

#7

**PROCEDURES FOR THE ABATEMENT OF NEIGHBORHOOD
NUISANCES PURSUANT TO CHAPTER 343, TEXAS HEALTH AND
SAFETY CODE**

Section 1. Scope and Purpose

- 1.1 These procedures are adopted by the Commissioners Court of Tom Green County pursuant to the Neighborhood Nuisance Abatement Act, codified as Chapter 343 of the Texas Health and Safety Code, shall apply to the unincorporated areas of Tom Green County, Texas.
- 1.2 The procedures provided for herein are not intended, nor shall they be construed, to limit in any way other remedies, causes of action, or rights provided for by law.
- 1.3 It is the purpose of these procedures to protect and enhance the desirability and the aesthetic character of residential and commercial neighborhoods in the unincorporated areas of Tom Green County and to control and abate certain conditions which lead to neighborhood blight and are detrimental to the overall health, welfare, and safety of the citizens of Tom Green County.

Section 2. Definitions

As used in this Order, the words and terms defined in this section shall have the meaning ascribed, unless the context clearly indicates another meaning.

“Abate” means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.

“Administrator” means the individual appointed by the Commissioners Court at the beginning of each fiscal year to administer the nuisance abatement program, or a county employee acting under his/her supervision and control.

“Building” means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

“Commissioners Court” means the Commissioners Court of Tom Green County, Texas.

“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.

“Hearing examiner” means any board, commission, or official designated by the Commissioners Court to conduct a public hearing requested in accordance with this Order.

“Neighborhood” means:

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

“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.

"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.

"Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

"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.

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

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

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

- (a) has grown to more than 36 inches in height; or
- (b) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

"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.

Section 3. A Public Nuisance is

- 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, abandoned and/or junked vehicles, abandoned and/or junked boats, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a 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 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.

3.7 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.

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

3.9. 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.

3.10 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.

3.11 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.

3.12 Discarding refuse on property that is not authorized for that activity.

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. ("agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code).

Section 4. Public Nuisances Prohibited

4.1 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 at the beginning of each fiscal year a regular salaried full-time Tom Green County employee to administer this program and the abatement procedures described in this order.

5.2 A complaint to abate a public nuisance under these procedures may be initiated by any person by contacting the Administrator either by telephone, in writing, or in person. The Administrator may also initiate a complaint based upon his/her own personal observations.

- 5.3 The Administrator shall make a written record of all complaints received.
- 5.4 The Administrator shall either himself investigate or assign the complaint to a Tom Green County Constable for inspection and enforcement if warranted. In order to administer these procedures, the Administrator 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, official, agent, or employee must exhibit proper identification to the occupant, manager or other appropriate person.
- 5.5 If the Administrator determines that a public nuisance does not exist, he/she will recommend closure of the complaint. The Administrator shall make a final determination on the closure of complaints.
- 5.6 If the Administrator determines that a public nuisance exists, he/she 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 Administrator shall inspect the premises described in the complaint.
- 5.8 If Administrator determines that the public nuisance has been abated, the Administrator shall make a record of the findings and take no further action thereon.
- 5.9 If the Administrator 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 Administrator 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 described by Texas Health and Safety Code Section 343.011(c)(1), (6), (9), or (10);
 - 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 before the 31st day after the date on which the notice is served;
 - h. That said written request for a hearing may be made to the Administrator by hand delivery to his/her office or by certified mail, return receipt requested, addressed to the Administrator. The Notice to Abate shall provide the physical address where the Administrator can be located.
 - 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 of this Order, then the Administrator may present to the Commissioners Court or to any board, commission, or official designated by the Commissioners Court, the Administrator's request to abate the public nuisance.
- 7.2 Commissioners Court or 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 against the person who received the Notice of Abatement OR assess the administrative fee of 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 a Hearing Examiner. Said request for a public hearing may be made upon the Administrator in compliance with Section 6.1 of this Order.
- 8.2 If a hearing is requested in compliance with Section 6.1 of this Order, the Administrator will present the request to the Justice of the Peace of Tom Green County who presides over the precinct where the nuisance is located. The Justice of the Peace will serve as the Hearing Examiner. The Justice of the Peace office 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 notice 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 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 interested person, including the Administrator, 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 Administrator shall inspect the subject premises to determine whether the public nuisance has been abated 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 Administrator shall make a record thereof and take no further action thereon.
- 9.3 If the public nuisance has not been abated, the Administrator will estimate the cost to abate the public nuisance and forward the estimate to the Commissioners Court.
- 9.4 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.
- 9.5 The Commissioners Court Order 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 who attended the hearing.
- 9.6 The county may abate a nuisance under this order:
 - (a) by demolition or removal;
 - (b) in the case of a nuisance under Texas Health and Safety Code 343.011(c)(1), (9), or (10), by prohibiting or controlling access to the premises;
 - (c) in the case of a nuisance under Section 343.011(c)(6), by:
 - (1) prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or
 - (2) draining and filling the swimming pool; or
 - (d) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361.

Section 10. Additional Duties

- 10.1 To obtain a lien against the property to secure an assessment, the commissioners court of the county 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.

- 10.2 The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the 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.
- 10.3 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 10 percent a year.
- 10.4 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.

Section 11. Violations and Penalties

- 11.1 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.
- 11.2 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 misdemeanor offense punishable by a fine of not less than \$50 or more than \$200.
- 11.3 If it is shown on the trial 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 and Safety Code, the person may be punished by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.
- 11.4 Each day a violation occurs is a separate offense.
- 11.5 The abatement of a nuisance shall be ordered by the court if a person is convicted of an offense under Chapter 343 of the Health and Safety Code.

Approved by the Tom Green County Commissioners Court this 27 day of

August, 2013, by a vote of 5 ayes and 0 nays.


Mike Brown, County Judge

Attest:


Elizabeth McGill, County Clerk

