

ORDER NO. 82

**COMAL COUNTY
PUBLIC NUISANCE ABATEMENT ORDER**

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Section 1.01 Establishment and General Provisions – Authority / Purpose

- (a) The Comal County Public Nuisance Abatement Order (“Order”) is adopted by the Commissioners Court acting in its capacity as the governing body of Comal County (“County”) under the authority of §341, §343, §365 and §366 of the Texas Health and Safety Code, §683 and §396 of the Texas Transportation Code, §7 of the Texas Water Code, and other applicable statutes as well as any subsequent amendments thereto.

- (b) The purpose of this Order is to protect the public health, safety, and welfare, to promote the economic welfare of the state and the County, to decrease situations creating a greater likelihood of vandalism or fire, and to prohibit activity that would cause, permit, or allow a public nuisance.
- (c) It is the purpose and legislative intent of the Comal County Commissioners Court to make this Order a living, adaptable, and changeable Order. Therefore, any and all definitions, directions, authority or powers granted by this Order shall, unless otherwise required by State Law, automatically include without need of subsequent action by this Court any and all amendments passed into law by the Texas Legislature.

Section 1.02 County Powers and Duties

- (a) The Commissioners Court hereby orders that it shall be unlawful for an owner, occupant, tenant, resident, or any other person in control of any lot or parcel of ground within Comal County that is subject to this Order to maintain a public nuisance if the person knows or reasonably should have known that the public nuisance exists on said lot or parcel of ground.
- (b) The Commissioners Court of Comal County hereby orders that any authorized county employee may enforce any law reasonably necessary to protect the public health of Comal County citizens—§121.003(a) Texas Health and Safety Code.
- (c) The Commissioners Court of Comal County hereby orders that the procedures adopted herein necessary to abate any nuisance by demolition, removal or other appropriate means consistent with the general purpose of this Order shall be vigorously pursued—§343.021 Texas Health and Safety Code.

Section 1.03 Area of Jurisdiction

- (a) **Comal County.** This Order shall apply to all unincorporated areas of Comal County as well as the areas within the boundaries of the incorporated cities and towns that have adopted this Order and executed cooperative agreements with Comal County for their enforcement.
- (b) **Reference:** The area of jurisdiction described in Section 1.02(a) shall be referred to herein as “Comal County” or “County”.

Section 1.04 Effective Date

This Order shall become effective upon adoption by the Commissioners Court.

Section 1.05 Construction and Interpretation

- (a) **Liberal Construction:** This Order shall be construed liberally to accomplish its purpose.
- (b) **Interpretation:** The Commissioners Court or any other court of competent jurisdiction shall resolve any question regarding interpretation of this Order.
- (c) **Conflict:** In the event of any conflict between this Order and a State law or rule adopted under a State law, the State law or Rule shall prevail.
- (d) **Number and Gender:** The masculine, feminine, and neuter genders shall be construed to include the other genders as required. The singular and plural shall be construed to include any other number as required.
- (e) **Computation of Time:** When any period of time is stated in this Order, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or holiday, these days shall be omitted from the computation.
- (f) **Headings:** The headings at the beginning of the various provisions of this Order have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Order.
- (g) **Severability:** If any provision of this Order or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction the validity of the remainder of this Order and the application thereof to other persons and circumstances shall not be affected.

Section 1.06 Designating Authorized Persons

- (a) This Order may be administered by any authorized "county employee", board, commission or official designated by the Commissioners Court.
- (b) Any such county employee, board, commission or official designated by the Commissioners Court shall have the following duties and necessary concomitant powers:
 - (1) To enforce this Order and to make appropriate recommendations to proper County authorities when instances of noncompliance with this Order have been determined;
 - (2) To inspect any property, public or private, as requested or required to enforce this Order;
 - (3) To provide to the Commissioners Court any information concerning this Order and its implementation which may be requested by the Commissioners Court; and
 - (4) To perform all other duties necessary to implement the purposes and requirements of this Order.

