



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

October 12, 1989

Honorable Ralph R. Wallace, III  
Chairman  
House Cultural & Historical Committee  
P. O. Box 2910, Capitol Station  
Austin, Texas 78769

LO-89-84

Dear Representative Wallace:

You ask about the validity of a Houston city ordinance requiring that all garbage to be picked up be placed in plastic bags. Specifically you ask whether the ordinance violates section 361.022 of the Texas Health and Safety Code.

Section 361.022 is part of the Solid Waste Disposal Act.<sup>1</sup> The act gives several state agencies responsibility for management of different categories of solid waste. Under section 361.011 the Department of Health is responsible for management of "municipal solid waste, excluding hazardous municipal waste." Acts 1989, 71st Leg., ch. 678, § 1, at 2620. Section 361.003(15) of the act defines "municipal solid waste" as follows:

'Municipal solid waste' means solid waste resulting from or incidental to municipal, community, commercial, institution, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

Id. at 2617. The act requires the department to develop a state plan for municipal solid waste, excluding hazardous municipal waste. Id. at 2620, 2622. In developing that

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1. The Solid Waste Disposal Act is now codified as chapter 361 of the Health and Safety Code. Acts 1989, 71st Leg., ch. 678, § 1, at 2612. The act was previously codified as article 4477-7, V.T.C.S.

plan, the department is required to consider "the preference of municipal solid waste management methods under section 361.022. Id. at 2623 Section 361.022 provides:

(a) To protect the public health and environment, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

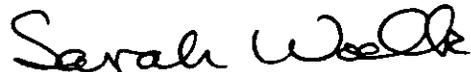
(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

- (1) minimization of waste production;
- (2) reuse or recycling of waste;
- (3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or
- (4) land disposal.

Id.

In short, the factors set out in section 361.022 are factors the Department of Health must take into account when it develops a state plan for disposal of "municipal solid waste." Section 361.022 does not have direct application to a city ordinance regarding garbage pick-up.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section  
Opinion Committee