



# Travis County Commissioners Court Agenda Request

**Meeting Date:** September 17, 2019

**AGENDA LANGUAGE:** Consider and take appropriate action regarding amendments to Chapter 312, Travis County Regulations for Siting of Solid Waste Facilities and make revisions as needed.

**Prepared By:** Jon A. White, Natural Resources & Environmental Quality, Division Director

**Phone #:** (512) 854-7212

**Department Head:** Cynthia C. McDonald, County Executive TNR

**Sponsoring Court Member:** Commissioner Jeff Travillion, Precinct One  
Commissioner Brigid Shea, Precinct Two

**Press Inquiries:** Hector Nieto, PIO@traviscountytexas.gov or (512) 854-8740

## **BACKGROUND/SUMMARY OF REQUEST:**

Travis County proposes to amend Chapter 312, Siting of Solid Waste Facilities, to implement the County's authority to specify where in Travis County solid waste can and cannot be disposed of in landfills. Amendments will also include additional definitions along with minor wording and format changes to provide greater clarity in the rule.

The following is an overview of the proposed amendments by section.

### **Definitions 312.001**

1. Major Facility. Amended to include Type I and Type IV landfills as classified by the Texas Commission on Environmental Quality (TCEQ) at Title 30 Texas Administrative Code. Chapter 312 did not previously apply to landfills.
2. Mulch and Related Definitions. Definitions are added for "mulch" and "clean wood" to provide clarity with respect to applicability of Chapter 312 and the identification of *de minimis* activities.
3. Other New Definitions. Definitions for "person" and "TCAD" are added for clarity.
4. Miscellaneous Minor Changes. Other changes to the Definitions section include minor wording changes in existing definitions for readability, minor changes in format to enhance clarity, and renumbering as needed.

### **Applicability of Ordinance 312.002**

1. The current version of Chapter 312, first adopted in 2003, explicitly does not apply to landfills. The proposed amendments provide that Chapter 312 will apply to landfills classified as Type I or Type IV under TCEQ rules at Title 30 Texas Administrative Code.
2. Exceptions to Applicability. Amendments clarify that Chapter 312 will not apply to solid waste facilities for which there is an administratively and technically complete application for specific and discrete units pending at TCEQ. Only discrete units specifically pending before and subsequently authorized by TCEQ qualify for exceptions to applicability of Chapter 312.
3. Mulch. Mulch processing and production are determined to be *de minimis* activities if there is no addition of manure during processing and production.
4. Other Miscellaneous Changes. Other minor changes are made for readability and clarity.

### **Siting Criteria – Various Sections 312.003, 312.004, 312.005, and 312.006**

Minor wording and format changes made for readability.

### **Landfills 312.0061**

This is a new section that applies to Type I and Type IV landfills as defined by TCEQ at title 30 Texas Administrative Code. Under this new section, solid waste processing and disposal in landfills

is prohibited throughout the County except within four areas designated by specific TCAD parcel numbers. These include:

1. A specific site in southeast Travis County where Type IV landfill processing and disposal operations are allowable on a tract where an existing Type IV landfill is currently being operated and on an adjacent tract for which there is a current application pending before TCEQ ("IESI Travis County Landfill").
2. A specific area in southeast Travis County which includes a site currently operating under a permit from TCEQ as a solid waste processing and disposal operation consistent with Type I and Type IV landfills (TDS Landfill).
3. A specific site in northwest Travis County where a Type I or Type IV landfill may be permissible if it satisfies TCEQ requirements (Western Travis County Site).
4. A specific site in eastern Travis County where ongoing processing and disposal of solid waste is authorized by a TCEQ permit issued before the date of the proposed amendment. Other processing and disposal of solid waste is prohibited on this site outside of the currently authorized area of in excess of the currently authorized capacity of the TCEQ permit as of the date of the amendments (WMI Landfill).

### **Variances 312.007**

Variance criteria are amended to include:

1. Only areas where processing and disposal is not prohibited.
2. Notification criteria for variances for landfills.

Other minor changes include changes in wording for readability.

### **STAFF RECOMMENDATIONS:**

Staff recommends adoption of the proposed amendments.

### **ISSUES AND OPPORTUNITIES:**

Solid waste processing and disposal, especially in landfills, is a matter of great interest and concern to the public and has significant implications for environmental quality. Travis County possesses the authority to determine where solid waste landfills may be located and where they may be prohibited under Chapter 364 of the Texas Health and Safety Code (Section 364.012 Prohibiting Solid Waste Disposal in County). When Chapter 312 was originally adopted in in 2003, the County chose not to address landfill siting. The County now has an opportunity to implement its authority in this matter and make associated improvements to the code that have become necessary over the years.

