

**BASTROP COUNTY
SOLID WASTE FACILITY SITING ORDINANCE
Ordinance # 2020-01**

WHEREAS, the Commissioners Court of Bastrop County has the responsibility and authority to protect public health, safety, and general welfare by prohibiting solid waste facilities in the unincorporated areas of the county, except those areas designated pursuant to Chapters 363.112 and 364.012 of the Texas Health and Safety Code; and

WHEREAS, solid waste facilities are critical to public health, safety, and welfare in Bastrop County, Texas because they facilitate the collection, handling, transportation, storage, processing, and disposal of the increasing volume of solid waste generated by the growing population of the region; and

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

WHEREAS, locating, constructing, or operating solid waste facilities in unsuitable areas can be detrimental to public health, safety, and welfare because:

- (i) solid waste and the pathogens and other contaminants contained therein can be carried to the air, land, surface water, and ground water and thereby subject nearby residents and the general public to exposure through direct and indirect contact with contaminated soil, water, or air and through disease vectors;
- (ii) traffic, trash, odors, vermin, unsightliness, and other undesirable side effects of solid waste facilities may adversely impact adjacent land and environmental resources thus making such facilities an incompatible use of land in close proximity to lakes and streams, suburban and rural residences and neighborhoods, parks and other recreational areas, historically significant places, airports, and other land features and uses;
- (iii) solid waste facilities that are improperly sited impair the character and quality of life in rural and suburban areas; and

WHEREAS, the region's population growth results in solid waste siting conflicts in unincorporated areas of the County through land use demands competing with suburban and rural residences and neighborhoods, parks, schools, places of worship, and health care facilities; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) approves solid waste facilities based primarily on facility design, operation, or other engineering-based criteria, with limited consideration for land-use impacts;

WHEREAS, the Commissioners Court finds that the presence of solid waste handling or disposal facilities negatively affects nearby property values and can hamper economic development; and

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WHEREAS, the Texas Health & Safety Code authorizes local governments to adopt ordinances or orders governing where certain solid waste facilities may and may not be located within their jurisdiction; and

WHEREAS, it is appropriate for Bastrop County to supplement TCEQ's requirements for solid waste facility siting by adopting reasonable, non-exclusionary, and locally-appropriate criteria for solid waste facilities in unincorporated areas of Bastrop County; and

WHEREAS, the Bastrop County Commissioners Court finds that that this Ordinance, while placing a demand on solid waste facility operators to be more selective in locating new facilities or operating and expanding existing sites, will allow for the continued processing and disposal of solid waste in Bastrop County, as required by law; and

WHEREAS, the Bastrop County Commissioners Court has published notice of a proposed Ordinance, as required by law, and held a public hearing; and

WHEREAS, because solid waste facilities and population growth go hand in hand, the Bastrop County Commissioners Court strongly encourages every citizen of Bastrop County to recycle every object in the waste stream to the greatest extent possible, so that the community is not overly dependent on land disposal as the method of solid waste management; and

WHEREAS, an Ordinance defining and limiting where a solid waste facility may be located within the unincorporated areas of Bastrop County is necessary to protect the general health, safety, and welfare of our citizens and does not impose an unreasonable burden;

NOW, THEREFORE, the Bastrop County Commissioners Court adopts this Siting Ordinance, which is effective immediately.

Section 1. Definitions

Unless the context clearly requires otherwise, in this Ordinance:

- (a) "Affected Entity" means a public water well, a public building, a school or day-care center, place of worship, health care facility, public park or historic place, residence, or neighborhood.
- (b) "Airport" means a takeoff and landing facility for any aircraft, whether for commercial or general aviation use.
- (c) "Chief Executive" means the Bastrop County Judge.
- (d) "Composting" means the processing and decomposition of bio-degradable materials, whether solid or liquid, as defined in Chapter 363.004(12) and 361.003(6) of the Health and Safety Code.

