

COLORADO COUNTY COMMISSIONERS COURT
NOTICE OF OPEN MEETING

DATE OF MEETING: May 17, 2019 – 11:30 A.M.
BUILDING: Colorado County Courthouse, County Courtroom
STREET LOCATION: 400 Spring Street
CITY OF LOCATION: Columbus, Texas

Pursuant to the authority granted under Government Code, Chapter 551, the Commissioners Court may convene in a closed meeting to discuss, deliberate and take action on any of the agenda items listed below. Immediately before any closed session, the specific section or sections of Government Code, Chapter 551, which provides statutory authority, will be announced.

On this the 17th day May 2019, the Commissioners Court of Colorado County, Texas met in Special Session at 11:30 A.M., in their regular meeting place at the Colorado County Courthouse, County Courtroom, 400 Spring Street, in the City of Columbus, Texas.

The Following Members were present, to wit:

Honorable Ty Prause	County Judge
Honorable Doug Wessels	Commissioner Precinct #1
Honorable Darrell Kubesch	Commissioner Precinct #2
Honorable Tommy Hahn	Commissioner Precinct #3
Honorable Darrell Gertson	Commissioner Precinct #4

Kimberly Menke, County Clerk was unable to attend meeting.

County Judge Ty Prause called the meeting to order at 11:30 A.M., followed by

Pledges to the United States Flag and Texas Flag.

DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:

__1. Agenda as posted.

Motion by Commissioner Wessels to approve Agenda; seconded by Commissioner Kubesch; 5 ayes 0 nays; motion carried, it was so ordered.

(See Attachment)

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

**COLORADO COUNTY COMMISSIONERS COURT
NOTICE OF OPEN MEETING**

FILED FOR RECORD
COLORADO COUNTY, TX

2019 MAY 14 AM 11:12

KIMBERLY MENKE
COUNTY CLERK

N.D.

DATE OF MEETING: May 17, 2019 – 11:30 A.M.
BUILDING: Colorado County Courthouse, County Courtroom
STREET LOCATION: 400 Spring Street
CITY OF LOCATION: Columbus, Texas

Pursuant to the authority granted under Government Code, Chapter 551, the Commissioners Court may convene in a closed meeting to discuss, deliberate and take action on any of the agenda items listed below. Immediately before any closed session, the specific section or sections of Government Code, Chapter 551, which provides statutory authority, will be announced.

DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:

1. Agenda as posted.
2. Authorization to publish Notice of Meeting and Notice of Public Hearing regarding proposed Ordinance Restricting Solid Waste Processing and Disposal in Colorado County pursuant to Section 363.112 and Section 364.012 of the Texas Health and Safety Code.
3. Adjourn.

The Colorado County Courthouse is wheelchair accessible and accessible parking spaces are available

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

- __2.** Authorization to publish Notice of Meeting and Notice of Public Hearing regarding proposed Ordinance Restricting Solid Waste Processing and Disposal in Colorado County pursuant to Section 363.112 and Section 364.012 of the Texas Health and Safety Code.

Judge Prause read Public Notice to the Court.

Motion by Judge Prause to approve the authorization to publish Notice of Meeting and Notice of Public Hearing regarding proposed Ordinance Restricting Solid Waste Processing and Disposal in Colorado County pursuant to Section 363.112 and Section 364.012 of the Texas Health and Safety Code; seconded by Commissioner Gertson; 5 ayes 0 nays; motion carried, it was so ordered.

(See Attachment)

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

PUBLIC NOTICE

**PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED
ORDINANCE RESTRICTING SOLID WASTE PROCESSING AND DISPOSAL IN
COLORADO COUNTY**

Pursuant to the provisions of Sections 363.112 and 364.012, Texas Health and Safety Code, notice is hereby given that the Commissioners Court of Colorado County will conduct a public hearing on June 6, 2019, at 8:15 a.m., in the County Courtroom, Colorado County Courthouse, 400 Spring Street, Columbus, Texas 78934 to obtain public comments from citizens and interested persons on a proposed ordinance restricting solid waste processing and disposal in Colorado County, Texas. Any interested citizen of the county may testify at the public hearing.

