

By: Rodriguez

S.B. No. 461

A BILL TO BE ENTITLED

AN ACT

relating to development regulations for certain unincorporated areas located near the Tornillo-Guadalupe Port of Entry; providing a penalty.

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. DEVELOPMENT REGULATIONS AROUND THE
TORNILLO-GUADALUPE PORT OF ENTRY

Sec. 231.271. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the Tornillo-Guadalupe Port of Entry will be one of the largest on the international border between the United States and the United Mexican States;

(2) the Tornillo-Guadalupe Port of Entry is essential to:

(A) relieving congestion associated with other crossing points on the international border; and

(B) facilitating trade between the United States and the United Mexican States and between this state and the United Mexican States;

(3) the Tornillo-Guadalupe Port of Entry and the surrounding area located in El Paso County will be used by residents from many parts of the state and the nation;

1 (4) the orderly development and use of the area
2 surrounding the Tornillo-Guadalupe Port of Entry is of concern to
3 the entire state; and

4 (5) without adequate development regulations, the
5 corridor will tend to become congested and to be used in a manner
6 that interferes with achieving the goals of the Tornillo-Guadalupe
7 Port of Entry described by Subdivision (2).

8 (b) The powers granted under this subchapter are for the
9 purpose of:

10 (1) promoting the public health, safety, peace,
11 morals, and general welfare; and

12 (2) encouraging the use of the area to facilitate
13 trade between the United States and the United Mexican States and
14 between this state and the United Mexican States.

15 Sec. 231.272. AREA SUBJECT TO REGULATION. This subchapter
16 applies only to the unincorporated area of El Paso County that is
17 bounded on:

18 (1) the west by the international border;

19 (2) the south by the boundary of Hudspeth County;

20 (3) the east by a line located one mile east of
21 Interstate Highway 10; and

22 (4) the north by the boundary of the City of Socorro
23 and a line extending east from the southeastern boundary point of
24 the City of Socorro on Darrington Road to a point one mile east of
25 Interstate Highway 10.

26 Sec. 231.273. DEVELOPMENT REGULATIONS GENERALLY. The
27 Commissioners Court of El Paso County may regulate in the area

1 described by Section 231.272:

2 (1) the height, number of stories, and size of
3 buildings or other structures;

4 (2) the percentage of a lot that may be occupied or
5 developed;

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

7 (4) population density;

8 (5) the location and use of buildings, other
9 structures, and land for business, industrial, residential, or
10 other purposes;

11 (6) the standards applying to the construction,
12 reconstruction, alteration, or razing of buildings or other
13 structures;

14 (7) the location, size, and other characteristics of
15 signs;

16 (8) the location, design, construction, extension,
17 and size of water and sewage facilities, drainage facilities, and
18 other required public facilities;

19 (9) the abatement of harm from inadequate facilities
20 described by Subdivision (8); and

21 (10) the location, design, and construction of parks,
22 playgrounds, and recreational areas.

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

26 (1) lessen congestion in the streets and roads;

27 (2) secure safety from fire, panic, and other dangers;

- 1 (3) promote health and the general welfare;
2 (4) provide adequate light and air;
3 (5) prevent the overcrowding of land;
4 (6) avoid undue concentration of population; or
5 (7) facilitate the adequate provision of
6 transportation, water, sewers, parks, and other public
7 requirements.

8 Sec. 231.275. DISTRICTS. (a) The commissioners court may
9 divide the area described by Section 231.272 into districts of a
10 number, shape, and size the commissioners court considers best for
11 carrying out this subchapter. Within each district, the
12 commissioners court may regulate development as provided by Section
13 231.273.

14 (b) The regulations must be uniform for each class or kind
15 of building in a district, but the regulations may vary from
16 district to district. The regulations shall be adopted with
17 reasonable consideration for, among other things, the character of
18 each district and its peculiar suitability for particular uses,
19 with a view of conserving the value of buildings, protecting
20 historic landmarks and structures, and encouraging the most
21 appropriate use of land throughout the area.

