

County Regulatory Authority

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Solid Waste Authority

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

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)

Game Room Regulations

The commissioners court of a county may regulate the operation of Game Rooms to promote the public health, safety, and welfare, according to Section 234.133 of the Local Government Code. A commissioners court may: (1) restrict the location of game rooms to specifies areas of the county, including the unincorporated area of the county; (2) prohibit a game room location with a certain distance to a school, regular place of religious worship or residential neighborhood; and (3) restrict the number of game rooms that may operate in a specified area of the county.

Game Room Regulations

Game Room License/Permit: A county may require that game room obtain a license or permit or renew a license or permit on a periodic basis to own or operate a game room in the county. An application for a license or permit must be made in accordance with regulations adopted by the county. Regulations adopted under this section may provide for the denial, suspension, or revocation of a license or permit. §234.134.

Fees: A county may impose a fee not to exceed \$1,000 on an applicant for a license or permit or for the renewal of the license or permit required under this subchapter. The fee must be based on the cost of processing the application and investigating the applicant. §234.135.

Game Room Regulations

Inspection: A peace officer or county employee may inspect a business in the county to determine the number of amusement redemption machines or machines subject to regulation. A person violates this subchapter if the person fails to allow a peace officer or county employee to conduct an inspection. §234.136

Civil and Criminal Penalties

- A county may sue in district court for an injunction to prohibit the violation or threatened violation of this subchapter or a regulation adopted.
- A violation could result in a civil penalty of not more than \$10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty under this subsection. A county may bring suit in district court to recover a civil penalty authorized by this subsection.
- The county is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.
- A person commits an offense if the person intentionally or knowingly operates a game room in violation of a regulation adopted and the offense is a Class A misdemeanor. §§234.137 & 234.138.

Sexually Oriented Business Regulations

- The legislature finds that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this chapter is to provide local governments a means of remedying this problem.
- This chapter does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.

§243.001.

- "sexually oriented business" means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. §243.002.

Sexually Oriented Business Regulations

A county by order of the commissioners court may adopt regulations regarding sexually oriented businesses as the municipality or county considers necessary to promote the public health, safety, or welfare. A regulation adopted by a county applies only to the parts of the county outside the corporate limits of a municipality. §243.003.

SCOPE OF REGULATION: The location of sexually oriented businesses may be: (1) restricted to particular areas; or (2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business.

- A county may restrict the density of sexually oriented businesses.

§§243.003 & 243.006.

Sexually Oriented Business Regulations

- License/Permit: A county may require that an owner or operator of a sexually oriented business obtain a license or other permit or renew a license or other permit on a periodic basis for the operation of a sexually oriented business. §243.007.
- FEES: A county may impose fees on applicants for a license or other permit issued under this chapter or for the renewal of the license or other permit. The fees must be based on the cost of processing the applications and investigating the applicants. §243.009.
- INSPECTION. A municipality or county may inspect a sexually oriented business to determine compliance with this chapter and regulations adopted under this chapter by the municipality or county. §243.008.

Public Nuisance

- County Authority to Abate Nuisance – County may abate a nuisance if County has adopted abatement procedures. Tex. Health & Safety Code §343.021.
- County Abatement Procedures – Must be administered by regularly salaried, full-time county employee; written notice to individual at premises and state condition of nuisance; individual may request hearing. § 343.022.
- Assessment of Costs; Lien – County may assess the cost of abating the nuisance, cost of legal notice and administrative fee; County may obtain a lien against the property to secure an assessment. § 343.023.
- County Authority to Enter Premises – May enter any premise at a reasonable time to inspect, investigate or abate a nuisance. § 343.024.

Public Nuisance

- **Illegal Dumping; Discarding Lighter Materials; Criminal Penalties.** A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.
 - A person commits an offense if: (1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and (2) a fire is ignited as a result of the conduct described by Subdivision (1).
- Tex. Health & Safety Code § 365.012.

Public Nuisance

- Regulation of Litter by County – Commissioners Court may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. § 365.017.
- County Regulation of Litter Near Public Highway; Criminal Penalty – Commissioners Court by order may: (1) prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway; (2) order for the removal and disposition of litter; (3) provide for the assessment against a person who owns the property from which litter is removed. § 365.034.

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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