehicle as defined in Section 683.071, Texas Transportation Code:
 - (1) that is self-propelled; and
 - (2) is:

- a. wrecked, dismantled or partially dismantled, or discarded;
or
- b. Inoperable and has remained inoperable for more than:
 - i. Seventy-two (72) consecutive hours, if the vehicle is on public property; or
 - ii. Thirty (30) consecutive days, if the vehicle is on private property.

(M) “Motor vehicle” means a motor vehicle subject to registration under the Certificate of Title Act (Texas Transportation Code Section 541.201) except that for purposes of this Order, may include a motorboat, outboard motor, or vessel subject to registration under Chapter 31, Texas Parks and Wildlife Code.

(N) “Neighborhood” means:

- (1) a platted subdivision; or
- (2) property contiguous to and within 300 feet of a platted subdivision.

(O) “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.

(P) “Person” means an individual, corporation or association.

(Q) “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.

(R) “Public street” or “public highway” means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state not privately owned or controlled, if any part of the road, street, way, thoroughfare, or bridge is:

- (1) open to the public for vehicular or pedestrian traffic;
 - (2) used as a public recreational area; or
 - (3) is under the state's legislative jurisdiction through its police power.
- (S) "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.
- (T) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (U) "Rubbish" means nondecayable waste from a public or private establishment or residence.
- (V) "Special interest vehicle" means a motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- (W) "Storage facility" means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.
- (X) "Weeds" means all rank and uncultivated vegetable growth or matter that:
- (1) has grown to more than 36 inches in height in neighborhoods, or on tracts or lots containing less than two acres; 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, in neighborhoods, or on tracts or lots containing less than two acres; or

(3) may create a fire hazard, regardless of the height of the weeds.

PART I: PUBLIC NUISANCES

Section 3. Each of the following constitutes a public nuisance:

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, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of 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 an abandoned and unoccupied property in a neighborhood with 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;

3.7 Maintaining a flea market in a manner that constitutes a fire hazard;

3.8 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 government body;

3.9 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;

3.10 Filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;

3.11 Discarding refuse on property that is not authorized for that activity; or

3.12 surface discharge from an on-site sewage disposal system as defined by Section 366.002.

3.13 This section does not apply to:

A. a site or facility that is:

(1) permitted and regulated by a state agency for the activity described; or

(2) licensed or permitted under Chapter 361 of the Texas Health and Safety Code for the activity described; or

B. agricultural land.

Section 4. Public Nuisances Prohibited

4.1 The Commissioners Court hereby ordered that a person may not cause, permit, or allow a public nuisance, as that term is defined in Section 3 of this Order.

Section 5. Investigation

5.1 The Commissioners Court shall appoint a regular salaried full-time Jeff Davis County employee to administer this program and the abatement procedures described in this Order. For purposes of this Order, the Commissioner's Court appoints the County Attorney as Administrator. The Constable, the Sheriff, or any

Jeff Davis County Deputy may investigate public nuisances. For purposes of this Order, the Commissioners Court appoints the County Constable as Investigator.

5.2 A citizen complaint to abate a public nuisance under these procedures may be initiated in writing by any person by contacting the Administrator or the Investigator. The citizen complaint must be in writing on the complaint form provided. The Administrator or Investigator may also initiate a complaint based upon his or her own personal observations.

5.3 The Administrator shall keep a written or electronic log of all complaints received.

5.4 In the event that the number of citizen complaints exceeds available manpower or budgeted resources for the program, then the Administrator and Investigator shall jointly determine the relative priority of each citizen complaint, based upon the following factors:

- A. severity of the public nuisance (fire or health threat);
- B. visibility;
- C. community impact; and
- D. best use of available manpower and resources.

5.5 In the event that any citizen complaint is delayed or cannot be pursued due to insufficient budgeted resources or manpower, then the complainant will be so notified and shall be referred to the county commissioner for his or her precinct.

