

Ordinance Prohibiting Solid Waste Disposal in Fannin County

Section 1. General Provisions and Findings

Whereas, the Commissioners Court of Fannin County, Texas, has both the responsibility and authority to protect the public health, safety and general welfare by prohibiting solid waste disposal in the unincorporated areas of Fannin County, except for those areas designated as solid waste disposal sites, pursuant to the authority of the Texas Health and Safety Code § 363.112 and 364.012; and,

Whereas, solid waste disposal, especially the disposal of solid waste in landfills, is an activity that has high potential to negatively impact the health, safety, and welfare of any community; and,

Whereas, the Commissioners Court has considered current state and federal laws and regulations, and makes that the regulations below, including distances from certain locations included in Section 4, below, are reasonable and necessary for complying with those regulations, and to protect the health, safety and welfare of its citizens.

Section 2. Definitions

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

"Affected Area" refers to area of the county in which solid waste 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 a 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.

"Facility" refers to any structure or property that is used for processing, storage, or disposal of solid waste or solid waste handling equipment. Including all contiguous land, structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned 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 100-year 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.

"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, mining, or agricultural operations.

"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 commissioners court or city council.

"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 and an overall density of one residential unit or more per acre; 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.

"Places 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 real private or public 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 man-made inert solid waste 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 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.

"Solid Waste Processing and or Disposal Facility" refers to any land, structures, appurtenances, and other improvements on land, used for management or disposal of 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 well, registered with TWDB/TCEQ used to supply or is capable of supplying potable 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 3. Approved Areas for Disposal in Unincorporated Areas of Fannin County

Fannin County designates the following areas for exemption under these regulations:

1. Any area with a current TCEQ Permit covering activities referenced in these regulations, as of the Effective Date, subject to Section 8., "Withdrawal or Return of Permit," below; and
2. Any area which is the subject of an application for permit or other authorization under Texas Health and Safety Code Chapter 361 covering activities referenced in these regulations, subject to Section 8, "Withdrawal or Return of Permit," below. This exemption applies only to geographic locations and permit parameters included in a pending application(s) as of the Effective Date, and does not exempt the application of these regulations to operations or location not included in such currently-pending application(s).

Section 4. Siting Criteria for Solid Waste Processing and Disposal Facilities

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

- (a) facility perimeter is located at least 2,640 feet from a school;
- (b) facility perimeter is located a least 2,640 feet from public or private water wells;
- (c) facility perimeter is located, at least 10,000 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 cares 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 1,000 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 5,000 feet from the end of any airport runway utilized by piston driven aircraft;
- (p) facility perimeter is located at least 10,000 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 is not in the watershed of the Bois d' Arc Lake Reservoir;
- (v) facility perimeter is located at least 5,000 feet from the shoreline of Bois d' Arc Lake Reservoir;
- (w) facility is not in the watershed of the Lake Ralph Hall Reservoir;
- (x) facility perimeter is located at least 5,000 feet from the shoreline of Lake Ralph Hall Reservoir;
- (y) facility is not in the watershed of the Lake Bonham Reservoir;
- (z) facility perimeter is located at least 5,000 feet from the shoreline of Lake Bonham Reservoir;
- (aa) 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, but only to the extent those areas are exempted under Texas Health and Safety Code § 364.012(e);
- (c) temporary sites established to handle demolition and debris from a natural disaster;

or

(d) Any activities regulated by Texas Health and Safety Code § 361.090, "REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL," but only to the extent those areas are exempted under Texas Health and Safety Code § 364.012(g).

Unless restricted by state or federal law.

Section 5. Civil Remedies and Penalties

(a) Violations of this Ordinance are subject to criminal penalties to the extent allowed by state law and a civil penalty of \$10,000 for each violation. Such penalty is to be forfeited to Fannin County, Texas. Each day that a violation continues constitutes a separate ground for recovery.

(b) The Fannin County Commissioners Court may bring a legal action to enjoin violations of this Ordinance and seek judgment for civil penalties.

Section 6. Severability

If any portion of this ordinance 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 shall remain in full force and effect.


Section 7. Withdrawal or Return of Permit

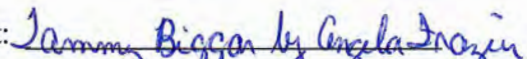
In the event that an application for permit or other authorization under Texas Health and Safety Code Chapter 361, et seq., which was pending before the Texas Commission of Environmental Quality at the time of the adoption of this Order for an area listed in Section 3 of this order is withdrawn by or 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 Order and unincorporated areas of Fannin County.

Section 8. Effective Date

These regulations are effective as of the date of adoption, May 2, 2023.

Passed and approved this 2nd day of May, 2023.


County Judge Newt Cunningham

Attest: 
Fannin County Clerk Tammy Biggar

