



**EL PASO COUNTY
ENVIRONMENTAL NUISANCE ABATEMENT ORDER
POLICIES & PROCEDURES**

**Article I
Scope, Purpose & Authority**

WHEREAS, the El Paso County Commissioners Court recognizes that the illegal dumping of solid waste and other nuisances causes a threat to the health, safety, and welfare of the residents of the unincorporated areas of El Paso County (“the County”); and

WHEREAS, the El Paso County Commissioners Court is authorized under Chapter 343 of the Texas Health and Safety Code (“THSC”), as amended, to enact orders to address the abatement of public nuisances in the unincorporated areas of the County; and

WHEREAS, the El Paso County Commissioners Court finds that the Proposed Order Establishing the El Paso Environmental Nuisance Abatement Program (“Program”) and the accompanying El Paso County Unincorporated Area Nuisance Abatement Program Policies and Procedures (“Procedures”) (included below) necessary to promote the public health, safety and welfare of the county; and

WHEREAS, the County may abate a nuisance by adopting abatement procedures that are consistent with, and conform to, Chapter 343 of the THSC, including abatement of a nuisance by means of demolition or removal *See* Tex. Health & Safety Code § 343.021(a)(1) with any available funds authorized under any other law *See* Tex. Health & Safety Code § 343.0235;

NOW, THEREFORE, the El Paso County Commissioners Court orders that the Program be established and administered under the Procedures included below.

**Article II
El Paso County Authority to Abate Nuisances**

- A. The County may abate a nuisance by adopting abatement procedures that are consistent with, and conform to, Chapter 343 of the THSC under § 343.021 of that chapter.
- B. The County may abate a nuisance by means of demolition of removal under § 343.021(a)(1) of the THSC.
- C. The County may utilize any available funds under any state law for a cleanup or remediation of private property to abate a nuisance as defined in this Order under § 343.0235 of the THSC.

Article III Definitions

- A. The following terms, phrases and words have the definitions assigned by Health and Safety Code Section 343.002: Abate, building, garbage, neighborhood, platted subdivision, premises, public street, receptacle, refuse, rubbish, undeveloped land, weeds, and flea market. In addition, “Public Nuisance” shall have the meaning prescribed by THSC 343.011(c), with the exceptions provided by that Section.
- B. A deadline that refers to days shall refer to calendar days, with the day that triggers a deadline excluded from any deadline and the day that ends a deadline period included in the calculation of the deadline. If the deadline falls on a Saturday, Sunday, or County Holiday, the deadline shall be extended to the next county business day.

Article IV Public Nuisance

- A. These Procedures apply only to the unincorporated area of the County. If a conflict arises between this Order and any municipal ordinance, rule, process or procedures within the extraterritorial jurisdiction of the municipality, the more stringent rule shall apply.
- B. A person may not cause, permit, or allow a public nuisance as defined in Article III, Sec. C of these Procedures
- C. These Procedures do not apply to a site or facility that is:
 - 1. permitted and regulated by a state agency for the activities described in Article III, Sec. C; or
 - 2. licensed or permitted under Texas Health and Safety Code Chapter 361 (the Solid Waste Disposal Act) for the activities described by Article III, Sec. C; or
 - 3. agricultural land. *See* Tex. Health & Safety Code § 343.011(d)

Article V Program Administration

- A. The Program shall be administered by the Director of Planning & Development (“Administrator”), or his designee, and the Planning & Development Department, (“Department”), under the direction and guidance of the El Paso County Chief Administrator
- B. The head of the Program (i.e. the Administrator) shall be a regularly salaried, full-time employee of the County under THSC 343.022(a).
- C. Complaints regarding public nuisances shall be accepted by the Department from the public, county departments, or from any law enforcement agency.
- D. Complaints and hearing requests may be submitted via phone, mail or email at:**

1. **Phone: 915-855-9664; or**
 2. **E-Mail: Inspections.Gem@EPCounty.com**
 3. **Mail: Attn: Nuisance Abatement Program, Planning & Development – Inspections Division, 14612 Greg Drive, El Paso, Texas 79938.**
- E. All of the following information is required to address a complaint of a public nuisance as defined by the Procedures:
1. name, address, and phone number of the complainant (unless the complainant requests to remain anonymous);
 2. address or descriptive location of the subject property as practical;
 3. if known, the name of the owner, lessee, or person in control of the subject property; **and**
 4. a description of the alleged violation, including where it exists on the subject property and when the violation began.
- F. Anonymous complaints will be accepted. However, anonymous complaints are discouraged because there may be the need to follow up with the complainant concerning the nature of the complaint during any investigation.
- G. The Department shall be responsible for the following:
- a. tracking and recording all complaints and associated field investigations regardless of their origin or the findings of the field investigation; and
 - b. submitting notice to responsible parties as dictated by Article VII, Sec. B of these Procedures; and
 - c. reporting of Program activities to the El Paso County Commissioners Court as requested (or on an annual basis).

Article VI Field Investigation Procedures

- A. Field investigations of properties that are the subject of nuisance complaints shall be conducted by licensed code enforcement officers as assigned by the Administrator.
- B. 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 Department's Geographic Information Systems Database, El Paso County Clerk's Office, the El Paso County Central Appraisal District, or any combination of those sources.
- C. A field investigation shall be conducted 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.