22 Sec. 231.276. COMMISSION. (a) To exercise the powers
23 authorized by this subchapter, the commissioners court shall
24 appoint a commission. The commission shall recommend boundaries
25 for the original districts and appropriate regulations for each
26 district. Unless the commissioners court makes a designation under
27 Subsection (e), the commission is composed of five members

1 appointed as follows:

2 (1) one member appointed by each county commissioner;

3 and

4 (2) one member appointed by the county judge.

5 (b) The members of a commission appointed under Subsection
6 (a) are appointed for two-year terms that expire February 1 of each
7 odd-numbered year, except as provided by this subsection. The
8 terms of the initial members of the commission appointed under
9 Subsection (a) expire on February 1 of the first February in an
10 odd-numbered year following their appointment. A vacancy in the
11 commission is filled in the same manner as the original
12 appointment.

13 (c) The commission shall elect a presiding officer from
14 among its members. The presiding officer serves in that capacity
15 for a term set by the commission. The commission may at any time
16 choose for a particular meeting or occasion an acting presiding
17 officer as necessary from among its members. The commission may
18 employ a secretary, an acting secretary, and other technical or
19 clerical personnel.

20 (d) A member of the commission is not entitled to
21 compensation but is entitled to expenses actually incurred while
22 serving on the commission as provided by order of the commissioners
23 court.

24 (e) If the county has a planning commission or historic
25 commission, the commissioners court may designate either of those
26 commissions to serve as the commission required by this section.

27 Sec. 231.277. COMMISSION REPORT; HEARING. (a) The

1 commission shall make a preliminary report regarding
2 recommendations under Section 231.276(a) and hold public hearings
3 on that report before submitting a final report to the
4 commissioners court. The commissioners court may not hold a public
5 hearing or take final action until it has received the final report
6 of the commission.

7 (b) Before the 10th day before the hearing date, written
8 notice of each public hearing before the commission on a proposed
9 change in a classification in the district shall be sent to:

10 (1) each owner of affected property or to the person
11 who renders the property for county taxes; and

12 (2) each owner of property that is located within 200
13 feet of property affected by the change or to the person who renders
14 the property for county taxes.

15 (c) The notice may be served by depositing it, postage paid
16 and properly addressed, in the United States mail.

17 Sec. 231.278. PROCEDURES GOVERNING ADOPTION OF REGULATIONS
18 AND DISTRICT BOUNDARIES. (a) The commissioners court shall
19 establish procedures for adopting and enforcing regulations and
20 district boundaries. A regulation or district boundary is not
21 effective until it is adopted by the commissioners court after a
22 public hearing on the matter at which parties in interest and
23 citizens have an opportunity to be heard. Before the 15th day
24 before the date of the hearing, the commissioners court must
25 publish notice of the hearing in a newspaper of general circulation
26 in the county.

27 (b) The commissioners court may amend or reject a regulation

1 or boundary proposed by the commission:

2 (1) by a majority vote if no protest is made under
3 Subsection (c); or

4 (2) by an affirmative vote of at least four members of
5 the commissioners court if a protest is made under Subsection (c).

6 (c) A protest to a proposed change to a regulation or
7 boundary must be written and signed by the owners of at least 20
8 percent of:

9 (1) the area of the lots or land covered by the
10 proposed change; or

11 (2) the area of the lots or land immediately adjoining
12 the area covered by the proposed change and extending 200 feet from
13 that area.

14 (d) After the commissioners court receives a protest, the
15 court shall hold a public hearing. The court shall publish notice
16 in the manner provided by Subsection (a).

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

25 (b) A board of adjustment must consist of five members to be
26 appointed for staggered terms of two years. The appointing
27 authority may remove a board member for cause on a written charge

1 after a public hearing. The appointing authority shall fill a
2 vacancy on the board for the unexpired term.

3 (c) The board shall adopt rules in accordance with any order
4 adopted under this subchapter. Meetings of the board are held at
5 the call of the presiding officer and at other times as determined
6 by the board. The presiding officer or acting presiding officer may
7 administer oaths and compel the attendance of witnesses. All
8 meetings of the board shall be open to the public.