Section 1.07 General Definitions

- (a) "Abandoned motor vehicle" is as defined in §683.002 Texas Transportation Code—a motor vehicle that:
 - (1) Is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
 - (2) Has remained illegally on public property for more than 48 hours;
 - (3) Has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;
 - (4) Has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours; or
 - (5) Has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority or a controlled access highway.
- (b) "Abate" is as defined in §343.022(1) Texas Health and Safety Code—to eliminate by removal, repair, rehabilitation, or demolition.
- (c) "Automotive wrecking and salvage yard" is as defined in §396.001(1) Texas Transportation Code—an outdoor place where a person stores three or more wrecked vehicles for the purpose of dismantling or wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business.
- (d) "Building" is as defined in §343.002(2) Texas Health and Safety Code—a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (e) "Commissioners Court" means the Comal County Commissioners Court—the governing body of Comal County, Texas
- (f) "County Employee" includes any authorized employee of the Comal County Sheriff's Office, Comal County Health Authority, Comal County Health Department, Comal County Environmental Health Department, and Comal County Environmental Enforcement Division of the Criminal District Attorney's Office. The employee must be a regularly salaried, full-time County employee.
- (g) "Discharge" is as defined in §26.001(19) Texas Water Code—to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or dispose of, or to allow, permit, or suffer any of these acts or omissions.
- (h) "Dispose" and "dump" is as defined in §365.011(5) Texas Health and Safety Code—to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

- (i) "Environmental Enforcement Officer" is any County official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws.
- (j) "Flea Market" is as defined in §343.002(12) Texas Health and Safety Code—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.
- (k) "Garbage" is as defined in §343.002(3) Texas Health and Safety Code—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.
- (l) "Human Excreta" is as defined in §341.001(4) Texas Health and Safety Code—the urinary and bowel discharges of a human.
- (m) "Health Authority" is as defined in §121.021 Texas Health and Safety Code—a physician appointed to administer state and local laws relating to public health within the appointing body's jurisdiction or his/her designated authorized representative.
- (n) "Junked vehicle" is as defined in §683.071 Texas Transportation Code—is a vehicle that is self-propelled and:
 - (1) Does not have lawfully attached to it:
 - (A) An unexpired license plate; or
 - (B) A valid motor vehicle inspection certificate;
 - (2) Is wrecked, dismantled or partially dismantled, or discarded; or
 - (3) Is inoperable and has remained inoperable for more than:
 - (A) 72 consecutive hours, if the vehicle is on public property; or
 - (B) 30 days consecutive days, if the vehicle is on private property.
- (o) "Junkyard" is as defined in §396.001(3) Texas Transportation Code—a place where a business that owns junk, and is operated to store, buy, or sell junk, keeps all or part of the junk outdoors until the business disposes of the junk.
- (p) "Litter" is as defined in §365.011(6)(A)(B) Texas Health and Safety Code:
 - (1) Decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking or consumption of food, but not including sewage, body wastes, or industrial by-products; or
 - (2) Non-decayable solid waste, except ashes, that consists of:
 - (A) Combustible waste material, including paper, rags, cartons, wood, excelsior, furniture,

rubber, plastics, yard trimmings, leaves, or similar materials;

- (B) Noncombustible waste material including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and
- (C) Discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(q) "Manufactured Home" is as defined in Title 83, Chapter 16, article 5221f, Section 3 (9) Vernon's Texas Civil Statutes—a structure that was constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).

(r) "Mobile home" is as defined in Title 83, Chapter 16, Article 5221f, Section 3 (17) Vernon's Texas Civil Statutes – a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems.

(s) "Motor vehicle" is as defined in §501.002(14), §663.001(1)(A)(B)(C)(D) and §683.001(4) Texas Transportation Code:

- (1) Any motor driven or propelled vehicle required to be registered under the laws of this state;
- (2) A trailer or semi-trailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds;
- (3) A house trailer;
- (4) A four-wheel all-terrain vehicle designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or
- (5) A motorcycle, motor-driven cycle, or moped, that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course.

(s) "Neighborhood" is as defined in §343.002(A)(B) Texas Health and Safety Code:

- (1) A platted subdivision, or

- (2) Property contiguous to and within 300 feet of a platted subdivision.
- (t) "Order" is as defined in the Comal County Public Nuisance Abatement Order—law adopted by the Commissioners Court acting in its capacity as the governing body of Comal County.
- (u) "Owner" is as defined in §1.17 Texas Penal Code—a person who:
- (1) Has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or
 - (2) Is a holder in due course of a negotiable instrument or executory agreement/contract.
- (v) "Platted subdivision" is as defined in §343.002(5) Texas Health and Safety Code—a subdivision that has or is required to have its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (w) "Person" is:
- (1) An individual, corporation, or association as defined in—§142.001(21) Texas Health and Safety Code; and
 - (2) An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, and any other legal entity as defined in—§1.10D(4) Texas Insurance Code.
- (x) "Premises" is as defined in §343.002(6) Texas Health and Safety Code—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.
- (y) "Public Health Threat" is a condition that poses or may pose a substantial present or potential danger to human health or the environment.
- (z) "Public street" is as defined in §343.002(7) Texas Health and Safety Code—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.
- (aa) "Public highway" is as defined in §365(8)(A)(B)(C) Texas Health and Safety Code:
- (1) 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, bridge, public beach, or park:
 - (A) is opened to the public for vehicular traffic;
 - (B) is used as a public recreational area; or
 - (C) is under the state's legislative jurisdiction through its police power.

- (bb) "Receptacle" is as defined in §343.002(8) Texas Health and Safety Code—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.
- (cc) "Refuse" is as defined in §343.002(9) Texas Health and Safety Code—as garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.
- (dd) "Rubbish" is as defined in §343.002(10) Texas Health and Safety Code—is non-decayable waste from a public or private establishment or residence.
- (ee) "Sanitary" is as defined in §341.001(7) Texas Health and Safety Code—a condition of good order and cleanliness that precludes the probability of disease transmission.
- (ff) "Sewage" is as defined in §366.002(9)(A)(B) Texas Health and Safety Code—as waste that:
 - (1) Is primarily organic and biodegradable or decomposable; and
 - (2) Generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.
- (gg) "Solid waste" is as defined in §343.002(9)(10)(11) Texas Health and Safety Code—as garbage, rubbish, refuse, discarded organic food products, kitchen waste, paper, and other discarded materials.
- (hh) "Storage facility" is as defined in §683.001(7) Texas Transportation Code—a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.
- (ii) "Wild Animal" is as defined in Comal County Order # 74 signed in November 2001.

Section 1.08 Public Nuisance and Other Nuisance Definitions

A Public Nuisance includes:

- (a) **As defined in §343.011 Texas Health and Safety Code:**
 - (1) Keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle—§343.011(1) Texas Health and Safety Code;
 - (2) Keeping, storing, or accumulating litter, or rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for ten days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street—§343.011(2) Texas Health and Safety Code;
 - (3) Maintaining premises in a manner that creates an unsanitary condition likely to attract or

harbor mosquitoes, rodents, vermin, or disease-carrying pests—§343.011(3) Texas Health and Safety Code;

(4) 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—§343.011(5) Texas Health and Safety Code;

(5) Maintaining an abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:

(A) A fence that is at least six (6) feet high and that has a latch gate that cannot be opened by a child or;

(B) A cover over the entire swimming pool that cannot be removed by a child younger than 14 years of age—§343.022(6)(A)(B) Texas Health and Safety Code;

(6) Maintaining a flea market in a manner that constitutes a fire hazard—§343.011(7) Texas Health and Safety Code—§343.011(7) Texas Health and Safety Code;

(7) Discarding refuse or creating a hazardous visual obstruction on:

(A) County-owned land; or

(B) Land or easements owned or held by a special district that has the commissioners court of the county as its governing body—§343.011(8)(A)(B) Texas Health and Safety Code; or

(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—§343.011(9)(A)(B) Texas Health and Safety Code.

(b) As defined in §365 Texas Health and Safety Code:

(1) Accumulation of litter for more than thirty-days (30) within fifty feet (50) of a public highway—§365.034(a)(1) Texas Health and Safety Code.

(c) As defined in §7.185 Texas Water Code:

(1) Disposal of a lead-acid battery by means other than as provided §361.451 Texas Health and Safety Code.

