

2017
SHORT ANSWERS TO
COMMON QUESTIONS

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**KEEPING THE COUNTY SCENIC:
JUNKYARDS, VISUAL AESTHETIC STANDARDS, PUBLIC NUISANCE, GRAFFITI,
LITTER, AND AMATEUR RADIO ANTENNAS**

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The  symbol indicates sections that have been updated since the previous publication.

Introduction

In general, Texas counties have only the powers expressly delegated to them by the Legislature and the implied authority to exercise powers necessary to accomplish the county's assigned duties.¹ The Legislature has provided counties with certain powers to preserve the visual appeal of unincorporated areas of the county. The following document provides information on county authority over junkyards, public nuisance, litter, graffiti, visual aesthetic standards, and amateur radio antennas. Enforcement of the orders or ordinances adopted by counties generally requires written or public notice to the affected property owner. For any information on additional ordinance authority, please contact the TAC Legal Department at 1-888-275-8224.

¹ *City of San Antonio v. City of Boerne*, 111 S.W. 3d 22 (Tex. 2003).

JUNKYARDS

While municipalities have ordinance authority over junkyards and auto salvage yards within their boundaries and the state has general authority over their regulation, Chapter 396 of the Transportation Code gives counties limited powers over junkyards and salvage yards that are situated in their unincorporated areas.

1. May a county require a junkyard or auto salvage yard to be licensed?

Yes, the county may require a license to operate a junkyard or automotive wrecking or salvage yard not in operation before June 1, 1987.² Under §396.041 of the Transportation Code, a county may pass an ordinance to require a junkyard or automotive wrecking and salvage yard to be licensed by the county. In most counties, the ordinance may impose a fee of \$25 for issuance or renewal of the license. In counties with a population of 250,000 or more the county may impose a fee of \$150 for issuance or renewal of a license. In a county with a population of 3.3 million or more, the county may impose a fee of \$500.³ The ordinance may also condition the license on the operation of the junkyard or automotive wrecking and salvage yard at a location approved by the commissioners court or a county employee designated by the commissioners court.⁴ License fees are deposited in the county general fund.



2. What notice is required before the ordinance is implemented?

Before the ordinance is adopted, the commissioners court is required to hold a public hearing. Notice of the hearing must be published in a newspaper of general circulation in the county at least once a week for three weeks preceding the date of the hearing and posted for ten days preceding the date of the hearing. Tex. Trans. Code Ann. §§396.042, 396.043 (Vernon Supp. 2013).

3. May a county require an individual property owner to erect a fence or some other type of screening on the property to camouflage a junked vehicle from public view?

No. The county may abate and remove as a public nuisance a junked vehicle that is visible from public or private property, but does not have authority to require a particular type of camouflage to render the vehicle non-visible. Op. Att'y Gen. No. GA-0034 (2003).

² Junkyards in existence prior to June 1, 1987 are not subject to county licensing provisions or screening requirements.

³ The Legislature has created a number of exceptions or greater regulatory authority for Harris County. Here, Chapter 397 applies to junk/salvage yards established as of September 1, 1983 and contains location, fencing, and screening requirements that are more restrictive than those for other counties.

⁴ Texas Transportation Code §396.041(c). Added by [HB 4114](#), 85th Leg. Effective September 1, 2017.

VISUAL AESTHETIC STANDARDS FOR CERTAIN OUTDOOR BUSINESSES

1. Does a county have any authority to control the appearance of outdoor businesses such as junkyards or flea markets?

Yes. The county has authority to apply visual standards to certain outdoor businesses. Under §234.002 of the Local Government Code, the commissioners court may establish visual aesthetic standards for automotive wrecking and salvage yards, junkyards, recycling businesses, flea markets, demolition businesses and outdoor resale businesses in the unincorporated areas of the county. The screening requirements for automotive wrecking and salvage yards or junkyards may not be more restrictive than the requirements under Chapter 396 of the Transportation Code.

