

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

As Authorized by: Health & Safety Code §§ 363.112 and 364.012, et seq.

ADOPTED _____

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

NOW, THEREFORE, the Orange County Commissioners Court hereby adopts this Ordinance Prohibiting Solid Waste Disposal in Certain Areas of Orange County, Texas.

SECTION 1. GENERALLY

- 1.01 **Purpose.** The purpose of this Ordinance is to preserve and protect the public health, safety, and welfare of the residents of Orange County, Texas through the designation of areas which are suitable and unsuitable for the placement of solid waste disposal sites.
- 1.02 **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 the public health, safety, and welfare.

1.03 **Scope.** The Commissioners Court recognizes that it is not tasked with permitting solid waste facilities, and its intent here is not to approve the siting of any specific solid waste facility in Orange County, Texas. Thus, the designation of areas where solid waste facilities are not prohibited should not be interpreted as a finding that siting 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.

SECTION 2. DEFINITIONS

- 2.01 **“Bird Hazard”** means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.
- 2.02 **“Disposal”** is defined as 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.
- 2.03 **“Industrial Solid Waste”** is defined as waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.
- 2.04 **“Municipal Solid Waste”** is defined as 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.
- 2.05 **“Processing”** means activities including, but not limited to, extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to neutralize hazardous waste; recover energy or material from hazardous waste; or render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.
- 2.06 **“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.
- 2.07 **“Solid Waste Facility”** means all contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. The term includes publicly or privately owned facilities consisting of several processing, storage, or

disposal operation units such as one or more landfills, surface impoundments, or a combination of units.

SECTION 3. FACTUAL FINDINGS

- 3.01 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.
- 3.02 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.
- 3.03 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.
- 3.04 The Court finds that the nature of the soils of Orange 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.
- 3.05 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.
- 3.06 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.
- 3.07 The Court finds that the prohibition of solid waste disposal as provided in this ordinance is necessary to prevent a grave and immediate threat to life and property.
- 3.08 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 4. DISPOSAL OF SOLID WASTE

- 4.01 **Areas Not Prohibited.** The disposal of solid waste within Orange 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; and

- b. Those areas within the tracts of land described in Attachment “A” to this Ordinance, incorporated by reference as though restated verbatim herein.

4.02 **Areas Prohibited.** Except as expressly limited herein, the disposal of municipal solid waste and industrial solid waste within Orange County, Texas, is **PROHIBITED** in all other areas of the County.

4.03 **Limitations on Applicability.** This Ordinance does not apply to:

- a. Areas inside the corporate limits of any municipality;
- b. 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;
- c. 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 of its predecessor or successor agencies provided that the permit or other authorization is effective and valid on the effective date of this ordinance; or
- d. 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 5. ADMINISTRATION, REMEDIES, AND PENALTIES

5.01 **Administration and Enforcement.** The Orange County Commissioners Court hereby designates and authorizes the Orange County Environmental Health & Code Compliance Office, as well as 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 Orange County Environmental Health & Code Compliance Office.

5.02 **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 Orange 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 judgment for any civil penalties.

5.03 **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.

SECTION 6. CONFLICTING LAWS; CUMULATIVE EFFECT

6.01 In case any 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.

6.02 The authority under this Ordinance is cumulative of other laws, rules, and regulatory authority, that Orange County may have to regulate municipal or solid waste disposal within its jurisdiction.

SECTION 7. SEVERABILITY

7.01 In 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 8. PROCEDURAL REQUIREMENTS: TIA, NOTICE, HEARING

8.01 Pursuant to the provisions of Chapter 2007, Government Code a Takings Impact Assessment (TIA) was prepared for this proposed ordinance and found to be an exempt action, and public notice of the TIA and solicitation of public comments were published on August 31, 2022, thirty (30) days prior to the Commissioners Court's proposed action.

8.02 This Ordinance has been published for two consecutive weeks in a newspaper of general circulation in the County.

8.03 The public hearing notices included (1) the proposed ordinance prohibiting solid waste and disposal in Orange County; (2) the time, place, and date that the Commissioners Court of Orange County was to consider the proposed ordinance; and (3) notice that an interested citizen of the county may testify at the hearing.

8.04 A public hearing on this ordinance was held on October 25, 2022, before the ordinance was considered by the Commissioners Court, and any interested citizen of the county was allowed to testify at the hearing.

8.05 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 9. EFFECTIVE DATE

9.01 This ordinance shall become effective immediately upon adoption.

APPROVED and **ADOPTED** by the Orange County Commissioners Court at a duly called and lawfully convened meeting on this the _____ day of _____, 2022, by a vote of _____ ayes and _____ nays.

John H. Gothia, Orange County Judge

Johnny A. Trahan, Commissioner Pct. 1

Theresa Beauchamp, Commissioner Pct. 2

Kirk Roccaforte, Commissioner Pct. 3

Robert L. Viator, Commissioner Pct. 4

Attest: Brandy Robertson, Orange County Clerk or her deputy clerk

ATTACHMENT "A"