(d) As defined in—§396 Texas Transportation Code:

- (1) Operating a junkyard or an automotive wrecking and salvage yard without proper screening of the yard with at least a six (6) foot solid barrier fence—§396.021 Texas Transportation Code. See Section 1.09 Screening Standards.
- (2) Operating a junkyard or an automotive wrecking and salvage yard located within 50 feet of the right-of-way of a public street, state highway, or residence—§396.022(a) Texas Transportation Code.
- (3) Accumulating or stacking materials associated with a junkyard or an automotive wrecking and salvage yard higher than eight feet above ground level, except for a junkyard or an automotive wrecking and salvage yard used only for farm equipment—§396.022(b)(c) Texas Transportation Code.

(e) As defined in—§683.072 Texas Transportation Code:

Possession of a junked vehicle, including a part of a junked vehicle that is visible from a public place or public right-of-way that either:

- (1) Is detrimental to the safety and welfare of the public;
- (2) Tends to reduce the value of private property;
- (3) Invites vandalism;
- (4) Creates a fire hazard;
- (5) Is an attractive nuisance creating a hazard to the health and safety of minors; or
- (6) Produces urban blight adverse to the maintenance and continuing development of municipalities—§ 683.072(1)(2)(3)(4)(5)(6)(7) Texas Transportation Code.

(f) As defined in §341 Texas Health and Safety Code:

- (1) A condition that is a breeding place for flies and that is in a populous area is a violation of—§341.011(1) Texas Health and Safety Code.
- (2) A restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition—§341.011(3) Texas Health and Safety Code.
- (3) A place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition—§341.011(4) Texas Health and Safety Code.

- (4) Sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons—§341.011(5) Texas Health and Safety Code.
 - (5) A vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents—§341.011(6) Texas Health and Safety Code.
 - (6) A place or condition harboring rats in a populous area—§341.011(9) Texas Health and Safety Code.
 - (7) The presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public—§341.011(10) Texas Health and Safety Code.
 - (8) The maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and an object, place, or condition that is a possible and probable medium of disease transmission to or between humans—§341.011(11)(12) Texas Health and Safety Code.
- (g) **Illegal Permanent Utilities:** Discharging human excreta from a building with permanent utility service that has not been issued a Comal County License to Operate an On-site Sewage Septic facility or that has not been connected to a public utility sewage system.
 - (h) **Discharge of Firearms:** Discharging a firearm or hunting with a bow and arrow on any subdivision lot of 10 acres or less—§240.022 Local Gov't. Code. See also Comal County Orders No. 2 and 15 respectively.
 - (i) **Illegal Dumping:** Disposing, allowing, permitting, receiving, or transporting litter or other solid waste at a place that is not an approved solid waste site— §365.012(a)(b)(c) Texas Health and Safety Code.
 - (j) **Dangerous Wild Animals:** Unlawfully possessing a dangerous wild animal in violation of Comal County Order # 74.
 - (k) **Animal Control Order Violation:** Any animal that unreasonably annoys humans, endangers the life or health of other animals or persons, or substantially interferes with the rights of citizens, other than their owners, to the enjoyment of life or property.

- (l) The term “**public nuisance**” also includes any definition added to, by subsequent amendment, in §341, §343, §361, §365, and §366, Texas Health and Safety Code, §683 and §396 Texas Transportation Code, and §7 Texas Water Code.

Section 1.09 Visual Aesthetic Standards for Screening

- (a) **Screening:** Material used for fencing shall be of a neutral or earth tone color. The use of non-standard fencing material or other materials not intended to be used, as fencing shall not be allowed.

- (b) **Non-Standard Fencing**

- (1) Doors of any kind
- (2) Tongue in Groove Flooring
- (3) Shipping crates or wooden pallets
- (4) Any material that is intended for interior use of a business or home
- (5) Corrugated metal composite sheets
- (6) Cardboard or any paper composite product

- (c) **Other standards:**

- (1) A person who operates a junkyard or an automotive wrecking and salvage yard in Comal County shall screen the junkyard or automotive wrecking and salvage yard to at least six (6) feet in height with opaque screening materials along the portion of the junkyard or automotive wrecking and salvage yard that faces a public road and/or residence. The person may screen the yard by any appropriate means, including:

- (A) A fence;
- (B) Natural objects; or
- (C) Six feet tall or taller plants that retain their leaves and/or foliage in the winter months – §396.021(4)(c)(1)(2)(3) Texas Transportation Code.

