

## POLK COUNTY NUISANCE ABATEMENT PROCEDURES

STATE OF TEXAS §

COUNTY OF POLK §

### Section 1 - Policy Basis

- 1.1 Whereas, Polk County, Texas, recognizes the need for County government to have the authority to abate public health nuisance.
- 1.2 Whereas, to ensure and protect the public health, the Commissioners Court of Polk County does hereby adopt the following as its policy and procedure for abating a public nuisance pursuant to Chapter 343, Texas Health and Safety Code, as amended.

### Section 2 - Scope and Purpose

- 2.1 These procedures are adopted by the Commissioners Court of Polk County pursuant to Chapter 343 of the Texas Health and Safety Code, as amended, and shall apply only to the unincorporated areas of Polk County, Texas.
- 2.2 The procedures provided 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. The adoption of these procedures does not restrict, limit, or replace any other County authority for abating public nuisances.
- 2.3 It is the purpose of these procedures to abate certain conditions which are detrimental to the overall health and safety of the citizens of Polk County.

### Section 3 - Definitions

The words and terms defined in this section shall have the meanings ascribed, unless the context clearly indicates another meaning.

**Abate** means to eliminate or remedy:

- a) by removal, repair, rehabilitation, or demolish;
- b) in the case of nuisance under Public Nuisance definition (a), (h), or (i), by prohibition or control of access; and
- c) in the case of the nuisance under Public Nuisance definition (k), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361 of the Texas Health and Safety Code.

**Administrator** means the Environmental Enforcement Officer, or other individual so designated by the Commissioners Court.

**Agricultural land** means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

**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 Polk County, Texas.

**County** means Polk 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 a Justice of the Peace in the County presiding over the hearing.

**Justice Court** means the Justice Court of Polk County, Texas where an abatement hearing is taking place.

**Neighborhood** means:

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

**Person** has the meaning assigned to that term by subsection (2) of Section 311.005 of the Texas Government Code, as amended.

**Platted subdivision** means a subdivision that has its approved or unapproved plat recorded with the County Clerk of the Polk County, Texas, 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** mean all rank and uncultivated vegetable growth or matter that:

- a) Has grown to more than 36 inches in height; and
- b) Creates 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.

**Public nuisance** is:

- a) Keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
- b) Keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for 10 days or more, unless the rubbish or object is completely enclosed in building;
- c) Maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
- d) Allowing weeds to grow on premises in a neighborhood;
- e) 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.
- f) 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 gate that cannot be opened by a child; or
  - b. A cover over the entire swimming pool that cannot be removed by a child.
- g) Maintaining a flea market in a manner that constitutes a fire hazard;
- h) 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 Polk County as its governing body;
- i) 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;
- j) 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;
- k) Discarding refuse on property that is not authorized for that activity; or
- l) Surface discharge from an on-site sewage disposal system as defined by Section 366.02 of Texas Health and Safety Code.
- m) This definition does not apply to the site or facility that is permitted and regulated by a state agency or agricultural land.

#### **Section 4 - Public Nuisances Prohibited**

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

#### **Section 5 - Investigations**

- 5.1 The Commissioners Court of Polk County hereby appoints the Environmental Enforcement Officer of the County, a regularly salaried full-time County employee, as Administrator to this program and the abatement procedures prescribed in this Policy.
- 5.2 Abatement of a public nuisance under these procedures may be initiated by any person by written complaint with the Administrator.
- 5.3 The Administrator shall make a record of all written complaints received.
- 5.4 The Administrator shall review the complaint and make a determination as to whether a public nuisance exists. In order to administer these procedures, the Administrator may enter any premises in the unincorporated areas of the County at a reasonable time to inspect, investigate, or abate a public nuisance, or to enforce Chapter 343 of the Texas Health and Safety Code, as amended. Before entering the premises, the Administrator must exhibit proper identification to the owner, occupant, lessee, manager, or other appropriate person.
- 5.5 If the Administrator determines that a public nuisance does not exist, he will then close the matter, make a record of his/her findings and take no further action thereon.
- 5.6 If the Administrator determines that a public nuisance exists as defined by Section 3 of this Policy, he shall request a title opinion from an abstract company regarding ownership of the premises on which the public nuisance exists, and serve written Notice to Abate Nuisance on the owner, and, if applicable, the lessee, occupant, agent, or person in charge of the premises. Written Notice to Abate Nuisance may also be served on 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 identified. The written Notice to Abate Nuisance shall comply with and be served as provided in Section 6 of this Policy.

- 5.7 After the expiration of 31 days from the date on which the County's written Notice to Abate Nuisance 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, he shall make a record of his/her findings and take no further action thereon.
- 5.9 If the Administrator determines that the public nuisance has not been abated, but there has been no request for a hearing by the person who received the Notice to Abate Nuisance, the Administrator shall follow the procedures set out in Section 7 of this Policy.
- 5.10 If the Administrator determines that the public nuisance has not been abated and that a hearing has been requested by the person who received the Notice to Abate Nuisance, the Administrator shall follow the procedures set out in Section 8 of this Policy.