Upon conclusion of the June 6, 2019 public hearing, the Colorado County Commissioners Court may consider action on the adoption of the following ordinance:

[ATTACH ORDINANCE]

TO BE PUBLISHED IN THE MAY 22/23 AND 29/30 ISSUES OF THE BANNER PRESS, COLORADO COUNTY CITIZEN, EAGLE LAKE HEADLIGHT & WEIMAR MERCURY.

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

STATE OF TEXAS §
 §
COUNTY OF COLORADO §

**ORDINANCE RESTRICTING SOLID WASTE PROCESSING AND DISPOSAL
IN COLORADO COUNTY**

ADOPTED: _____

WHEREAS, the Commissioners Court of Colorado County, Texas has the responsibility and the authority to act to protect the public health, safety and welfare of the citizens of Colorado County;

WHEREAS, the Commissioners Court of Colorado County, Texas has determined that the Chicot Aquifer is a major regional aquifer underlying Colorado County that serves as an important source of groundwater for residents of Colorado County;

WHEREAS, the Commissioners Court of Colorado County recognizes that fresh water from the Lissie Formation feeds the Chicot Aquifer and contamination of the Lissie Formation can occur from contaminant releases from solid waste landfills constructed in the overlying soils known as the Beaumont Formation;

WHEREAS, groundwaters from the Lissie Formation and the Chicot Aquifer are used by the citizens of Colorado County for residential consumption, commercial use, agricultural irrigation and livestock consumption;

WHEREAS, such groundwaters are also hydrologically connected with surface creeks and streams in Colorado County which act as tributaries to the Colorado River, which itself is used for agricultural irrigation and livestock consumption, residential consumption, commercial use and recreational purposes;

WHEREAS, solid waste landfills do not permanently contain waste contaminants within their confines;

WHEREAS, processing of solid waste and disposal of solid waste in landfills in Colorado County could threaten surface water and groundwater quality as well as air quality and other environmental receptors in the vicinity of such facilities;

WHEREAS, the location of solid waste landfills and processing facilities within Colorado County could hamper economic development within the county and may negatively affect property values in the vicinity of such facilities;

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

WHEREAS, the transportation of solid waste creates transportation-related risks related to heavy truck traffic and the potential spillage of solid waste due to vehicular accidents on public roadways within Colorado County;

WHEREAS, Colorado County's emergency response and hospital resources are limited and would be overextended by the proliferation of solid waste landfills and processing facilities within the county;

WHEREAS, for the foregoing reasons, the Commissioners Court of Colorado County finds that the disposal and processing of solid waste in the county is a substantial threat to the public health, safety and welfare and that the level and geographic scope of this threat should be minimized in order to significantly advance public health, safety and welfare consistent with serving the solid waste management needs of Colorado County;

WHEREAS, the Commissioners Court of Colorado County has determined that the designation of property in Section III of this Ordinance will allow Colorado County to better protect the public health, safety and welfare by minimizing the area where contamination may be released to surrounding properties, surface waters and underlying groundwaters as well as by allowing the county to focus its limited enforcement and emergency response resources providing protection to the public health, safety and welfare;

WHEREAS, the designation of any area within Section III of this Ordinance should not be interpreted as a finding that a solid waste facility in such area is necessarily appropriate, recommended, or otherwise compatible with the maintenance of health, safety and welfare within Colorado County;

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 2007, the Commissioners Court of Colorado County has determined that this ordinance is being adopted (1) to prevent nuisances; (2) to prevent waste and protect interests in groundwater; and (3) in response to a real and substantial threat to public health and safety, is designed to significantly advance the health and safety purpose of better protecting the citizens of Colorado County, and does not impose a greater burden than is necessary to achieve that purpose;

WHEREAS, the public hearing notices regarding this proposed Ordinance were published in a newspaper of general circulation in Colorado County for two (2) consecutive weeks before the Commissioners Court considered this Ordinance;

WHEREAS, the public hearing notices included (i) the proposed Ordinance restricting solid waste disposal in Colorado County; (ii) the time, place and date that the Commissioners Court of Colorado County was to consider the proposed Ordinance; and (iii) notice that interested citizens of Colorado County could testify at the public hearing;

