

By: Bolton

H.B. No. 1119

A BILL TO BE ENTITLED

AN ACT

relating to authorizing certain populous counties to adopt county planning regulations; providing criminal and civil penalties.

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

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

SUBCHAPTER M. COUNTY PLANNING REGULATORY AUTHORITY BY CERTAIN
POPULOUS COUNTIES

Sec. 231.271. PURPOSE. The powers granted under this subchapter are for the purpose of promoting the public health, safety, morals, or general welfare.

Sec. 231.272. APPLICABILITY. This subchapter applies only to a county with a population of more than 800,000.

Sec. 231.273. COUNTY PLANNING REGULATIONS GENERALLY. In the unincorporated area of a county, the commissioners court of the county may adopt zoning regulations to regulate noise levels and the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes.

Sec. 231.274. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- (1) reduce congestion in the streets;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;

1 (4) provide adequate light and air;

2 (5) facilitate the adequate provision of
3 transportation, water, sewers, schools, parks, and other public
4 requirements; or

5 (6) promote the maintenance of noise levels that are
6 compatible with the land use of an area or promote, to the greatest
7 degree, the purpose of this subchapter.

8 Sec. 231.275. DISTRICTS. (a) The commissioners court of a
9 county may divide the unincorporated area of the county into
10 districts of a number, shape, and size the commissioners court
11 considers best for carrying out this subchapter.

12 (b) Zoning regulations must be uniform for each class or
13 kind of building in a district, but the regulations may vary from
14 district to district. The regulations shall be adopted with
15 reasonable consideration, among other factors, for the character of
16 each district and its peculiar suitability for particular uses,
17 with a view of conserving the value of buildings and encouraging the
18 most appropriate use of land in the county.

19 Sec. 231.276. PROCEDURES GOVERNING ADOPTION OF COUNTY
20 PLANNING REGULATIONS AND DISTRICT BOUNDARIES. (a) The
21 commissioners court of a county wishing to exercise the authority
22 relating to zoning regulations and zoning district boundaries shall
23 establish procedures for adopting and enforcing the regulations and
24 boundaries. A regulation or boundary is not effective until after a
25 public hearing on the matter at which parties in interest and
26 citizens have an opportunity to be heard. Before the 15th day
27 before the date of the hearing, notice of the time and place of the

1 hearing must be published in an official newspaper or a newspaper of
2 general circulation in the county.

3 (b) In addition to the notice required by Subsection (a), a
4 county without a county planning commission shall give notice of a
5 proposed change in a zoning classification to each property owner
6 who would be entitled to notice under Section 231.277(c) if the
7 county had a county planning commission. That notice must be given
8 in the same manner as required for notice to property owners under
9 Section 231.277(c). The commissioners court may not adopt the
10 proposed change until after the 30th day after the date the notice
11 required by this subsection is given.

12 (c) If the commissioners court of a county conducts a
13 hearing under Subsection (a), the commissioners court may, by a
14 majority vote, prescribe the type of notice to be given of the time
15 and place of the public hearing. Notice requirements prescribed
16 under this subsection are in addition to the publication of notice
17 required by Subsection (a).

18 (d) If a proposed change to a regulation or boundary is
19 protested in accordance with this subsection, the proposed change
20 must receive, in order to take effect, the affirmative vote of at
21 least 75 percent of all members of the commissioners court. The
22 protest must be written and signed by the owners of at least 20
23 percent of:

24 (1) the area of the lots or land covered by the
25 proposed change; or

26 (2) the area of the lots or land immediately adjoining
27 the area covered by the proposed change and extending 200 feet from

1 that area.

2 (e) In computing the percentage of land area under
3 Subsection (d), the area of streets and alleys shall be included.

4 Sec. 231.277. COUNTY PLANNING COMMISSION. (a) To exercise
5 the powers authorized by this subchapter, the commissioners court
6 of a county may appoint a county planning commission. The
7 commission shall recommend boundaries for the original zoning
8 districts and appropriate zoning regulations for each district.