5.6 Subject to section 5.4 above, the Investigator shall investigate citizen complaints and shall report his findings to the Administrator. In order to administer these procedures, the Administrator, the Investigator, 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. Before entering the premises, the Administrator, Investigator, official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

5.5 If the Investigator determines that a public nuisance does not exist, he will recommend closure of the complaint to the Administrator, who shall notate "NO FINDING OF PUBLIC NUISANCE" in the log.

5.6 If the Investigator determines that a public nuisance exists, he shall serve a written Notice to Abate the Public Nuisance on the owner, lessee, occupant, agent, or person in charge of the premises. Such notice must also be given to the person responsible for causing the nuisance when that person can be identified and that person is not the owner, lessee, occupant, agent, or person in charge of the premises. 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 Investigator shall inspect the premises described in the complaint.

5.8 If the Investigator determines that the public nuisance has been abated, the Investigator shall make a record of the findings and take no further action thereon. The Investigator will recommend to the Administrator to notate in the Nuisance Log that the public nuisance was "ABATED WITHIN 30 DAYS."

5.9 If the Investigator determines that the public nuisance has not been abated and a hearing has been requested, the Administrator shall follow the procedures set out in Section 8 of this Order.

5.10 If the Investigator 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 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 the nuisance;
- B. The street address or other general description of the property on which the nuisance exists;

- C. That the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served;
- D. That 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;
- E. That the county may prohibit or control access to the premises to prevent a continued or future nuisance as described by Texas Health and Safety Code Section 343.011(c)(1), (6), (9), and (10), which are incorporated into this Order as follows: Section 3.1 (*accumulating refuse in neighborhood*); Section 3.6 (*unfenced swimming pool*); Section 3.8 (*refuse or hazardous visual obstruction on county land*); or Section 3.9 (*discarding refuse on utility line or easement*);
- F. That Section 343.012 of the Texas Health and Safety Code provides if a 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, that a person commits a misdemeanor punishable by a fine of not less than \$50 or more than \$200, and if the person has been previously convicted of an offense under this section by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.
- G. That the person receiving notice is entitled to submit a written request for a hearing to the Administrator within ten (10) days after the notice is served or received;
- H. That said written request for a hearing must be made to the Administrator by hand delivery or by certified mail, return receipt requested, addressed to the Administrator. The Notice to Abate shall provide the physical address and mailing address of the Administrator.

I. 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 testimony and other evidence, examine witnesses, and argue on his/her behalf.

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 registered or certified mail, return receipt requested; or
- B. If personal service cannot be obtained or the address of the person to be notified 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.

Section 7. Procedures When No Hearing is Requested

7.1 If the Administrator determines that the public nuisance has not been abated and a hearing has not been requested in compliance with Section 6.1.G of this Order, then the Administrator may present a request to abate the public nuisance to the Commissioners Court or their designee.

7.2 Commissioners Court or their designee 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 to the person responsible for causing the public nuisance when that person can be identified;
- C. Assess the cost of legal notification by publication, if utilized; and/or
- D. Assess an administrative fee of not more than \$100.00 against the person who received the Notice of Abatement OR assess the administrative fee or not more than \$100 against the property on which the 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.

Section 8. Procedures When a Hearing is Requested

8.1 A person receiving a Notice to Abate the Public Nuisance under this Order is entitled to a public hearing before the Hearing Examiner. Said request for a public hearing may be made upon the Administrator in compliance with Section 6.1.G of this Order.

8.2 If a hearing is requested in compliance with Section 6.1.G of this Order, the Administrator will present the request to the Hearing Examiner, who 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 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.

8.3 The owner and/or his or her representative present at the hearing shall be entitled to present testimony and other evidence, examine witnesses, and argue on the owner's behalf.

8.4 Any interest person, including the Administrator and/or Investigator, may appear and present testimony and other evidence.

8.5 All persons testifying at the hearing shall be under oath.

8.6 The Hearing Examiner shall be allowed to question any person testifying.

8.7 The Hearing Examiner shall assess the testimony fairly and impartially and in accordance with the law.

8.8 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.