WHEREAS, a public hearing on this Ordinance was held on _____, 2019 before the Ordinance was considered by the Commissioners Court, and all interested citizens of Colorado County were afforded the opportunity to testify at the hearing; and

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

WHEREAS, the Commissioners Court of Colorado County acted on this Ordinance on _____, 2019 at a public meeting noticed and held in accordance with the requirements of the Texas Open Meetings Act as well as all other requirements of law:

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS COURT OF COLORADO COUNTY, TEXAS:

**COLORADO COUNTY SOLID WASTE PROCESSING AND DISPOSAL
ORDINANCE**

**I.
GENERAL PROVISIONS**

This Ordinance shall be designated as the Colorado County Solid Waste Processing and Disposal Ordinance. The Commissioners Court of Colorado County is authorized to enact this Ordinance under Chapters 363 and 364 of the Texas Health & Safety Code.

**II.
DEFINITIONS**

As used in this Ordinance, the following terms are defined as follows:

- a. Disposal:** the discharge, deposit, injection, dumping, spilling, leaking, or placing of solid waste, whether containerized or uncontainerized, into or on the land or water so that the solid 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.
- b. Industrial Solid Waste:** solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operation.
- c. Municipal Solid Waste:** 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.
- d. Processing:** 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 solid waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.
- e. Solid Waste:** 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 not

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

including material excluded from the term "solid waste" at Texas Health & Safety Code §361.003.

f. Solid Waste Facility or Facility: 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.

g. Hazardous Waste: solid waste identified or listed as a hazardous waste by the Administrator of the U. S. Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 USC Section 6901 et seq.).

Other terms used in this Ordinance shall be assigned the meanings set forth in the Texas Solid Waste Disposal Act, Texas Health & Safety Code Chapter 361 or, if not otherwise defined herein, according to their ordinary meaning.

**III.
AREAS NOT PROHIBITED**

The processing or disposal of solid waste or the operation of a solid waste facility is not prohibited in the following areas within Colorado County, Texas: One or more areas for which a variance has been granted pursuant to Section V below.

**IV.
PROHIBITED AREAS**

The processing or disposal of solid waste or the operation of a solid waste facility is prohibited in all portions of Colorado County, Texas not included in Section III above.

**V.
VARIANCE PROCEDURES**

(a) In spite of the prohibition contained in Section IV of this Ordinance above, Colorado County may grant a variance to a proposed owner or operator for the processing or disposal of solid waste or the operation of a solid waste facility in an area where such activity is prohibited, provided such proposed owner or operator submits in writing the information set forth below, and the Commissioners Court of Colorado County determines that the granting of such variance request will not impact the environment or otherwise endanger the public health, safety and welfare. The amount and detail of information shall be related to the volume of solid waste involved and the potential for adverse impacts to public health, safety, or welfare or the environment, as determined by the Commissioners Court of Colorado County.

(b) The information to be supplied pursuant to subsection (a) above shall include, but is not limited to, the following:

- (i) satisfactory evidence of the impracticability of locating the proposed facility in an area set forth in Section III above;
- (ii) satisfactory assurances that the facility owner and operator will comply with all necessary conditions and employ all measures to protect public health, safety and

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

welfare by mitigating any adverse impacts on nearby or adjacent property, natural resources and persons who reside, work or recreate adjacent or nearby to the proposed facility;

