

County Landfill & Solid Waste Authority

88TH Annual South Texas County Judges and
Commissioners Association Conference
June 14, 2022

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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.

Generally

- A county has the opportunity to review permit applications submitted to the TCEQ for the construction, operation, and maintenance of solid waste facilities used to store, process or dispose of solid waste.
 - If the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.
 - A county to whom the information is mailed shall have a reasonable time, as prescribed by the commission, to present comments and recommendations on the permit application before the commission acts on the application.

(Tex. Health & Safety Code §361.067)

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

Solid Waste Disposal Act

Powers and Duties of a County

1. A county may appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services.
 - A County shall develop county solid waste plans and coordinate those plans with the plan of local governments, regional planning agencies and other government entities and the TCEQ.

Solid Waste Disposal Act

Powers and Duties of a County

Licenses

2. A county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality. (Tex. Health & Safety Code §361.154(a))
 - The County shall adopt and enforce rules for the management of solid waste and these rules must be compatible with and not less stringent than those of the TCEQ and approved by TCEQ.
(Tex. Health & Safety Code §361.154(b))
 - The County must notify TCEQ of each license application. TCEQ has 60 days to submit comments and recommendations on the application before County acts unless waived by TCEQ.
(Tex. Health & Safety Code §361.155)
 - A separate license must be issued for each solid waste facility.
(Tex. Health & Safety Code §361.156)

Solid Waste Disposal Act

Powers and Duties of a County

Licenses

- A County may charge a license fee not to exceed \$100, as set by the commissioners court and the fees shall be deposited into the general fund. (Tex. Health & Safety Code §361.158)
- A County may amend, extend, or renew a license it issues in accordance with county rules. (Tex. Health & Safety Code §361.159)
- For good cause and after a hearing with notice to the license holder and TCEQ, a county may amend a license it issues for reasons concerning (1) public health; (2) air or water pollution; (3) land use; or (4) a violation laws or rules controlling the processing, storage, or disposal of solid waste.
(Tex. Health & Safety Code §361.160)
- If a county issues, amends, renews, or extends a license, the owner or operator of the facility is not required to obtain a permit from the TCEQ for the same facility. (Tex. Health & Safety Code §361.161)

Solid Waste Disposal Act

Powers and Duties of a County

3. A County may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.
 - The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors. (Tex. Health & Safety Code §361.162)

Solid Waste Disposal Act

Limitations on a County's Power and Duties

- The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the TCEQ from exercising the powers vested in the TCEQ, including the provisions authorizing the TCEQ to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste. (Tex. Health & Safety Code §361.151(b))
- The TCEQ, by specific action or directive, may supersede any authority granted to or exercised by a county under the aforementioned provisions. (Tex. Health & Safety Code §361.151(c))
- These powers may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies. (Tex. Health & Safety Code §361.152)

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)

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

The creation of this Act was based on the legislature's findings that:

- (1) the growth of the state's economy and population has resulted in an increase in discarded materials;
- (2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;
- (3) there is increasing public opposition to the location of solid waste land disposal facilities;
- (4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;
- (5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;
- (6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

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

- (7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;
- (8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;
- (9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge, expertise, and technology in the fields of energy production and recycling, reuse, reclamation, and collection of materials;
- (10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems;
- (11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste; and
- (12) local governments should be encouraged to contract with waste management firms to meet the requirements of this chapter. (Tex. Health & Safety Code §363.003)

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

Powers of a County:

1. A County may adopt rules for regulating solid waste collection, handling, transportation, storage processing, and disposal. (Tex. Health & Safety Code §363.111)
2. A County may prohibit the processing or disposal of solid waste in certain areas.
 - To prohibit the processing or disposal of municipal or industrial solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order specifically designate the area of the municipality or county, as appropriate, in which the disposal of municipal or industrial solid waste will not be prohibited.
(Tex. Health & Safety Code §363.112)

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

- The ordinance or order must be published for two consecutive weeks in a newspaper or general circulation in the area of the municipality or county, as appropriate, before the date the proposed ordinance or order is adopted by the governing body.
- The ordinance or order will 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 or order.
- These powers may not be exercised by the governing body of a municipality or county with respect to areas to which Section 361.090 applies.

(Tex. Health & Safety Code §363.112)

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 of that county 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)

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