### **FISCAL IMPACT AND SOURCE OF FUNDING:**

N/A

### **ATTACHMENTS/EXHIBITS:**

Legislative Version of Chapter 312 Amendments

### **REQUIRED AUTHORIZATIONS:**

Cynthia C. McDonald	County Executive	TNR	(512) 854-7682
Isabelle Lopez	Financial Manager, Sr.	TNR	(512) 854-7675
Tom Nuckols	Director, Land Use Division	TCAO	(512) 854-9513

### **CC:**

Sydnia Crosbie	TNR Deputy	TNR	(512) 854-7682
Jennifer Hopgood	Assistant County Attorney	TCAO	(512) 854-9513

JAW:CCM:jm

## Chapter 312. Siting of Solid Waste Facilities<sup>1</sup>

### Contents

312.001	Definitions 1
312.002	Application of Ordinance 4
312.003	Siting Criteria for Minor Facilities 6
312.004	Siting Criteria for Major Facilities 6
312.005	Special Siting Criteria: Airports 7
312.006	Special Siting Criteria: Floodplains 7
312.007	Variances 8
312.008	Severability 10
312.009	No Implied Determinations 10

### 312.001 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) “Clean wood” means tree trunks and stumps, branches, brush, wood or wood products that have been cut or shaped, including wet, air-dried, and kiln-dried products. Clean wood does not include wood products that have been painted, pigment-stained, or pressure treated by toxic preservatives including copper chromium arsenate, pentachlorophenol, or creosote or any other toxic preservative. Clean wood does not include vegetation killed by any systemic herbicide.
- (23) “Executive Manager” or [“County Executive”] means the County Executive of the Travis County Transportation and Natural Resources Department.
- (34) “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.
- (45) “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.

---

<sup>1</sup> Chapter 62 was adopted by the Travis County Commissioners Court on 7/22/2003, (item 34). Chapter 62 was renumbered as Chapter 312 on June 1, 2018 (approved May 15, 2018, Item 7). “Executive Manager” updated to “County Executive” throughout May 29, 2018, Item 8. Chapter 312 – amendments added through September 17, 2019.

- (56) "Minor facility" means a transfer station or recycling facility.
- (67) "Major Facility" means any solid waste processing and disposal facility other than a minor facility or landfills classified as Type I or IV by TCEQ rules at Title 30, Texas Administrative Code, as it existed on the effective date of the subsection.
- (8) "Mulch" means ground, coarse, woody yard trimmings, clean wood and other vegetative material. Paper and manure may be added to mulch. "Mulch" also means to treat or cover with mulch.
- (79) "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.
- (10) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.
- (811) "Place of worship" means an 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, and the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.
- (912) "Processing and disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, placing, collecting~~on~~, handling, transporting~~ation~~, storing~~age~~, 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.
- (4013) "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, and that is used for the primary purpose of public congregation or visitation for recreation or historical or scientific education.
- (4414) "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.
- (4215) "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.

(~~43~~16) "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, and are collected, separated, or processed and returned to use in the form of new products or raw materials in the production of new products rather than being permanently disposed of at the recycling facility.

(~~44~~17) "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 Section §25.085 and Section §25.086, Education Code, as the sections existed on the effective date of this chapter, or a daycare center as defined in Section §42.002, Human Resources Code, as the section existed on the effective date of this chapter.

(~~45~~18) "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 the following:

- (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;<sub>i</sub>
- (B) soil, dirt, rock, sand, and other natural or man-made 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;<sub>i</sub>
- (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 Section §91.101, Natural Resources Code;<sub>i</sub> or
- (D) hazardous waste.

(~~47~~19) "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.

- (1820) "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.
- (1921) "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.
- (22) "TCAD" means Travis Central Appraisal District.
- (2023) "Unit" means a discrete area of land or an excavation, or a building, where solid waste is processed or disposed, and that may be smaller than the facility within which the unit is located, and that does not include land, structures, appurtenances, and other improvements on land, that are beyond that discrete area or building, in which solid waste is processed or disposed.

### **312.002 Application of Ordinance**

- (a) Processing and disposal of solid waste in areas not meeting the requirements of County Code sections 312.003 through 312.006~~1~~ is declared to be an inappropriate land use and is prohibited, unless Travis County issues a variance pursuant to section 312.007. 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~~ areas inside the full purpose corporate limits of any municipality;
  - (2) an area for which an complete application for a permit or other authorization under Chapter 361, Health & Safety Code, has been filed with, and that is pending before, ~~the~~ TCEQ prior to the effective date of the applicable provision of this chapter and that is finally approved by TCEQ;
  - (3) 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 the applicable provision of this chapter and remains in effect;
  - (4) an area to which Section 361.090, Health & Safety Code, applies;
  - (5) processing and disposal of biosolids at a municipally-owned municipal wastewater treatment and biosolids facility; or

