

**CERTIFIED COPY  
GALVESTON COUNTY COMMISSIONERS' COURT**

**RE: AGENDA ITEM NO. 13**

Consideration of *adoption of revisions of the Galveston County Nuisance Abatement Program* submitted by Legal Services Coordinator and Nuisance Abatement

Motion to approve consent agenda items 1 - 33 by County Judge Henry, seconded by Commissioner Giusti.

Passed: 5-0

Aye: County Judge Henry, Commissioner Apffel, Commissioner Giusti,  
Commissioner Holmes and Commissioner Clark  
Nay: (None)

**STATE OF TEXAS        §**

**COUNTY OF GALVESTON   §**

**I, Dwight D. Sullivan, Clerk County Court and Ex-Officio Clerk of the Commissioners' Court of Galveston County, Texas,** do hereby certify that the attached is a true and correct copy of that certain:

**RE: AGENDA ITEM NO. 13**

as passed by the Commissioners' Court on the 9th day of March, 2020 REGULAR Term of Commissioners' Court and as the same appear(s) in the Commissioners' Court Records of Galveston County, Texas.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 12<sup>th</sup> DAY OF March, A. D., 2020.**

DWIGHT D. SULLIVAN, Clerk County Court  
and Ex-Officio Member of the Commissioners'  
Court of Galveston County, Texas

By: Mae Ross Deputy  
Mae Ross



## **GALVESTON COUNTY NEIGHBORHOOD NUISANCE ABATEMENT PROCEDURES**

### **SCOPE**

The following Abatement Procedures are adopted by the Commissioners' Court of Galveston County, Texas pursuant to the Neighborhood Nuisance Abatement Act, codified as Chapter 343 of the Health & Safety Code of the State of Texas. These Procedures shall apply to the unincorporated areas of Galveston County, Texas.

The Procedures provided for herein are not intended nor shall they be construed to limit, in any way, other remedies, causes of action, rights or penalties provided for by law. It is the intent of the Commissioners' Court that these Procedures may be pursued and enforced independently or concurrently with action for injunctions, actions for damages, criminal proceedings, all other claims, suits and proceedings provided for by law.

### **PURPOSE**

It is the purpose of these Procedures to protect and enhance the desirability and the aesthetic character of residential and commercial neighborhoods in unincorporated areas of Galveston County and to control and abate those certain conditions which lead to neighborhood blight and which are detrimental to the overall health, welfare and safety of the citizens of Galveston County.

### **DEFINITIONS**

- (1) "Abate" means to eliminate or remedy:
  - (A) by removal, repair, rehabilitation, or demolition;
  - (B) in the case of a nuisance under Texas Health & Safety Code Section 343.011(c)(1), (9), or (10), by prohibition or control of access; and
  - (C) in the case of a nuisance under Texas Health & Safety Code Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Texas Health & Safety Code Chapter 361.
- (2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "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.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "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.

(6) "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.

(7) "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.

(8) "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.

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

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

(10-a) "Undeveloped land" means land in a natural, primitive state that lacks improvements, infrastructure, or utilities and that is located in an unincorporated area at least 5,000 feet outside the boundaries of a home-rule municipality.

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

(A) has grown to more than 36 inches in height; or

(B) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "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.

### **PUBLIC NUISANCES PROHIBITED**

- (a) This section applies only to the unincorporated area of a county.
- (b) A person may not cause, permit, or allow a public nuisance under this section.
- (c) A public nuisance is:
  - (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 other 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; or
- (13) surface discharge from an on-site sewage disposal system as defined by Texas Health & Safety Code Section 366.002.

(d) This section does not apply to:

- (1) a site or facility that is:
  - (A) permitted and regulated by a state agency for the activity described by Subsection (c); or
  - (B) licensed or permitted under Texas Health & Safety Code Chapter 361 for the activity described by Subsection (c); or
- (2) agricultural land.

(d-1) This subsection applies only to a county with a population of 3.3 million or more and only in an unincorporated area in the county that is at least 5,000 feet outside the boundaries of a home-rule municipality. Subsections (c)(3) and (4) apply only to undeveloped land in the county for which:

- (1) a condition on that land has been found to cause a public nuisance under those provisions in the preceding year; and
- (2) a finding of public nuisance could have been applied to that condition when the condition first occurred.

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

#### **CRIMINAL PENALTY**

- a) A person commits an offense if:
  - 1. the person violates Texas Health & Safety Code Section 343.011(b); and

2. the 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.

b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

d) Each day a violation occurs is a separate offense.

e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

### INJUNCTION

(a) A county or district court may by injunction prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section Texas Health & Safety Code 343.011(c)(1), (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

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

(2) the owner of the premises knew about the nuisance and has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner.

(d) In granting relief under Subsection (c), the court:

(1) may not, in a suit brought under Texas Health & Safety Code Section 343.011(c)(10), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from accessing the property but

may prohibit a continued or future violation.

