

AN ACT

relating to the authority of certain counties to regulate communication facility structures in certain circumstances; providing a penalty.

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

SECTION 1. Chapter 240, Local Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. COMMUNICATION FACILITY STRUCTURES

Sec. 240.081. DEFINITIONS. In this subchapter:

(1) "Residential subdivision" means a subdivision:

(A) for which a plat is recorded in the county real property records;

(B) in which the majority of the lots are subject to deed restrictions limiting the lots to residential use; and

(C) that includes at least five lots that have existing residential structures.

(2) "Communication facility structure" means:

(A) antenna support structures for mobile and wireless telecommunication facilities, whip antennas, panel antennas, microwave dishes, or receive-only satellite dishes;

(B) cell enhancers and related equipment for wireless transmission from a sender to one or more receivers for mobile telephones, mobile radio systems facilities, commercial radio service, or other services or receivers; or

1 (C) a monopole tower, a steel lattice tower, or
2 any other communication tower supporting mobile and wireless
3 telecommunication facilities.

4 Sec. 240.082. APPLICABILITY. (a) This subchapter applies
5 only to real property that is located in the unincorporated area of
6 a county with a population of 1.4 million or more.

7 (b) This subchapter does not apply to:

8 (1) existing communication facilities or other
9 structures used for the purpose of colocation, provided the height
10 is not increased by more than 10 feet;

11 (2) a communication facility structure built to
12 replace an existing communication facility structure if:

13 (A) the replacement communication facility
14 structure is constructed within 50 feet of the existing
15 communication facility structure;

16 (B) the replacement communication facility
17 structure is no higher than and constructed for the same purpose as
18 the existing communication facility structure; and

19 (C) the existing communication facility
20 structure is removed not later than the 14th day after the date the
21 replacement communication facility begins operations; or

22 (3) a communications antenna, antenna facility, or
23 antenna tower or support structure located in a residential area
24 that is used by an amateur radio operator exclusively for amateur
25 radio communications or public safety services.

26 Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) Subject
27 to the restrictions in Section 240.084, the commissioners court of

1 a county subject to this subchapter may by order regulate the
2 location of communication facility structures in the
3 unincorporated areas of the county.

4 (b) The regulations may include a requirement for a permit
5 for the construction or expansion of the facility and may impose
6 fees, not to exceed \$50, on regulated persons to recover the cost of
7 administering the regulations.

8 Sec. 240.084. LOCATION OF COMMUNICATION FACILITY
9 STRUCTURE. The commissioners court of a county that is subject to
10 this subchapter may by order prohibit the construction of a
11 communication facility structure within 300 feet, or the height of
12 the structure, whichever is greater, of a residential subdivision.

13 Sec. 240.085. FILING REQUIREMENTS REGARDING CONSTRUCTION.
14 A person proposing to construct a communication facility structure
15 in the unincorporated area of a county subject to this subchapter
16 shall file with the county official designated by the commissioners
17 court:

18 (1) a statement informing the county that the
19 construction is proposed and providing the date on or after which
20 the construction is proposed to begin;

21 (2) copies of any necessary permits from the Federal
22 Communications Commission or Federal Aviation Administration;

23 (3) a plat or map of the specific proposed location of
24 the communication facility structure; and

25 (4) the correct phone number and address of the entity
26 primarily responsible for the construction.

27 Sec. 240.086. VARIANCES. (a) A person who desires to

1 construct or increase the height of a communication facility
2 structure in violation of an order adopted by a county subject to
3 this subchapter may apply to the commissioners court of the county
4 for a variance from the regulation.

5 (b) The commissioners court may allow a variance from a
6 regulation if the commissioners court finds that:

7 (1) a literal application or enforcement of the
8 regulation would result in practical difficulty or unnecessary
9 hardship; and

10 (2) the granting of the relief would:

11 (A) result in substantial justice being done;

12 (B) not be contrary to the public interest; and

13 (C) be in accordance with the spirit of the
14 regulation and this subchapter.

15 (c) The commissioners court may impose any reasonable
16 conditions on the variance that it considers necessary to
17 accomplish the purposes of this subchapter.

18 (d) Before granting a request for a variance under this
19 section, the county may require the applicant to prominently post
20 an outdoor sign at the location stating that a communication
21 facility structure is intended to be located on the premises and
22 providing the name and business address of the applicant.

23 (e) The sign must be at least 24 by 36 inches in size and
24 must be written in lettering at least two inches in size. The
25 county in which the communication facility structure is to be
26 located may require the sign to be in English and a language other
27 than English if it is likely that a substantial number of the

1 residents in the area speak a language other than English as their
2 familiar language.

3 Sec. 240.087. OFFENSE. (a) A person commits an offense if
4 the person violates an order adopted under this subchapter and the
5 order defines the violation as an offense.

6 (b) An offense under this section is prosecuted in the same
7 manner as an offense defined under state law.

8 (c) An offense under this section is a Class C misdemeanor.

9 Sec. 240.088. INJUNCTION. The county attorney or an
10 attorney representing the county may file an action in a district
11 court to enjoin a violation or threatened violation of an order
12 adopted under this subchapter. The court may grant appropriate
13 relief.

14 SECTION 2. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 843 was passed by the House on May 11, 2005, by the following vote: Yeas 143, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 843 on May 26, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 843 on May 29, 2005, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 843

I certify that H.B. No. 843 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 843 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor