

STATE OF TEXAS

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COUNTY OF FAYETTE

**FAYETTE COUNTY, TEXAS SOLID WASTE DISPOSAL AND PROCESSING
ORDINANCE AND ORDER**

WHEREAS, the Commissioners Court of Fayette County, Texas, has both the responsibility and authority to protect the public health, safety and general welfare by prohibiting municipal and industrial solid waste processing and disposal in the unincorporated areas of Fayette County, except for those areas specifically designated in the Ordinance and Order where municipal or industrial solid waste processing or disposal is not prohibited, pursuant to the authority of the Texas Health and Safety Code Section (§)363.112; and, §364.012; and,

WHEREAS, municipal and industrial solid waste processing or disposal, especially the disposal of municipal or industrial solid waste in landfills, is an activity that has high potential to negatively impact, and is a threat to, the public health, safety, and welfare of any community; and,

WHEREAS, the Fayette County Commissioners Court has determined that the resources of the County are best served, and the public health, safety and general welfare of the citizens of Fayette County and the public at large will be best protected, by designating the areas set forth below as areas in which municipal or industrial solid waste processing or disposal will not be permitted; and,

WHEREAS, the Fayette County Commissioners Court understands that in order to prohibit the disposal of municipal or industrial solid waste processing or disposal in the county, the Commissioners Court must adopt an ordinance specifically designating the areas of the county in which municipal or industrial solid waste disposal or processing is not prohibited; and,

WHEREAS, the Fayette County Commissioners Court has determined that the Carrizo-Wilcox Aquifer and Gulf Coast Aquifer are major aquifers that serve as an important source of groundwater for residents of Fayette County; and

WHEREAS, the Fayette County Commissioners Court has determined that the Carrizo-Wilcox Aquifer and Gulf Coast Aquifer supply water for agricultural irrigation and residential and commercial uses in Fayette County; and

WHEREAS, the disposal of municipal or industrial solid waste in landfills in Fayette County could threaten the water and air quality, attract vermin, and result in the spread of refuse; and

WHEREAS, the location of landfills within Fayette County could hamper economic development within the county and may negatively affect property values in the county; and

WHEREAS, citizens and property owners of Fayette County oppose the location of landfills within the county; and

WHEREAS, the Fayette County Commissioners Court finds that the disposal of municipal or industrial solid waste in the county is a threat to the public health, safety, and welfare; and

WHEREAS, public hearing notices regarding the proposed ordinance were published in a newspaper of general circulation in the county for two consecutive weeks before the commissioners court considered this Ordinance and Order; and

WHEREAS, the public hearing notices included (1) the proposed Ordinance and Order prohibiting solid waste disposal in Fayette County; (2) the time, place, and date that the Commissioners Court of Fayette County was to consider the proposed Ordinance and Order; and (3) notice that an interested citizen of the county may testify and be given the opportunity to be heard at the hearing; and

WHEREAS, a public hearing on this Ordinance and Order was held on February 13, 2020 at 9:00 AM before the Ordinance and Order was considered by the Fayette County Commissioners Court, and any interested citizen of the county was allowed to testify and be given the opportunity to be heard at the hearing; and

WHEREAS, this Order complies with Texas Health and Safety Code Section §363.112 and §364.012, and all applicable sections of said Texas Health and Safety Code;

NOW, THEREFORE, BE IT ORDAINED AND ORDERED BY THE COMMISSIONERS COURT OF FAYETTE COUNTY, TEXAS THAT THE FAYETTE COUNTY SOLID WASTE PROCESSING AND DISPOSAL ORDINANCE AND ORDER IS HEREBY APPROVED AND ADOPTED AS FOLLOWS:

FAYETTE COUNTY SOLID WASTE PROCESSING AND DISPOSAL ORDINANCE AND ORDER

SECTION I: GENERAL PROVISIONS

This Ordinance and Order shall be designated as the Fayette County Solid Waste Processing and Disposal Ordinance and Order. The Fayette County Commissioners Court is authorized to enact this Ordinance and Order under Chapters 363 and 364, Texas Health and Safety Code.