Section 9. Post-Hearing Procedures

9.1 If the Hearing Examiner determines that a nuisance exists, the Investigator shall inspect the subject premises to determine whether the public nuisance has been abated at least 30 days after the party ordered to abate the nuisance receives the Hearing Examiner's determination.

9.2 If the public nuisance has been abated, then the Investigator shall notify the Administrator, who shall notate "ABATED AFTER HEARING" in the log and take no further action thereon.

9.3 If the public nuisance has not been abated, then the Investigator shall report this to the Administrator, who has the authority to initiate a criminal case under Section 10 below.

Section 10. Enforcement; Criminal Penalty

10.1 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.

10.2 A person responsible for a public nuisance when said nuisance remains unabated after 30 days after the date on which the person received notice from a county official, agent, or employee to abate the nuisance commits a criminal Class C misdemeanor offense, punishable by a fine of not less than \$50.00 or more than \$200.00.

10.3 If it is shown at the hearing of the person responsible for the public nuisance that he or she has been previously convicted of an offense under Chapter 343 of the Texas Health & Safety Code, then the person commits a criminal Class B misdemeanor offense, punishable by a fine of not less than \$200.00 or more than \$1,000.00, confinement in jail for not more than six months, or both.

10.4 Each day a violation occurs is a separate offense.

10.5 The abatement of a nuisance shall be ordered by the Court if a person is convicted in that court of an offense under Chapter 343 of the Health & Safety Code.

Section 11. County Abatement of Public Nuisance

11.1 If the public nuisance has not been abated as required by court order after conviction under Section 10.5, then the Administrator will estimate the cost to abate the public nuisance and forward the estimate to the Commissioners Court accompanied by a request for county abatement of the public nuisance.

11.2 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.

11.3 The Commissioners Court 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.

Section 12. Authority to Abate Nuisance

12.1 The County may abate a nuisance under this chapter:

- (1) by demolition or removal, except as provided by Subsection;
- (2) in the case of a nuisance under Texas Health and Safety Code 343.011(c)(1), (9), or (10) [Sections 3.1, 3.8, or 3.9 above], by prohibiting or controlling access to the premises;
- (3) If the case or a nuisance under Section 343.(c)(6) [Section 3.6 above], by:

(a) prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or

(b) draining and filling the swimming pool; or

(4) In the case of a nuisance under Section 343.011(c)(12) [Section 3.11 above], by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Texas Health and Safety Code Chapter 361.

12.2 In the case of a nuisance under Section 343.011(c)(13) [Section 3.12 above], the county may use any means of abatement reasonably necessary to bring the system into compliance with Chapter 366 only after the defendant fails to abate the nuisance as ordered by the court.

Section 13. Assessment of Costs; Lien

13.1 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 county clerk of the county in which the property is located.

13.2 The county's lien to secure an assessment attached 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 attached, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

13.3 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 ten percent (10%) per year.

13.4 The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

13.5 The county is entitled to use any money available under other law for a cleanup or remediation of private property to abate a nuisance.

Section 14. Injunction

14.1 A county or district court having jurisdiction may issue an injunction in order to prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

14.2 A county or a 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 14.1. If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

14.3 A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Texas Health and Safety Code Section 343.011(c)(1), (6), (9), or (10), which are incorporated into this Order as Sections 3.1, 3.6, 3.8, and 3.9. The court may grant relief under this subsection only if the county demonstrates that:

A. the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

B. the owner of the premises know about the nuisance and has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner;

14.4 In granting relief under Subsection 12.3, the court:

A. may not, in a suit brought under Section 343.011(c)(10) [Section 3.9 above], prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

B. may not prohibit the owner of the premises from accessing the property but may prohibit a continued or future violation.

Section 15. Special Exception or Variance to Public Nuisance Classification

15.1 The Commissioners Court by order may:

A. Describe the circumstances in which a special exception to the application of a public nuisance classification, and grant the special exception to a person in a specific case if the Commissioners Court finds that the grant of the exception:

- (1) promotes justice;
- (2) is not contrary to the public interest; and
- (3) is consistent with the general purpose of the public nuisance classification.