- D. The findings of all field investigations shall be reported back to the Administrator and the Administrator's staff.

Article VII
Notification & Nuisance Abatement Procedures

- A. After receiving the findings of the field investigation of a property, the Administrator and the Administrator's staff shall make a determination as to whether a nuisance condition exists, as defined in Article IV, Section C of these 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.
- B. If the Administrator determines that the findings of the investigation show that a nuisance condition exists, the Administrator shall, after conferring with the Director of Infrastructure Services, or his designee, issue a Notice to Abate a Public Nuisance to the following:
1. the owner, lessee, occupant, agent, or person in charge of the premises; and
 2. the person responsible for causing a public nuisance on the premises, in the event that such person is not the owner, lessee, occupant, agent, or person in charge of the premise when the person responsible can be identified. Tex. Health & Safety Code § 343.022(b),
- C. The notice must state the following under Tex. Health & Safety Code § 343.022(c):
1. the specific condition that constitutes a nuisance;
 2. that the person receiving notice shall abate the nuisance before the:
 - a) the 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
 - b) 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;
 3. that failure to abate the nuisance may result in:
 - a) abatement of the nuisance by the County by either removal or demolition;
 - b) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and/or
 - c) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;

4. that the person receiving notice is entitled to submit a written request for a hearing, as outlined in Article V Section D, before the:
 - a) the 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
 - b) 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. *See* Tex. Health & Safety Code §343.022(c)(5)(a)-(b)
- D. The notice described above must be given to the persons identified in Article VII, Sec. A:
 1. by service in person or registered or certified mail, return receipt requested, or
 2. if personal service cannot be obtained, 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 *See* Tex. Health & Safety Code § 343.022(d).
- E. If the findings of the investigation show that a nuisance condition exists, and if the public nuisance is abated within 31 days after the notice was properly served, the complaint shall be closed upon confirmation by the Administrator that the nuisance has been abated.
- F. If the findings of the investigation show that a nuisance condition does exist, and if the nuisance is not abated within 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 Article IX of these Procedures.
- G. If the findings of the investigation shows that a nuisance condition does exist, and a person receiving notice submits a written request for a hearing before the 31st day after receiving notice for the first notice and the 10th business day for subsequent notices, the Administrator shall proceed with the complaint according to the procedures set forth in Article VIII of these Procedures.

Article VIII Hearing Procedure

- A. If a request for a hearing is received under Article VII Sec. C(3)D , the Administrator shall:
 1. set a hearing date, to be heard by the Executive Director of Public Works, “Executive Director”, within 60 days of receipt of a written request for hearing;
 2. 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;
 3. stay any abatement actions authorized under this Order until the outcome of the hearing.

4. If the respondent does not appear for a hearing, or agree to a reasonable date within 60 days of the written request, the Executive Director Public Works shall conduct a de novo review of the written findings and evidence in the file and make a final determination. The Executive Director of Public Works may set a hearing beyond the 60 day period described above if there is good cause to do so. A hearing may not take place later than calendar 120 days from the date of the receipt of a written request for hearing.
- B. In conducting a hearing under these Procedures, the Executive Director shall make a determination, under a preponderance of the evidence standard, 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. Courtroom rules of evidence do not apply, and the Executive Director may consider any evidence that she determines is relevant and material.
 - C. Upon determination by the Executive Director that a nuisance condition does not exist as defined by these Procedures, the complaint shall be closed.
 - D. Upon determination by the Executive Director that a nuisance does exist as defined by these Procedures, the Administrator shall proceed with the complaint according to the procedures set out in Section 9 of these Procedures.

Article IX
Nuisance Abatement Procedures

- A. For nuisance conditions that are not abated within 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. provide notice to the Commissioners Court by placing a report describing the nuisance abatement findings and outcomes on the consent agenda of the El Paso County Commissioners Court regularly-scheduled meetings; and
 - c. upon conferring with the Director of Infrastructure Services, 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 as authorized under Tex. Health & Safety Code § 343.023(a)(1), and produce a statement of costs reflecting this determination.; and
 - d. 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 60 days of the notice; or
 - e. if payment is not received within 60 days of the notice, and with the approval of the El Paso County Commissioners Court, file a Notice of Lien for recording in the El Paso County Property Records maintained by the El Paso 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 under with THSC § 343.023(c). The amount of the lien will include interest in the amount of:

- 1) 10% per year beginning on the 31st day after the date of the assessment against the property. *See* Tex. Health & Safety Code §343.023(e)
 - 2) A lien filed under this section will attach when it is filed with the El Paso 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 El Paso County Clerk's Office before the date on which the County files the notice of lien with the County Clerk. [*See* THSC §343.023(d)]
- B. The Administrator shall take necessary means to proceed with abatement of the public nuisance as provided under these Procedures.
- C. A statement of costs produced under this section is prima facie proof of the costs incurred to abate the nuisance under THSC § 343.023(f).
- D. Nothing contained in these 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.

**APPROVED AND ADOPTED BY THE HONORABLE EL PASO COUNTY
COMMISSIONERS COURT THIS 14th DAY OF MARCH 2022**

Ricardo A. Samaniego
El Paso County Judge

APPROVED AS TO FORM



Kevin McCary
Assistant County Attorney

APPROVED AS TO CONTENT



Jose M. Landeros
Director of Strategic Development