SECTION II: DEFINITIONS

The following words and terms, when used in this Ordinance and Order, shall have the following meanings, unless the context clearly indicates otherwise.

“Affected Area” refers to area of the county in which municipal or industrial solid waste

processing or disposal is prohibited.

“Aquifer” refers to any subsurface geological formation, group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

“Day Care Facility” refers to any real property used for the care of children or the elderly and is registered with the State of Texas as such.

“Executive Manager” refers to the person, in addition to the Fayette County Judge, designated by Fayette County to handle land use issues.

“Facility” refers to any structure or property used for processing, storage, or disposal of industrial or municipal solid waste, or industrial or municipal solid waste handling equipment. Including all contiguous land, structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of industrial or municipal solid waste. The term includes a publicly or privately owned industrial or municipal solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

“Fault” refers to an area that has fractured along the crust of the earth and has two sides that have moved in relation to each other.

“Floodplain” refers to any area in the 100year floodplain that is susceptible to being inundated by water from any source or that is identified by the Federal Emergency Management Agency on flood insurance rate maps, flood boundary and floodway maps under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4129).

“Health Care Facility” refers to any real property that provides medical care or treatment under the direction of a licensed physician to four or more persons unrelated to the proprietor or operator of the facility. Includes public or private hospitals, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and any other facility designated a health care facility by federal law.

“Historic Site” refers to any real property that is included on the National Register of Historic Places, designated as a Texas Historic Landmark, designated as a State Archeological Landmark; is determined to qualify as eligible property under criteria for inclusion on the National Register of Historic Places, as a Recorded Texas Historical Landmark or as a State Archeological Landmark; or has been designated as such by the actions of a county commissioner’s court or city council.

“Individual Residence” refers to any structure intended to serve as the primary residence of, and is inhabited by, a human being. A structure is presumed to be an individual residence if it is designed for human residential habitation.

“Industrial Solid Waste” means solid waste resulting from or incidental to a process of industry, manufacturing, or mining.

“Municipal Solid Waste” means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and other solid waste other than industrial solid waste.

“Neighborhood” refers to any manufactured or mobile home development, apartment, or condominium complex, subdivision, or community having a total of nine or more individual residences or residential units; an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal permitted land use is for private residences; a subdivision for which a plat is recorded in the real property records of the county and a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

“Park” refers to any real property owned or operated or so designated by a unit of federal, state, or local government as such; and any land so designated in an adopted parks plan of a city or county.

“Place of Worship” refers to any enclosed structure that is owned by a religious institution or organization and that is used primarily as a place of regular group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of religious faith.

“Public Surface Drinking Supply” refers to any surface water supply utilized for public drinking water supply.

“Scenic Road” refers to any road or highway in an area containing natural and scenic qualities of at least regional significance designated by federal, state, or local governments.

“School” refers to any private or public real property, attendance at which satisfies the compulsory school attendance requirements of §§25.085 and 25.086, Education Code, as they existed on the effective date of this ordinance.

“Solid Waste” means, subject to the limitations of 42 U.S.C. § 6903 (27) and 40 C.F.R. § 261.4 (a) garbage, rubbish, refuse, sludge, from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from commercial and institutional activities. The term:

(A) does not include:

- i. solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;
- ii. soil, dirt, rock, sand, and any other natural or manmade inert solid waste materials used to fill land if the object of the fill is to make land suitable for the construction of surface improvements; or

- iii. waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by Railroad Commission of Texas under Section 91.101, Natural Resource Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et seq.); and,

(B) does not include hazardous substances

“Processing and or Disposal Facility” refers to any land, structures, appurtenances, and other improvements on land, used for management or disposal of municipal or industrial solid waste, including any incinerator, landfill, transfer station, materials recovery facility, land application, beneficial use, or composting site. This includes both publicly and privately owned facilities.

“Tourist Attraction” refers to any area designated as such by the federal government, state, city council or county commissioners court.

