



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2023

The Honorable Rene P. Montalvo
Starr County Attorney
401 North Britton Avenue, #405
Rio Grande City, Texas 78582

Opinion No. KP-0438

Re: Authority of a general-law city to offer trash collection services outside its geographic boundaries (RQ-0482-KP)

Dear Mr. Montalvo:

You ask whether the City of Escobares (“City”), a general-law municipality, has authority to offer trash collection services outside its “geographic boundaries.”¹ You do not specify what you mean by geographic boundaries, but the context of your Request Letter suggests you seek to understand whether the City may offer solid waste disposal service² in its extraterritorial jurisdiction (“ETJ”), an unincorporated land area that is contiguous to a municipality’s corporate boundary. *See* Request Letter at 1 (citing sources related to the ETJ); TEX. LOC. GOV’T CODE § 42.021. Thus, we limit this opinion to consideration of that question.

As a general-law municipality, the City possesses only those powers expressly conferred upon it by state law or reasonably necessary to make effective the powers expressly granted. *See Builder Recovery Servs., LLC v. Town of Westlake*, 650 S.W.3d 499, 503 (Tex. 2022); *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 530, 536 (Tex. 2016) (examining a general-law municipality’s extraterritorial authority).

¹*See* Letter from Rene P. Montalvo, Starr Cnty. Att’y, to Off. of the Att’y Gen., Op. Comm. at 1–2 (Oct. 14, 2022), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2022/RQ0482KP.pdf> (“Request Letter”); TML City Officials Directory at <https://directory.tml.org/profile/city/28576> (providing the City is a type A general-law municipality).

²We refer to solid waste disposal service, rather than trash collection service, because it is consistent with the statutory terminology used to describe this service. *See generally* TEX. HEALTH & SAFETY CODE §§ 363.001–.145.

Chapter 363 of the Health and Safety Code, titled “Municipal Solid Waste,” is one of the primary sources of authority for municipal solid waste regulation.³ *See* TEX. HEALTH & SAFETY CODE §§ 363.001–.145. In enacting chapter 363, the Legislature declared that encouraging cooperation “among federal, state, and local governments and private enterprise” furthers the State’s solid waste management goals but found that “the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies[.]” *Id.* §§ 363.002, .003(11). Consequently, and relevant to your question, section 363.113 provides that certain counties and each municipality “shall review the provision of solid waste management⁴ services in its jurisdiction and . . . assure that those services are provided to all persons in its jurisdiction by a public agency or private person.” *Id.* § 363.113 (footnote added).

No applicable statute defines the term “jurisdiction.” In relation to a geographic area, the term commonly means an “area within which political or judicial authority may be exercised.” BLACK’S LAW DICTIONARY 980 (10th ed. 2014); *see also* TEX. HEALTH & SAFETY CODE § 1.002 (providing that Government Code, chapter 311, applies to the construction of the Health and Safety Code); TEX. GOV’T CODE § 311.011(a) (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”). The ETJ is an area in which a general-law municipality may, in some instances, exercise authority. *See, e.g., Bizios*, 493 S.W.3d at 532 (discussing municipal authority under Local Government Code section 212.002 and subsection 212.003(a)). By its own terms, the ETJ is an area within the “jurisdiction” of a municipality. *See* TEX. LOC. GOV’T CODE § 42.001 (declaring “it the policy of the state to designate certain areas as the *extraterritorial jurisdiction of municipalities* to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities” (emphasis added)). Using the common meaning of the term “jurisdiction,” a court could conclude that a municipality has authority to provide solid waste disposal service to all persons in its ETJ by a public agency or private person. *See* TEX. HEALTH & SAFETY CODE § 363.113. A municipality itself is a “public agency” under the statute. *See id.* § 363.004(14).

Chapter 363 gives public agencies broad contracting authority. *See id.* §§ 363.116, .117. Section 363.116 provides that a public agency, such as a municipality, “may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency’s governing body.” *Id.* § 363.116(a). And such a contract may provide that a public agency “contract with a person or other public agency to manage solid waste for that person or agency[.]” *Id.* § 363.117(2). Thus, a municipality could ensure solid waste disposal service in its jurisdiction independently or via a contract authorized by chapter 363.

³You cite to Texas Attorney General Opinion GA-0988 and section 364.0341, Health and Safety Code, in your Request Letter. *See* Request Letter at 1. But neither is directly applicable here. *See* Tex. Att’y Gen. Op. No. GA-0988 (2013) (addressing a county’s solid waste authority in the ETJ); TEX. HEALTH & SAFETY CODE § 364.0341 (prohibiting a municipality in a county with a population of more than 54,000 and less than 54,500 from providing solid waste disposal service in the ETJ in certain instances); *see also Quick Facts*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/starrcountytexas,US/PST045221> (last visited Jan. 17, 2023) (providing that the 2020 estimated population of Starr County is 65,920).

⁴“Solid waste management” includes the collection, handling, and disposal of solid waste. TEX. HEALTH & SAFETY § 363.004(20)(C), (D), (J).

In sum, a court could conclude that section 363.113 of the Health and Safety Code authorizes the City to provide solid waste disposal service in its ETJ.

S U M M A R Y

A court could conclude that section 363.113 of the Health and Safety Code authorizes the City of Escobares to provide solid waste disposal service in the extraterritorial jurisdiction as a means of assuring solid waste management service is provided to all persons in the City's jurisdiction.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

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