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- (e) "Health care facility" means a hospital, a nursing home, or overnight facility 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.
- (f) "Individual residence" means any structure intended to serve as the residence of, and can actually be inhabited by, a human being. A structure is presumed to be an individual residence if it is designed for human residential habitation and is connected to public water or electrical utilities.
- (g) "Minor facility" means a transfer station, composting, or recycling facility that is designed and approved to process less than 20 tons of solid waste per day (based a monthly average of authorized waste), with onsite overnight storage of 40 cubic yards or less..
- (h) "Major Facility" means any solid waste processing or disposal facility other than a minor facility.
- (i) "Neighborhood" means any site-built, manufactured, or mobile home development, apartment or condominium complex, subdivision, or community having seven or more individual residences or residential units and an overall density of one or more residential units per five acres.
- (j) "Place of worship" means an enclosed structure that is owned by a religious institution or organization and 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 a religious faith.
- (k) "Processing and disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, placing, collection, handling, transportation, storage, or processing of solid waste, including the systematic control of the activities of generation, source separation, treatment, composting, recycling, beneficial use, resource recovery, or land application.
- (l) "Public Park or historic place" means real property owned or operated by a unit of federal, state, or local government that is used for the primary purpose of public congregation or visitation for recreation, or for historical or scientific education.
- (m) "Public water well" means a water well that is owned or operated by a utility subject to regulation by the TCEQ and that presently supplies or is capable of supplying potable water.
- (n) "Recycling facility" means a solid waste processing and disposal facility where paper, plastic, glass, or metal materials that are scrapped, discarded, used, surplus, or obsolete or have served their intended use are collected, separated, or processed and returned to use in the form of raw materials in the production of new products rather than being permanently disposed of at the facility.
- (o) "School or day-care center" means a public or private facility, other than a home school, 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, or a daycare center as defined in §42.002(3), Human Resources Code, as it existed on the effective date of this Ordinance.

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- (p) "Solid waste" means solid, liquid, semi-solid, or contained-gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including rubbish, sludge, garbage, refuse, ashes, street cleanings, compost materials, dead animals, abandoned automobiles, and other discarded material. The term 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; or
 - (ii) soil, dirt, rock, sand, and other natural or manmade inert solid materials used to fill land if the object of the fill is to make the 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 substances or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code;
 - (iv) the small-scale processing of yard and household solid waste materials that does not require a Notice of Intent, Registration, or Permit from the TCEQ; or
 - (v) hazardous waste, including household hazardous waste.
- (q) "Solid waste processing or disposal facility" means land, structures, appurtenances, and other improvements on the land, used for processing, composting, storage or disposal of solid waste, including any incinerator, landfill, transfer station, land application, or composting site. The term includes any publicly or privately owned solid waste facility consisting of multiple processing, storage, or disposal units such as one or more landfills, surface impoundments, or a combination of units.
- (r) "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.
- (s) "Transfer Station" means a fixed facility used solely to facilitate the transfer of solid waste from collection vehicles to long-haul vehicles for transport to another solid waste processing or disposal facility for further or final processing and disposal.
- (t) "Unit" means a discrete area of land or an excavation or a building where solid waste is actually processed or disposed of, that may be smaller than the facility within which it is located, and that does not include land, structures, appurtenances, and other improvements on land that are beyond that area in which solid waste is actually processed or disposed of.

Section 2. Application of Ordinance

- (a) Processing and disposal of solid waste in areas not meeting the requirements of Sections 3 through 6 is declared to be an inappropriate land use and is

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prohibited, unless Bastrop County Commissioners Court issues a variance pursuant to Section 7.

