

FILED

2/26/2024 3:45PM
Stephanie M. Sanders, County Clerk
Robertson County, Texas
By: Lacy Echner

LEGAL REVIEW COVERSHEET

December 12, 2023

Attached, please review the Ordinance Prohibiting Solid Waste Disposal in Certain Areas of Robertson County, Texas.

Sign for approval and recommendation of signature.

Approval: Robert Yezak
Robert Yezak
Assistant District Attorney

Date: 12-19-23

Comments:

~~See highlighted - 2 typos~~ Updated Ordinance
4.1 Should be RC50

**ORDINANCE PROHIBITING SOLID WASTE DISPOSAL IN CERTAIN AREAS OF
ROBERTSON COUNTY, TEXAS**

Adopted by the Robertson County Commissioners' Court: February 26, 2024.
Effective date: February 26, 2024

SECTION 1. GENERALLY

WHEREAS, the Commissioners Court of Robertson County, Texas (the "Court") has both the responsibility and the authority to take action to protect the public health, safety, and welfare of the citizens of Robertson County, Texas and their property interests; and

WHEREAS, the Court understands the importance of protecting floodplains from landfill development in order to protect ground water and surface water resources from contamination; and

WHEREAS, the court recognizes the long-term impacts of landfills due to their permanent nature; and

WHEREAS, the disposal of municipal or industrial solid waste in landfills in Robertson County could negatively affect water and air quality, attract disease vectors, and result in the spread of refuse and pollutants that may be emitted from the transport and storage of waste; and

WHEREAS, the Court finds that the unrestricted disposal of municipal or industrial solid waste in the county would constitute an unacceptable risk and threat to the public health, safety and welfare, as described more fully in its Factual Findings herein, and that the geographic scope of this threat should be minimized; and

WHEREAS, the Court finds that the adoption of this Ordinance Prohibiting Solid Waste Disposal in Certain Areas of Robertson County, Texas is specifically exempt from the Texas Private Real Property Rights Preservation Act pursuant to provision of Government Code §2007.003(b)(6), §2007.003(b)(11)(C), and §2007.003(b)(13); and

WHEREAS, a majority of the Court has determined that the resources of the County are best served by designating certain areas within Robertson County, Texas as suitable and unsuitable for solid waste disposal sites.

NOW, THEREFORE, the Robertson County Commissioners Court hereby adopts this Ordinance Prohibiting Solid Waste Disposal in Certain Areas of Robertson County, Texas, and resolves that:

- 1.1 **Purpose.** The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of the residents of Robertson County, Texas, to abate public nuisances, to control pollution and to protect the environment through the designation of areas which are suitable and unsuitable for the placement of solid waste disposal sites.
- 1.2 **Authority.** The Commissioners Court is authorized to enact this Ordinance by Chapters 363 and 364 of the Texas Health and Safety Code, including but not limited to as follows:

- (a) Section 363.112 of the Texas Health and Safety Code authorizes a county to prohibit the disposal of municipal or industrial solid waste in certain areas of the county; and
- (b) Section 364.012 of the Texas Health and Safety Code authorizes a county to 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 public health, safety and welfare.

1.3 **Scope.** The Commissioners' Court recognizes that it is not tasked with permitting solid waste facilities and its intent here is not to approve any specific solid waste facility in Robertson County, Texas. Thus, the designation of areas where solid waste facilities are not prohibited should not be interpreted as a finding that the sitting or placement of a solid waste facility in such an area is appropriate, recommended or otherwise compatible with surrounding land uses pursuant to 30 Texas Administrative Code Section 330.61.