- (6) any activity that otherwise qualifies as solid waste processing and disposal, but constitutes a *de minimis* activity, including the following:
- (A) collection stations for household hazardous waste or citywide or roadside cleanups;
  - (B) composting and land application of source-separated yard trimmings; clean wood material, vegetative material, manure, and paper;
  - (C) ~~mulching operations~~ Mulch processing and production, both without manure;
  - (D) agricultural operations that compost and use agricultural materials onsite; and disposal of litter or other solid waste generated by an ~~individual person~~ on that individual person's own land, for other than commercial purposes not exceeding 2,000 pounds per year;
  - (E) 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 County Executive determines to be *de minimis*.
- (b) The exception for areas described in section 312.002(a)(3) - (4) includes only those types of processing or disposal and only those discrete units specifically authorized by TCEQ. Other types of processing and disposal and processing, and processing disposal outside or in excess of the capacity of those units, are not excepted from this chapter.
- (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 as of 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~~ a person has filed with the County Executive 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.

### **312.003 Siting Criteria for Minor Facilities**

Solid waste may be processed and disposed of at a minor facility only if ~~it~~ the minor facility 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.

### **312.004 Siting Criteria for Major Facilities**

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

- (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;
- (2) ~~it is located~~ at least 5280 feet from all neighborhoods;
- (3) ~~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);
- (4) ~~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 Texas Administrative 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);



- (5) ~~it is located~~ at least 3,000 feet from Lake Travis, Lake Austin, or any other public surface drinking water reservoir; or
- (6) ~~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.

### **312.005 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 5,000 feet from the runway ends of any other airport.

### **312.006 Special Siting Criteria: Floodplains**

Solid waste may be processed and disposed of only in an area that complies with the requirements of Chapter ~~464.074~~, Travis County Code.

### **312.0061 Landfills**

- (a) This section applies to the processing and disposal of solid waste at Type I through IV landfills as defined by TCEQ regulations in effect on the date of this section.
- (b) Solid waste processing and disposal at Type I through IV landfills is prohibited except as follows:(1) Processing and disposal of Type IV solid waste is not prohibited on the land in TCAD Property ID Numbers 297471, 298867 ("IESI Travis County Landfill");
  - (2) Processing and disposal of Type I through IV solid waste is not prohibited on the land in TCAD Property ID Numbers 352540, 352534, 300573, 351860, 300484, 300492, 300553, 300557, 300568, 300588, 300606, 301083, 301490, 301491, 351835, 351839, 351852, 351854, 351855, 351856, 351858, 351863, 351864, 351868, 351869, 351870, 351873, 352531, 352532, 352536, 352537, 352538, 352539, 352562, 374038, 382570, 382571, 726401, 352559, 352541 ("TDS Landfill");
  - (3) Processing and disposal of Type I through IV solid waste is not prohibited on the land in TCAD Property ID Number 840515 ("West Travis County Site"); and

(4) The types of processing and disposal of Type I through IV solid waste is not prohibited in units authorized in a permit issued before the effective date of this section on the land in TCAD Property ID Numbers 236645 and 711099. Other types of processing and disposal and processing and disposal outside or in excess of the capacity of those units are prohibited there. ("WMI Landfill)

(c) No other TCAD parcels may be used for solid waste processing and disposal.

(d) References to TCAD Property ID Numbers means those in existence on the effective date of this section.

### **312.007 Variances**

- (a) If all requirements of this section are met to Travis County's satisfaction, Travis County ~~may~~ shall issue a variance for the processing and disposal of solid waste in an area where it is otherwise declared inappropriate and prohibited under ~~Section~~ Section 312.002(a). A person seeking a variance shall submit to the County Executive the following information: ~~t~~ 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 County Executive:;
- (1) Satisfactory evidence of the impracticability of locating or having located a facility in an area where the processing and disposal of solid waste is not prohibited by this chapter described in sections 312.003-312.006;
  - (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;: and

- (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, or a Type I through IV landfill as defined by TCEQ regulations in effect on the effective date of this section, and to any homeowners association of any neighborhood if a major facility or Type I through IV landfill is proposed within 5,280 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 County Executive 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 Section §312.007(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 County 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 (d) below.
- (d) Travis County ~~may 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 County finds that the following requirements are met;:
  - (1) ~~The County find that~~ it is impracticable to process and dispose of the solid waste at a facility located in an area where the processing and disposal of solid waste is not prohibited by this chapter described in 312.003-312.006;:-
  - (2) Taking into account the information described in section 312.007(b)(a)(1) through (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; and

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

### **312.008 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.

### **312.009 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~~ 30 Texas Administration Code Section 331.60, 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 Section 361.089, Health & Safety Code.