



AN ORDER ADOPTING PROCEDURES FOR ABATEMENT OF A PUBLIC NUISANCE

1. Scope and Purpose

- 1.1 These procedures are adopted by the Commissioners Court of Grimes County, Texas, acting pursuant to the authority provided by Chapter 343 of the TEXAS HEALTH AND SAFETY CODE, and shall apply to the unincorporated areas of Grimes 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, including but not limited to those remedies set out in TEXAS HEALTH AND SAFETY CODE §345.012 (Illegal Dumping; Discarding Lighted Materials; Criminal Penalties).
- 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 Grimes 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 Grimes County.

2. Definitions

- 2.1 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.
 - a. "Abate" means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.
 - b. "Administrator" means the individual designated by the Commissioners Court to administer the nuisance abatement program, or a county employee acting under his/her supervision and control.
 - c. "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
 - d. "Commissioners Court" means the Commissioners Court of Grimes County, Texas.
 - e. "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.
 - f. "Hearing Examiner" means any board, commission, or official designated by the Commissioners Court to conduct a public hearing requested in accordance with this Order.

- g. "Neighborhood" means a platted subdivision or property contiguous to and within 300 feet of a platted subdivision.
- h. "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.
- i. "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.
- j. "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.
- k. "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.
- l. "Refuse" means garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.
- m. "Rubbish" means non-decayable waste from a public or private establishment or residence.
- n. "Weeds" means all rank and uncultivated vegetable growth or matter that has grown to more than 36 inches in height; or creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.
- o. "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.

3. A Public Nuisance is:

- 3.1 keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
- 3.2 keeping, storing, or accumulating rubbish, including newspapers, abandoned and/or junked vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
- 3.3 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 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 governing 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 septic system, as regulated by Section 366.002 TEXAS HEALTH AND SAFETY CODE.
- 3.13 This section does not apply to:
 - a. a site or facility that is:
 - i. permitted and regulated by a state agency for the activity described; or
 - ii. licensed or permitted under Chapter 361 for the activity described.
 - b. agricultural land ("agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code).

4. Public Nuisances Prohibited

A person may not cause, permit or allow a public nuisance, as that term is defined in paragraph 3 of this Order.

5. Investigation

- 5.1 The Commissioners Court hereby appoints the Department Head of the Grimes County Environmental Department or his/her designee 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/herself investigate or assign the complaint to a Grimes 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 ("the Notice" herein) on the owner, lessee, occupant, agent, or person in charge of the premises. The Notice must 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. The Notice shall comply with and be served as provided by paragraph 6 of this Order.
- 5.7 After the expiration of 30 days from the date on which the Notice is served, the Administrator shall inspect the premises described in the complaint.
- 5.8 If the 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 forth in paragraph 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 provisions set forth in paragraph 7 of this Order.

6. Notice Requirements

- 6.1 The Notice must state:

- 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 the Notice shall abate the nuisance before the:
 - i. 31st day after the date on which the Notice is served; or
 - ii. the 10th business day after the date on which the Notice is served, if the person has previously received a notice regarding a nuisance on the premises.
- d. that failure to abate the nuisance may result in:
 - i. abatement by the County;
 - ii. assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
 - iii. 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 §343.011(c)(1), (6), (9), or (10).
- f. that §343.012 of the TEXAS HEALTH AND SAFETY CODE provides that if a public nuisance remains after the 30th day after the date on which the person receives the Notice 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 previously been 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 the Notice is entitled to submit a written request for a hearing before:
 - i. the 31st day after the date on which the Notice is served; or
 - ii. the 10th day business day after the date on which the Notice is served if the person has previously received a notice regarding a nuisance on the premises.
- 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 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 and the person responsible for causing a public nuisance on the premises when that person is not the owner, lessee, occupant, agent or person in charge of the

premises and the person responsible can be found, is entitled to appear at the scheduled hearing and is entitled to present testimony and other evidence, examine witnesses, and present argument on his/her behalf.