9 (b) The county planning commission shall make a preliminary
10 report and hold public hearings on that report before submitting a
11 final report to the commissioners court. The commissioners court
12 may not hold a public hearing until it receives the final report of
13 the county planning commission unless the commissioners court by
14 order provides that a public hearing is to be held, after the notice
15 required by Section 231.276(a), jointly with a public hearing
16 required to be held by the county planning commission. In either
17 case, the commissioners court may not take action on the matter
18 until it receives the final report of the county planning
19 commission.

20 (c) Before the 10th day before the hearing date, written
21 notice of each public hearing before the county planning commission
22 on a proposed change in a zoning classification shall be sent to
23 each owner, as indicated by the most recently approved county tax
24 roll, of real property within 200 feet of the property on which the
25 change in classification is proposed. The notice may be served by
26 its deposit in the county, properly addressed with postage paid, in
27 the United States mail.

1 (d) If a county exercises zoning authority without the
2 appointment of a county planning commission, any reference in a law
3 to a county planning commission means the commissioners court of
4 the county.

5 Sec. 231.278. COMPLIANCE WITH OPEN MEETINGS LAW. A board or
6 commission established by an order or resolution adopted by the
7 commissioners court of a county to assist the commissioners court
8 in developing an initial comprehensive zoning plan or initial
9 zoning regulations for the county, or a committee of the board or
10 commission that includes one or more members of the board or
11 commission, is subject to Chapter 551, Government Code, regardless
12 of whether the board, commission, or committee has rulemaking or
13 quasi-judicial powers or functions only in an advisory capacity.

14 Sec. 231.279. BOARD OF ADJUSTMENT. (a) The commissioners
15 court of a county may provide for the appointment of a board of
16 adjustment. In the regulations adopted under this subchapter, the
17 commissioners court may authorize the board of adjustment, in
18 appropriate cases and subject to appropriate conditions and
19 safeguards, to make special exceptions to the terms of the zoning
20 regulations that are consistent with the general purpose and intent
21 of the regulations and in accordance with any applicable rules
22 contained in the regulations.

23 (b) A board of adjustment must consist of at least five
24 members to be appointed for terms of two years. The commissioners
25 court must provide the procedure for appointment. The
26 commissioners court may authorize each member of the commissioners
27 court to appoint one member to the board. The appointing authority

1 may remove a board member for cause, as found by the appointing
2 authority, on a written charge after a public hearing. The
3 appointing authority shall fill a vacancy on the board for the
4 unexpired term.

5 (c) The commissioners court by resolution may provide for
6 the appointment of alternate board members to serve in the absence
7 of one or more regular members when requested to do so by the county
8 judge. An alternate member serves for the same period as a regular
9 member and is subject to removal in the same manner as a regular
10 member. A vacancy among the alternate members is filled in the same
11 manner as a vacancy among the regular members.

12 (d) Each case before the board of adjustment must be heard
13 by at least 75 percent of the members.

14 (e) The board by majority vote shall adopt rules in
15 accordance with any regulation adopted under this subchapter.
16 Meetings of the board are held at the call of the presiding officer
17 and at other times as determined by the board. The presiding
18 officer or acting presiding officer may administer oaths and compel
19 the attendance of witnesses. All meetings of the board shall be
20 open to the public.

21 (f) The board shall keep minutes of its proceedings that
22 indicate the vote of each member on each question or the fact that a
23 member is absent or fails to vote. The board shall keep records of
24 its examinations and other official actions. The minutes and
25 records shall be filed immediately in the board's office and are
26 public records.

27 (g) The commissioners court of a county may grant the

1 members of the commissioners court the authority to act as a board
2 of adjustment under this subchapter.