- (iii) satisfactory evidence of the degree to which the proposed facility will contribute to meeting the solid waste management needs of Colorado County;
 - (iv) copies of all notices of violations, notices of enforcement, final judicial or administrative orders, agreed orders or settlements, and all other compliance history information required under Subchapter Q, Chapter 5, Texas Water Code, and the rules adopted thereunder, for the facility and any other facility in the State of Texas under the control of the same owner or operator, or any other person or individual affiliated with such owner or operator, supplemented by copies of all 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; and
 - (v) a certification that written notice of the variance request, including a request that written comments be submitted to Colorado County within thirty (30) days, was both posted prominently at the site of the proposed facility and mailed to all property owners within 1500 feet of the proposed facility and to any homeowner's association of any neighborhood if the facility is proposed to be within 5,280 feet of the neighborhood. Property ownership shall be determined by reference to records of the Colorado County Appraisal District, and distances shall be measured from the perimeter of the proposed solid waste facility to the legal boundary of any potentially affected property.
- (c) Within thirty (30) days after the end of the written comment period, the County Judge shall issue a written determination of whether to issue the variance under this Section V and post it on the Colorado County website. Persons entitled to mailed notice under this Section or any other affected person with a justiciable interest in the proposed facility may file a written appeal to the Commissioners Court within thirty (30) days of an adverse determination by the County Judge. If an appeal is filed, the Commissioners Court shall hold a public hearing at the earliest practicable date and determine whether to issue the variance under this Section.
- (d) Colorado 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:
- (i) the County finds that it is impracticable to process and dispose of the solid waste at a facility located in the area described in Section III above;
 - (ii) taking into account the information provided pursuant to this Section and any other significant and reliable information obtained by the County, the County finds that there are adequate assurances that the owner and 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 nearby or adjacent to the proposed facility, and that the owner and operator have agreed to an adequate remediation plan that the owner and operator

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

shall be obligated to implement, and financially capable of implementing, in the event of any release of pollutants or waste from the facility; and

- (iii) the County finds that the facility will provide an overall public benefit in light of the solid waste management needs of Colorado County.

(e) The County Judge or the Commissioners Court may impose appropriate terms and conditions in any variance granted under this Section in order to protect public health, safety and welfare and protect the environment. Such terms and conditions may include requirements for the provision of emergency response resources or funding and protection or improvement of public roadways.

**VI.
ENFORCEMENT**

Violations of this Colorado County Solid Waste Processing and Disposal Ordinance are subject to civil and criminal penalties to the fullest extent allowed by state law. Each day a violation occurs is a separate offense and constitutes a separate ground for recovery.

**VII.
NON-APPLICABILITY**

Pursuant to Texas Health & Safety Code Section 364.012, this Ordinance does not apply to any pending application on file with the Texas Commission on Environmental Quality or any existing authorized solid waste landfill or processing facility, but shall apply to any change in classification of any existing authorized solid waste facility from municipal solid waste to industrial or hazardous solid waste or from industrial nonhazardous waste to hazardous waste.

**VIII.
WITHDRAWAL OR RETURN OF PERMIT**

In the event an application or other authorization under the Texas Health & Safety Code Chapter 361 that was pending before the Texas Commission on Environmental Quality at the time of the adoption of this Ordinance for an area listed in Section III of this Ordinance is withdrawn by or returned to the applicant, or a permit is overturned by final appeal, then such area shall be removed from Section III of this Ordinance.

**IX.
SEVERABILITY AND CONFLICTING LAWS**

If any portion of this Ordinance is declared partially void or unenforceable by order of a Court of competent jurisdiction, said portion shall be severed, and the remaining portions of this Ordinance shall be construed as remaining in effect to the full extent allowed by that order. If any or all of this Ordinance is found to be in conflict with any other provisions of local, state or federal law, the more stringent conflicting rule or law shall control.

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

ORDAINED, ADOPTED AND ORDERED on this the ____ day of _____, 2019
by a vote of ____ Ayes and ____ Nays.

Ty Prause, County Judge

**MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019**

__3. Adjourn.

Motion by Judge Prause to adjourn; seconded by Commissioner Hahn;

5 ayes 0 nays; motion carried, it was so ordered.

An audio recording of this meeting of May 17, 2019 is available in the County

Clerk's Office.

MINUTES OF THE COLORADO COUNTY
COMMISSIONER'S COURT SPECIAL MEETING
MAY 17, 2019

Minutes were taken and prepared by Kimberly Menke, County Clerk on the 17th day of May, 2019 with Judge Ty Prause presiding.

I, KIMBERLY MENKE, COUNTY CLERK AND EX-OFFICIO OF THE COMMISSIONERS COURT IN AND FOR COLORADO COUNTY, TEXAS do hereby certify that the foregoing is a true and correct copy of the minutes of the Commissioner Court in session on the 17th day of May, 2019.

Given under my hand and official seal of office this date May 17, 2019.



