

County Landfill & Solid Waste Authority

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- This Session presents an overview of provisions of the Texas Health & Safety Code relating to solid waste management by a County including the statutory provisions relating to the Commissioners Court authority and responsibility for regulation and control of the collection, transportation, and disposal of solid waste.

Specific Statutory Authority for Counties Solid Waste Issues

- The **Solid Waste Disposal Act** – Tex. Health & Safety Code, Chapter 361, Subchapter E.
- The **Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act** – Tex. Health & Safety Code, Chapter 363, Subchapter F.
- The **County Solid Waste Control Act** – Tex. Health & Safety Code, Chapter 364.

Solid Waste Disposal Act

(Tex. Health & Safety Code, Chapter 361)

- It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.
- The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.
- Tex. Health & Safety Code §361.002

**Comprehensive Municipal Solid Waste Management,
Resource Recovery, and Conservation Act**

(Tex. Health & Safety Code, Chapter 363)

- It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy. (Tex. Health & Safety Code §363.002)

County Solid Waste Control Act

(Tex. Health & Safety Code, Chapter 364)

- The purpose of this chapter is to authorize a cooperative effort by counties, public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in this state.

(Tex. Health & Safety Code §364.002)

County Solid Waste Control Act

Regulating of Solid Waste

- A commissioners court by rule may **regulate** solid waste collection, handling, storage, and disposal in areas of the county not in a municipality or the extraterritorial jurisdiction of a municipality.
- A county, in making any rules, including those under the licensing power granted by Chapter 361 (Solid Waste Disposal Act), may not impose an unreasonable requirement on the disposal of the solid waste in the county not warranted by the circumstances.
- A county may institute legal proceedings to enforce its rules.

(Tex. Health & Safety Code §364.011)

County Solid Waste Control Act

Ordinance Prohibiting Disposal

A county **may prohibit** the disposal of municipal or industrial solid waste in the county if the disposal of the municipal or industrial solid waste is a threat to the public health, safety, and welfare.

- To prohibit the disposal of municipal or industrial solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances ***specifically designating the area of the county in which municipal or industrial solid waste disposal is not prohibited.***
- An ordinance may be passed on first reading, but the proposed ordinance ***must be published in a newspaper of general circulation in the county for two consecutive weeks*** before the commissioners court considers the proposed ordinance. The publication must contain:
 - (1) a statement of the time, place, and date that the commissioners court will consider the proposed ordinance; and
 - (2) notice that an interested citizen of the county may testify at the hearing.

County Solid Waste Control Act Ordinance Prohibiting Disposal (cont.)

- A public hearing must be held on a proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify.
- ***The commissioners court of a county may not prohibit the processing or disposal of municipal or industrial solid waste in an area for which an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the TCEQ or a permit or other authorization under Chapter 361 has been issued by the TCEQ.***
- The TCEQ may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance.
- These powers may not be exercised by the County with respect to areas to which Section 361.090 applies.

(Tex. Health & Safety Code §364.012)

County Solid Waste Control Act

A county may:

- (1) acquire, construct, improve, enlarge, repair, operate, and maintain all or part of one or more solid waste disposal systems;
- (2) contract with a person to collect, transport, handle, store, or dispose of solid waste for that person;
- (3) contract with a person to purchase or sell, by installments for a term considered desirable, all or part of a solid waste disposal system;
- (4) enter into an operating agreement with a person, for the terms and on the conditions considered desirable, for the operation of all or part of a solid waste disposal system by that person or by the county; and
- (5) lease to or from a person, for the term and on the conditions considered desirable, all or part of a solid waste disposal system.

(Tex. Health & Safety Code §364.013)

- As referenced in the provisions above, Texas Health and Safety Code, Section 361.090 states that (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:
 - (1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and
 - (2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(Tex. Health & Safety Code §361.090)

COUNTY REGULATION OF TRANSPORTATION OF WASTE

- To protect the public health, safety, or welfare, the commissioners court of a county with a population of less than 375,000 may by ordinance:
 - (1) require a waste hauler who transports waste in unincorporated areas of the county to be **licensed** by the county;
 - (2) establish requirements for obtaining and renewing a waste hauler license;
 - (3) impose a license issuance or renewal fee in an amount that generates annually the approximate amount of revenue needed to fund the licensing program for a year;
 - (4) establish standards governing the transportation of waste in unincorporated areas of the county;
 - (5) establish grounds for suspending or revoking a waste hauler license; and
 - (6) prescribe any other provisions necessary to administer the licensing program.

(Tex. Health & Safety Code §368.012)

COUNTY REGULATION OF TRANSPORTATION OF WASTE

- Waste means: (A) animal and vegetable waste materials resulting from the handling, preparation, cooking, or consumption of food; (B) discarded paper, rags, cardboard, wood, rubber, plastics, yard trimmings, fallen leaves, brush materials, and similar combustible items; and (C) discarded glass, crockery, tin or aluminum cans, metal items, and similar items that are noncombustible at ordinary incinerator temperatures.
- Waste hauler means a person who, for compensation, transports waste by the use of a motor vehicle.

(Tex. Health & Safety Code §368.011)

COUNTY REGULATION OF TRANSPORTATION OF WASTE

Exemptions for Certain Waste Haulers

- Those who transport materials as part of a recycling program or salt water, drilling fluids, or other waste associated with the exploration, development, and production of oil, gas, or geothermal resources.
- A county may not require a waste hauler license to be held by a waste hauler: (1) while transporting waste on behalf of a municipality or other governmental entity; or (2) operating regularly in more than three counties.
- However, a county may require a waste hauler who transports waste on behalf of a municipality or other governmental entity to have a waste hauler license if the hauler deposits any part of that waste in a county other than the county in which all or part of the municipality or other governmental entity is located.

(Tex. Health & Safety Code §368.013)

COUNTY REGULATION OF TRANSPORTATION OF WASTE

- An applicant for a waste hauler license must execute a surety bond or provide other financial assurance payable for the use and benefit of the county or any person harmed. The commissioners Court will set the amount of the bond for which it deems necessary or desirable according to the risk of harm. (Tex. Health & Safety Code §368.014)
- Any fees or other money received by a County shall be deposited to the credit of the general fund. (Tex. Health & Safety Code §368.015)
- A county is entitled to appropriate injunctive relief to prevent the violation or threatened violation. (Tex. Health & Safety Code §368.017)
- If the County Ordinance defines an offense for a violation of the ordinance, the offense is a Class C misdemeanor. A separate offense occurs on each day on which all the elements for the offense exist. (Tex. Health & Safety Code §368.018)

COUNTY REGULATION OF TRANSPORTATION OF WASTE

- Additionally, Counties have the authority to establish a program regulating transporters of grease trap, sand trap, and septic waste.

(Tex. Health & Safety Code §368.001)

Other Considerations

The Private Real Property Rights Preservation Act

- The Private Real Property Rights Preservation Act may apply to the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure by a County. (Tex. Gov't Code § 2007.003)
 - The attorney general shall prepare guidelines to assist governmental entities in identifying and evaluating those governmental actions that may result in a taking. (Tex. Gov't Code §2007.041)
 - A “taking” is defined as a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that: (1) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. (Tex. Gov't Code §2007.0002(5))

Other Considerations

The Private Real Property Rights Preservation Act

- A political subdivision that proposes to engage in a governmental action that may result in a taking **shall provide** at least 30 days' notice of its intent to engage in the proposed action by providing a reasonably specific description of the proposed action in a notice published in a newspaper of general circulation published in the county in which affected private real property is located. The political subdivision **shall, at a minimum, include** in the notice a reasonably specific summary of the takings impact assessment that was prepared as required by this subchapter and the name of the official of the political subdivision from whom a copy of the full assessment may be obtained. (Tex. Gov't Code §2007.042)

Other Considerations

The Private Real Property Rights Preservation Act

- A governmental entity **shall prepare** a written takings impact assessment of a proposed governmental action that complies with the evaluation guidelines developed by the attorney general before the governmental entity provides the public notice required under Section 2007.042.
 - The takings impact assessment must:
 - (1) describe the specific purpose of the proposed action and identify:
 - (A) whether and how the proposed action substantially advances its stated purpose; and
 - (B) the burdens imposed on private real property and the benefits to society resulting from the proposed use of private real property;
 - (2) determine whether engaging in the proposed governmental action will constitute a taking; and
 - (3) describe reasonable alternative actions that could accomplish the specified purpose and compare, evaluate, and explain:
 - (A) how an alternative action would further the specified purpose; and
 - (B) whether an alternative action would constitute a taking.

(Tex. Gov't Code §2007.043)

Other Considerations

The Private Real Property Rights Preservation Act

- A governmental action requiring a takings impact assessment is void if an assessment is not prepared. A private real property owner affected by a governmental action taken without the preparation of a takings impact assessment may bring suit for a declaration of the invalidity of the governmental action.
 - A suit under this section must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected property is located in more than one county, the private real property owner may file suit in any county in which the affected property is located.
 - The court shall award a private real property owner who prevails in a suit under this section reasonable and necessary attorney's fees and court costs.

(Tex. Gov't Code §2007.044)