1.4 Definitions

As used in the Regulations:

- (a) **"Disposal"** means the discharge, deposit, injection, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or un-containerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner. Texas Health and Safety Code §361.003(7).
- (b) **"Industrial Solid Waste"** means waste resulting from or incidental to a process of industry, or manufacturing, or mining or agricultural operations. Texas Health and Safety Code §361.003(16)
- (c) **"Municipal Solid Waste"** means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste. Texas Health and Safety Code §361.003 (20)
- (d) **"Processing"** means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designated to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted 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 of 1976, as amend (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment. Texas Health and Safety Code §361.003 (25)

- (e) **“Solid Waste”** means 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 community and institutional activities, but does not include: 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; soli, dirt, rock, sand, and other natural or man-made inert solid material used to fill land if the object of the fill is to make land suitable for the construction of surface improvements; 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 the Railroad Commission of Texas under Section 91.101, Natural Resources Code; or post-use polymers or recoverable feedstocks processed through pyrolysis or gasification that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.). Texas Health and Safety Code §361.003 (35)
- (f) **“Solid Waste Facility”** means all contiguous land, including 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. The term does not include a pyrolysis or gasification facility. Texas Health and Safety Code §361.003 (36)
- (g) **“Hazardous Waste”** means solid waste identified or listed as a hazardous waste 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 of 1976, as amended (42 U.S.C. Section 6901 et seq.). Texas Health and Safety Code §361.003 (12)
- (h) **“Extra-territorial Jurisdiction”** means the unincorporated areas designated by the Texas Legislature as having limited municipal governance for the promotion and protection of the general health, safety, and welfare of persons residing adjacent to municipalities. The extent of an extra-territorial jurisdiction is defined by Chapter 42 Texas Local Government Code.
- (i) Unless the context requires a different definition, any other term not defined herein shall have the same meaning as those Definitions in Texas Health and Safety Code §361.003.

SECTION 2. FACTUAL FINDINGS

- 2.1 The Court finds that the disposal of solid waste in general may hamper economic development within the county and may negatively influence property values in the county.**
- 2.2 The Court finds the use of all present technology and science with regard to the location, installation, operation and maintenance of municipal, industrial and hazardous solid waste disposal sites cannot guarantee or ensure that such sites will not contaminate, spoil and pollute areas surrounding and distant to said disposal sites.**
- 2.3 The Court finds that if the substances contained within disposed of solid waste escape into the air or waterways, including subsurface waterways, significant threats to the public health, safety and welfare will exist.**
- 2.4 The Court finds that the nature of the soils of Robertson County is such that it would allow migration of waste and hazardous materials to the contamination of groundwater, which many citizens rely on for drinking water.**
- 2.5 The Court finds that the traffic associated with the disposal of solid waste, which involves receiving and dispatching a large number of heavy trucks hauling waste, constitutes a hazard to the public health and a threat to the public road.**
- 2.6 The Court finds that waste streams that can be received in municipal and non-hazardous industrial waste facilities include chemicals that are toxic, corrosive, flammable and explosive, and that such substances present a threat to the public health, safety and welfare.**
- 2.7 The Court finds that the prohibition of solid waste disposal as provided in the ordinance is necessary to prevent a grave and immediate threat to life and property.**
- 2.8 The Court finds that such a prohibition is a necessary response to a real and substantial threat to public health and safety, that such a prohibition will significantly advance the health and safety of the public and that the prohibition does not impose a greater burden than necessary to protect the public health and safety under the circumstance.**

SECTION 3. DISPOSAL OF SOLID WASTE

- 3.1 **Areas Not Prohibited.** The disposal of solid waste within Robertson County is **NOT PROHIBITED** in the following areas of the County:
- (a) Those areas that have an existing, effective, and valid solid waste permit or other solid waste authorization issued by the Texas Commission on Environmental Quality or, as of the effective date of this Ordinance, had a pending application for municipal solid waste permit before the Texas Commission on Environmental Quality.
- 3.2 **Areas Prohibited.** Except as expressly limited herein, the disposal of municipal solid waste and industrial solid waste within Robertson County, Texas, is **PROHIBITED** in all other areas of the County.
- 3.3 **Limitations on Applicability.** This Ordinance does not apply to:
- (a) Areas inside the corporate limits of any municipality;
 - (b) Areas inside the Extra-Territorial Jurisdiction of a municipality, unless the municipality has entered into an inter-local agreement with Robertson County as provided by the Inter-Local Cooperation Act, Chapter 791, Texas Government Code.
 - (c) Areas for which a pending application for a solid waste permit or other solid waste authorization under Chapter 361, Texas Health & Safety Code, has been filed with the Texas Commission on Environmental Quality or its predecessor agency;
 - (d) Areas for which a solid waste permit or other solid waste authorization under Chapter 361, Texas Health & Safety Code, has been issued by the Texas Commission on Environmental Quality or any predecessor or successor agencies provided that the permit or other authorization is effective and valid on the effective date of this ordinance; or
 - (e) Pursuant to Texas Health & Safety Code §361.090, areas that do not require a permit 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, or mining 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.