#### **Section 6 - Notice Requirements**

- 6.1 Each Notice to Abate Nuisance must contain following information:
  - a) The specific condition that constitutes a public nuisance;
  - b) The street address or other general description of the property on which the public nuisance exists;
  - c) That the person receiving the Notice shall abate the nuisance before the 31<sup>st</sup> 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;
  - d) That the person receiving the Notice shall abate the nuisance before the 10<sup>th</sup> 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) That failure to abate the public nuisance may result in abatement by the County, assessment of costs, and the attachment of a lien against the property on which the nuisance exists;
  - f) That the County may prohibit or control access to the premises to prevent a continued or future nuisance;
  - g) That the owner, lessee, occupant, agent, or person in charge of the premises is entitled to submit, before the 31<sup>st</sup> day after the date on which the Notice is served, a written request for hearing. If the owner, lessee, occupant, agent, or person in charge of the premises has previously received a notice regarding a nuisance on the premises, the written request for a hearing must be submitted before the 10<sup>th</sup> business day after the date on which the Notice is served. The written request for a hearing should contain the name and address of the person to be notified of the date, time, and place of the hearing;
  - h) That said Request for Hearing may be given to the Administrator by hand delivery to his office which is currently located at 101 West Church Street, Suite 105, Livingston, Texas 77351, or by certified mail, return receipt requested, addressed to Environmental Enforcement Officer, 101 West Church Street, Suite 105, Livingston, Texas 77351; and

- 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 the owner's behalf.
- 6.2 The Notice to Abate Nuisance shall be served on the owner and, if applicable, the lessee, occupant, agent, or person in charge in the following manner:
- a) In person or by registered or certified mail, return receipt requested; or
  - b) If the owner cannot be located or identified, by posting a copy of the Notice to Abate Nuisance 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.

### **Section 7 - Procedures When No Hearing is Required**

- 7.1 If, after the expiration of 31 days from the date on which the County's written Notice to Abate Nuisance is served, the Administrator determines that the public nuisance has not been abated, and a hearing has not been requested by any person who received the Notice to Abate Nuisance, then:
- a) The Administrator shall estimate the cost to abate the public nuisance; and
  - b) The Administrator shall forward the estimate of the cost to the County Commissioner in the precinct in which the nuisance is located.
- 7.2 After receiving the estimate of the cost to abate the public nuisance, the Commissioner may request to add an item to the Commissioners Court agenda to consider any/all necessary action regarding the nuisance. The Commissioners Court shall then determine whether or not:
- a) To order the abatement of the public nuisance;
  - b) To assess the cost of abating the public nuisance, the cost of legal notification by publication, if said procedure was utilized, and an administrative fee of \$100.00, plus interest beginning on the 31<sup>st</sup> day after the date of the assessment to the person receiving a Notice to Abate Nuisance pursuant to Section 6; and/or
  - c) To assess the cost of abating the public nuisance, the cost of legal notification by publication, if said procedure was utilized, and an administrative fee of \$100.00, plus interest beginning on the 31<sup>st</sup> day after the date of the assessment against property on which the public nuisance exists.

### **Section 8-Hearing before Hearing Examiner**

- 8.1 A person receiving a Notice to Abate Nuisance under this Order is entitled to a hearing before a Hearing Examiner. A request for hearing may be accomplished by submission of a written request to the Administrator before the 31<sup>st</sup> day after the date on which the Notice to Abate Nuisance is served.
- 8.2 If a hearing has been requested, the Administrator shall set a hearing date and shall mail a Notice of Hearing to the person requesting the hearing at the address stated in the Request for Hearing, or by serving the owner in the same manner as used for serving the Notice to Abate Nuisance in Section 6.2 of this Policy. The Notice of Hearing shall state the date, time, and place of the hearing and shall be provided at least ten (10) days 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/her representative present at the hearing shall be entitled to present testimony and other evidence, examine witnesses, and argue on the owner's behalf. The owner and/or his/her representative at the hearing shall also be entitled to propose his/her plan to abate the public nuisance and to explain why it has not yet been abated.
  - 8.4 Any interested person, including the Administrator, may appear at the hearing 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. The Hearing Examiner shall assess the testimony fairly and impartially and in accordance with the law.
  - 8.7 The Hearing Examiner shall make a written determination as to whether a public nuisance exists and sign such written determination. Copies shall be sent to the Administrator and the Commissioner. Upon receipt of the copy of the written determination, the Administrator or his/her representative shall hand-deliver or send by certified mail, return receipt requested, a copy of the Hearing Examiner's written determination to the person designated in the Request for 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 public nuisance exists, then after the expiration of 30 days from the date on which the Hearing Examiner's written determination is received by the person designated in the Request for Hearing, the Administrator shall inspect the premises and determine whether or not the public nuisance has been abated. At the Hearing Examiner's discretion, additional time to abate the public nuisance may be given.
- 9.2 If the Administrator determines that the public nuisance has been abated, then the Administrator shall make a record of his/her findings and take no further action thereon.
- 9.3 If the Administrator determines that the public nuisance has not been abated, the Administrator shall estimate the cost to abate the public nuisance and forward the estimate of the cost to the County Commissioner in the precinct in which the nuisance is located.
- 9.4 After receiving the estimate of the cost to abate the public nuisance, the Commissioner may request to add an item to the Commissioners Court agenda to consider any/all necessary action regarding the nuisance. The Commissioners Court shall then determine whether or not:
  - a) To issue an Order to Abate Nuisance;
  - b) To assess the cost of abating the public nuisance, the cost of legal notification by publication, if said procedure was utilized, and an administrative fee of \$100.00, plus interest beginning on the 31<sup>st</sup> day after the date of the assessment to the person receiving a Notice to Abate Nuisance pursuant to Section 6; and/or
  - c) To assess the cost of abating the public nuisance, the cost of the legal notification by publication, if said procedure was utilized, and an administrative fee of \$100.00, plus interest beginning on the 31<sup>st</sup> day after the date of the assessment against the property on which the public nuisance exists.

