

By: Isaac

H.B. No. 2265

A BILL TO BE ENTITLED

AN ACT

relating to county land use regulatory authority in certain counties; providing a criminal penalty.

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 COMAL COUNTY

Sec. 231.301. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) parts of Comal County including the area that surrounds Canyon Lake and the Guadalupe River are or will be frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of recreational areas of the county is of concern to the entire state; and

(3) without adequate development regulations, the county will be developed in ways that put an undue strain on natural resources and endanger and interfere with the proper use of recreational areas of the county as places of recreation to the detriment of public health, safety, peace, morals, and general welfare.

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

(1) promoting public health, safety, peace, morals,

1 and general welfare;

2 (2) encouraging recreation; and

3 (3) safeguarding and preventing the pollution of the  
4 state's rivers and lakes.

5 Sec. 231.302. REGULATING COUNTY; APPLICABILITY. In this  
6 subchapter, "regulating county" means Comal County, if the  
7 residents of the county approved the exercise of the regulatory  
8 authority granted under this subchapter in an election held under  
9 Section 231.304.

10 Sec. 231.303. ZONING REGULATIONS GENERALLY. (a) The  
11 commissioners court of a regulating county may regulate:

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

14 (2) the percentage of a lot that may be occupied by  
15 buildings and structures;

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

17 (4) population density;

18 (5) the location and use of buildings, other  
19 structures, and land for business, industrial, residential, or  
20 other purposes;

21 (6) the placement of water and sewage facilities,  
22 parks, and other public requirements;

23 (7) the location, design, construction, extension,  
24 and size of streets and roads; and

25 (8) the control, storage, preservation, and  
26 distribution of storm and flood water.

27 (b) The regulatory authority granted under this subchapter

applies only to the unincorporated areas of a county.

Sec. 231.304. ELECTION TO APPROVE REGULATORY AUTHORITY REQUIRED. (a) The regulatory authority granted under Section 231.303 is not effective unless it is approved by a majority of the county residents voting in an election held under this section. The commissioners court shall order the election to be held on a uniform election date authorized by Section 41.001, Election Code.

(b) For an election under this section, the ballot shall be prepared to permit voting for or against the proposition: "Approving the authority granted to the Commissioners Court of (insert name of county) to regulate land development in the unincorporated areas of the county (insert description of general authority)."

(c) The regulatory authority approved under this section includes the authority of the commissioners court to repeal, revise, or amend a regulation of land development adopted under this subchapter.

Sec. 231.305. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- (1) lessen congestion in the streets and roads;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;
- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population;
- (7) facilitate the adequate provision of

1 transportation, water, sewers, parks, and other public  
2 requirements;

3 (8) control, store, preserve, and distribute storm and  
4 flood water; and

5 (9) assist in developing the regulated area into  
6 parks, playgrounds, and recreational areas.

7 Sec. 231.306. DISTRICTS. (a) The commissioners court of a  
8 regulating county may divide the unincorporated area of the county  
9 into districts of a number, shape, and size the commissioners court  
10 considers best for administering this subchapter. Within each  
11 district, the commissioners court may regulate the erection,  
12 construction, reconstruction, alteration, repair, or use of  
13 buildings, other structures, or land.

14 (b) The zoning regulations must be uniform for each class or  
15 kind 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 and encouraging the  
20 most appropriate use of land throughout the area.

21 Sec. 231.307. PROCEDURES GOVERNING ADOPTION OF REGULATIONS  
22 AND DISTRICT BOUNDARIES. (a) The commissioners court of a  
23 regulating county shall establish procedures for adopting and  
24 enforcing zoning regulations and zoning district boundaries. A  
25 regulation or district boundary is not effective until it is  
26 adopted by the commissioners court after a public hearing on the  
27 matter at which parties in interest and citizens have an

1 opportunity to be heard. Before the 15th day before the date of the  
2 hearing, the commissioners court must publish notice of the time  
3 and place of the hearing in a newspaper of general circulation in  
4 the county.

5 (b) If a proposed change to a regulation or district  
6 boundary is protested in accordance with this subsection, the  
7 proposed change must receive, in order to take effect, the  
8 affirmative vote of at least three-fourths of all members of the  
9 commissioners court. The protest must be written and signed by the  
10 owners of at least 20 percent of either:

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

13 (2) the lots immediately adjacent to the rear of the  
14 lots covered by the proposed change and extending 200 feet from  
15 those lots or from the street frontage of the opposite lots.

