

By: Gerdes

H.B. No. 3398

A BILL TO BE ENTITLED

AN ACT

relating to county zoning authority for counties adjacent to populous counties; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 231, Local Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. ZONING IN COUNTIES ADJACENT TO POPULOUS COUNTIES

Sec. 231.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county that is adjacent to a county with a population of one million or more.

Sec. 231.302. ADOPTION OF SUBCHAPTER. This subchapter applies only to a county for which the commissioners court by order adopts this subchapter on the court's own motion or following an election as provided by Section 231.304(d).

Sec. 231.303. PETITION FOR ADOPTION. (a) A person may submit a petition to the county clerk of a county to request that the county hold an election on the question of adopting this subchapter.

(b) The petition must:

(1) be signed by a number of registered voters in the county that is equal to at least 10 percent of the number of votes received by all candidates for governor in the most recent gubernatorial general election in the area eligible to vote in the election under Section 231.304;

1 (2) include each signer's current voter registration
2 number, printed name, and residence address, including zip code;

3 (3) include a signature date entered by each signer
4 next to the signer's signature; and

5 (4) include a statement on each page of the petition
6 preceding the space for signatures in substantially the following
7 form:

8 "This petition is to request that an election be held in (name of
9 county) to authorize the county to adopt zoning and building
10 regulations applicable in the unincorporated areas of the county
11 not subject to municipal zoning ordinances."

12 (c) A petition signature is not valid if:

13 (1) the signer fails to enter the date the signer signs
14 the petition; or

15 (2) the date is earlier than the 90th day before the
16 date the petition is submitted to the county clerk.

17 (d) Not later than the 30th day after the date the county
18 clerk receives a petition under this section, the clerk shall
19 provide a written determination on whether the petition is valid to
20 the commissioners court of the county.

21 (e) If the county clerk determines the petition is invalid,
22 the clerk shall provide written notice to the person submitting the
23 petition, which must include each reason the clerk determines the
24 petition is invalid.

25 Sec. 231.304. ADOPTION ELECTION. (a) After receipt of the
26 county clerk's determination of a valid petition under Section
27 231.303, the commissioners court of the county shall order an

1 election on the question of adopting this subchapter to be held on
2 the first uniform election date that allows sufficient time to
3 comply with any requirements of law.

4 (b) Only registered voters residing in a part of the
5 unincorporated area of the county that is not subject to a municipal
6 zoning ordinance are eligible to vote in the election.

7 (c) The ballot for the election must be printed to provide
8 for voting for or against the following proposition:

9 "Granting authority to the county to adopt zoning and building
10 regulations for the unincorporated areas of the county not subject
11 to municipal zoning ordinances."

12 (d) If a majority of the votes cast in the election favor the
13 proposition, the commissioners court shall adopt by order this
14 subchapter at the next scheduled meeting of the court.

15 Sec. 231.305. AUTHORITY TO REGULATE. (a) The
16 commissioners court of a county by order may adopt regulations
17 authorized by this subchapter that may be applied in the
18 unincorporated areas of the county that are not subject to
19 municipal zoning regulations adopted under Chapter 211.

20 (b) For an area designated by a county as having historical,
21 cultural, or architectural significance, the commissioners court
22 may regulate the construction, reconstruction, alteration, or
23 razing of buildings or other structures in the area.

24 Sec. 231.306. PROHIBITED COUNTY REGULATION. This
25 subchapter does not authorize the commissioners court of a county
26 to:

27 (1) require the removal or destruction of property

1 that exists at the time the commissioners court adopts this
2 subchapter;

3 (2) regulate a billboard or outdoor advertising that
4 conflicts with a municipal ordinance or state agency rule;

5 (3) regulate for siting or zoning purposes, new
6 manufactured or industrialized housing that is constructed to
7 preemptive state or federal building standards in a manner that is
8 different from site-built housing; or

9 (4) regulate the construction, use, design, or
10 placement of a public utility building or facility, including a
11 central office building used by a person engaged in providing
12 telephone services to the public.

13 Sec. 231.307. AGRICULTURAL AND RANCHING OPERATIONS. (a)
14 In this section, "agricultural or ranching operation" includes:

15 (1) cultivation of soil;

16 (2) production of crops for human food, animal feed,
17 planting seed, or fiber;

18 (3) floriculture;

19 (4) viticulture;

20 (5) horticulture;

21 (6) possession of livestock or poultry; and

22 (7) use of cover crops or idle land for the purpose of
23 participation in a governmental program or normal crop or livestock
24 rotation procedure.

25 (b) Except as provided by Subsection (c), the commissioners
26 court of a county may not restrict the right of a property owner to
27 construct an improvement for an agricultural or ranching operation,

1 or to otherwise use the property for an agricultural or ranching
2 operation.