SECTION 4. ADMINISTRATION, REMEDIES, AND PENALTIES

- 4.1 Administration and Enforcement. The Robertson County Commissioners Court hereby designates and authorizes any law enforcement agency, to investigate for violations of this Ordinance. Further, the enforcement and administration of this Ordinance shall be the responsibility of the Robertson County Sheriff's Office.
- 4.2 Civil Remedies and Penalties. Any violation of this ordinance is subject to a civil penalty of \$10,000.00 for each violation.
- (a) Such penalty is to be forfeited to Robertson County, Texas.
 - (b) Each day that a violation continues constitutes a separate ground for recovery.
 - (c) The Commissioners Court may bring a legal action to enjoin violations of this ordinance and seek judgement for any civil penalties.
- 4.3 Criminal Penalty. In addition to civil remedies and penalties, disposal of solid waste in violation of this ordinance constitutes a criminal offense.
- (a) An offense under this ordinance is a class C misdemeanor punishable by a fine not to exceed \$500.00.
 - (b) Each day that a violation continues constitutes a separate offense under this ordinance.
- 4.4 Public Nuisance, Illegal Dumping and Littering Prohibited. In addition to the Civil and Criminal remedies and penalties, disposal of solid waste in violation of this ordinance or State Law may constitute:
- (a) Any property owner located within the unincorporated area of the County that commits a public nuisance, illegal dumping, or littering will be subject to the appropriate penalties.
 - (b) An offense causing or creating nuisance conditions as defined by Section 343.011, Texas Health and Safety Code shall be subject to the criminal penalties of Section 343.012, Texas Health and Safety Code.
 - (c) An offense causing or creating illegal dumping or littering as defined by Section 365.011, Texas Health and Safety Code shall be subject to the criminal penalties of Section 365.012 and Sections 365.013, Texas Health and Safety Code.
 - (d) Citations for causing or creating public nuisance conditions, illegal dumping, and littering, may be issued by a peace officer as defined by 1 Texas Code of Criminal Procedures Art. 2.12.

SECTION 5. CONFLICTING LAWS; CUMULATIVE EFFECT

- 5.1 In the case any one or more of the provisions contained in this Ordinance are found to be in conflict with any other provision of local, state, or federal law, the more stringent conflicting rule or law shall control.
- 5.2 The authority under this Ordinance is cumulative of other laws, rules, and regulatory authority that Robertson County may have to regulate municipal or solid waste disposal within its jurisdiction.

SECTION 6. SEVERABILITY

- 6.1 In the case any one or more of the provisions contained in these rules shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of these rules and these rules shall be construed as if the invalid, illegal, or unenforceable provision had never been included.

SECTION 7. PROCEDURAL REQUIREMENTS: NOTICE, HEARING

- 7.1 This Ordinance has been published for a period of two consecutive weeks in a newspaper of general circulation in the County.
- 7.2 The public hearing notices included (1) the proposed this Ordinance Prohibiting Solid Waste Disposal in Certain Areas of Robertson County, Texas; (2) the time, place, and date that the Commissioners Court of Robertson County was to consider the proposed ordinance; and (3) notice that an interested citizen of the county may testify at the hearing.
- 7.3 A public hearing on this ordinance was held on February 26, 2024, before the Ordinance was considered by the Commissioners' Court, and any interested citizen of the county was allowed to testify at the hearing.
- 7.4 The meeting at which this Ordinance was passed was open to the public as required and public notice of the time, place and purpose of said meeting was given as required by the Chapter 551, Texas Government Code.

SECTION 8. EFFECTIVE DATE

- 8.1 This Ordinance shall become effective immediately upon adoption.