9 (d) The board shall keep minutes of its proceedings that
10 indicate the vote of each member on each question or indicate that a
11 member is absent or fails to vote. The board shall keep records of
12 its examinations and other official actions. The minutes and
13 records shall be filed immediately in the board's office and are
14 public records.

15 Sec. 231.280. AUTHORITY OF BOARD. (a) The board of
16 adjustment may:

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

21 (2) hear and decide special exceptions to the terms of
22 a regulation adopted under this subchapter when the regulation
23 requires the board to do so; and

24 (3) authorize in specific cases a variance from the
25 terms of a regulation adopted under this subchapter if:

26 (A) the variance is not contrary to the public
27 interest;

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

3 (C) the granting of the variance would allow the
4 spirit of the regulation to be observed and substantial justice to
5 be done.

6 (b) In exercising its authority under Subsection (a)(1),
7 the board may reverse or affirm, in whole or in part, or modify the
8 administrative official's order, requirement, decision, or
9 determination from which an appeal is taken and make the correct
10 order, requirement, decision, or determination, and for that
11 purpose the board has the same authority as the administrative
12 official.

13 (c) The concurring vote of four members of the board is
14 necessary to:

15 (1) reverse an order, requirement, decision, or
16 determination of an administrative official;

17 (2) decide in favor of an applicant on a matter on
18 which the board is required to pass under a regulation adopted under
19 this subchapter; or

20 (3) authorize a variance in a regulation adopted under
21 this subchapter.

22 Sec. 231.281. APPEAL TO BOARD. (a) Any of the following
23 persons may appeal to the board of adjustment a decision made by an
24 administrative official:

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

26 (2) any officer, department, board, or bureau of the
27 county or of a municipality affected by the decision.

1 (b) The appellant must file with the board and the official
2 from whom the appeal is taken a notice of appeal specifying the
3 grounds for the appeal. The appeal must be filed within a
4 reasonable time as determined by board rule. On receiving the
5 notice, the official from whom the appeal is taken shall
6 immediately transmit to the board all the papers constituting the
7 record of the action that is appealed.

8 (c) An appeal stays all proceedings in furtherance of the
9 action that is appealed unless the official from whom the appeal is
10 taken certifies in writing to the board facts supporting the
11 official's opinion that a stay would cause imminent peril to life or
12 property. In that case, the proceedings may be stayed only by a
13 restraining order granted by the board or a court of record on
14 application, after notice to the official, if due cause is shown.

15 (d) The board shall set a reasonable time for the appeal
16 hearing and shall give public notice of the hearing and due notice
17 to the parties in interest. A party may appear at the appeal
18 hearing in person or by agent or attorney. The board shall decide
19 the appeal within a reasonable time.

20 Sec. 231.282. JUDICIAL REVIEW OF BOARD DECISION. (a) Any
21 of the following persons may present to a court of record a verified
22 petition stating that the decision of the board of adjustment is
23 illegal in whole or in part and specifying the grounds of the
24 illegality:

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

26 (2) a taxpayer; or

27 (3) an officer, department, board, or bureau of the

1 county or of the municipality affected by the decision.

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

4 (c) On the presentation of the petition, the court may grant
5 a writ of certiorari directed to the board to review the board's
6 decision. The writ must indicate the period within which the
7 board's reply must be made and served on the petitioner's attorney,
8 which must be after the 10th day after the date the petition is
9 presented to the board under Subsection (b). The court may extend
10 the period for reply described by this subsection. A grant of the
11 writ does not stay the proceedings on the decision under appeal. On
12 application and after notice to the board, the court may grant a
13 restraining order if due cause is shown.

14 (d) The board's reply must be verified and must concisely
15 state any pertinent and material facts that show the grounds of the
16 decision under appeal. The board is not required to return the
17 original documents on which the board acted but may return
18 certified or sworn copies of the documents or parts of the documents
19 as required by the writ.

20 (e) If at the hearing the court determines that testimony is
21 necessary for the proper disposition of the matter, the court may
22 take evidence or appoint a referee to take evidence as directed.
23 The referee shall report the evidence to the court with the
24 referee's findings of fact and conclusions of law. The referee's
25 report constitutes a part of the proceedings on which the court
26 shall make its decision.