3 (c) A commissioners court may impose a reasonably necessary
4 restriction or prohibition on a commercial agricultural or ranching
5 operation, including a commercial feed lot, to protect the public
6 health, safety, peace, morals, and general welfare from the dangers
7 of explosion, flooding, vermin, insects, physical injury,
8 contagious disease, contamination of water supplies, radiation,
9 storage of toxic materials, or other hazards.

10 Sec. 231.308. ZONING REGULATIONS. (a) The commissioners
11 court of a county by order may adopt zoning regulations.

12 (b) A commissioners court may regulate:

13 (1) the height, number of stories, and size of
14 buildings and other structures;

15 (2) the percentage of a lot that may be occupied or
16 developed;

17 (3) the size of yards, courts, and other open spaces;

18 (4) population density;

19 (5) the location, design, construction, extension,
20 and size of streets and roads;

21 (6) the location and use of buildings, other
22 structures, and land for business, industrial, residential, or
23 other purposes;

24 (7) the location, design, construction, extension,
25 size, and regulation of water, wastewater, and drainage facilities,
26 including requirements for connecting to a centralized water or
27 wastewater system;

1 (8) the location, design, and construction of parks,
2 playgrounds, and recreational areas; and

3 (9) the abatement of harm resulting from inadequate
4 water or wastewater facilities.

5 (c) In adopting zoning regulations, a commissioners court
6 must ensure that the regulations:

7 (1) comply with the county's comprehensive plan;

8 (2) are coordinated with the comprehensive plans of
9 each municipality located in the county;

10 (3) are uniform for each class or kind of building in a
11 district established under this subchapter, but may vary from
12 district to district; and

13 (4) are adopted with reasonable consideration for:

14 (A) preserving the character of each district and
15 its particular suitability for particular uses; and

16 (B) conserving the value of buildings and
17 encouraging the most appropriate use of land throughout a district.

18 Sec. 231.309. DISTRICTS. The commissioners court of a
19 county may divide the unincorporated area of the county into
20 districts of a number, shape, and size the court considers best for
21 implementing this subchapter.

22 Sec. 231.310. COMPREHENSIVE PLAN. (a) The commissioners
23 court of a county by order shall adopt a comprehensive plan for the
24 growth and development of the county.

25 (b) A comprehensive plan must be designed to:

26 (1) lessen congestion in the county's streets and
27 roads;

- 1 (2) secure safety from fire, panic, and other dangers;
- 2 (3) promote health and the general welfare;
- 3 (4) provide adequate light and air;
- 4 (5) prevent the overcrowding of land;
- 5 (6) avoid undue concentration of population;
- 6 (7) facilitate the adequate provision of
7 transportation, water, sewers, parks, and other public
8 requirements; and
- 9 (8) assist in developing land in the county into
10 parks, playgrounds, and recreational areas for the public.

11 Sec. 231.311. PLANNING COMMISSION. (a) The commissioners
12 court of a county shall appoint a planning commission.

13 (b) The planning commission consists of seven members who
14 must be county residents. If a county has a park or historic
15 commission, the commissioners court may designate the historic
16 commission to serve as the planning commission.

17 (c) The members of the planning commission shall elect a
18 presiding officer from among its members to serve a term set by the
19 members. If the presiding officer is absent from a meeting, the
20 members of the planning commission may designate a member to serve
21 as the acting presiding officer.

22 (d) The planning commission may employ a secretary and
23 necessary staff.

24 (e) A commissioners court shall fill any vacancy on the
25 planning commission.

26 (f) A member of the planning commission is not entitled to
27 compensation but is entitled to reimbursement of expenses actually

1 incurred while serving on the planning commission, as provided by
2 commissioners court order.

3 Sec. 231.312. PLANNING COMMISSION: POWERS AND DUTIES. (a)
4 The planning commission of a county established under this
5 subchapter shall recommend:

6 (1) boundaries for dividing the county into districts
7 described by Section 231.309; and

8 (2) appropriate zoning regulations for each district.

9 (b) A planning commission shall develop a preliminary
10 report on its recommendations and hold a public hearing on that
11 report before submitting the final report to the commissioners
12 court of the county.

13 (c) Not later than the 10th day before the hearing date, a
14 planning commission shall provide written notice of each public
15 hearing before the planning commission on a proposed change in a
16 classification in a district to:

17 (1) each owner of affected property or the person who
18 renders that property for county taxes; and

19 (2) each owner of property that is located within 200
20 feet of property affected by the change or the person who renders
21 that property for county taxes.

22 (d) For purposes of Subsection (c), a planning commission is
23 considered to have provided notice by depositing the notice, with
24 postage paid and a proper address, in the United States mail.

25 (e) After the public hearing is held under Subsection (b), a
26 planning commission shall develop and submit a written final report
27 to the commissioners court.

