

**ORDER AMENDING MONTGOMERY COUNTY  
NUISANCE ABATEMENT PROCEDURES**

STATE OF TEXAS                   §  
COUNTY OF MONTGOMERY       §

ON THIS 4<sup>th</sup> day of June, 2007, at a duly posted and called meeting of the Commissioners Court of Montgomery County, Texas, upon motion of Commissioner Meador, seconded by Commissioner Doyal, duly put and carried:

*Section 1. Policy Basis*

- 1.1 Whereas, Montgomery County, Texas, recognizes the need for County government to have the authority to abate public health nuisances.
- 1.2 Whereas, to ensure and protect the public health, the Commissioners Court of Montgomery County does hereby adopt the following as its amended 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 Montgomery County pursuant to Chapter 343 of the Texas Health and Safety Code, as amended, and shall apply only to the unincorporated areas of Montgomery County, Texas.
- 2.2 The procedures provided for 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 Montgomery 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 a public nuisance by removal, repair, rehabilitation, or demolition.

*Administrator* means the Director of the Montgomery County Environmental Health Services, or a County employee acting under his/her supervision and control.

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

*Commissioners Court* means the Commissioners Court of Montgomery County.

*County* means Montgomery County.

*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 the County Commissioner in the precinct where the nuisance is located.

*Neighborhood* means:

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

*Order* means the “Order Amending Montgomery County Nuisance Abatement Procedures.”

*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 Montgomery County, Texas.

*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 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 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;
- 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 if the weeds are located within 300 feet of another residence or commercial establishment;
- 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:
  - (1) A fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or
  - (2) A cover over the entire swimming pool that cannot be removed by a child.
- g. This definition does not apply to a site or facility that is permitted and regulated by a state agency.

*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.

*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 non-decayable waste, including vegetable matter and animal and fish carcasses.

*Rubbish* means non-decayable waste from a public or private establishment or residence.

*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.

*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 Order.

*Section 5. Investigation*

- 5.1 The Commissioners Court of Montgomery County hereby appoints the Director of the Montgomery County Environmental Health Services, a regularly salaried full-time County employee, to administer this program and the abatement procedures prescribed in this Order.
- 5.2 Abatement of a public nuisance under these procedures may be initiated by any person by written complaint filed 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 and take no further action thereon.
- 5.6 If the Administrator determines that a public nuisance exists as defined by Section 3 of this Order, he may serve written Notice to Abate Nuisance on the owner of the premises on which the public nuisance exists, 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 Order.

- 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 Order.
- 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 Order.

*Section 6. Notice Requirements*

- 6.1 Each Notice to Abate Nuisance must contain the 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 a 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 deliver to his office which is currently located at 301 N. Thompson, Suite 206, Conroe, Texas, or by certified mail, return receipt requested, addressed to the Director of the Montgomery County Environmental Health Services, 301 N. Thompson, Suite 206, Conroe, Texas 77301; 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, 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 Requested*

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 the person who received the Notice to Abate Nuisance, then the Administrator shall request a title opinion from the county Attorney regarding ownership of the premises on which the public nuisance exists.

7.2 If the title opinion reflects an owner other than the person shown on the Notice To Abate Nuisance, the Administrator shall serve a Notice to Abate Nuisance on the person named as the owner in the title opinion as set out

in Section 6 of this Order, as if no prior action had been taken on the complaint subsequent to the service of the first Notice to Abate Nuisance.

- 7.3 Where the title opinion shows the owner to be the person served with 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 Commissioners Court.
- 7.4 After receiving the estimate of the cost to abate the public nuisance, the Commissioners Court shall 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 the 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 perfected 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 Order. 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 present 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. A copy shall be sent to the Administrator. 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 Procedure*

- 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 Commissioner Court.
- 9.4 After receiving the estimate of the cost to abate the public nuisance, the Commissioners Court shall 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 the property on which the public nuisance exists.

*Section 10. Additional Duties of the Administrator*

- 10.1 If an owner fails or refuses to abate a public nuisance and the Commissioners Court orders the abatement of same pursuant to this Order, then the Administrator shall contact the Purchasing Department to initiate the proper procurement procedure for the County to let a 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 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.
- 10.2 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 the County Attorney, record same in the Official Public Records of Real Property of Montgomery 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 Order.
- 10.3 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 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.
- 10.4 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 Montgomery County Clerk's Office before the date on which the County files the Notice of Lien with the County Clerk.

- 10.5 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 the County Attorney to proceed with collecting 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, from such person.
  
- 10.6 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 the County 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 Montgomery County.

PASSED AND APPROVED this 4<sup>th</sup> day of June, 2007.

**MONTGOMERY COUNTY, TEXAS**

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ALAN B. SADLER, COUNTY JUDGE

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MIKE MEADOR  
COMMISSIONER, PRECINCT 1

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CRAIG DOYAL  
COMMISSIONER, PRECINCT 2

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JAMES NOACK  
COMMISSIONER, PRECINCT 3

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JIM CLARK  
COMMISSIONER, PRECINCT 4

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MARK TURNBULL  
COUNTY CLERK