

# HIDALGO COUNTY UNINCORPORATED AREA NUISANCE ABATEMENT PROGRAM POLICIES AND PROCEDURES

## Section 1. Scope and Purpose

- 1.1. Whereas, the Hidalgo County Commissioners Court recognizes that the illegal dumping of solid waste and other nuisances cause a threat to the health, safety, and welfare of the residents of the unincorporated areas of Hidalgo County (“the County”); and
- 1.2. Whereas, the Hidalgo County Commissioners Court is authorized under Chapter 343 of the Texas Health and Safety Code, as amended, to enact orders to address the abatement of public nuisances in the unincorporated areas of the County; and
- 1.3. Whereas, the Hidalgo County Commissioners Court finds that the Proposed Order Establishing the Hidalgo County Unincorporated Area Nuisance Abatement Program (nuisance abatement program) and the accompanying Hidalgo County Unincorporated Area Nuisance Abatement Program Policies and Procedures (policies and procedures) necessary to promote the public health, safety and welfare of the county; and
- 1.4. The Hidalgo County Commissioners Court has ordered the establishment of a nuisance abatement program to be administered in accordance with the policies and procedures contained herein.

## Section 2. Hidalgo County Authority to Abate Nuisances

- 2.1. Hidalgo County may abate a nuisance by adopting abatement procedures that are consistent with and conform to Chapter 343 of the Texas Health and Safety Code as per Section 343.021 of that chapter.
- 2.2. Hidalgo County may abate a nuisance by means of demolition or removal. [Texas Health and Safety Code (“THSC”) § 343.021(a)(1)].
- 2.3. Section 343.0235 of the Texas Health and Safety Code authorizes the use of any available funds under other law for a cleanup or remediation of private property to abate a nuisance described by Paragraph 4.3(d).

## Section 3. Definitions: [THSC § 343.002]. In these policies and procedures:

- 3.1. “**Abate**” shall mean to eliminate or remedy by removal, repair, rehabilitation, or demolition;
- 3.2. “**Agricultural land**” shall mean land that qualifies for tax appraisal under Subchapter C or D of Chapter 23 of the Texas Tax Code [THSC 343. 011(e)].
- 3.3. “**Building**” shall mean a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property. [THSC §343.002(2)]
- 3.4. “**Neighborhood**” shall mean
  - a. a platted subdivision; or,
  - b. property contiguous to and within 300 feet of a platted subdivision. [THSC §343.002 (4)]
- 3.5. “**Platted subdivision**” shall mean a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located. [THSC §343.002(5)]
- 3.6. “**Premises**” shall mean 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. [THSC §343.002(6)]
- 3.7. “**Weeds**” shall mean all rank and uncultivated vegetable growth or matter that

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- 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. [THSC §343.002(11)]

### **Section 4. Public Nuisance** [THSC §343.011]

- 4.1. These policies and procedures apply only to the unincorporated area of the County. [THSC §343.011(a)]
- 4.2. A person may not cause, permit, or allow a public nuisance as defined in Paragraph 4.3 of these policies and procedures. [THSC §343.011(b)]
- 4.3. A public nuisance shall be defined as:
  - a. maintaining a premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests [THSC §343.011(c)(3)]; or
  - b. allowing weeds to grow on a premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment [THSC §343.011(c)(4)]; or
  - c. 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. [THSC §343.011(c)(11)]; or
  - d. discarding refuse or creating a hazardous visual obstruction on county-owned land; or land or easements owned or held by a special district that has the Hidalgo County Commissioners Court as its governing body. [THSC §343.011(c)(9)]
- 4.4. These policies and procedures do not apply to a site or facility that is:
  - a. permitted and regulated by a state agency for the activities described by Paragraph 4.3; or
  - b. licensed or permitted under Texas Health and Safety Code Chapter 361 for the activities described by Paragraph 4.3; or
  - c. agricultural land. [THSC 343.011(d)]

