

By: Baxter

H.B. No. 3461

A BILL TO BE ENTITLED

AN ACT

relating to the manner in which a municipality may impose a moratorium on certain property development.

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

SECTION 1. Section 212.131, Local Government Code, is amended by amending Subdivision (3) and adding Subdivision (4) to read as follows:

(3) "Property development" means the ~~new~~ construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision or replatting of a subdivision of residential or commercial property ~~[on vacant land]~~.

(4) "Commercial property" means property zoned for or otherwise authorized for use other than single-family use, multi-family use, heavy industrial use, or use as a quarry.

SECTION 2. Subchapter E, Chapter 212, Local Government Code, is amended by amending Sections 212.132, 212.133, 212.135, 212.136, and 212.137 and adding Sections 212.1351, 212.1352, 212.1361, 212.1362, and 212.139 to read as follows:

Sec. 212.132. APPLICABILITY. This subchapter applies only to a moratorium imposed on property development affecting only residential property, commercial property, or both residential and commercial property.

Sec. 212.133. PROCEDURE FOR ADOPTING MORATORIUM. A

1 municipality may not adopt a moratorium on property development
2 unless the municipality:

3 (1) complies with the notice and hearing procedures
4 prescribed by Section 212.134; and

5 (2) makes written findings as provided by Section
6 212.135, 212.1351, or 212.1352, as applicable.

7 Sec. 212.135. JUSTIFICATION FOR MORATORIUM: SHORTAGE OF
8 ESSENTIAL PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED. (a) If a
9 municipality adopts a moratorium on property development, the
10 moratorium is justified by demonstrating a need to prevent a
11 shortage of essential public facilities. The municipality must
12 issue written findings based on reasonably available information.

13 (b) The written findings must include a summary of:

14 (1) evidence demonstrating the extent of need beyond
15 the estimated capacity of existing essential public facilities that
16 is expected to result from new property development, including
17 identifying:

18 (A) any essential public facilities currently
19 operating near, at, or beyond capacity;

20 (B) the portion of that capacity committed to the
21 development subject to the moratorium; and

22 (C) the impact fee revenue allocated to address
23 the facility need; and

24 (2) evidence demonstrating that the moratorium is
25 reasonably limited to:

26 (A) areas of the municipality where a shortage of
27 essential public facilities would otherwise occur; and

1 (B) property that has not been approved for
2 development because of the insufficiency of existing essential
3 public facilities.

4 Sec. 212.1351. JUSTIFICATION FOR MORATORIUM: SIGNIFICANT
5 NEED FOR PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED. (a) Except
6 as provided by Section 212.1352, a [~~(b)~~—A] moratorium that is not
7 based on a shortage of essential public facilities is justified
8 only by demonstrating a significant need for other public
9 facilities, including police and fire facilities. For purposes of
10 this subsection, a significant need for public facilities is
11 established if the failure to provide those public facilities would
12 result in an overcapacity of public facilities or would be
13 detrimental to the health, safety, and welfare of the residents of
14 the municipality. The municipality must issue written findings
15 based on reasonably available information.

16 (b) The written findings must include a summary of:

17 (1) evidence demonstrating that applying existing
18 development ordinances or regulations and other applicable laws is
19 inadequate to prevent the new development from causing the
20 overcapacity of municipal infrastructure or being detrimental to
21 the public health, safety, and welfare in an affected geographical
22 area;

23 (2) evidence demonstrating that alternative methods
24 of achieving the objectives of the moratorium are unsatisfactory;
25 and

26 (3) evidence demonstrating that the municipality has
27 approved a working plan and time schedule for achieving the

1 objectives of the moratorium.

2 Sec. 212.1352. JUSTIFICATION FOR COMMERCIAL MORATORIUM IN
3 CERTAIN CIRCUMSTANCES; WRITTEN FINDINGS REQUIRED. (a) If a
4 municipality adopts a moratorium on commercial property
5 development that is not based on a demonstrated shortage of
6 essential public facilities, the municipality must issue written
7 findings based on reasonably available information that the
8 moratorium is justified by demonstrating that applying existing
9 commercial development ordinances or regulations and other
10 applicable laws is inadequate to prevent the new development from
11 being detrimental to the public health, safety, or welfare of the
12 residents of the municipality.