- 9.5 After receiving an Order to Abate Nuisance, including any assessed fees, the Owner of the premises where the nuisance exists will be given no less than 10 days to abate the nuisance without penalty.

#### **Section 10- Special Exception or Variance to Public Nuisance Classification**

10.1 The Hearing Examiner may:

- a) Describe circumstances in which a special exception to the application of Section 4 is available to a person and may grant the special exception in a specific case if the Hearing Examiner finds that the specific case fits within the 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 4; and
- b) Authorize in a specific case not covered by a special exception a variance from the terms of Section 4 if the Hearing Examiner 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 4 would result in an unnecessary hardship.

10.2 The Hearing Examiner 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 11- Additional Duties of the Administrator**

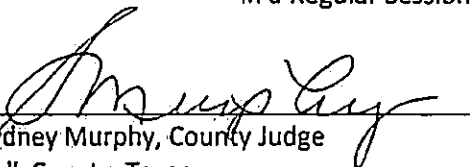
- 11.1 If the Commissioners Court orders the abatement of a public nuisance and an owner fails or refuses the abatement of same within 10 days pursuant to this Policy, then the Administrator shall work with the Commissioner to initiate and carryout abatement procedures. The abatement of the public nuisance shall be in compliance with any applicable federal, state, and local laws, rules, procedures, and ordinances. Upon completion of such abatement, the Administrator shall calculate the cost that the County incurred in abating the nuisance.
- 11.2 If the Commissioners Court has ordered assessment of the costs of abating the public nuisance against the property on which the public nuisance exists, the Administrator shall prepare a Notice of Lien and, after such document is reviewed by an attorney, record same in the Official Public Records of Real Property of Polk County. The Notice of Lien must contain a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known. The County may not make an assessment against property unless the owner or owner's agent receives notice of the public nuisance in accordance with Section 6 of this Policy.
- 11.3 The amount of the lien shall be the amount of the cost of abating the nuisance, the cost of legal notification by publication, if said procedure was utilized, and an administrative fee of \$100.00, plus interest beginning on the 31<sup>st</sup> day after the date of the assessment. The original lien documents shall be returned to the Administrator after recording. The County is



authorized by Section 343.023 of the Texas Health and Safety Code, as amended, to collect interest beginning on the 31<sup>st</sup> day after the date of the assessment against the property at the rate of 10% per year pursuant to these procedures.

- 11.4 The County's lien to secure an assessment attaches when the Notice of Liens 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 Polk County Clerk's Office before the date on which the County files the Notice of Lien with the County Clerk.
- 11.5 If the Commissioners Court has ordered assessment of the costs of abating the public nuisance to the person receiving a Notice to Abate Nuisance pursuant to Section 6, the Administrator will request an attorney to proceed with collecting the amount of the costs of abating the nuisance, the costs of legal notification by publication, if said procedure was utilized, and an administrative fee of \$100 plus interest beginning on the 31<sup>st</sup> day after the date of the assessment, from such person.
- 11.6 Upon the satisfaction of any order issued pursuant to these procedures, the Administrator is authorized to sign any release or other document, upon review and approval by an attorney, to confirm that said orders or judgments have been complied with. This includes, but is not limited to, releases of liens filed in the Official Public Records of Real Property of Polk County.

Adopted by the Polk County Commissioners Court  
In a Regular Session duly posted and held on July 14, 2020.

  
Sydney Murphy, County Judge  
Polk County, Texas

ATTEST:

  
Schelana Hock, County Clerk.