- (b) This Ordinance does not apply to:
- (1) landfills that are classified as Type I, II, III, or IV by TCEQ rules at Title 30 Texas Administrative Code (30 TAC) *Municipal Solid Waste Rules*, Section 330.5, *Classification of Municipal Solid Waste Facilities* as it existed on the effective date of this Ordinance or successor applicable code;
 - (2) an area fully inside the corporate limits of any municipality;
 - (3) an area for which an application for a permit or other authorization under Chapter 361, Health & Safety Code, has been filed with and is pending before the TCEQ prior to the effective date of this Ordinance;
 - (4) an area for which a permit or other authorization under Chapter 361, Health & Safety Code, has been issued by the TCEQ prior to the effective date of this Ordinance;
 - (5) an area to which Chapter 361.090, Health & Safety Code, applies;
 - (6) processing and disposal of bio-solids at a municipally-owned municipal wastewater treatment and bio-solids facility;
 - (7) the on-site processing of waste that does not require a Notice of Intent, Registration, or Permit from the TCEQ; or
 - (8) any activity that otherwise qualifies as solid waste processing and disposal, but constitutes a *de minimis* activity, including collection stations for household hazardous waste or citywide or roadside cleanups; composting and land application of source-separated yard trimmings, clean wood material, vegetative material, manure, and paper; mulching operations; agricultural operations that compost and use agricultural materials onsite; and disposal of litter or other solid waste generated by an individual on that individual's own land for other than commercial purposes not exceeding 2000 pounds per year; a minor change to the pattern or place of processing and disposal within the outermost perimeter of a facility's footprint that does not increase the maximum height, or overall volumetric capacity of the facility, or any similar activity that the Chief Executive determines to be *de minimis*.
- (c) Where this Ordinance requires solid waste to be processed and disposed of at certain distances from an Affected Entity, those distances shall be measured from the outer boundary of each individual facility or unit in which solid waste processing or disposal is to be permitted to the perimeter property line of the owned or controlled Affected Entity that existed on the date the application for the permit or other authorization is filed.
- (d) Unless otherwise required by state or federal law, no department, official, or employee under the supervision of the Bastrop County Commissioners Court may issue a County permit or other approval for a solid waste management or disposal facility that does not meet the requirements of this Ordinance. Any

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permit issued based on false, incorrect, or incomplete information produced in association with the permit application is voidable.

3. Section Siting Criteria for Minor Facilities

Solid waste may be processed and disposed of at a minor facility only if it is located at least 1000 feet from any:

- (a) public water well;
- (b) school or day-care center;
- (c) place of worship;
- (d) health care facility;
- (e) public park or historic site;
- (f) critical habitat of an endangered species; or
- (f) individual residence.

Section 4. Siting Criteria for Major Facilities

Solid waste may be processed and disposed of at a major facility only if it is located:

- (a) at least 2640 feet from any:
 - (1) public water well;
 - (2) school or day-care center;
 - (3) place of worship;
 - (4) health care facility
 - (5) public park and historic facility;
 - (6) critical habitat of an endangered species; or
 - (7) individual residence;
- (b) at least 5280 feet from any neighborhood;
- (c) at least 1000 feet from the recharge zone of the Colorado River Alluvial Aquifer, including associated terrace deposits, as depicted by the Geologic Atlas of Texas, Austin Sheet, University of Texas at Austin Bureau of Economic Geology, 1974 (reprinted 1995);
- (d) at least 1000 feet outside the recharge and contributing zones (outcrop) of any segment or formation of the Carrizo-Wilcox, Queen City, or Sparta aquifers, or any other groundwater aquifer as indicated in the Geologic Atlas of Texas at the Texas Water Development Board as of the date of this Ordinance;
- (e) at least 5280 feet from Lake Bastrop, Stagner's Lake, Shipp Lake, or any public drinking water reservoir in the county; and
- (f) where the Major Facility will take its primary vehicular access from a road that is or will, prior to commencement of operations at the facility, be

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capable of withstanding a minimum of 2,000,000 18-kip single axle loads for a 20-year period assuming 750 trucks per day.

Section 5. Special Siting Criteria: Airports

Putrescible solid waste may be processed or disposed of only in an area greater than:

- (a) 10,560 feet from any airport runway where jet aircraft take off or land; and
- (b) 5,280 feet from the runway of any other airport.

Section 6. Special Siting Criteria: Floodplains

Solid waste may be processed and disposed of only in an area that complies with the requirements of the Bastrop County Floodplain Order.