B. Authorize a variance in a specific case not covered by a special exception, so long as:

- (1) The Commissioners Court makes the findings specified in A.(1)-(3) above; and
- (2) makes the additional finding that “due to special conditions a literal enforcement of the public nuisance classification would result in an unnecessary hardship.”

PART II: JUNKED VEHICLES

Section 15. Junked vehicle declared to be public nuisance.

15.1 Pursuant to Texas Transportation Code Chapter 683, Subchapter E., a junked vehicle that is visible at any time of the year from a public place or public right-of-way:

- A. is detrimental to the safety and welfare of the public;
- B. tends to reduce the value of private property;
- C. invites vandalism
- D. creates a fire hazard;
- E. is an attractive nuisance creating a hazard to the health and safety of minors;

F. produces urban blight adverse to the maintenance and continuing development of municipalities; and

G. is a public nuisance.

Section 16. Junked vehicle public nuisance prohibited.

16.1 The Commissioners Court hereby orders that the owner or occupant or person in control of any real property within Jeff Davis County shall keep such property free of junked vehicles, and shall not permit, suffer, or allow the presence of any junked vehicles on such property in violation of this Order.

16.2 A junked vehicle that is visible from a public place or right-of-way is hereby declared to be a public nuisance and subject to abatement as provided herein.

16.3 For purposes of this Order, “junked vehicle” includes a motor vehicle, aircraft, or watercraft. This Order applies to:

A. a motor vehicle that does not have lawfully attached to it:

(1) an unexpired license plate; and

(2) a valid motor vehicle inspection certificate;

B. 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

C. a watercraft that:

(1) does not have lawfully on board an unexpired certificate of number; and

(2) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

Section 17. Administration/Investigation.

17.1 Unless otherwise specified in Part II of this Order, the public nuisance administration and investigation procedures contained in Part I shall also be applicable to the public nuisance of junked vehicles.

17.2 In the event that a single property contains both junked vehicles and other forms of public nuisance as specified in Part I above, then a single investigation, case report, and hearing can be utilized; however, separate notices shall be issued and, if necessary, separate criminal cases shall be filed if the public nuisances and junked vehicles remain unabated.

17.3 A person authorized by the County to administer the procedures authorized in Part II of this Order (Junked Vehicles), including the Administrator, Investigator, law enforcement, or any other official designated by Commissioners Court, may enter private property for the purposes specified in the procedures to examine a vehicle or vehicle part, obtain information as to the identity of the vehicle, and remove or cause the removal of a vehicle or vehicle part that constitutes a nuisance.

17.4 The Administrator shall maintain a log of all junked vehicle complaints, which shall be separate from the Part I nuisance abatement log.

Section 18. Written Notice to Abate or Remove.

18.1 Whenever any junked vehicle is located on any private property in violation of this Order, the Investigator shall send a written Notice to Abate to the owner or the occupant of the premises whereon junked vehicle(s) exists to abate or remove the same.

18.2 The notice shall be in writing, and shall:

A. state that the junked vehicle(s) located on the property are a public nuisance and must be abated or removed not later than the tenth (10th) day after the date on which the notice was personally delivered or mailed; and

B. state that any request for a hearing to determine whether or not the motor vehicle is a junked motor vehicle in violation of this Order must be made before the ten (10) day period expires; and

C. state that in the event that no request for a hearing is received before the expiration of said ten (10) day period, it shall be conclusively presumed that said vehicle is a junked vehicle in violation of this Order; and

D. be personally delivered, sent by certified or registered United States mail with a five (5) day return receipt requested, or delivered by the United States Postal Service with signature confirmation to:

1. the last known registered owner of the junked vehicle;
2. each lienholder of record of the junked vehicle; and
3. the owner or occupant of:
 - a. the property on which the junked vehicle is located; or
 - b. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

18.3 If the post office address of the last known registered owner of the motor vehicle is unknown, notice may be placed on the motor vehicle or, if the last known registered owner is physically located, the notice may be personally delivered.

