

**TAKINGS IMPACT ASSESSMENT**

Proposed Action: The County proposes to adopt an Ordinance designating a solid waste disposal area and prohibiting solid waste disposal in all other areas of Tyler County, and providing civil and criminal penalties.

County Department: Commissioners Court

Contact Person: County Judge Jacques Blanchette Phone: (409) 283-2141

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**I. Stated Purpose**

The purpose of the proposed action is to protect citizens and their property in the affected area, as well as the area's natural resources, from the potential harm which can result from solid waste disposal operations. The county has sufficient waste disposal capacity, and it is the judgment of the Commissioners Court that additional waste disposal in the county would present an unnecessary threat of harm to citizens, property and natural resources.

**II. The Nature of the Action**

A takings impact assessment is required only for two types of governmental of actions. State whether the proposed action is one of the following:

- 1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure; or
- 2) an action that imposes a physical invasion or requires a dedication of private real property;

Yes. The proposed course of action is to adopt an ordinance.

**III. Potential Effect on Private Property**

- 1. Does the county action require a physical invasion, occupation or dedication of real property?

Yes \_\_\_\_\_ No \_\_x\_\_

- 2. Does the county action limit or restrict a real property right, even partially or temporarily?

Yes \_\_\_\_\_ No   x  

The proposed action does prohibit the use of property for solid waste disposal. However, under Texas law there is no right to dispose of solid waste without a permit. There are no property owners affected by the proposed ordinance who have a permit to dispose of solid waste, and there are no property owners affected by the proposed ordinance who have an administratively complete application for a permit to dispose of solid waste. Because no affected owners have a permit to dispose of solid waste, and because a property owner has no right to dispose of waste without a permit, there is no existing property right limited or restricted by the proposed action. Therefore, the proposed action does not appear to be an action covered under the Texas Real Property Rights Preservation Act.

#### **IV. Exemptions**

After consideration, the Commissioners Court finds that the proposed action is:

1. an action taken to prohibit or restrict a public or private nuisance;
2. an action taken to prevent a grave and immediate threat to life or property;
3. an action a) taken in response to a real and substantial threat to public health and safety, b) designed to significantly advance the health and safety purpose, and c) one that does not impose a greater burden than necessary to achieve the health and safety purpose; and
4. an action taken pursuant to the county's statutory authority to prevent waste or protect rights of owners of interest in groundwater.

Based upon the above findings, the proposed action is exempt from the provisions of the Texas Real Property Rights Preservation Act.

#### **IV. Analysis of Purpose, Burdens and Benefits**

- A. Referring to the purpose of the county action in Section I above, state how

the action achieves or advances its purpose.

As stated, the purpose of the proposed action is to protect citizens, property and natural resources in the affected area from the dangers attendant to solid waste disposal operations. This purpose is furthered by preventing solid waste disposal in the affected area.

B. Describe the benefits to society resulting from the county action.

The benefits include 1) reducing the threat of contamination of groundwater and other water supplies; 2) reduce the threat of harm to persons and property which could result from solid waste disposal operations; 3) prevent the unnecessary reduction of property values in the county; 4) provides for orderly and appropriate development; and 5: protects neighboring landowners right to full use and enjoyment of their property.

C. Discussion of the burdens that may be imposed on private real property by the county action.

After consideration, the Commissioners Court finds as follows:

1. The proposed action will not result indirectly or directly in a permanent or temporary physical occupation of private real property;
2. The proposed action does not require a property owner to dedicate property or grant an easement;
3. The proposed action does not deprive the owner of all economically viable use of his property;
4. The proposed action does not deny any owner the right to possess his real property, enjoy it, exclude others from it or sell it; and
5. It is unclear whether the proposed action will serve to reduce the market value of the owner's property. It appears, in light of the fact that no owner affected by the ordinance presently has a right to engage in solid waste disposal, that there will be no reduction in the market value of any owner's property.

Additional discussion of potential burdens:

The proposed action does not restrict any property owner's right to use and enjoy his property. The proposed action does not, and is not intended to, prohibit development of property. Under this ordinance, property may be put to any economically beneficial use other than solid waste disposal. Presently, there are no landowners with a right to dispose of waste on their property who will be prevented from doing so by this ordinance. Therefore, no existing property rights will be impinged and market value should not be affected.

**V. Alternatives**

- A. Describe alternative actions that could accomplish the same purpose as the proposed action.

After consideration, the Commissioners Court finds that there are no alternatives which would effectively accomplish the same purpose.

- B. Would these alternatives impose a lesser burden on the property which is the subject of the proposed action?

This section is inapplicable in light of the response to V(A.).

**VI. Potential Impact on Value**

- A. Will the county action reduce the market value of any parcel of private real property by 25% or more?

Yes \_\_\_\_\_ No   x  

Since no owner affected by the ordinance presently has a right to engage in solid waste disposal, there will be no reduction in the market value of any owner's property. In addition, the ordinance does not prevent any use of the property other than solid waste disposal. The Commissioners Court finds that there are alternative uses available for the property.

**VII. Conclusion:** \_\_\_\_\_ Not a Covered Action

No Impact on Private Real Property  
 Proposed Action is Exempt

Proposed Action Fully Assessed for Potential  
Impact on Private Property.

Read and adopted this \_\_\_\_ day of \_\_\_\_\_, 2019, by a vote of \_\_\_\_ ayes and  
\_\_\_\_\_ nays.

\_\_\_\_\_  
County Judge

ATTEST:

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County Clerk