“Water Well” refers to any water well, registered with TWDB/TCEQ, or with the Fayette County Groundwater Conservation District, used to supply or is capable of supplying potable or domestic water.

“Wetlands” refers to a transitional land between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and conforms to the Army Corps of Engineers’ definition.

SECTION III: APPROVED AREAS OF DISPOSAL OR PROCESSING

Areas where municipal or industrial solid waste processing or disposal will be permitted by Fayette County include those areas not identified by Section IV.

SECTION IV: SITING CRITERIA FOR SOLID WASTE PROCESSING AND DISPOSAL MUNICIPAL OR INDUSTRIAL SOLID WASTE FACILITIES

Processing or disposal of municipal or industrial solid waste may only occur if all of the following conditions are met:

- a) facility perimeter is located at least 2,640 feet from a school;
- b) facility perimeter is located at least 2,640 feet from public or private water well;
- c) facility perimeter is located at least 2,640 feet from neighborhoods;
- d) facility perimeter is located at least 2,640 feet from individual residences;
- e) facility perimeter is located at least 2,640 feet from day care facilities;
- f) facility perimeter is located at least 2,640 feet from places of worship;
- g) facility perimeter is located at least 5,280 feet from areas of direct drainage to any public surface drinking supply;
- h) facility perimeter is located at least 2,640 feet from historic site;

- i) facility perimeter is located at least 2,640 feet from health care facilities;
- j) facility perimeter is located at least 5,280 feet from areas of direct drainage to any recharge aquifers;
- k) facility perimeter is located at least 500 feet from the boundary of a 100-year floodplain;
- l) facility perimeter is located at least 2,640 feet from a park;
- m) facility perimeter is located at least 2,640 feet from a tourist attraction;
- n) facility is not visible from a road designated as a scenic road;
- o) facility perimeter is located at least 12,000 feet from the end of any airport runway utilized by piston driven aircraft;
- p) facility perimeter is located at least 15,000 feet from the end of any airport runway utilized by turbojet powered aircraft;
- q) facility perimeter is not located within the boundaries of any wetland area;
- r) facility perimeter is not located within 200 feet of any fault areas that have shifted since the last Ice Age;
- s) facility perimeter is not located within a seismic impact zone;
- t) facility perimeter is not located within any unstable area;
- u) facility does not create conditions which make traffic flow unsafe.

This section does not apply to:

- a) areas within a municipality;
- b) any area that has applied for a permit or received authorization from TCEQ prior to the issuance of this ordinance's effective date;
- c) temporary sites established to handle demolition and debris from a natural disaster; Unless restricted by state or federal law.

SECTION V: VARIANCES

- a) If all requirements of this section are met to the Fayette County Commissioner Court's satisfaction, Fayette County shall issue a variance for the processing or disposal of municipal or industrial solid waste in an area where it is otherwise declared inappropriate and prohibited.
- b) A person seeking a variance shall submit to the Flood Plain Administrator the following information. The amount and detail of the information shall be commensurate with the volume of and potential for adverse impacts from the proposed processing and disposal activities, as determined by the Executive Manager.
 1. Satisfactory evidence of the impracticability of locating or having located a facility in an area identified in Section 3.
 2. Satisfactory assurances that the facility operator will comply with all necessary conditions and employ all necessary measures to protect public health, safety, and welfare by mitigating any adverse impacts on adjacent property, natural resources, and persons who reside, work, or recreate adjacent to the facility; and that facility operator will comply with all necessary conditions and employ all necessary measures to protect public health, safety, and welfare by mitigating any adverse impacts on adjacent property, natural resources, and persons who reside, work, or recreate adjacent to the facility.