3 Sec. 231.280. AUTHORITY OF BOARD. (a) The board of
4 adjustment may:

5 (1) hear and decide an appeal that alleges error in an
6 order, requirement, decision, or determination made by an
7 administrative official in the enforcement of this subchapter or a
8 regulation adopted under this subchapter;

9 (2) hear and decide special exceptions to the terms of
10 a zoning regulation as authorized by the regulation;

11 (3) authorize in specific cases a variance from the
12 terms of a zoning regulation if:

13 (A) the variance is not contrary to the public
14 interest;

15 (B) due to special conditions, a literal
16 enforcement of the regulation would result in unnecessary hardship;
17 and

18 (C) by granting the variance, the spirit of the
19 regulation is observed and substantial justice is done; and

20 (4) hear and decide other matters authorized by a
21 regulation adopted under this subchapter.

22 (b) In exercising its authority under Subsection (a)(1),
23 the board may reverse or affirm, in whole or in part, or modify the
24 administrative official's order, requirement, decision, or
25 determination from which an appeal is taken and make the correct
26 order, requirement, decision, or determination. For purposes of
27 this subsection, the board has the same authority as the

1 administrative official.

2 (c) The concurring vote of 75 percent of the members of the
3 board is necessary to:

4 (1) reverse an order, requirement, decision, or
5 determination of an administrative official;

6 (2) decide in favor of an applicant on a matter on
7 which the board is required to pass under a zoning regulation; or

8 (3) authorize a variation from the terms of a zoning
9 regulation.

10 Sec. 231.281. APPEAL TO BOARD. (a) Except as provided by
11 Subsection (e), any of the following persons may appeal to the board
12 of adjustment a decision made by an administrative official:

13 (1) a person aggrieved by the decision; or

14 (2) any officer, department, board, or bureau of the
15 county affected by the decision.

16 (b) The appellant must file with the board and the official
17 from whom the appeal is taken a notice of appeal specifying the
18 grounds for the appeal. The appeal must be filed within a
19 reasonable time as determined by the rules of the board. On
20 receiving the notice, the official from whom the appeal is taken
21 shall immediately transmit to the board all the papers constituting
22 the record of the action that is appealed.

23 (c) An appeal stays all proceedings in furtherance of the
24 action that is appealed unless the official from whom the appeal is
25 taken certifies in writing to the board facts supporting the
26 official's opinion that a stay would cause imminent peril to life or
27 property. In that case, the proceedings may be stayed only by a

1 restraining order granted by the board or a court of record on
2 application, after notice to the official, if due cause is shown.

3 (d) The board shall set a reasonable time for the appeal
4 hearing and shall give public notice of the hearing and due notice
5 to the parties in interest. A party may appear at the appeal
6 hearing in person or by agent or attorney. The board shall decide
7 the appeal within a reasonable time.

8 (e) A member of the county commissioners court who serves on
9 the board of adjustment under Section 231.279(g) may not bring an
10 appeal under this section.

11 Sec. 231.282. JUDICIAL REVIEW OF BOARD DECISION. (a) Any
12 of the following persons may present to a district court, county
13 court, or county court at law a verified petition stating that the
14 decision of the board of adjustment is wholly or partly illegal and
15 specifying the grounds of the illegality:

16 (1) a person aggrieved by a decision of the board;

17 (2) a taxpayer; or

18 (3) an officer, department, board, or bureau of the
19 county.

20 (b) The petition must be presented within 10 days after the
21 date the decision is filed in the board's office.

22 (c) On the presentation of the petition, the court may grant
23 a writ of certiorari directed to the board to review the board's
24 decision. The writ must indicate the time by which the board's
25 return must be made and served on the petitioner's attorney, which
26 must be after 10 days and may be extended by the court. Granting of
27 the writ does not stay the proceedings on the decision under appeal,

1 but on application and after notice to the board the court may grant
2 a restraining order if due cause is shown.

3 (d) The board's return must be verified and must concisely
4 state any pertinent and material facts that show the grounds of the
5 decision under appeal. The board is not required to return the
6 original documents on which the board acted but may return
7 certified or sworn copies of the documents or parts of the documents
8 as required by the writ.