13 (b) The written findings must include a summary of:

14 (1) evidence demonstrating the need to adopt new
15 ordinances or regulations or to amend existing ordinances,
16 including identification of the harm to the public health, safety,
17 or welfare that will occur if a moratorium is not adopted;

18 (2) the geographical boundaries in which the
19 moratorium will apply;

20 (3) the specific types of commercial property to which
21 the moratorium will apply; and

22 (4) the objectives or goals to be achieved by adopting
23 new ordinances or regulations or amending existing ordinances or
24 regulations during the period the moratorium is in effect.

25 Sec. 212.136. EXPIRATION OF MORATORIUM; EXTENSION. [~~(a)~~]
26 A moratorium adopted under Section 212.135 or 212.1351 [~~this~~
27 ~~subchapter~~] expires on the 120th day after the date the moratorium

1 is adopted unless the municipality extends the moratorium by:

2 (1) holding a public hearing on the proposed extension
3 of the moratorium; and

4 (2) adopting written findings that:

5 (A) identify the problem requiring the need for
6 extending the moratorium;

7 (B) describe the reasonable progress made to
8 alleviate the problem; and

9 (C) specify a definite duration for the renewal
10 period of the moratorium.

11 Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED. [~~(b)~~] A
12 municipality proposing an extension of a moratorium under this
13 subchapter must publish notice in a newspaper of general
14 circulation in the municipality not later than the 15th day before
15 the date of the hearing required by this subchapter [~~Subsection~~
16 ~~(a)~~].

17 Sec. 212.1362. EXPIRATION OF MORATORIUM ON COMMERCIAL
18 PROPERTY IN CERTAIN CIRCUMSTANCES; EXTENSION. (a) A moratorium on
19 commercial property adopted under Section 212.1352 expires on the
20 90th day after the date the moratorium is adopted unless the
21 municipality extends the moratorium by:

22 (1) holding a public hearing on the proposed extension
23 of the moratorium; and

24 (2) adopting written findings that:

25 (A) identify the problem requiring the need for
26 extending the moratorium;

27 (B) describe the reasonable progress made to

1 alleviate the problem;

2 (C) specify a definite duration for the renewal
3 period of the moratorium; and

4 (D) include a summary of evidence demonstrating
5 that the problem will be resolved within the extended duration of
6 the moratorium.

7 (b) A municipality may not adopt a moratorium on commercial
8 property under Section 212.1352 that exceeds an aggregate of 180
9 days. A municipality may not adopt a moratorium on commercial
10 property under Section 212.1352 before the second anniversary of
11 the expiration date of a previous moratorium if the subsequent
12 moratorium addresses the same harm, affects the same type of
13 commercial property, or affects the same geographical area
14 identified by the previous moratorium.

15 Sec. 212.137. WAIVER PROCEDURES REQUIRED. (a) A
16 moratorium adopted under this subchapter must allow a permit
17 applicant to apply for a waiver from the moratorium relating to the
18 property subject to the permit by:

19 (1) claiming a right obtained under a development
20 agreement; or

21 (2) ~~claiming a vested right under Chapter 245 or~~
22 ~~common law; or~~

23 ~~[(3)]~~ providing the public facilities that are the
24 subject of the moratorium at the landowner's cost.

25 (b) The permit applicant must submit the reasons for the
26 request to the governing body of the municipality in writing. The
27 governing body of the municipality must vote on whether to grant the

1 waiver request within 10 days after the date of receiving the
2 written request.

3 Sec. 212.139. LIMITATION ON MORATORIUM. (a) A moratorium
4 adopted under this subchapter does not affect an application for a
5 project in progress under Chapter 245.

6 (b) A municipality may not adopt a moratorium under this
7 subchapter that:

8 (1) prohibits a person from filing or processing an
9 application for a project in progress under Chapter 245; or

10 (2) prohibits or delays the processing of an
11 application for zoning filed before the effective date of the
12 moratorium.

13 SECTION 3. (a) This Act applies to a moratorium adopted on
14 or after the effective date of this Act.

15 (b) If a moratorium affecting commercial property was
16 adopted by a municipality before the effective date of this Act and,
17 under the terms of the moratorium, remains in effect later than the
18 120th day after the effective date of this Act, the municipality
19 must comply with Section 212.136, Local Government Code, as amended
20 by this Act, or Section 212.1362(a), Local Government Code, as
21 added by this Act, as applicable, to continue the moratorium in
22 effect later than the 120th day after the effective date of this
23 Act.

24 SECTION 4. This Act takes effect September 1, 2005.