Section 1.10 Utilities to Newly Constructed Buildings & On-site Sewage Facilities

- (a) No person may obtain or seek to obtain permanent utility service to any newly constructed or erected residential or commercial building(s), including but not limited to manufactured housing units, mobile homes, or other building which contains or is to contain any device, facility, or equipment to be used to dispose of human excreta, until the owner of the property presents a License to Operate an On-site Sewage Facility (OSSF) issued by Comal County or shows proof of a sewer connection to a public utility.
- (b) Temporary utility service shall be disconnected within 10 days after any such building or manufactured housing unit is occupied.

- (c) A License to Operate an On-site Sewage Facility (OSSF), issued by Comal County Environmental Health, must be shown to any utility company before a person may obtain connection of permanent utility service to any such building or any manufactured housing unit.
- (d) Authorized agents of Comal County shall enforce Texas Administrative Code (TAC) Title 30 §285 *et seq.* and §366 *et seq.* Texas Health and Safety Code.
- (e) The authorized agent shall investigate all complaints about malfunctioning OSSFs and other sewage disposal systems, devices or connections within 96 hours after receipt of complaint.
- (f) Electric utilities serving the areas covered by this Order shall compile a list weekly of the addresses at which the electric utility has made new electric service connections during the preceding week and forward the list to the Environmental Enforcement Division of the District Attorney's Office.
- (g) Any authorized County employee may obtain and use the list to implement and enforce rules relating to on-site sewage disposal systems—§366.005(a) Texas Health and Safety Code.
- ✓ (h) With the approval of the Comal County public health authority, the Environmental Enforcement Division of the District Attorney's Office may issue emergency orders, as be necessary to protect public health and safety, concerning an OSSF and other sewage disposal systems, devices or connections—§366.016 Texas Health and Safety Code.

Section 2.01 General Procedures - Abatement Public Nuisance

- (a) **Application.** The requirements of this Section shall generally apply to any public nuisance.
- (b) **Administration of Nuisance Procedures.** Comal County's abatement procedures shall be administered by a regularly salaried, full-time County employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.
- (c) **Authority to Enter Premises - Nuisance**
 - (1) **Entry:** A County official, agent, or employee charged with the enforcement of this Order, including the Health Authority, its authorized representative or other duly authorized person charged with the enforcement of health, safety, environmental, or fire laws, may enter any premises in an area covered by this Order at a reasonable time to inspect, investigate, abate a nuisance or to enforce this Order—§343.024(a) Texas Health and Safety.
 - (2) **Identification:** Upon entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person—§343.024(b) Texas Health and Safety Code.

Section 2.02 Abatement Procedures for a Junked Vehicle Nuisance

- (a) To abate a public nuisance under this section, notice of the nature of the nuisance shall be sent by certified mail with a five-day return requested to:
 - (1) The last known registered owner of the nuisance;
 - (2) Each lien holder of record of the nuisance; and
 - (3) The owner or occupant of:
 - (A) The property on which the nuisance is located; or
 - (B) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way—§683.075(a)(1)(2)(3)(A)(B) Texas Transportation Code.
- (b) The notice shall state that:
 - (1) The nuisance must be abated and removed not later than the 30th day after the date on which the notice was mailed; and
 - (2) Any request for a hearing must be made before that 30-day period expires—§683.075(b)(1)(2) Texas Transportation Code.
- (c) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered—§683.075(c) Texas Transportation Code.
- (d) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 31st day after the date of the return— §683.075(c) Texas Transportation Code.
- (e) If the nuisance under this section has not been timely abated, an authorized County employee may initiate and take any action reasonably necessary to abate the nuisance, including but not limited to impoundment of the vehicle.
- (f) Within five (5) days after impoundment, notice shall be given to the Texas Department of Transportation, Comal County Sheriff's Department, and any other appropriate law enforcement, that a junked vehicle has been impounded identifying the vehicle or part thereof impounded.
- (g) Thereafter, the County shall dispose of all impounded junked vehicles in such manner as may be designated by the County consistent with state law.

