

COURT ORDER

ORDER NO. 91 1831

DATE: OCT 15 1991

STATE OF TEXAS §

COUNTY OF DALLAS §

BE IT REMEMBERED, at a regular meeting of the Commissioners Court of Dallas County, Texas, held on the 15th day of October, 1991, on motion made by Chris V. Semos, Commissioner of District #4, and seconded by Nancy E. Judy, Commissioner of District #2, the following Order was adopted:

WHEREAS, it is the desire of the Dallas County Commissioners Court to eliminate those nuisances in the County's unincorporated areas that constitute a threat to the public's health, safety and welfare; and

WHEREAS, in accordance with Chapter 343 of the Health and Safety Code, Dallas County wishes to adopt a set of policies and procedures that will govern the operation of a County Nuisance Abatement Program; and

WHEREAS, the policies and procedures for such a program were briefed before the Commissioners Court on October 1 and 15, 1991;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Dallas County Commissioners Court hereby approves and adopts the attached set of policies and procedures for the County's Nuisance Abatement Program.

DONE IN OPEN COURT this the 15th day of October, 1991.

Lee F. Jackson
Lee F. Jackson
County Judge

Jim Jackson
Jim Jackson
Commissioner Dist. #1

Nancy E. Judy
Nancy E. Judy
Commissioner Dist. #2

John Wiley Price
John Wiley Price
Commissioner Dist. #3

Chris V. Semos
Chris V. Semos
Commissioner Dist. #4

Recommended by: J. Allen Clemens
10-10

**POLICIES AND PROCEDURES
DALLAS COUNTY NUISANCE ABATEMENT PROGRAM**

I. INTRODUCTION/PURPOSE

It is the purpose of Dallas County's Nuisance Abatement Program, which is authorized under Chapter 343 of the Health and Safety Code, to eliminate those nuisances in the County's unincorporated area that threaten the public's health, safety, and welfare. To ensure that this program is operated efficiently and that the State law that it enforces is applied fairly and consistently, the following policies and procedures have been developed. They shall govern the operation of this program unless otherwise expressly amended or repealed by the Dallas County Commissioners Court.

II. DEFINITIONS

(A) "Abate" means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.

(B) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other movable property.

(C) "Director" means the Director of Environmental Health for Dallas County, Texas, or any other regularly salaried full-time County employee acting under the Director's control and supervision.

(D) "Citation" means the legal instrument that charges an individual with a criminal offense specified under Chapter 343.012 of the Health and Safety Code. It should not be confused with a Notice to Abate a Public Nuisance that is required under Section V (F) of these policies and procedures.

(E) "Garbage" means decayable waste from public and private establishments and restaurants, including vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste or industrial by-product.

(F) "Neighborhood" means:

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

(G) "Person" has the meaning assigned to that term by subdivision (2) of Section 311.005 of the Government Code.

(H) "Platted Subdivision" means a subdivision that has its approved or unapproved plat recorded with the Dallas County Clerk.

(I) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes, together with the yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

(J) "Public nuisance" means:

- (1) Keeping, storing, or accumulating refuse on premises in a neighborhood unless such refuse is entirely contained in a closed receptacle.
- (2) Keeping, storing, or accumulating rubbish or any unused, discarded, or abandoned object, including newspapers, vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for ten days or more, unless the rubbish or object is completely enclosed within 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 such 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, fire hazard, disaster, damage, or abandonment.
- (6) This section does not apply to a site or facility that is permitted and regulated by a State agency.

(K) "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 opened to the public for vehicular or pedestrian traffic.

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

(M) "Receptacle" means a container which is composed of durable material and designed in a way that prevents the discharge of its contents and makes its contents inaccessible to animals, vermin, or other pests.

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

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

- (1) has grown to more than eighteen (18) inches in height; or
- (2) regardless of height, may create an unsanitary condition or become a harborage for rodents, vermin, or other disease carrying pests.

III. VIOLATIONS

(A) A person may not cause, permit, or allow a public nuisance as described in Section II (I) on premises located within the County's unincorporated area.

(B) A person commits an offense if 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.