16 Sec. 231.308. ZONING COMMISSION. (a) To exercise the  
17 powers authorized by this subchapter, the commissioners court of a  
18 regulating county shall appoint a zoning commission. The  
19 commission shall recommend boundaries for the original zoning  
20 districts and appropriate zoning regulations for each district.  
21 The commission must consist of seven members, each of whom must be a  
22 resident of the county.

23 (b) The commission shall elect a presiding officer from  
24 among its members. The presiding officer serves in that capacity  
25 for a term set by the commission. The commission may at any time  
26 choose for a particular meeting or occasion an acting presiding  
27 officer as necessary from among its members. The commission may

1 employ a secretary and acting secretary and other technical or  
2 clerical personnel.

3 (c) A member of the commission is not entitled to  
4 compensation but is entitled to expenses actually incurred while  
5 serving on the commission as provided by order of the commissioners  
6 court.

7 (d) The zoning commission shall make a preliminary report  
8 and hold public hearings on that report before submitting a final  
9 report to the commissioners court. The commissioners court may not  
10 hold a public hearing or take action until it receives the final  
11 report of the zoning commission.

12 (e) Before the 10th day before the hearing date, written  
13 notice of each public hearing before the zoning commission on a  
14 proposed change in a zoning classification shall be sent to:

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

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

20 (f) The notice may be served by depositing it in the United  
21 States mail, postage paid and properly addressed to the address of  
22 the property owner on file with the county tax assessor-collector.

23 Sec. 231.309. BOARD OF ADJUSTMENT. (a) The commissioners  
24 court of a regulating county may provide for the appointment of a  
25 board of adjustment. In the zoning regulations adopted under this  
26 subchapter, the commissioners court may authorize the board of  
27 adjustment, in appropriate cases and subject to appropriate

1 conditions and safeguards, to make special exceptions to the terms  
2 of the zoning regulations that are consistent with the general  
3 purpose and intent of the regulations and in accordance with any  
4 applicable rules contained in the regulations.

5 (b) A board of adjustment must consist of five members to be  
6 appointed for terms of two years. The appointing authority may  
7 remove a board member for cause on a written charge after a public  
8 hearing. The appointing authority shall fill a vacancy on the board  
9 for the unexpired term.

10 (c) The board of adjustment shall adopt rules in accordance  
11 with any order adopted under this subchapter. Meetings of the board  
12 are held at the call of the presiding officer and at other times as  
13 determined by the board. The presiding officer or acting presiding  
14 officer may administer oaths and compel the attendance of  
15 witnesses. All meetings of the board are open to the public.

16 (d) The board of adjustment shall keep minutes of its  
17 proceedings that indicate the vote of each member on each question  
18 or indicate that a member is absent or fails to vote. The board  
19 shall keep records of its examinations and other official actions.  
20 The minutes and records shall be filed immediately in the board's  
21 office and are public records.

22 Sec. 231.310. AUTHORITY OF BOARD OF ADJUSTMENT. (a) The  
23 board of adjustment may:

24 (1) hear and decide an appeal that alleges error in an  
25 order, requirement, decision, or determination made by an  
26 administrative official in the enforcement of this subchapter or a  
27 zoning regulation;

1           (2) hear and decide special exceptions to the terms of  
2 a zoning regulation when the regulation requires the board to do so;  
3 and

4           (3) authorize in specific cases a variance from the  
5 terms of a zoning regulation if the variance is not contrary to the  
6 public interest and, due to special conditions, a literal  
7 enforcement of the regulation would result in unnecessary hardship,  
8 and so that the spirit of the regulation is observed and substantial  
9 justice is done.

10          (b) In exercising its authority under Subsection (a)(1),  
11 the board of adjustment may reverse or affirm, wholly or partly, or  
12 modify the administrative official's order, requirement, decision,  
13 or determination from which an appeal is taken and make the correct  
14 order, requirement, decision, or determination, and for that  
15 purpose the board has the same authority as the administrative  
16 official.