- 6.2 The Notice shall be given to 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.

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 paragraph 6.1 of this Order, then the Administrator may present to the Commissioners Court the Administrator's request to abate the public nuisance.
- 7.2 The Commissioners Court shall determine whether or not to:
- a. Abate 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 receiving the Notice pursuant to paragraph 6.2 of this Order or the property on which the nuisance exists.
- 7.3 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.
- 7.4 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 before the date on which the County files the notice of lien with the County Clerk.
- 7.5 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.
- 7.6 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.

8. Procedures When a Hearing is Requested

- 8.1 A person receiving the Notice is entitled to public hearing before a Hearing Examiner. Said request for a public hearing may be made upon the Administrator in compliance with paragraph 6.1 of this Order.
- 8.2 If a hearing is requested in compliance with paragraph 6.1 of this Order, the Administrator will present the request to the Justice of the Peace of Grimes County of the precinct where the nuisance is located. The Justice of the Peace will serve as the Hearing Examiner. The Justice of the Peace shall set a hearing date and send a Notice of Hearing to the person requesting the hearing and all other parties who received the Notice pursuant to paragraph 6.2 of this Order.
- 8.3 The owner and/or his representative in attendance at the hearing shall be entitled to present testimony and other evidence, examine witnesses, and present argument on the owner's behalf. The owner and/or his representative have the right to be represented by counsel.
- 8.4 Any interested person, including the Administrator, may appear and present testimony and other evidence, examine witnesses, and present argument. Any such person has the right to be represented by counsel.
- 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 thereof 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 the request for a hearing.

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 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 enter an Order as provided in paragraph 7.2 of this Order; or
 - b. To dismiss the proceedings.
- 9.5 The Commissioners Court Order determining the final disposition shall be entered in the Minutes of the 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 the 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 §343.011(c)(6), by:
 - i. Prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or
 - ii. Draining and filling the swimming pool.
 - d. In the case of a nuisance under §343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361, TEXAS HEALTH AND SAFETY CODE.
 - e. In the case of a nuisance under §343.011(c)(13), 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 following conviction pursuant to TEXAS HEALTH AND SAFETY CODE §343.012(e).
 - f. Pursuant to TEXAS HEALTH AND SAFETY CODE §343.0235, the County is entitled to use any money available under other law for a clean up or remediation of private property to abate a nuisance described by TEXAS HEALTH AND SAFETY CODE §343.011(c)(1), (9), or (10).

10. Additional Duties

- 10.1 To obtain a lien against the property to secure an assessment, the Commissioners Court shall 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 Grimes County Clerk.
- 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 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.

- 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% 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.

11. Violations and Penalties

- 11.1 This Order adopts and incorporates all applicable penalty provisions related to public nuisance, which include but are 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 the 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 TEXAS HEALTH AND SAFETY CODE.

12. Severability

Should any section of Chapter 343 of the TEXAS HEALTH AND SAFETY CODE, or of this Order, be determined to be unlawful or unenforceable by a court of competent jurisdiction, that section alone shall be deemed invalid, and shall not affect, impair, or restrict reliance upon any other section of Chapter 343 of the TEXAS HEALTH AND SAFETY CODE, or of this Order.

13. Amendment

Should Chapter 343 of the TEXAS HEALTH AND SAFETY CODE, or this Order, be amended, revised, recodified, or otherwise altered, such amendments shall be deemed applicable to this Order, unless such a construction of the amended statute renders such a construction unreasonable.

14. Adoption

The above and foregoing Order for the Abatement of Public Nuisance in Grimes County, Texas was this date ADOPTED and APPROVED by a majority of the Commissioners Court of Grimes County, Texas, in a meeting duly posted as required by law, this 10th day of August, 2023.

GRIMES COUNTY, TEXAS



JOE FAUTH, III, Grimes County Judge

ATTESTED:



VANESSA BURZYNSKI, Grimes County Clerk