#### **AUTHORITY TO ABATE NUISANCE**

(a) Galveston County adopts abatement procedures that are consistent with the general purpose of Texas Health & Safety Code Chapter 343 and that conform to Chapter 343, therefore may abate a nuisance under Chapter 343:

- (1) by demolition or removal, except as provided by Subsection (b);
- (2) in the case of a nuisance under Texas Health & Safety Code Section 343.011(c)(1), (9), or (10), by prohibiting or controlling access to the premises;
- (3) in the case of a nuisance under Texas Health & Safety Code Section 343.011(c)(6), by:

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

(B) draining and filling the swimming pool; or

- (4) in the case of a nuisance under Texas Health & Safety Code Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Texas Health & Safety Code Chapter 361.

(b) In the case of a nuisance under Texas Health & Safety Code Section 343.011(c)(13), the county may use any means of abatement reasonably necessary to bring the system into compliance with Texas Health & Safety Code Chapter 366 only after the defendant fails to abate the nuisance as ordered by the court under Texas Health & Safety Code Section 343.012(e).

#### **ABATEMENT PROCEDURES**

(a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee (Administrator). A person authorized by the person administering the abatement program may administer:

- (1) the prohibition or control of access to the premises to prevent a violation of Texas Health & Safety Code Section 343.011(c)(1), (6), (9), or (10);
- (2) the removal or demolition of the nuisance; and
- (3) the abatement of a nuisance described by Texas Health & Safety Code Section 343.011(c)(12).

(b) The abatement procedures must require that written notice be given to:

- (1) the owner, lessee, occupant, agent, or person in charge of the premises; and
- (2) the person responsible for causing 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.

(c) The notice must state:

- (1) the specific condition that constitutes a nuisance;
- (2) that the person receiving notice shall abate the nuisance before the:
  - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
  - (B) 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;
- (3) that failure to abate the nuisance may result in:
  - (A) abatement by the county;
  - (B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
  - (C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
- (4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Texas Health & Safety Code Section 343.011(c)(1), (6), (9), or (10); and
- (5) that the person receiving notice is entitled to submit a written request for a hearing before the:
  - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
  - (B) 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) The notice must be given:

- (1) by service in person or by registered or certified mail, return receipt requested; or
- (2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two



times within 10 consecutive days.

(e) Except as provided in Subsection (f), the abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

(f) A county may, before conducting a hearing, abate a nuisance under Texas Health & Safety Code Section 343.011(c)(6) by prohibiting or controlling access to the premises on which the nuisance is located and installing a cover that cannot be opened by a child over the entire swimming pool, but only if the county conducts a hearing otherwise in accordance with Subsection (e) after the nuisance is abated.

#### **ASSESSMENT OF COSTS; LIEN**

(a) Galveston County may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 on the person receiving notice under Texas Health & Safety Code Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Texas Health & Safety Code Section 343.022.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

#### **USE OF COUNTY FUNDS**

The County is entitled to use any money available under other law for a cleanup or remediation of private property to abate a nuisance described by Texas Health & Safety Code, Section 343.011 (c) (1), (9), or (10).

#### **AUTHORITY TO ENTER PREMISES**

(a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce Texas Health & Safety Code, Chapter 343.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

#### **ENFORCEMENT**

A court of competent jurisdiction in the county may issue any order necessary to enforce these procedures.

#### **FILING OF COMPLAINT**

- I. A complaint to abate a public nuisance under these Procedures may be initiated by any Person by written complaint filed with the Administrator.

2. The Administrator or his authorized representative is authorized to initiate abatement procedures on behalf of the County by written complaint.
3. The Administrator shall make a record of all complaints received.

B. Initial Investigation/Notice to Abate.

1. The Administrator shall investigate the complaint and make a determination as to whether a public nuisance does exist.
  - a) If the Administrator determines that a public nuisance does not exist, then the Administrator shall close the matter and take no further action thereon.
  - b) If the Administrator determines that a public nuisance does exist, the Administrator shall determine legal ownership of the premises and shall serve Notice to Abate the Public Nuisance on the Owner of the premises upon which the public nuisance exists. This Notice to Abate shall comply with and be served on the Owner as provided in Notice Requirements below.

C. Investigation Determination.

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.

1. If the Administrator determines that the public nuisance has been abated, the Administrator shall make a record of his findings and take no further action thereon.
2. If the Administrator determines that the public nuisance has not been abated and a hearing has not been requested, then the Administrator shall do the following:
  - a) Estimate the cost to abate the public nuisance;
  - b) Forward the estimate of the cost to Commissioners' Court;

- c) The Commissioners' Court shall determine whether or not to order the abatement of the public nuisance. In the event the Commissioners' Court orders the abatement the Court shall assess against the Owner or the property on which the nuisance exists the costs of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100.00.
3. If the Administrator determines that the public nuisance has not been abated and that a hearing has been requested, the Administrator shall set a hearing date and send a Notice of Hearing to the Owner requesting the hearing. The Notice of Hearing will be sent to the Owner at the Owner's address as stated in the Request for Hearing. Such notice will be sent in the same manner as used for serving the Notice to Abate the Public Nuisance. The Notice of Hearing shall state the date, time and place of the hearing.