Section 2.03 Abatement Procedures for other Public Nuisances

- (a) These abatement procedures shall be administered by a regularly salaried, full-time county employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program—§343.022(a) Texas Health and Safety Code.

(b) To initiate abatement procedures, written notice shall be given to:

(1) The owner, lessee, occupant, agent, or person in charge of the premises; or

(2) The person responsible for causing or maintaining 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—§343.022(b)(1)(2)(A)(B) Texas Health and Safety Code.

(c) The notice must state:

(1) The specific condition that constitutes a nuisance—§343.022(c)(1) Texas Health and Safety Code.

(2) The person receiving notice shall abate the nuisance before the thirty-first (31st) day after the date on which the notice is received—§343.022(c)(2) Texas Health and Safety Code.

(3) The failure to timely abate the nuisance may result in criminal prosecution of any person noticed and responsible for the nuisance.

(4) Each day a violation occurs is a separate violation—§343.012(a)(2)(b)(d) Texas Health and Safety Code.

(5) That under certain conditions, failure to abate a public nuisance may result in assessment of costs and the imposition of a lien against the property on which the nuisance exists—§343.022(c)(3)(B) Texas Health and Safety Code.

(d) If there is a failure to abate the public nuisance a second notice must be given by certified mail, return receipt stating:

(1) Failure to abate the public nuisance may result in a forced abatement of the nuisance by the County with assessment of costs to the owner and/or person responsible for causing or maintaining the nuisance when that person can be identified—§343.022(c)(3)(A)(B) Texas Health and Safety Code.

(2) A lien will be filed against the property on which the nuisance exists, if the person responsible for causing or maintaining the nuisance has an interest in the property—§343.022(c)(3)(C) Texas Health and Safety Code; and

(3) The person receiving the notice is entitled to submit, before the thirty-first (31st) day after the date on which the forced abatement notice is received, a written request for a public hearing—§343.022(c)(4) Texas Health and Safety Code.

(e) The forced abatement notice must be:

- (1) Given by service, in person, by an officer or employee of the County, or sent by registered or certified United States Mail, return receipt—§343.022(d)(1) Texas Health and Safety Code.
- (2) If personal service may not be had or the address of the person to be notified is unknown, then notice may be given by:
 - (A) Publishing a copy of the notice at least two times within ten consecutive days in a newspaper of general circulation published in the County; and
 - (B) Posting a copy of the notice on the premises on which the nuisance exists, or if the property contains no building, by posting a copy of the notice on a placard attached to a stake driven into the ground of the property to which the violation relates—See generally §343.022(d)(2) Texas Health and Safety Code.

Section 2.04 Public Hearing for Forced Abatement

- (a) **Public Hearing:** If a public hearing is requested under §343.022(e) Texas Health and Safety Code, or §683.076 Texas Transportation Code, the County must conduct said hearing before the Commissioners Court prior to abatement. In order to request such a hearing, the person who has received notice that a public nuisance exists on his real estate must file a written request for a hearing with the Commissioners Court within thirty (30) days of receipt of said notice, and the Commissioners Court shall then set a public hearing date within a reasonable time.
- (b) **During that public hearing,** the Commissioners Court will:
 - (1) Review the determination by the county official, agent, or employee charged with the enforcement of this Order; and, if the determination of the existence of a nuisance is confirmed, pursuant to any applicable nuisance provision; then,
 - (2) Review the issue of abatement, including the costs of such abatement and make a final determination as to the actual course of action to be taken by the County pursuant to Sections 2.03 and 2.05 of this Order.
- (c) In the event a public hearing is not requested, the county official, agent, or employee charged with the enforcement of this Order will present a determination and necessary information concerning any proposed abatement, other than junked vehicles or public health threats, to the Commissioners Court in a regularly scheduled meeting for a final decision by the Commissioners Court as to the action to be taken by County.

Section 2.05 Assessment of Costs and Expenses

- (a) **Failure to Remedy:** In the event any owner or person responsible for the nuisance fails or refuses to remedy any of the conditions prohibited by Sections 1.02 and 1.08 after the thirtieth (30th) day after the receipt of notice to do so, the County may abate such condition by demolition, removal, impoundment, or other appropriate means, or cause the same to be done and charge the expenses in doing or having such work done to the owner of the property with such charge being a personal liability of such owner or other responsible person.