9 (e) If at the hearing the court determines that testimony is
10 necessary for the proper disposition of the matter, it may take
11 evidence or appoint a referee to take evidence as directed. The
12 referee shall report the evidence to the court with the referee's
13 findings of fact and conclusions of law. The referee's report
14 constitutes a part of the proceedings on which the court shall make
15 its decision.

16 (f) The court may reverse or affirm, in whole or in part, or
17 modify the decision that is appealed. Costs may not be assessed
18 against the board unless the court determines that the board acted
19 with gross negligence, in bad faith, or with malice in making its
20 decision.

21 (g) The court may not apply a different standard of review
22 to a decision of a board of adjustment that is composed of members
23 of the county commissioners court under Section 231.279(g) than is
24 applied to a decision of a board of adjustment that does not contain
25 members of the county commissioners court.

26 Sec. 231.283. ENFORCEMENT; PENALTY; REMEDIES. (a) The
27 commissioners court of a county may adopt orders to enforce this

1 subchapter or any regulation adopted under this subchapter.

2 (b) A person commits an offense if the person violates this
3 subchapter or a regulation adopted under this subchapter. An
4 offense under this subsection is a misdemeanor, punishable by fine,
5 imprisonment, or both, as provided by the commissioners court. The
6 commissioners court may also provide civil penalties for a
7 violation.

8 (c) If a land use violates this subchapter or a regulation
9 adopted under this subchapter, the appropriate county authority, in
10 addition to other remedies, may institute appropriate action to:

11 (1) restrain, correct, or abate the violation;

12 (2) prevent the occupancy of the building, structure,
13 or land; or

14 (3) prevent any illegal act, conduct, business, or use
15 on or about the premises.

16 Sec. 231.284. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a)
17 This subchapter does not authorize the commissioners court of a
18 county to require the removal or destruction of property that
19 exists at the time the commissioners court implements this
20 subchapter and that is actually and necessarily used in a public
21 service business.

22 (b) This subchapter does not apply to a building, other
23 structure, or land under the control, administration, or
24 jurisdiction of a state or federal agency.

25 (c) This subchapter applies to a privately owned building or
26 other structure and privately owned land when leased to a state
27 agency.

1 Sec. 231.285. CONTINUATION OF LAND USE IN CERTAIN AREAS.

2 (a) A county may not prohibit a person from:

3 (1) continuing to use land in the manner in which the
4 land was being used on January 1, 2010, if the land use was legal at
5 that time; or

6 (2) beginning to use land in the manner that was
7 planned for the land before September 1, 2009, if:

8 (A) one or more licenses, certificates, permits,
9 approvals, or other forms of authorization by a governmental entity
10 were required by law for the planned land use; and

11 (B) a completed application for the initial
12 authorization was filed with the governmental entity before
13 September 1, 2009.

14 (b) For purposes of this section, a completed application is
15 filed if the application includes all documents and other
16 information designated as required by the governmental entity in a
17 written notice to the applicant.

18 (c) This section does not prohibit a county from imposing:

19 (1) a regulation relating to the location of sexually
20 oriented businesses, as that term is defined by Section 243.002;

21 (2) a regulation or other requirement affecting
22 colonias, as that term is defined by Section 2306.581, Government
23 Code;

24 (3) a regulation relating to preventing imminent
25 destruction of property or injury to persons;

26 (4) a regulation relating to public nuisances;

27 (5) a regulation relating to flood control;

1 (6) a regulation relating to the storage and use of
2 hazardous substances;

3 (7) a regulation relating to the sale and use of
4 fireworks;

5 (8) a regulation relating to the discharge of
6 firearms; or

7 (9) a regulation relating to noise levels that does
8 not prevent a person from continuing to use property for
9 residential purposes.

10 (d) An order or regulation in conflict with this section is
11 void.

12 SECTION 2. This Act takes effect September 1, 2009.