## HEARING

- A. Hearing Officer.
  1. Hearings conducted pursuant to these procedures shall be conducted by a Hearing Officer.
  2. The Hearing Officer will be the Justice of the Peace of the Precinct in which the public nuisance is located.
- B. Conduct of the Hearing.
  1. An Owner receiving a Notice to Abate a Public Nuisance under these procedures is entitled to a hearing before the Hearing Officer if the Owner requests a hearing as set forth in Notice Requirements below.
  2. The Owner and/or their representative(s) shall be entitled to attend the hearing,

present testimony and other evidence, examine witnesses, and argue on their behalf.

3. The Administrator and/or his representative shall have the right to attend the hearing, present testimony and other evidence, examine witnesses, and argue on the County's behalf.
4. Any other interested person may appear and present testimony and other evidence.
5. The Hearing Officer shall be allowed to question any person testifying.
6. All persons testifying at the hearing shall be under oath.
7. The Hearing Officer shall assess the testimony fairly and impartially and in accordance with law.
8. The Hearing Officer shall make a written determination as to whether a public nuisance exists and sign such written determination. A copy of the written determination shall be sent to the Administrator.
9. Upon the receipt of the copy of the written determination of the Hearing Officer, the Administrator shall, within three (3) working days, send by certified mail, return receipt requested, a copy of the written determination of the Hearing Officer to the Owner at the address stated in the Request for Hearing.

C. Post Hearing Action.

1. If the hearing results in a determination that a public nuisance does not exist, the Administrator shall take no further action thereon.
2. If the hearing results in a determination that a public nuisance exists, publication costs and payment of the Hearing Officer's fees, if any, will be assessed as costs. In addition, the Administrator, upon the expiration of 30 days from date of mailing of the Hearing Officer's determination to the Owner will determine

whether or not the public nuisance has been abated.

3. If the public nuisance has been abated, then the Administrator shall make a record thereof and take no further action thereon other than to collect the costs of the hearing from the Owner.
4. If the public nuisance has not been abated or if the Hearing Officer's fee has not been paid, then the Administrator shall do the following:
  - a) Estimate the cost to abate the public nuisance;
  - b) Forward the estimate of the cost to the Commissioners' Court;
  - c) The Commissioners' Court shall determine whether or not to order the abatement of the public nuisance. In the event the Commissioners' Court orders the abatement the Court shall assess against the Owner or the property on which the nuisance exists the costs of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100.00.

### NOTICE REQUIREMENTS

- A. The abatement procedures must require that written notice be given to:
  1. the owner, lessee, occupant, agent, or person in charge of the premises; and
  2. the person responsible for causing 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.
- B. The notice must state:
  1. the specific condition that constitutes a nuisance;
  2. that the person receiving notice shall abate the nuisance before the:
    - a) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

- b) 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;
- 3. that failure to abate the nuisance may result in:
  - a) abatement by the county;
  - b) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
  - c) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
- 4. that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Texas Health & Safety Code Section 343.011(c)(1), (6), (9), or (10); and
- 5. that the person receiving notice is entitled to submit a written request for a hearing before the:
  - a) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
  - b) 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.

C. The notice must be given:

- 1. by service in person or by registered or certified mail, return receipt requested; or
- 2. if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

D. Except as provided in Subsection (E) below, the abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested.

E. A county may, before conducting a hearing, abate a nuisance under Texas Health & Safety Code Section 343.011 (c)(6) by prohibiting or controlling access to the premises on which the nuisance is located and installing a cover that cannot be opened by a child over the entire

swimming pool, but only if the county conducts a hearing otherwise in accordance with Subsection (D) after the nuisance is abated.

### **ADMINISTRATOR DUTIES**

In addition to the duties, set forth above the Administrator shall do the following:

A. If an Owner fails or refuses to abate a nuisance and the Commissioners' Court determines to abate the same pursuant to these Procedures, then the Administrator shall proceed to let a County contract for such abatement. The procedure for letting such contract shall be substantially the same as that for letting County construction contracts. The abatement of the nuisance shall comply with any applicable federal, state and local laws, rules and procedures.

B. Upon completion of such abatement, the Administrator shall calculate the cost that the County incurred in abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the County.

C. If the Commissioners' Court has ordered assessment of such costs against the property on which the nuisance exists, the Administrator shall prepare 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, and record same in the Official Public Records of Real Property of Galveston County. The amount of the statement of costs shall be the amount of the cost of abating the nuisance, the cost of legal notification by publication, title report and an administrative fee of \$100.00 against the property on which the nuisance exists. The County is entitled to accrued interest on the amount specified in the lien beginning on the 31st day after the date of the assessment against the property at the rate of Ten (10%) percent a year. The original lien documents shall be returned to the Administrator after recording.

D. If the Commissioners' Court has ordered assessment of such costs against the Owner of the premises on which the nuisance exists, then the Administrator may request the services of outside



counsel to proceed to collect such cost of abating the nuisance, the cost of legal notification by publication and an administrative fee of \$100.00 from said Owner. The County may file suit to recover same if the County determines that the same is necessary and that it is economically feasible to do so.

**EFFECTIVE DATE**

These procedures shall be effective as of March 9, 2020 as adopted by Commissioners Court.