1 Sec. 231.313. PROCEDURES FOR ADOPTING ZONING DISTRICT
2 BOUNDARIES AND REGULATIONS. (a) The commissioners court of a
3 county may not adopt a zoning district boundary or zoning
4 regulation until the court receives the planning commission's final
5 report prepared under Section 231.312.

6 (b) A commissioners court shall establish procedures for
7 adopting zoning district boundaries and zoning regulations. The
8 procedures must:

9 (1) require the boundary or regulation to be adopted
10 by order;

11 (2) limit the court's consideration of a boundary or
12 regulation to a boundary or regulation recommended by the planning
13 commission;

14 (3) provide that the boundary or regulation is not
15 effective until after a public hearing on the matter at which the
16 public has an opportunity to be heard; and

17 (4) require notice of the time and place of the hearing
18 in a newspaper of general circulation in the county not later than
19 the 15th day before the date of the hearing.

20 (c) Except as provided by Subsection (f), a commissioners
21 court may by majority vote adopt, or adopt with amendment, a zoning
22 district boundary or zoning regulation proposed by the planning
23 commission.

24 (d) A person may protest an amendment by a commissioners
25 court to a zoning district boundary or zoning regulation proposed
26 by the planning commission by submitting a written protest to the
27 court that is signed by the owners of at least 20 percent of:

1 (1) the area of the lots covered by the proposed
2 change; or

3 (2) the property immediately adjacent to the rear of
4 the lots covered by the proposed change and extending 200 feet from:

5 (A) those lots; or

6 (B) the street frontage of the opposite lots.

7 (e) After receipt of a protest under Subsection (d), a
8 commissioners court shall hold a public hearing for which the court
9 provides notice in the manner provided by Subsection (b).

10 (f) A commissioners court may adopt with amendment a zoning
11 district boundary or zoning regulation proposed by the planning
12 commission for which the court receives a protest under Subsection
13 (d) only by an affirmative vote of at least three-fourths of all
14 members of the court.

15 Sec. 231.314. SPECIAL EXCEPTIONS. (a) A person aggrieved
16 by a zoning regulation adopted under this subchapter or an officer,
17 department, board, or bureau of the county or a municipality in the
18 county may petition the commissioners court of the county for a
19 special exception to the regulation.

20 (b) A commissioners court may grant a special exception to a
21 zoning regulation if the court finds that the exception:

22 (1) is not contrary to the public interest; and

23 (2) would prevent unnecessary hardship from the
24 literal enforcement of the regulation.

25 (c) A commissioners court shall adopt procedures governing
26 applications, notice, hearings, and other matters relating to
27 special exceptions.

1 Sec. 231.315. ENFORCEMENT. (a) The commissioners court of
2 a county may adopt orders to enforce this subchapter or an order
3 adopted under this subchapter.

4 (b) A person commits an offense if the person violates this
5 subchapter or an order adopted under this subchapter. An offense
6 under this subsection is a misdemeanor punishable by a fine of not
7 less than \$500 and not more than \$1,000. Each day that a violation
8 occurs constitutes a separate offense. An offense must be
9 prosecuted in a district court in the county in which the offense
10 occurs.

11 (c) The appropriate county authority may bring an action
12 against the owner of:

13 (1) a building or other structure erected,
14 constructed, reconstructed, altered, repaired, converted, or
15 maintained in violation of this subchapter or an order adopted
16 under this subchapter; or

17 (2) a building, other structure, or land used in
18 violation of this subchapter or an order adopted under this
19 subchapter.

20 (d) In an action brought under Subsection (c), the county
21 may recover:

- 22 (1) injunctive relief to:
23 (A) prevent the unlawful action or use;
24 (B) restrain, correct, or abate the violation;
25 (C) prevent the occupancy of the building, other
26 structure, or land that is the subject of the action; or
27 (D) prevent any illegal act, conduct, business,

1 or use on or about the premises of the property that is the subject
2 of the action;

3 (2) court costs and attorney's fees incurred in
4 bringing the action; and

5 (3) other appropriate remedies.

6 Sec. 231.316. COOPERATION WITH MUNICIPALITIES. The
7 commissioners court of a county by order may enter into an agreement
8 with a municipality located in the county to assist in the
9 implementation and enforcement of regulations adopted under this
10 subchapter.

11 Sec. 231.317. CONFLICT WITH OTHER LAW. In the event of a
12 conflict between an order adopted under this subchapter and a
13 statute or local regulation, the more stringent regulation
14 prevails. A more stringent regulation is the regulation that
15 imposes a higher standard, including a requirement of:

16 (1) a greater width or size of a yard, court, or other
17 open space;

18 (2) a lower building height or fewer number of stories
19 for a building; or

20 (3) a greater percentage of a lot to be left
21 unoccupied.

22 SECTION 2. This Act takes effect September 1, 2023.