3. Satisfactory evidence of the degree to which the proposed facility or expansion will contribute to meeting the solid waste management needs of the Capital Area Planning Council region.
 4. Copies of notices of violations, notices of enforcement, final judicial or administrative orders, agreed orders or settlements, and all other compliance history information, for the facility in question and any other facility in the State of Texas under control of the same operator.
 5. A certification that written notice of the variance request, including a request that written comments be submitted to Fayette County before the public hearing under Subsection (c) below, and copies of all the information required were submitted to TCEQ and the homeowners within one mile of the area that is the subject of the request, and were also made available to the public at locations readily accessible to the owners of all public water wells, schools or day cares, places of worship, health care facilities, parks, historic facilities, and individual residences, and all residents of any neighborhood, that are closer to the area than the distances set out in Section IV.
- c) The Executive Manager shall hold a public hearing on the requested variance after the Executive Manager has determined that the information provided is adequate, but in no event sooner than thirty days before the information was submitted and made available as required. If the variance is not protested either in written comments or at hearing, within twenty days after the hearing the Executive Manager shall issue a written determination of whether to issue the variance under Subsection (d) below. If the variance is protested either in written comments or at the hearing, or if the person requesting the variance submits a written appeal within ten days of an adverse determination by the Executive Manager, at the earliest practicable date the Fayette County Commissioners Court shall determine whether to issue the variance under Subsection (d) below.
- d) Fayette County shall issue a variance order authorizing, and specifically designating as an appropriate land use the processing and disposal of municipal and industrial solid waste in the area if the following requirements are met.
1. The County finds that it is impracticable to process and dispose of the solid waste at a new facility located in an area described in Section III.
 2. Taking into account the information described and any other significant and reliable information obtained by the County, the County finds that there are adequate assurances that the operator will comply with all necessary conditions and employ all necessary measures to protect the public health, safety, and welfare by mitigating any adverse impacts on persons, property, and natural resources adjacent to the facility.
 3. The County finds that the facility will provide an overall public health benefit in light of the solid waste management needs of the Capital Area Planning Council region.

SECTION VI: CIVIL REMEDIES AND PENALTIES

The Commissioners Court of Fayette County, Texas, may bring legal action or cause legal action to be brought to enjoin violations of this Ordinance and Order and seek judgment for any civil penalties.

SECTION VII: SEVERABILITY

If any portion of this Ordinance and Order is deemed to be in violation of the statutes or the constitution of this state or the United States by a court of competent jurisdiction, said portion shall be severed, and the remaining portions of the Ordinance and Order shall remain in full

force and effect.

SECTION IIX: WITHDRAWAL OF PERMIT

In the event that an application for permit or other authorization under Texas Health and Safety Code Chapter 361 which was pending before the Texas Commission of Environmental Quality at the time of the adoption of this Ordinance and Order for an area listed in Section III of this Ordinance and Order is withdrawn by or returned to the applicant, or if a permit is overturned by a final appeal, then such area shall be removed from Section 3 of this Ordinance and Order r and unincorporated areas of Fayette County.

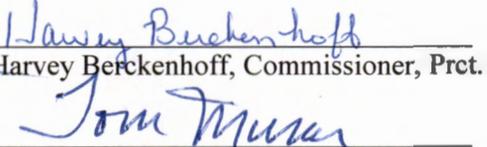
CONSIDERED, ADOPTED, MADE, ORDAINED, ORDERED, SIGNED, AND DONE IN OPEN MEETING AND OPEN COURT by vote of the Fayette County Commissioners Court on this the 13th day of February, 2020, upon motion of Commissioner Berckenhoff, seconded by Commissioner McBroom, with 5 members of the Commissioners Court being present, 5 members of Commissioners Court voting in favor thereof, 0 members voting against, and 0 members abstaining.



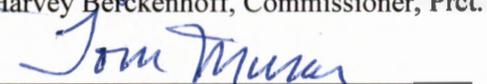
Joseph F. Weber, Fayette County Judge



Jason McBroom, Commissioner, Prct. 1



Harvey Berckenhoff, Commissioner, Prct. 3



Tom Muras, Commissioner, Prct. 4

ATTEST:



Brenda Fietsam, Fayette County Clerk and Clerk of the Commissioners Court



EXHIBIT A