

IN THE COMMISSIONERS COURT OF SUTTON COUNTY, TEXAS

AN ORDER ADOPTING PROCEDURES FOR ABATEMENT OF PUBLIC NUISANCE

The Commissioners Court of Sutton County, Texas, acting pursuant to the authority provided by Chapter 343 of the Texas Health and Safety Code, hereby adopts the following procedures for the abatement of a public nuisance, as defined in §343.011, Texas Health and Safety Code:

Section I: Definitions:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (9) , or (10) of the Texas Health and Safety Code , by prohibition or control of access; and

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

(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.

(11) "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.

(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.

Section II: Public Nuisance Defined

(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.

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 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; or

(12) discarding refuse on property that is not authorized for that activity.

(13) surface discharge from an on-site septic system, as regulated by Section 366.002 Texas Health and Safety Code.

(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 Chapter 361 of the Texas Health and Safety Code for the activity described by Subsection (c); or

(2) agricultural land.

(e) In Subsection (d), “agricultural land” means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Texas Tax Code, and that has such designation at the time of the violation of this Order.

Section III: Exceptions or Variances:

(a) The commissioners court of Sutton County may, upon application:

(1) describe the circumstances in which a special exception to the application of Section 343.011 of the Texas Health and Safety Code, or Section II of this Order, is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case justifies a special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011 of the Texas Health and Safety Code and this Order; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of §343.011 of the Texas Health and Safety Code, if the commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of Section 343.011 of the Texas Health and Safety Code, and Section II of this Order, would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Section IV: Enforcement:

Criminal Penalty:

(a) A person commits an offense if:

(1) the person violates Section 343.011(b) of the Texas Health and Safety Code and Section II of this Order; 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.

Civil 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) Sutton County or a person affected or to be affected by a violation under provisions of Chapter 343 of the Texas Health and Safety Code, 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) Sutton County may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section 343.011(c)(1), (6), (9), or (10) of the Texas Health and Safety Code, or of

Section II of this Order. 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 Section 343.011(c)(10) of the Texas Health and Safety Code, or Section II of this Order, 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.

Section V: Authority to Abate Nuisance

By adopting these procedures, Sutton County is authorized to abate a nuisance under this chapter:

1) by entry upon the land to engage in demolition or removal;

(2) in the case of a nuisance under Section 343.011(c)(1), (9), or (10) of the Texas Health and Safety Code, and Section II of this Order, by prohibiting or controlling access to the premises;

(3) in the case of a nuisance under Section 343.011(c)(6) of the Texas Health and Safety Code, and Section II of this Order, 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 Section 343.011(c)(12) of the Texas Health and Safety Code and Section II of this Order, by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361 of the Texas Health and Safety Code, and by exhaustion of remedies provided by Section 343.012(e) Health and Safety Code.

Section VI: Nuisance Abatement Officer and Procedures

- (a) The abatement procedures adopted by the commissioners' court will be administered by the County Judge. The County Judge may, by way of a formal delegation of authority entered into the minutes of the Commissioners Court, authorize another person to conduct such inspections, draft such Notices or Orders, or take such other administrative steps necessary to properly enforce the nuisance abatement procedures outlined in this Order.
- (b) The County Judge, or his or her designee, may engage in the following duties and functions:
 - (1) the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (6), (9), or (10) of the Texas Health and Safety Code or Section II of this Order;
 - (2) the removal or demolition of the nuisance; and
 - (3) the abatement of a nuisance described by Section 343.011 (c)(12) of the Texas Health and Safety Code and Section II of this Order.
- (c) The abatement procedures shall be in writing, and 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.
- (d) 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 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.

(e) 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.

(f) Except as provided in Subsection (g), 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.

(g) A county may, before conducting a hearing, abate a nuisance under Section 343.011(c) (6) of the Texas Health and Safety Code, or Section II of this Order, 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 (f) after the nuisance is abated.

Section VII: Assessment of Costs; Lien

Sutton 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 Section 343.022 of the Texas Health and Safety Code, or Section VI of this Order; 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.

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

(4) 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.

(a) 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.

- (b) The county is entitled to accrue interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.
- (c) 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 VIII: Use of County Funds

Sutton County may use any money available under other law for a cleanup or remediation of private property to abate a nuisance described by Section 343.011(c) (1), (9), or (10) of the Texas Health and Safety Code, or provisions of this Order.

Section IX: 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 this chapter.

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

Section X: 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.

Section XI: 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.

Section XII: Adoption

The above and foregoing Order for the Abatement of Public Nuisance in Sutton County, Texas was this date ADOPTED and APPROVED by a majority of the Commissioners Court of Sutton County, Texas, in a meeting duly posted as required by law, this 11th day of July, 2016.

Miguel Villanueva
MIKE VILLANUEVA, Comm., Pct. 1

Carl Teaff
CARL TEAFF, Comm., Pct. 3

Steve Smith
STEVE SMITH, County Judge

John Wade
JOHN WADE, Comm., Pct. 2

Fred C. Perez
FRED PEREZ, Comm., Pct. 4



Attest:

Rachel Chavez Duran
RACHEL CHAVEZ DURAN, County Clerk
Acting as Ex Officio Clerk of the Sutton County
Commissioners Court