(C) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 and not more than \$200. If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this section within one year of the date that the offense being tried occurred, the defendant shall be punished by a fine of not less than \$200 nor more than \$1,000, by confinement in jail for not more than six months, or by both. Each day a violation occurs is a separate offense. If the defendant is

convicted of an offense under this section, the Court shall order abatement of the nuisance.

IV. GENERAL ADMINISTRATION

(A) Dallas County's Nuisance Abatement Program shall be administered by the County's Health Department under the supervision of the County's Director of Environmental Health who is a regularly salaried, full-time County employee.

(B) Nuisance abatement staff shall have the authority to enter premises in the unincorporated area of the County at any reasonable time to inspect, investigate, or abate a nuisance or to enforce State law. However, before they enter such premises, they must give reasonable notice and exhibit proper identification to the property's occupant, manager, or other appropriate person.

(C) Nuisance abatement staff shall make frequent inspections of unincorporated area neighborhoods and maintain regular contact with the County's Road & Bridge Districts, its Fire Marshal, its Public Works Department, its Planning & Development staff, the Sheriff's Department, and other Health Department staff.

V. NUISANCE COMPLAINT INVESTIGATION

(A) Complaints and violations shall be investigated if they have been detected during field inspections by program staff or if they have been reported verbally or in writing from citizens or other County staff.

(B) Possible violations shall be investigated within seven days of detection or notification.

(C) Once a possible violation has been reported or identified, the Director shall maintain a file on this complaint, investigate the complaint, and make a determination as to whether a public nuisance exists.

(D) In investigating a complaint, staff shall inspect and photograph the area containing the alleged nuisance, record the date and location of this inspection, document its findings and observations (including a detailed description of the nuisance if it does appear to exist) and place all of this material in the complaint's file.

(E) If the Director determines that a public nuisance does not exist, then the Director shall close the matter and take no further action thereon.

(F) If the Director determines that a public nuisance does exist, the Director shall serve Notice to Abate the Public Nuisance on the owner, lessee, occupant, agent, or person in charge of the premises upon which the public nuisance exists. This Notice to Abate the Public Nuisance shall comply with, and be served as provided in, Section VI below. If, however, the Director also determines that the nuisance constitutes a severe threat to the community that will only become more serious unless it is immediately removed or the practices responsible for its existence cease, then the Director may also consult with the District Attorney about seeking injunctive relief before or in addition to taking any of the other actions authorized under these policies and procedures.

VI. NOTIFICATION

(A) Each Notice to Abate a Public Nuisance must contain the following information:

- (1) The specific condition that constitutes a public nuisance;
- (2) The street address or other general description of the property on which the public nuisance exists;
- (3) That the person receiving the notice must abate the public nuisance not later than the 30th day after the date on which the notice is served;
- (4) That failure to abate the public nuisance shall result in fines and/or in abatement by the County, assessment of costs, and the attachment of a lien to the property on which the public nuisance exists;
- (5) That Chapter 343 of the Health and Safety Code provides that a person commits a misdemeanor (punishable by a fine of not less than \$50 or more than \$200 for the first offense) if the public nuisance remains unabated after the 30th day after the date on which the person receives notice from a

County official, agent, or employee to abate the nuisance;

- (6) That the owner, lessee, occupant, agent, or person in charge of the premises is entitled to submit, not later than the 30th day after the date on which the notice is served, a written request for an appeals hearing which should contain the name and address of the person to be notified of the date, time and place of the hearing; and,
- (7) That the owner, lessee, occupant, agent, or person in charge of the premises is entitled to appear at the scheduled appeals hearing and is entitled to present evidence, examine witnesses, and argue on owner's behalf.

(B) The Notice to Abate a Public Nuisance shall be served on the owner in the following manner:

- (1) in person or by registered or certified mail, return receipt requested; or
- (2) if the owner cannot be located or identified, 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 ten consecutive days.

VII. APPEALS HEARING

(A) A person that receives a Notice to Abate a Public Nuisance that disagrees with the Director's finding that a public nuisance exists may appeal this finding within 30 days of the receipt of the notice to the County's Nuisance Abatement Board.

(B) The County's Nuisance Abatement Board is composed of the County's Fire Marshal, its Coordinator for Planning & Development, and Chief of Regulated Substances.