17          (c) The concurring vote of four members of the board of  
18 adjustment is necessary to:

19               (1) reverse an order, requirement, decision, or  
20 determination of an administrative official;

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

23               (3) authorize a variation in a zoning regulation.

24          Sec. 231.311. APPEAL TO BOARD OF ADJUSTMENT. (a) Any of  
25 the following persons may appeal to the board of adjustment a  
26 decision made by an administrative official:

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



1           (2) an officer, department, board, or bureau of the  
2 county or of a municipality affected by the decision.

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

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

18          (d) The board of adjustment shall set the date of the appeal  
19 hearing not later than the 30th day after the date notice of appeal  
20 is filed and shall give public notice of the hearing and due notice  
21 to the parties in interest. A party may appear at the appeal  
22 hearing in person or by agent or attorney. The board shall decide  
23 the appeal within a reasonable time.

24          Sec. 231.312. JUDICIAL REVIEW OF BOARD OF ADJUSTMENT  
25 DECISION. (a) Any of the following persons may present to a court  
26 of record a verified petition stating that the decision of the board  
27 of adjustment is illegal wholly or partly and specifying the

1 grounds of the illegality:

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

3 (2) a taxpayer; or

4 (3) an officer, department, board, or bureau of the  
5 county or of the municipality.

6 (b) The petition must be presented within 10 days after the  
7 date the decision is filed in the board of adjustment's office.

8 (c) On the presentation of the petition, the court may grant  
9 a writ of certiorari directed to the board of adjustment to review  
10 the board's decision. The writ must indicate the time within which  
11 the board's return must be made and served on the petitioner's  
12 attorney, which must be after 10 days and may be extended by the  
13 court. Granting of the writ does not stay the proceedings on the  
14 decision under appeal, but on application and after notice to the  
15 board, the court may grant a restraining order if due cause is  
16 shown.

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

23 (e) If at the hearing the court determines that testimony is  
24 necessary for the proper disposition of the matter, it may take  
25 evidence or appoint a referee to take evidence as directed. The  
26 referee shall report the evidence to the court with the referee's  
27 findings of fact and conclusions of law. The referee's report

1 constitutes a part of the proceedings on which the court shall make  
2 its decision.

3 (f) The court may reverse or affirm, wholly or partly, or  
4 modify the decision that is appealed. The court may not assess  
5 costs against the board of adjustment unless the court determines  
6 that the board acted with gross negligence, in bad faith, or with  
7 malice in making its decision.

8 Sec. 231.313. SPECIAL EXCEPTION. (a) If the commissioners  
9 court of a regulating county does not provide for the appointment of  
10 a board of adjustment under Section 231.309, a person aggrieved by a  
11 zoning regulation or a zoning district boundary adopted under this  
12 subchapter may petition the commissioners court.

13 (b) The commissioners court shall adopt procedures  
14 governing applications, notice, hearings, and other matters  
15 relating to the grant of a special exception.

16 Sec. 231.314. ENFORCEMENT; PENALTY; REMEDIES. (a) The  
17 commissioners court of a regulating county may adopt orders to  
18 enforce this subchapter, any order adopted under this subchapter,  
19 or a zoning regulation.

20 (b) A person commits an offense if the person violates this  
21 subchapter, an order adopted under this subchapter, or a zoning  
22 regulation. An offense under this subsection is a misdemeanor,  
23 punishable by fine, as provided by the commissioners court. The  
24 commissioners court may also provide civil penalties for a  
25 violation.

26 (c) If a building or other structure is erected,  
27 constructed, reconstructed, altered, repaired, converted, or

maintained or if a building, other structure, or land is used in violation of this subchapter, an order adopted under this subchapter, or a zoning regulation, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

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

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

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

Sec. 231.315. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

(b) This subchapter does not authorize the commissioners court of a regulating county to require the removal or destruction of property that exists at the time the court implements this subchapter.

1        (c) This subchapter, an order adopted under this  
2 subchapter, or a zoning regulation does not apply to the location,  
3 construction, maintenance, or use of central office buildings used  
4 by a person engaging in providing telephone service to the public or  
5 equipment used in connection with those buildings or as part of the  
6 telephone system, as necessary to furnish telephone service to the  
7 public.

8        SECTION 2. This Act takes effect September 1, 2025.