Section 7. Variances

A variance may be sought from the Bastrop County Commissioners Court for the processing and disposal of solid waste in an area where it is otherwise prohibited under this Siting Order, as follows:

- (a) A person seeking a variance shall submit to the Chief Executive 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 Chief Executive.
 - (1) Satisfactory evidence of the impracticability of locating a facility in an area described in Sections 3 through 6.
 - (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 persons, property and natural resources adjacent to the proposed facility, and persons who reside, work, or recreate in the vicinity of the proposed site.
 - (3) A remediation plan in the event of any release of pollutants or waste from the proposed facility.
 - (4) Satisfactory evidence of the degree to which the proposed facility or expansion will contribute to meet the solid waste management needs of the Capitol Area Council of Governments region.
 - (5) Copies of the notices of violation, notices of enforcement, final judicial or administrative orders, agreed orders or settlements, and all other compliance history information required under Subchapter Q, Chapter 5, Water Code, and the rules adopted thereunder, for the facility in question and any other facility in the State of Texas under the control of the proposed operator, supplemented by copies of any notices of violation, notices of enforcement, citations, indictments, final judicial or administrative orders, agreed orders or

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settlements, and other compliance history information issued or produced after the date of the foregoing Subchapter Q, Chapter 5, Water Code information.

- (6) A certification that written notice of the variance request, including a request that written comments be submitted to Bastrop County within 30 days, was both posted prominently at the site of the proposed facility and mailed to all property owners either within 2640 feet of the site if it is to be a Minor Facility, or within 5280 feet of the site if it is to a Major Facility, and to any homeowner's association of any neighborhood if a Major Facility is proposed within 5280 feet of the neighborhood. Property ownership shall be determined by reference to records of the Bastrop Central Appraisal District.

- (b) Within ninety (90) days after receipt of a request for variance and all documentation required by this section, the Chief Executive shall issue a written recommendation to the Bastrop County Commissioners Court whether to issue the variance under Subsection (c) below and post it on the Bastrop County web site. Persons entitled to mailed notice under Section 7(b)(6) or the person requesting the variance may file a written appeal to the Bastrop County Commissioners Court within thirty (30) days of an adverse recommendation by the Chief Executive. If an appeal is filed, at the earliest practicable date the Commissioners Court shall hold a public hearing and determine whether to issue the variance under Subsection (c) below.

- (c) Bastrop County Commissioners Court may issue a Variance Order authorizing, and specially designating as an appropriate land use, the processing and disposal of solid waste in an area not otherwise approved by this Order based on the application for such variance and the Courts determination of public benefit as defined in this Section, that it is impracticable to process and dispose of the solid waste at a facility located in an area described in Sections 3 through 6 and that the proposed facility will provide an overall public benefit in light of the solid waste management needs of the Capitol Area Planning Council region.

Section 8. Severability

If this Ordinance is declared partially void or unenforceable by an Order of a Court of competent jurisdiction, the remaining parts of this Ordinance shall be construed as remaining in effect to the full extent allowed by that Order.

Section 9. No Implied Determinations

The exemption from this Ordinance of any solid waste processing and disposal facility, or the failure of this Ordinance to prohibit processing and disposal of solid waste in any

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particular area does not constitute the County's determination that either such a facility or the disposal and processing of solid waste in such an area is an appropriate land use. The County reserves the right to participate fully in administrative and legal proceedings regarding such areas and facilities, including but not limited to land use compatibility hearings under Title 30, Texas Administrative Code Chapter 330, *Municipal Solid Waste Rules* as it existed on the effective date of this Ordinance or applicable successor code, and to base its positions in such proceedings on the individual circumstances of the facility or area in question, including but not limited to a position that a permit should be amended or denied on the basis of land use as provided by Chapter 361.089, Health & Safety Code.

Section 10. Civil Remedies and Penalties

Any violation of this Ordinance is subject to a civil penalty of \$10,000 for each violation. Such penalty is to be forfeited to Bastrop County, Texas. Each day a violation continues constitutes separate grounds for recovery.

Section 11. Withdrawal or Return of Application

In the event that a permit or registration or an application for a permit or other authorization under Title 30, Texas Administrative Code Chapter 330 which existed or was pending before the TCEQ at the time of the adoption of this Ordinance is denied, withdrawn by or returned to the applicant, or if such application is overturned upon final appeal, then such application is deemed to not exist at on the effective date of this Ordinance.

APPROVED AND EFFECTIVE this the 8th day of June, 2020, by the Commissioners Court of Bastrop County, Texas.



Paul Pape, Bastrop County Judge

Attest:



Rose Pietsch, Bastrop County Clerk