

## **Chapter 62. Siting of Solid Waste Facilities<sup>1</sup>**

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### **62.001 Definitions**

Unless the context clearly requires otherwise, in this subchapter:

- (1) "Airport" means an airport that is open to the general public for the landing or takeoff of aircraft with or without a prior request to use the airport.
- (2) "Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.
- (3) "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.
- (4) "Individual residence" means any structure intended to serve as the primary residence of, and is actually 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 water and electrical utilities.
- (5) "Minor facility" means a transfer station or recycling facility.
- (6) "Major Facility" means any solid waste processing and disposal facility other than a minor facility
- (7) "Neighborhood" means 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 average density of one residential unit or more per acre
- (8) "Place of worship" means an enclosed structure that is owned by a religious institution or organization and that is used

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<sup>1</sup> Chapter 62 was adopted by the Travis County Commissioners Court on 7/22/2003, (item 34).

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.

- (9) "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.
- (10) "Public park or historic facility" means real property owned or operated, or a facility officially designated as historic pursuant to express statutory authority, by a unit of federal, state, or local government that is used for the primary purpose of public congregation or visitation for recreation or historical or scientific education.
- (11) "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.
- (12) "Receptor" means a public water well, school or day-care center, place of worship, health care facility, public park or historic facility, individual residence, or neighborhood.
- (13) "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.
- (14) "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 chapter, or a daycare center as defined in §42.002 Human Resources Code, as it existed on the effective date of this chapter.
- (15) "Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleaning, dead animals, abandoned automobiles, and other discarded material. The term does not include

- (A) 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,
  - (B) or 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,
  - (C) waste materials that result from activities associated with the exploration, development or production of oil or as or geothermal resources and other substances or material regulated by the Railroad Commission of Texas under §91.101 Natural Resources Code, or
  - (D) hazardous waste.
- (17) "Solid waste processing and disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. 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.
- (18) "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.
- (19) "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 and disposal facility for further or final processing and disposal.
- (20) "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.

#### **62.002 Application of Ordinance**

- (a) Processing and disposal of solid waste in areas not meeting the requirements of §§62.003 through 62.006 is declared to be an inappropriate land use and is prohibited, unless Travis County issues a variance pursuant to §62.007. This chapter does not apply to:

- (1) landfills that are classified as Type I, II, III, or IV by TCEQ rules at 30 Texas Administration Code 330.41, as it existed on the effective date of this chapter
  - (2) areas 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 chapter;
  - (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 chapter;
  - (5) an area to which §361.090, Health & Safety Code, applies;
  - (6) processing and disposal of biosolids at a municipally-owned municipal wastewater treatment and biosolids facility; or
  - (7) 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 Executive Manager determines to be *de minimis*.
- (c) Where this chapter requires solid waste to be processed and disposed of at certain distances from a receptor, those distances shall be measured from the edge of each individual unit in which solid waste processing and disposal is to be permitted to the edge of the area lying within 100 feet of a receptor that existed the date the application for the permit or other authorization in question is filed. No requirement to process or dispose of solid waste at a certain distance from an individual residence, school or day-care center, place of worship, health care facility, public park or historic facility shall apply if the owner has filed with the Executive Manager and in the Travis County Real Property Records written consent to the processing or disposal of solid waste at a distance closer than that specified by this chapter.
- (d) Unless otherwise required by state or federal law, no department, official, or employee under the supervision of the Travis 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 chapter. Any permit issued based on false, incorrect, or incomplete information produced in association with the permit application is voidable.

#### **62.003 Siting Criteria for Minor Facilities**

Solid waste may be processed and disposed of at a minor facility only if it is located at least 350 feet from all:

- (1) public water wells;
- (2) schools or day-care centers;
- (3) places of worship;
- (4) health care facilities;
- (5) public parks or historic facilities; and
- (6) individual residences.