Section 396.021(b) of the Transportation Code requires a junkyard or an automotive wrecking and salvage yard to screen the business with a solid barrier fence at least eight feet high, with the fence painted a natural earth tone coloring and no sign on its surface other than a sign with the business name. Section 396.021(c) of the Transportation Code requires a junkyard or automotive wrecking and salvage yard located in a county with a population of 200,000 or less to be screened with a fence, natural objects, or plants to at least six feet in height along the portion of the junkyard or automotive wrecking and salvage yard that faces a public road or residence.

The county must provide a reasonable period of time not to exceed 12 months for a business that was in operation on the effective date of the order to comply with the new visual standards.

2. Is there a penalty for violating the standards?

Yes. A business that violates the adopted visual aesthetic standards may be subject to a civil penalty, filed by the attorney representing the county in civil cases, not to exceed \$50 each day for the first 10 days of the violation, \$100 each day for the next ten days, \$250 each day for the following 10 days and \$1000 for each subsequent day. Tex. Loc. Gov't Code Ann. §234.004. Penalties recovered under this section are deposited to the general fund. There are no criminal penalties for violating the standards.

PUBLIC NUISANCE

The county has authority to enter onto private property to abate a public nuisance, as long as proper notice is given to the property owner. The county also has the ability to recover the cost of abating the public nuisance.

1. Under what authority may a county regulate public nuisances?

The county may adopt abatement procedures consistent with the general purposes of Chapter 343 of the Health and Safety Code. The procedures may provide for the county to abate a nuisance by demolition or removal, by controlling access to the premises, or by installing a cover to a swimming pool that cannot be opened by a child or draining or filling the swimming pool, or by removing, storing, transporting, or otherwise disposing of refuse that has been placed on unauthorized property. Health and Safety Code §343.021.

2. What is a public nuisance?

Under Section 343.011(c), Health and Safety Code, a public nuisance is defined as:

- (1) Keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
- (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood 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;
- (6) Maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched and locked gate;and

- (B) a cover over the entire swimming pool that cannot be removed by a child;
- (7) Maintaining on any property in a neighborhood in a county with a population of more than 1.1 million 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;
- (8) Maintaining a flea market in a manner that constitutes a fire hazard;
- (9) 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;
- (10) 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;
- (11) 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;
- (12) Discarding refuse on property that is not authorized for that activity; and
- (13) Surface discharge from an on-site sewage disposal system as defined by Section 366.022 of the Health and Safety Code⁵.

Under §343.011(d-1) of the Code, a public nuisance also includes undeveloped land⁶ in the county for which: (1) the conditions described above by (c)(3) and (4) exist, (2) the conditions have been found to cause a public nuisance in the preceding year, and (3) a

⁵ "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities that: (A) produce not more than 5,000 gallons of waste each day; and (B) are used only for disposal of sewage produced on a site on which any part of the system is located.

⁶ Defined as land in a natural, primitive state that lacks improvements, infrastructure, or utilities that is located in an unincorporated area at least 5000 feet outside the boundaries of a home-rule municipality.

finding of public nuisance could have been applied to the condition when it first occurred. Section 343.011(d-1) applies only to a county with a population of 3.3 million or more and in an unincorporated area in the county at least 5000 feet outside the boundary of a home-rule municipality.

3. May the county grant exceptions or variances for public nuisances?

Yes. Section 343.0111 of the Health and Safety Code authorizes the commissioners court to describe in an order the circumstances under which a special exception to the prohibition against public nuisances may be granted and then grant the exception in specific cases so long as it is not contrary to the public interest. The commissioners court may also grant an exception or variance to the prohibition against public nuisance in a specific case, even if it does not fall within one of the described special circumstances, if the court determines a literal enforcement of Section 343.011 would result in an unnecessary hardship.