(C) The Board shall select a Chairperson from among its members to preside at the hearings.

(D) The Board shall convene within 15 days of a request for an appeals hearing.

(E) A quorum for the purpose of conducting official business shall exist when at least two of the Board's members are present.

(F) Hearings before the Board shall be conducted in the following manner:

- (1) A person receiving a Notice to Abate a Public Nuisance shall be entitled to present testimony and other evidence and examine witnesses and argue on the owner's behalf.
- (2) The Director and/or his representative shall have the right to attend the hearing and/or testify.
- (3) Any interested person may appear and present testimony and other evidence.
- (4) All persons testifying at the hearing shall be under oath.
- (5) The Board shall be allowed to question any persons testifying.
- (6) The Board shall assess the testimony fairly and impartially and in accordance with the law.
- (7) The Board's charge shall be to solely determine whether a public nuisance exists and whether State law and County policies and procedures have been followed in investigating and determining the existence of a nuisance and in notifying the appropriate person that this nuisance exists and must be removed.
- (8) The Board shall make a written determination as to whether a public nuisance exists and sign such written determination. Copies of the written determination shall immediately be given to the Director and to the person (or his representative) that has requested the appeal at the completion of the hearing.

- (a) If the Board upholds the Director's finding of a public nuisance, then the Director will immediately proceed with the abatement of the nuisance in accordance with County's procedures.
- (b) If the Board overturns the Director's finding of a public nuisance, efforts to remove the original complaint will cease.

VIII. NUISANCE ABATEMENT/ENFORCEMENT

(A) When a nuisance has been identified and determined, the Director shall seek to encourage the voluntary abatement of this nuisance. In so doing, the Director shall, if applicable, provide the person who has received the notice to abate the public nuisance with information pertaining to any public, private, or community program that could assist him in the nuisance's removal.

(B) Should the person who has received the Notice to Abate the Public Nuisance request an appeals hearing to contest the finding of a public nuisance, then such a hearing shall be held in accordance with Section VII.

(C) After either the expiration of 30 days from the date on which the County's Notice to Abate the Public Nuisance is served if no appeals hearing is requested or seven days after a finding of public nuisance has been upheld by the County's Nuisance Abatement Board if an appeals hearing has been requested, the Director shall inspect the premises described in the complaint.

- (1) If the Director determines that the public nuisance has been abated, the Director shall make a record of his findings and take no further action thereon.
- (2) If the Director determines that the public nuisance still exists, he shall, unless there has been substantial progress in removing a very large, complicated, and/or expensive nuisance, or there have been mitigating and unforeseen circumstances such as inclement weather, immediately issue a citation. He shall then periodically inspect the premises in question at least once a week thereafter and issue successive citations if the nuisance continues to be present at any of these inspections.

(D) In the event that the person who receives these citations wishes to contest them in court, then the Director shall work closely with the District Attorney in preparing testimony for this court appearance.

(E) Rather than issuing one or repeated citations as prescribed above, the Director may either seek injunctive relief or have the County itself abate the nuisance if the nuisance, by virtue of its size and/or nature, represents a significant and immediate threat to the community.

(1) In determining whether an injunction should be sought, the Director shall consult with the District Attorney and any other needed health officials.

(2) Nuisances may be abated by the County when the costs of such abatement, along with a \$100 administrative fee, are assessed against the property in question, and when either funds for this purpose have been previously budgeted or when the Commissioners Court authorizes such a specific expenditure. When such conditions are met, then the Director shall arrange for and monitor the abatement of the nuisance and the filing of the assessment.

(F) When a nuisance has been finally abated, whether it be through County action or action taken by the person receiving the notice to abate a public nuisance, the Director shall record this finding and the date that it occurs in the case's file.

IX. REPORTING

(A) The Director shall keep an ongoing record of the number of nuisances identified, the number of nuisances abated by the County, the number of nuisances abated by the owner, the number of pending nuisances, the number of citations issued, the number of repeat violators, the amount of fines received and assessments recovered, the amount of County funds expended for direct abatement and the locations where most of the nuisances occur.

(B) This information shall be summarized and presented to the Commissioners Court on a quarterly basis.

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