### **Section 5. Administration of the Nuisance Abatement Program**

- 5.1. The nuisance abatement program shall be administered by the Hidalgo County Executive Office with the assistance of all Hidalgo County Constables, the Hidalgo County Health Department, the Hidalgo County Fire Marshal's Office, all Hidalgo County Justice of the Peace Offices, the Hidalgo County Criminal District Attorney's Office, the Hidalgo County Commission Precincts and Commissioners Court. The head of the Hidalgo County Nuisance Abatement Program shall be a regularly salaried, full time employee of the County who shall be designated as the Administrator of the program (the Administrator). [THSC 343.022(a)]
- 5.2. Complaints regarding public nuisances shall be accepted by the Hidalgo County Executive Office from the public, county departments, or from any law enforcement agency.
- 5.3. Complaints may be submitted:
  - a. by phone at: (956) 292-7655; or
  - b. by mail at the following address:
    - Attn: Executive Office
    - 2818 S. Bus. Hwy. 281
    - Edinburg, TX 78539

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- 5.4. The following information is required in order to address a complaint of a public nuisance as defined by these policies and procedures:
- name, address, and phone number of the complainant; and
  - address or descriptive location of the subject property as practical; and
  - if known, the name of the owner, lessee, or person in control of the subject property; and
  - a description of the alleged violation, including where it exists on the subject property.
- 5.5. Anonymous complaints will be accepted, but discouraged, as there may be the need to follow up with the complainant concerning the nature of the complaint during a subsequent investigation.
- 5.6. The Hidalgo County Executive Office shall be responsible for the following:
- tracking and recording all complaints and associated field investigations regardless of their origin or the findings of the field investigation; and
  - submitting notice to responsible parties as dictated by paragraph 7.2 of these policies and procedures; and
  - reporting of nuisance abatement program activities to the Hidalgo County Commissioners Court as requested (or on an annual basis).

### **Section 6. Field Investigation Procedures**

- 6.1. Field investigations of properties that are the subject of nuisance complaints shall be conducted by Hidalgo County Executive Office personnel as assigned by the Administrator.
- 6.2. The owner, lessee, occupant, or person in control of the premises that is the subject of the complaint shall be identified during the investigation using the Official Records of the Hidalgo County Clerk's Office, and if needed, the records of the Hidalgo County Appraisal District and County Tax Office.
- 6.3. A field investigation shall be conducted in order to gather information necessary to determine if a nuisance condition exists. Photographic documentation of the conditions found at the property shall be provided to the Administrator before a nuisance condition determination can take place.
- 6.4. The findings of all field investigations shall be reported back to the Administrator.

### **Section 7. Notification and Nuisance Abatement Procedures**

- 7.1. After receiving the findings of the field investigation of a property, the Administrator shall make a determination as to whether a nuisance condition exists as defined in paragraphs 4.3(a) through (d) of these policies and procedures based on the field investigation findings. If the Administrator determines that the findings of the field investigation show that a nuisance condition does not exist, the complaint shall be closed.
- 7.2. If the Administrator determines that the findings of the investigation show that a nuisance condition exists, the Administrator shall request that the Hidalgo County Executive Office issue a Notice to Abate a Public Nuisance to the following:
- the owner, lessee, occupant, agent, or person in charge of the premises; and
  - the person responsible for causing a public nuisance on the premises, in the event that they are not the owner, lessee, occupant, agent, or person in charge of the premise when the person responsible can be identified. [THSC §343.022(b)]
- 7.3. The notice must state the following [THSC §343.022(c)]:
- the specific condition that constitutes a nuisance;
  - that the person receiving notice shall abate the nuisance before the:
    - thirty-first (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; or
    - tenth (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; and