- (b) **Assessed Against Property:** In addition to other remedies provided herein, and cumulative thereto, the county official, agent, or employee charged with the enforcement of this Order, after giving thirty (30) days notice as specified in Section 2.03, may seek final approval from Commissioners Court to cause any of the work mentioned in Sections 2.03 and 2.04 to be done at the expense of the County on behalf of and on the account of the owner of the property on which the work is to be done and cause all of the actual cost to the County to be assessed on the real estate on account of which such expense is incurred.

- (c) **Assessment of Costs – Lien**
 - (1) **Assessment:** At the discretion of the County, the cost of legal notification by publication and an administrative fee of not more than \$100.00 may be assessed on the person receiving notice or, by order or resolution, assess said costs against the property on which the nuisance exists. The County may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 2.03.
 - (A) At the discretion of the County, any personal property that constitutes a public nuisance may be liquidated as surplus County property and the proceeds shall be applied to offset the costs of the abatement of that Public Nuisance.
 - (B) In the event that the proceeds from the liquidation of personal property exceed the cost of abatement of the public nuisance, the excess shall be returned to the landowner.
 - (2) **Lien:** To obtain a lien against the property to secure an assessment, the Commissioners Court shall approve a statement of the costs incurred in doing such work to be submitted and certified by the county official, agent, or employee charged with the enforcement of this Order and filed with the County Clerk. The statement of costs shall describe the property upon which such work was done, the character of work done and name the owner of such property.
 - (3) **Inferiority of Lien:** The County's lien to secure an assessment 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 County Clerk of the County in which the real property is located before the date on which the County begins abatement and liens for lawful ad valorem taxes or for street improvements.

(4) Guidelines for Forced Abatement by County for Public Nuisance

(A) Any recommendation for an expenditure of County Funds for a forced abatement of a Public Nuisance will be determined by the Environmental Enforcement Officer.

(B) Determinative Factors may include but are not limited to:

- (i) Non-Compliance
- (ii) Inability to Comply
- (iii) Lack of Financial Resources
- (iv) Inability to identify or locate property owner

(5) **Interest:** The County is entitled to accrued interest beginning on the thirty-first (31st) day after the date of the assessment against the property at the rate of ten (10) percent a year.

(6) **Suit Against Owner:** For any expenditures and interest under Sections 2.03 and 2.04, suit may be instituted and a personal judgment obtained against the owner of such property or other responsible person. Recovery of the costs may include foreclosure against the real property to which the lien is attached in the name of the County against the owner of such property in any court having jurisdiction, and the statement of expenditures so made and filed, or a certified copy thereof, shall be prima facia proof of the amount expended in any such work.

Section 2.06 Abatement of Public Health Nuisances and Public Health Threats

- (a) If the Comal County public health authority receives information and proof that a public health nuisance exists in the health authority's jurisdiction, the health authority shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall, at the same time, send a copy of the notice to the district attorney—§341.012(b) Texas Health and Safety Code.
- (b) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated—§341.012(c) Texas Health and Safety Code.
- (c) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the district attorney who shall proceed to abate the public health nuisance—§341.012(d)(1)(2) Texas Health and Safety Code.
- (d) If the local health authority receives information and proof that a public health nuisance exists in the local health authority's jurisdiction, the local health authority may declare that a Public Health Threat exists at the specific location.
- (e) Upon declaration that a specific location constitutes a Public Health Threat, a public utility who is notified by certified letter of the Public Health Threat shall discontinue service of the utilities to the specific location named in the Public Health Threat letter for so long as the authority finds the threat to exist—See generally §121.003(a) Texas Health and Safety Code.