18.4 In addition to written notice provided in Section 18.2 above, the Investigator may place a tag on junked vehicle(s) stating that the vehicle is a public nuisance that must be abated within ten (10) days from the date on said notice, and stating that a request for a hearing must be made within ten (10) days of the date of said notice. This additional "tag" is not legally required, and a failure to tag a vehicle shall not constitute a condition precedent to or a legal defense in any public nuisance proceeding.

18.4 If notice is returned undelivered, official action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the day of the return.

Section 19. Hearing

19.1 The Hearing Examiner shall conduct hearings under the procedures adopted herein.

19.2 If a hearing is requested, then the hearing shall be held not earlier than the eleventh (11th) day after the date of the service of notice. If there is a request for a public hearing for both a junked vehicle and another form of public nuisance, then

the hearing on the junked vehicle may be joined with the other public nuisance hearing, so long as all applicable procedures for both Part I and Part II are followed.

19.3 At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

19.4 If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include:

A. for a motor vehicle, the vehicle's:

- (1) description;
- (2) vehicle identification (VIN) number; and
- (3) license plate number;

B. for an aircraft, the aircraft's:

- (1) description; and
- (2) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and

C. for a watercraft, the watercraft's:

- (1) description; and
- (2) identification number as set forth in the watercraft's certificate of number.

Section 20. Inapplicability of Order:

20.1 Procedures adopted in this Order may not apply to a vehicle or vehicle part:

A. 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

B. that is outdoors, but completely enclosed by fencing or other enclosure such that it is not visible from the street or other public or private property; or

C. that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means; or

D. unlicensed, operable, or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

20.2 This section does not affect a law authorizing the immediate removal of a vehicle left on public property that is an obstruction to traffic.

20.3 The relocation of a junked vehicle that is a public nuisance to another location in the same municipality or county after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

Section 21. Offense/Enforcement.

21.1 A person commits an offense if the person maintains a public nuisance described by Section 683.072 (Section 15.1 above).

21.2 An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200.00.

21.3 The Court hearing the case shall order abatement and removal of the nuisance on conviction.

Section 22. County Disposal of Junked Vehicles

22.1 If the junked vehicles are not removed after conviction and court order, then the junked vehicles shall be removed and disposed of as specified by the Jeff Davis County Commissioners Court, consistent with state law.


22.2 In no event shall any junked vehicle be reconstructed or made operable.

22.3 Disposal may be accomplished by removal or sale, with or without competitive bidding, to a scrapyards, to a demolisher, or to any suitable site operated by any city or county for processing as scrap or salvage.

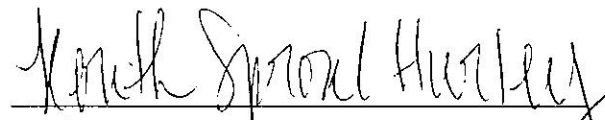
Section 23. Notice to Texas Department of Transportation

23.1 Once the vehicle is removed, notice identifying the vehicle 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 so that the certificate of title can be cancelled.

APPROVED AND ORDERED on this the 10th day of April, 2017.


Jeanette Duer, Jeff Davis County Judge


Jody Adams, Commissioner Pct. 1

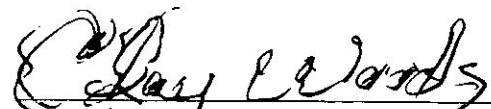

Kerith Sproul Hurley, Commissioner Pct. 2


Curtis Evans, Commissioner Pct. 3

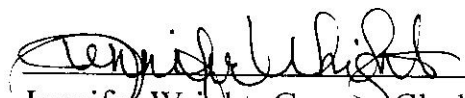

Albert Miller, Commissioner Pct. 4

AGREED:


Teresa Todd, County Attorney


Clay Woods, Constable

ATTEST:


Jennifer Wright, County Clerk