#### **62.004 Siting Criteria for Major Facilities**

Solid waste may be processed and disposed of at a major facility only if

- (1) it is located at least 1500 feet from all:
  - (A) public water wells;
  - (B) schools or day-care centers;
  - (C) places of worship,
  - (D) health care facilities;
  - (E) public parks and historic facilities; and
  - (F) individual residences; it is located at least 5280 feet from all neighborhoods;
- (2) it is located at least 500 feet from the recharge zone of the Colorado River Alluvial Aquifer, including associated terrace deposits, as depicted by the Geologic Atlas of Texas, Qal and Qt Map Units, Austin Sheet, University of Texas at Austin Bureau of Economic Geology, 1974 (reprinted 1995);
- (3) it is located outside the recharge and contributing zones of the Barton Springs and Northern segments of the Edwards Aquifer, as mapped by TCEQ under 30 TEX. ADMIN. CODE § 213 and housed at TCEQ's Region 11 Office, and the Trinity Aquifer recharge zone as depicted by Aquifers of Texas, Ashworth, J.B. and Hopkins, J., Report No. 345, Texas Water Development Board (1995);

- (4) it is located at least 3000 feet from Lake Travis, Lake Austin, or any other public surface drinking water reservoir; and
- (5) it is located 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 capable of withstanding a minimum of 2,000,000 18-kip single axle loads for a 20-year period assuming 750 trucks per day.

**62.005 Special Siting Criteria: Airports**

Putrescible solid waste may be processed and disposed of only in an area:

- (1) greater than 10,000 feet from the runway ends of any airport at which jet aircraft take off and land; and
- (2) greater than 5000 feet from the runway ends of any other airport.

**62.006 Special Siting Criteria: Floodplains**

Solid waste may be processed and disposed of only in an area that complies with the requirements of §64.071, Travis County Code.

**62.007 Variances**

- (a) If all requirements of this section are met to Travis County's satisfaction, Travis County shall issue a variance for the processing and disposal of solid waste in an area where it is otherwise declared inappropriate and prohibited under §62.002 (a). A person seeking a variance shall submit to the Executive Manager 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 described in §§62.003-62.006.
  - (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.
  - (3) Satisfactory evidence of the degree to which the proposed facility or expansion will contribute to meeting the solid waste management needs of the Capitol Area Planning Council region.

- (4) 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 same operator, supplemented by copies of any notices, of violation, notices of enforcement, citations, indictments, final judicial or administrative orders, agreed orders or settlements, and other compliance history information issued or produced after the date of the foregoing Subchapter Q, Chapter 5 Water Code, information.
  - (5) A certification that written notice of the variance request, including a request that written comments be submitted to Travis County within 30 days, was both posted prominently at the site of the facility and mailed to all property owners either within 350 feet of the facility if it is a minor facility, or within 1500 feet of the facility if it is a major facility and to any homeowners 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 Travis Central Appraisal District.
- (b) Within 30 days after the end of the written comment period, the Executive Manager shall issue a written determination of whether to issue the variance under Subsection (c) below and post it on the Travis County web site. Persons entitled to mailed notice under §62.007(b)(5) or the person requesting the variance may file a written appeal to the Commissioners Court within 30 days of an adverse determination by the Executive Manager. 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 (d) below.
- (d) Travis County shall issue a variance order authorizing, and specially designating as an appropriate land use, the processing and disposal of 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 facility located in an area described in §62.003-.006.
  - (2) Taking into account the information described in §62.007(b)(4) 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, and that the operator has agreed to an adequate remediation plan that the operator shall be obligated to implement in the event of any release of pollutants or waste from the facility.

- (3) The County finds that the facility will provide an overall public benefit in light of the solid waste management needs of the Capitol Area Planning Council region.

#### **62.008 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 degree allowed by that order.

#### **62.009 No Implied Determinations**

The exemption from this chapter of any solid waste processing and disposal facility, or the failure of this chapter to prohibit processing and disposal of solid waste in any 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 §331.60 Texas Administration 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 §361.089, Health & Safety Code.