Section 3.01 Civil Enforcement

- (a) Relative to the purposes of this Order, the Comal County Commissioners Court, by and through its District Attorney, may bring a civil suit for injunctive relief and civil penalty for any violation of state law, rules implemented to advance state law or this Order.
- (b) Relative to the purposes of this Order, any person affected or to be affected by a violation of state law, rules implemented to advance state law or this Order, may bring a civil suit for injunctive relief and civil penalty.
- (c) The county court(s) at law or the district courts in Comal County may by injunction prevent or restrain continuing violations of this Order.
- (d) It is an affirmative defense to civil liability under this Order that the questioned site or facility is:
 - (1) Permitted and regulated by a state agency; or
 - (2) Dedicated to the processing and distribution of recyclable material.
- (e) For the purposes of prosecuting a civil action brought to enforce this Order, the Texas Rules of Civil Procedure shall guide and control the litigation.
- (f) If the court grants the relief sought, that court may award the plaintiff reasonable attorneys fees and recover court costs.

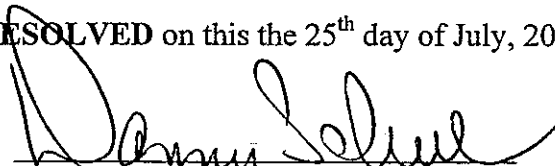
Section 4.01 Criminal Enforcement & Penalty

- (a) A person commits an offense if:
 - (1) The person violates any section or subsection of this Order; and
 - (2) The nuisance remains unabated after the thirtieth (30th) day after the date on which a person receives notice from the county official, agent, or employee charged with the enforcement of this Order to abate the nuisance.
- (b) **Misdemeanor:** An offense under this Order unless otherwise noted, is a Class C misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00)—§343.012(b) Texas Health and Safety Code.
- (c) **Previous Conviction:** If alleged and shown on the trial of the defendant that the defendant has been previously and finally convicted of an offense under this section, conviction for a subsequent offense under this Order unless otherwise noted is punishable by a fine of not less

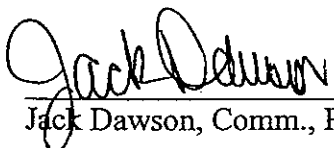
than two hundred dollars (\$200.00) or more than one thousand dollars (\$1,000.00), confinement in jail for not more than six (6) months, or both—§343.012(c) Texas Health and Safety Code.

- (d) **Illegal Dumping:** The degree of penalty is based on weight or volume of the litter or solid waste on the property and whether it is alleged and shown at trial that the defendant has previously been convicted under this section—§365.012(c)(d)(e)(f)(g) Texas Health and Safety Code.
- (e) **Separate Offense:** Each day a violation occurs is a separate offense.
- (f) **Order to Abate:** The court having jurisdiction over the offense shall order abatement of the nuisance if the defendant is convicted of an offense under this section.
- (g) **Affirmative Defense:** It is an affirmative defense to criminal liability under this Order that the questioned site or facility is:
 - (1) Permitted and regulated by a state agency; or
 - (2) Dedicated to the processing and distribution of recyclable material.
- (h) **Illegal Disposal of Batteries:** A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided by §361.451 Texas Health and Safety Code. An offense under this section is a Class A misdemeanor—§7.185(a)(b) Texas Water Code. See Section 1.08(c)(1) of this Order.
- (i) **Other Penalties:** If a state law or rule or order of Comal County specifies a penalty for conviction of an offense(s) or subsequent offense(s) that is in conflict with this Order, the state law or rule or other order of Comal County shall prevail.

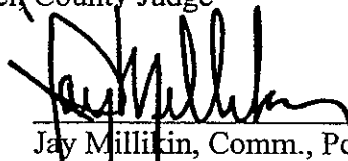
IT IS SO ORDERED AND RESOLVED on this the 25th day of July, 2002.




Danny Scheel, County Judge



Jack Dawson, Comm., Pct. # 1



Jay Millikin, Comm., Pct. # 2



Cristina Zamora, Comm., Pct. # 3

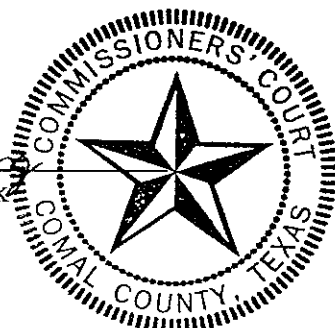


Moe Schwab, Comm., Pct. # 4

ATTEST:



Joy Strater, County Clerk



Date: 