

**COMMISSIONERS COURT SECOND AMENDED ORDER ADOPTING
PROCEDURES FOR ABATEMENT OF REFUSE AND OTHER NUISANCES FROM
NEIGHBORHOODS PURSUANT TO CHAPTER 343 OF THE
HEALTH & SAFETY CODE, V.T.C.A.**

WHEREAS, the Legislature has enacted Chapter 343 of the Texas Health and Safety Code; and

WHEREAS, on August 22, 1990, the Commissioners Court of Bexar County, Texas adopted Procedures for Abatement of Refuse and Other Nuisances from Neighborhoods pursuant to Chapter 343 of the Texas Health and Safety Code; and

WHEREAS, the Legislature has amended portions of that chapter to expand the authority of counties pertaining to such abatement procedures; and

WHEREAS, the Commissioners Court of Bexar County, Texas, has considered the matter and deems it appropriate to amend its Order adopting additional procedures in accordance with the amendments to the enabling legislature for that Order;

**NOW, THEREFORE, IT IS ORDERED, BY THE COMMISSIONERS COURT
OF BEXAR COUNTY, TEXAS:**

Article I
Definitions

1.01 In this Order:

- (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 moveable property.
- (c) "Department" means Bexar County Infrastructure Department.
- (d) "Developed" means altered from its natural state by leveling and/or clearing so that it is reasonably accessible to mowing equipment.
- (e) "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.
- (f) "Garbage" means all decayable wastes 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 an industrial by-product.
- (g) "Neighborhood" means:
 - (1) A platted subdivision; or
 - (2) Property contiguous to and within 300 feet of a platted subdivision.

- (h) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estates, trust, partnership, association, or any other legal entity.
- (i) "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.
- (j) "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.
- (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, bridge is opened to the public for vehicular traffic or pedestrian traffic.
 - (l) "Receptacle" means a container that 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.
- (m) "Refuse" means garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.
- (n) "Rubbish" means all non-decayable wastes, except ashes, from a public or private establishment or residence.
- (o) "Weeds" means all rank and uncultivated vegetable growth or matter that:
 - (1) has grown to more than 36 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.

Article II
Public Nuisances on Premises

2.01 Chapter 343 of the Health and Safety Code has deemed the following to be public nuisances:

- (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, vehicles, refrigerators, stoves, furniture, tires, and cans, or premises in a neighborhood for 10 days or more, unless the rubbish or object is completely enclosed within 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 such 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, fire hazard, disaster, damage, or abandonment;

- (f) maintaining on any 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 a cover over the entire swimming pool that cannot be removed by a child; and
 - (2) the swimming pool was constructed or installed on or after September 1, 2005, or located on property sold on or after September 1, 2005;
- (g) 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 a cover over the entire swimming pool that cannot be removed by a child; and
 - (2) the swimming pool was constructed or installed before September 1, 2005, and the property has not been sold on or after September 1, 2005;
- (h) maintaining a flea market in manner that constitutes a fire hazard;
- (i) discarding refuse or creating a hazardous visual obstruction on:
 - (1) county-owned land; or
 - (2) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;
- (j) discarding refuse on the smaller of:
 - (1) the area that spans 20 feet on each side of the utility line; or
 - (2) the actual span of the utility easement; or
- (k) 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.

2.02 Article 2.01 of this Article does not apply to a site or facility that

- (1) is permitted and regulated by a state agency;
- (2) licensed or permitted under Chapter 361; or
- (3) land that qualifies for tax appraisal under Chapter C or D, Chapter 23, Tax Code.

Article III
Administration of Abatement Proceedings

3.01 The Commissioners Court of Bexar County, Texas hereby authorizes the Department to administer the abatement procedures adopted in this Order.

Article IV
Notice of Abate Nuisance

4.01 The Department shall give written notice to the owner of the property on which a nuisance as defined in Article 2.01 exists.

4.02 Said notice shall state:

- (a) the specific condition that constitutes a nuisance;
- (b) that the person receiving notice must abate the nuisance not later than the 30th 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 the 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;
- (c) that failure to abate the nuisance may result in abatement by the county, assessment of costs to the person responsible for causing the nuisance when that person can be identified, and a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
- (d) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by 2.01 (a), (i), or (j); and
- (e) that the person receiving notice is entitled to submit a written request for a hearing before the:
 - (1) 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
 - (2) 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.

4.03 Notice shall be served on the owner or his agent:

- (a) in person or by registered or certified mail, return receipt requested; or
- (b) if personal service cannot be obtained or the address of the owner or his agent 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.

4.04 If the occupier of the premises is not the owner or his agent, the occupier shall also be served with notice: (a) in person or by registered or certified mail; or (b) if personal service cannot be obtained, by posting a copy of the notice on the premises.

Article V
Hearing

- 5.01 If a hearing is requested in conformity with Article 4.02(e), the County Judge shall order a public hearing before the Department takes action to abate a nuisance under this Order.
- 5.02 All hearings under this Article will be conducted by Commissioners Court within 15 days after receipt by the County Judge of request for hearing.

Article VI
Abatement

- 6.01 In the event the owner of the property fails to abate the nuisance within thirty days of the date notice is received, and has not requested a hearing, the Department may abate the nuisance by demolition or removal or, in the case of a nuisance under 2.01 (a), (i), or (j), by prohibiting or controlling access to the premises.
- 6.02 The demolition or removal of a nuisance under this Order may be performed by a person so authorized by the Department.

Article VII
Lien

- 7.01 Commissioners Court may, by order or resolution, assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of \$100.00 against the property on which the nuisance exists. Bexar County is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at a rate of 10% per year.
- 7.02 Commissioners Court may obtain a lien against the property for the assessment and interest thereon by filing a statement of costs with the County Clerk of Bexar County, Texas in order to perfect the lien.

Article VIII
Use of County Funds

- 8.01 Bexar County is entitled to use money available under other law for a cleanup or remediation of private property to abate a nuisance described in 2.01 (a), (i), or (j).

Article IX
Criminal Penalties

- 9.01 Criminal penalties attach to a violation of Chapter 343 if the nuisance remains unabated after the 30th day after the date on which the person received notice from a county official, agent, or employee to abate the nuisance.

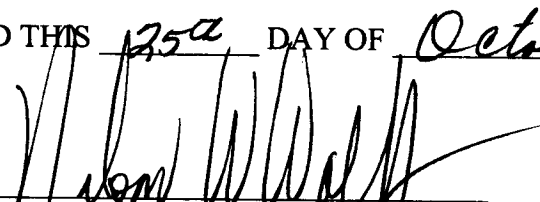
Article X
Severability

10.01 If any provision of these Regulations or its application to any person or circumstances is held invalid for any reason, the invalidity does not affect any other provisions or application of these Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these Regulations are declared to be severable.

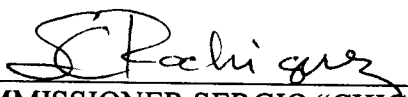
Article X
Effective Date

10.01 This Order is effective OCTOBER 25, 2005.

PASSED AND APPROVED THIS 25th DAY OF October, 2005.




NELSON W. WOLFF
Bexar County Judge




COMMISSIONER SERGIO "CHICO"
RODRIGUEZ
Precinct 1



COMMISSIONER PAUL ELIZONDO
Precinct 2



COMMISSIONER LYLE LARSON
Precinct 3



COMMISSIONER TOMMY ADKISSON
Precinct 4