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- c. that failure to abate the nuisance may result in:
    - 1. abatement of the nuisance by the County by either removal or demolition;
    - 2. assessment of costs to the person responsible for causing the nuisance when that person can be identified; and/or
    - 3. a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property; and
  - d. that the person receiving notice is entitled to submit a written request for a hearing before the:
    - 1. thirty-first (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; or
    - 2. tenth (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. [THSC §343.022(c)(5)(A)-(B)]
- 7.4. The notice described above must be given to the persons identified in Paragraph 7.1:
- a. by service 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 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 [THSC §343.022(d)].
- 7.5. If the findings of the investigation show that a nuisance condition does exist, and if the public nuisance is abated within thirty one (31) days after the notice was properly served, the complaint shall be closed upon confirmation by the Administrator that the nuisance has been abated.
- 7.6. If the findings of the investigation show that a nuisance condition does exist, and if the nuisance is not abated within thirty one (31) days after the notice was properly served and no request for a hearing has been submitted, the Administrator shall proceed with the complaint according to the procedures set forth in Section 9 of these policies and procedures.
- 7.7. If the findings of the investigation show that a nuisance condition does exist, and a person receiving notice submits a written request for a hearing before the thirty-first (31<sup>st</sup>) day after receiving notice for the first notice and the tenth (10<sup>th</sup>) business day for subsequent notices, the Administrator shall proceed with the complaint according to the procedures set forth in Section 8 of these policies and procedures.

### **Section 8. Hearing Procedure**

- 8.1. If a request for a hearing is received pursuant to paragraph 7.7, the Administrator shall:
  - a. set a hearing date within sixty (60) days of receipt of a written request for hearing; and
  - b. send a Notice of Hearing stating the date, time, and place of the hearing to all persons receiving the Notice of Abatement of Public Nuisance.
- 8.2. In conducting a hearing under these policies and procedures, the Administrator shall make a determination if a nuisance condition exists by weighing the evidence contained in the field investigation report and any other evidence submitted by investigators against evidence submitted by the person contesting the nuisance complaint.
- 8.3. Upon determination by the Administrator that a nuisance condition does not exist as defined by these policies and procedures, the complaint shall be closed.
- 8.4. Upon determination by the Administrator that a nuisance does exist as defined by these policies and procedures, the Administrator shall proceed with the complaint according to the procedures set out in Section 9 of these policies and procedures.

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## Section 9. Nuisance Abatement Procedures

- 9.1. For nuisance conditions that are not abated within thirty one (31) days of proper notice, and upon the completion of any required hearings, on behalf of the County, the Administrator shall:
  - a. direct the abatement of the nuisance; and
  - b. make a determination as to the costs of abating the nuisance including management, remediation, storage, transportation, disposal costs, damages, other expenses incurred by the County, the cost of legal notification by publication, if applicable, and an administrative fee of \$100.00 [THSC §343.023(a)(1)], and produce a statement of costs reflecting this determination. The Hidalgo County Commissioners Court may also assess such costs by resolution or order [THSC §343.023(a)(2)]; and
  - c. provide notice to the property owner, lessee, occupant, agent, or person in charge of the premises that the costs associated with the abatement of the nuisance shall be paid within sixty (60) days of the notice; or
  - d. if payment is not received within sixty (60) days of the notice, and with the approval of the Hidalgo County Commissioners Court, file a Notice of Lien for recording in the Hidalgo County Property Records maintained by the Hidalgo County Clerk, which shall contain a statement of costs to abate the public nuisance as stated above, a legal description of the property sufficient to identify the property, and the name of the property owner, if known. [THSC §343.023(c)] The amount of the lien will include interest in the amount of 10% per year beginning on the thirty-first (31<sup>st</sup>) day after the date of the assessment against the property. [THSC §343.023(e)]
- 9.2. A lien filed under this section will attach when it is filed with the Hidalgo County Clerk's Office and will be inferior to any 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 Hidalgo County Clerk's Office before the date on which the County files the notice of lien with the County Clerk. [THSC §343.023(d)]
- 9.3. The Administrator shall take necessary means to proceed with abatement of the public nuisance as provided under these policies and procedures.
- 9.4. A statement of costs produced under this section is prima facie proof of the costs incurred to abate the nuisance [THSC §343.023(f)].
- 9.5. Nothing contained in these policies and procedures is meant to preclude the filing of an injunction under §343.013 of the THSC or the filing of criminal actions under § 343.012 of the THSC, when appropriate.