4. Must notice be given to the owner or person in charge of the premises prior to abatement?

Yes. Under §343.022(c) of the Health and Safety Code, the written notice must: (1) state the specific condition that constitutes a nuisance; (2) require the person receiving the notice to abate the nuisance before the 31st day after the date the notice is served (if the first notice) or the 10th business day after the date the notice is served (if previous notices have been served concerning the public nuisance); (3) state that the failure to abate the nuisance may result in abatement by the county; (4) state that failure to abate may result in assessment of costs to the person responsible for causing the nuisance if he or she can be identified; (5) state that a lien may be placed against the property if the person responsible for causing the nuisance has an interest in the property; (6) state that the county may prohibit or control access to the property; and (7) state that the person receiving notice may request a hearing before the 31st day after the date on which the notice was served (if the first notice) or the 10th business day after the date the notice was served (if previous notices have been served regarding the public nuisance).

The notice must be given by service in person or by registered or certified mail, with return receipt requested; or if the address of the responsible party is unknown or personal service cannot be obtained, the county may post a copy of the notice on the premises and publish a copy in a newspaper of general circulation in the county two times within 10 consecutive days.

5. How is a public nuisance hearing conducted?

The hearing may be conducted by the commissioners court or by any other board, commission, or official as designated by the commissioners court. The county may take action to abate a dangerous swimming pool by prohibiting access or controlling access to the disputed property and by placing a cover over the pool prior to the hearing. Health and Safety Code §343.022(e) and (f).

6. How may the county recover the costs of abating a public nuisance?

The county may recover the costs of abating the nuisance, the cost of providing notice, and an administrative fee of \$100. The assessment of costs may not be made unless the owner or owner's agent received notice of the abatement. To obtain a lien against the property, the commissioners court may file with the county clerk a statement of costs coupled with a legal description of the property and the name of the owner. The county is entitled to interest at the rate of 10% a year beginning on the 31st day after the date of the assessment against the property. Health and Safety Code §343.021.

7. What is the criminal penalty for causing, permitting, or allowing a public nuisance?

Under §343.012 of the Health and Safety Code, the penalty for causing, permitting, or allowing a public nuisance is a misdemeanor punishable by fine of not less than \$50 or more than \$200. If shown at trial that the defendant has been previously convicted of an offense under Section 343.012, the penalty increases to a fine of not less than \$200 or more than \$1000, or confinement in jail for not more than six months, or both. Each day the violation occurs is a separate offense.

8. Do the public nuisance prohibitions apply to agricultural land?

No. The prohibitions against public nuisances do not apply to open-space land or land primarily used for agriculture that qualifies for tax appraisal under Subchapter C or D, of Chapter 23 of the Tax Code. Health and Safety Code §343.011(d)(2).

GRAFFITI

While graffiti may be generally described as markings, writing, or drawing on a sidewalk, wall of a building, or other public surface, the term is not expressly defined in Chapter 250 of the Local Government Code.⁷ In the absence of a statutory definition, a county should be consistent in how it defines graffiti for purposes of §250.006 of the Local Government Code.

1. May a county order private land owners to remove graffiti from their property?

Yes. Under §250.006 of the Local Government Code, a county by order or ordinance may require property owners within the county's jurisdiction to remove graffiti from the owner's property on receipt of a notice from the county. Prior to sending the graffiti removal notice, the county must first offer to remove the graffiti free of charge and the owner must have refused the offer.

⁷ "graffiti," Dictionary.com (2014), at <http://dictionary.reference.com/browse/graffiti?s=t>.

2. Must a county provide a private land owner with notice before initiating action to remove graffiti?

Yes. The county's order or ordinance must require notice to be given personally to the owner in writing, or be sent by certified mail addressed to the owner at the owner's address as reflected in appraisal records, or—if the first two methods are not available—either by publication in a newspaper of general circulation in the county, posting notice on or near the front door of the buildings to which the notice relates, or being placed on a placard attached to a stake driven into the ground on the appropriate property. Loc. Gov't Code §250.006(d).