27 (f) The court may reverse or affirm, in whole or in part, or

1 modify the decision that is appealed. The court may not assess
2 costs against the board unless the court determines that the board
3 acted with gross negligence, in bad faith, or with malice in making
4 its decision.

5 Sec. 231.283. ENFORCEMENT; PENALTY; REMEDIES. (a) The
6 commissioners court may adopt orders to enforce this subchapter or
7 an order or a regulation adopted under this subchapter.

8 (b) A person commits an offense if the person violates this
9 subchapter or an order or a regulation adopted under this
10 subchapter. An offense under this subsection is a Class B
11 misdemeanor. Each day that a violation occurs constitutes a
12 separate offense. Trial shall be in a county court.

13 (c) A person who violates this subchapter or an order or a
14 regulation adopted under this subchapter is liable to the county
15 for a civil penalty in an amount not to exceed \$1,000 for each day
16 the violation exists. The appropriate attorney representing the
17 county in civil actions may file a civil action in court to recover
18 the civil penalty. If the attorney for the county prevails in the
19 civil action, the person shall reimburse the attorney for the costs
20 of the civil action, including court costs and attorney's fees. In
21 determining the amount of the penalty, the court shall consider the
22 seriousness of the violation. A penalty recovered under this
23 subsection shall be deposited in the county treasury to the credit
24 of the general fund.

25 (d) If a building or other structure is erected,
26 constructed, reconstructed, altered, repaired, converted, razed,
27 or maintained or if a building, other structure, or land is used in

1 violation of this subchapter or an order or a regulation adopted
2 under this subchapter, the appropriate county authority, in
3 addition to other remedies, may institute appropriate action to:

4 (1) prevent or remove the unlawful action or use,
5 including an unlawful erection, construction, reconstruction,
6 alteration, repair, conversion, razing, or maintenance;

7 (2) enjoin, restrain, correct, or abate the violation;

8 (3) prevent the occupancy of the building, structure,
9 or land; or

10 (4) prevent any illegal act, conduct, business, or use
11 on or about the premises.

12 Sec. 231.284. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If
13 a regulation adopted under this subchapter imposes a more stringent
14 standard than a standard required under another statute or local
15 order or regulation, the regulation adopted under this subchapter
16 controls. If the other statute or local order or regulation imposes
17 a more stringent standard, that statute, order, or regulation
18 controls.

19 (b) The commissioners court may require the removal,
20 destruction, or change of any structure or use of any property that
21 does not conform to an order or a regulation adopted under this
22 subchapter only if:

23 (1) the court permits the owner's investment in the
24 structure or property to be amortized over a period determined by
25 the court; or

26 (2) the court determines the nonconforming structure
27 or property has been permanently abandoned.

1 (c) This subchapter or an order or a regulation adopted
2 under this subchapter does not apply to the location, construction,
3 maintenance, or use of central office buildings or equipment used
4 by a person engaged in providing telephone service to the public.

5 (d) This subchapter does not authorize the commissioners
6 court to:

7 (1) require the removal or destruction of property
8 that exists at the time the court implements this subchapter; or

9 (2) restrict the right of a landowner, acting on the
10 owner's behalf, to construct improvements for agriculture and
11 ranching operations or to otherwise use the land for agriculture
12 and ranching operations.

13 (e) For purposes of Subsection (d)(2), "agriculture and
14 ranching operations" includes:

15 (1) cultivating the soil;

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

18 (3) floriculture, viticulture, or horticulture;

19 (4) raising or keeping livestock or poultry; or

20 (5) planting cover crops or leaving land idle for the
21 purpose of participating in any governmental program or normal crop
22 or livestock rotation procedure.

23 (f) The commissioners court may take actions under
24 Subsection (d)(2) to restrict or prohibit any commercial
25 agricultural enterprise, such as a commercial feed lot, that are
26 reasonably necessary to protect the public health, safety, peace,
27 morals, and general welfare from the dangers of explosion,

1 flooding, vermin, insects, physical injury, contagious disease,
2 contamination of water supplies, radiation, storage of toxic
3 materials, or other hazards.

4 SECTION 2. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2013.