3. May a county enter on to private property to remove graffiti?

Yes. The county's graffiti order or ordinance must require property owners to remove the graffiti on or before the 15th day after receipt of the notice. If the owner does remove the graffiti by the deadline, the county may enter the property and remove the graffiti.

4. Is there a way for the county to recover the unpaid costs of graffiti removal from a particular property?

Yes. The commissioners court may file a statement of expenses with the county clerk to obtain a lien against the property. The lien attaches to the property on the date the statement is filed in the real property records of the county in which the property is located. The lien is subordinate to any previously recorded lien and the rights of a purchaser or lender for value who acquires an interest in the property before the statement of expenses was filed with the county clerk. Local Gov't Code §250.006(f) & (g).

5. Are there exceptions to the land owner's requirement to remove the graffiti from the owner's property?

Yes. The county graffiti order or ordinance is required to contain an exception to the requirement if the graffiti is located on "transportation infrastructure" and the removal would create a hazard for the person performing the removal. Local Gov't Code §250.006(h). While not defined in the Code, we would suggest that transportation infrastructure is a term that includes, but is not limited to, roads, bridges, culverts, retaining walls, and signage.

LITTER

Counties may receive many calls from residents complaining about litter in unincorporated areas and demanding that the litter be removed. Chapter 365 of the Health and Safety Code gives the county authority to adopt regulations prohibiting litter and authorizing county personnel to go onto certain areas of private property to remove it.

1. May a county adopt litter regulations?

Yes. A county may adopt regulations to control the disposal of litter and removal of illegally dumped litter in unincorporated areas of the county. Under §365.017 of the Health and Safety Code, the commissioners court must make a finding that the proposed regulations are necessary to promote the public health, safety, and welfare of residents of the county. The regulations may require the property owner of record to pay for the cost of removal after the owner has been given 30 days written notice to remove the illegally dumped litter.

The definition of “illegally dumped litter” for these purposes is litter dumped anywhere other than at an approved solid waste site. Litter also has the meaning set out in §365.011 of the Health and Safety Code, except that the term does not include equipment used for agricultural purposes. Section 365.011(6), Health and Safety Code, defines litter as:

(A) 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

(B) Nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) 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

(iii) 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.

2. May the county enter private property to remove litter?

Yes, under certain circumstances. Section 365.034 of the Health and Safety Code authorizes the commissioners court to issue an order prohibiting accumulation of litter for more than 30 days

on a person's property located within 50 feet of a public highway in the county, provide for removal and disposition of litter accumulated near a highway in violation of the order, and provide for assessment of removal costs against the property owner.

The commissioners court is required to send the record owner of the property a notice by certified mail before taking any action. No action to remove or dispose of the litter or to assess costs against the record property owner may be taken until the 30th day after the date the notice was sent to the owner. A violation of the order is a Class C misdemeanor.

3. Is there a way for the county to recover the unpaid costs of litter removal?

Yes. A lien in favor of the county attaches to the property if a person assessed costs does not pay within 60 days of the date of assessment. The commissioners court files a record of the lien with the county clerk.

4. May a county contract with a private non-profit entity and expend public funds for an education campaign against littering?

Yes, if the commissioners court identifies a public purpose in the campaign to abate litter. Op. Tex. Att'y Gen. No. JM-324 (1985).

AMATEUR RADIO ANTENNAS

1. How may the county regulate the placement of amateur radio antennas?

Under Local Government Code §250.002, any county orders regulating amateur radio antennas must comply with FCC regulations. The FCC regulations on antennas are available [here](#).

Any order the county adopts involving placement screening or height of antennas based on health, safety, or aesthetics, must reasonably accommodate amateur communications and represent the minimal required regulation to accomplish the purpose. The county may take action to preserve historical sites in the county.

CAMPAIGN SIGNS ON COUNTY ROADS

For information on this topic, please see our separate publication *Campaign Signs on County Roads* available on the TAC website.