

1-1 By: Baxter (Senate Sponsor - Armbrister) H.B. No. 3461
1-2 (In the Senate - Received from the House May 10, 2005;
1-3 May 12, 2005, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 20, 2005, reported favorably by
1-5 the following vote: Yeas 4, Nays 0; May 20, 2005, sent to
1-6 printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the manner in which a municipality may impose a
1-10 moratorium on certain property development.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 212.131, Local Government Code, is
1-13 amended by amending Subdivision (3) and adding Subdivision (4) to
1-14 read as follows:

1-15 (3) "Property development" means the ~~new~~
1-16 construction, reconstruction, or other alteration or improvement
1-17 of residential or commercial buildings or the subdivision or
1-18 replatting of a subdivision of residential or commercial property
1-19 ~~[on vacant land]~~.

1-20 (4) "Commercial property" means property zoned for or
1-21 otherwise authorized for use other than single-family use,
1-22 multi-family use, heavy industrial use, or use as a quarry.

1-23 SECTION 2. Subchapter E, Chapter 212, Local Government
1-24 Code, is amended by amending Sections 212.132, 212.133, 212.135,
1-25 212.136, and 212.137 and adding Sections 212.1351, 212.1352,
1-26 212.1361, 212.1362, and 212.139 to read as follows:

1-27 Sec. 212.132. APPLICABILITY. This subchapter applies only
1-28 to a moratorium imposed on property development affecting only
1-29 residential property, commercial property, or both residential and
1-30 commercial property.

1-31 Sec. 212.133. PROCEDURE FOR ADOPTING MORATORIUM. A
1-32 municipality may not adopt a moratorium on property development
1-33 unless the municipality:

1-34 (1) complies with the notice and hearing procedures
1-35 prescribed by Section 212.134; and

1-36 (2) makes written findings as provided by Section
1-37 212.135, 212.1351, or 212.1352, as applicable.

1-38 Sec. 212.135. JUSTIFICATION FOR MORATORIUM: SHORTAGE OF
1-39 ESSENTIAL PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED. (a) If a
1-40 municipality adopts a moratorium on property development, the
1-41 moratorium is justified by demonstrating a need to prevent a
1-42 shortage of essential public facilities. The municipality must
1-43 issue written findings based on reasonably available information.

1-44 (b) The written findings must include a summary of:

1-45 (1) evidence demonstrating the extent of need beyond
1-46 the estimated capacity of existing essential public facilities that
1-47 is expected to result from new property development, including
1-48 identifying:

1-49 (A) any essential public facilities currently
1-50 operating near, at, or beyond capacity;

1-51 (B) the portion of that capacity committed to the
1-52 development subject to the moratorium; and

1-53 (C) the impact fee revenue allocated to address
1-54 the facility need; and

1-55 (2) evidence demonstrating that the moratorium is
1-56 reasonably limited to:

1-57 (A) areas of the municipality where a shortage of
1-58 essential public facilities would otherwise occur; and

1-59 (B) property that has not been approved for
1-60 development because of the insufficiency of existing essential
1-61 public facilities.

1-62 Sec. 212.1351. JUSTIFICATION FOR MORATORIUM: SIGNIFICANT
1-63 NEED FOR PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED. (a) Except
1-64 as provided by Section 212.1352, a ~~(b) A~~ moratorium that is not

2-1 based on a shortage of essential public facilities is justified
 2-2 only by demonstrating a significant need for other public
 2-3 facilities, including police and fire facilities. For purposes of
 2-4 this subsection, a significant need for public facilities is
 2-5 established if the failure to provide those public facilities would
 2-6 result in an overcapacity of public facilities or would be
 2-7 detrimental to the health, safety, and welfare of the residents of
 2-8 the municipality. The municipality must issue written findings
 2-9 based on reasonably available information.

2-10 (b) The written findings must include a summary of:

2-11 (1) evidence demonstrating that applying existing
 2-12 development ordinances or regulations and other applicable laws is
 2-13 inadequate to prevent the new development from causing the
 2-14 overcapacity of municipal infrastructure or being detrimental to
 2-15 the public health, safety, and welfare in an affected geographical
 2-16 area;

2-17 (2) evidence demonstrating that alternative methods
 2-18 of achieving the objectives of the moratorium are unsatisfactory;
 2-19 and

2-20 (3) evidence demonstrating that the municipality has
 2-21 approved a working plan and time schedule for achieving the
 2-22 objectives of the moratorium.

2-23 Sec. 212.1352. JUSTIFICATION FOR COMMERCIAL MORATORIUM IN
 2-24 CERTAIN CIRCUMSTANCES; WRITTEN FINDINGS REQUIRED. (a) If a
 2-25 municipality adopts a moratorium on commercial property
 2-26 development that is not based on a demonstrated shortage of
 2-27 essential public facilities, the municipality must issue written
 2-28 findings based on reasonably available information that the
 2-29 moratorium is justified by demonstrating that applying existing
 2-30 commercial development ordinances or regulations and other
 2-31 applicable laws is inadequate to prevent the new development from
 2-32 being detrimental to the public health, safety, or welfare of the
 2-33 residents of the municipality.

2-34 (b) The written findings must include a summary of:

2-35 (1) evidence demonstrating the need to adopt new
 2-36 ordinances or regulations or to amend existing ordinances,
 2-37 including identification of the harm to the public health, safety,
 2-38 or welfare that will occur if a moratorium is not adopted;

2-39 (2) the geographical boundaries in which the
 2-40 moratorium will apply;

2-41 (3) the specific types of commercial property to which
 2-42 the moratorium will apply; and

2-43 (4) the objectives or goals to be achieved by adopting
 2-44 new ordinances or regulations or amending existing ordinances or
 2-45 regulations during the period the moratorium is in effect.

2-46 Sec. 212.136. EXPIRATION OF MORATORIUM; EXTENSION. [~~(a)~~]
 2-47 A moratorium adopted under Section 212.135 or 212.1351 [~~this~~
 2-48 ~~subchapter~~] expires on the 120th day after the date the moratorium
 2-49 is adopted unless the municipality extends the moratorium by:

2-50 (1) holding a public hearing on the proposed extension
 2-51 of the moratorium; and

2-52 (2) adopting written findings that:

2-53 (A) identify the problem requiring the need for
 2-54 extending the moratorium;

2-55 (B) describe the reasonable progress made to
 2-56 alleviate the problem; and

2-57 (C) specify a definite duration for the renewal
 2-58 period of the moratorium.

2-59 Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED. [~~(b)~~] A
 2-60 municipality proposing an extension of a moratorium under this
 2-61 subchapter must publish notice in a newspaper of general
 2-62 circulation in the municipality not later than the 15th day before
 2-63 the date of the hearing required by this subchapter [~~Subsection~~
 2-64 ~~(a)~~].

2-65 Sec. 212.1362. EXPIRATION OF MORATORIUM ON COMMERCIAL
 2-66 PROPERTY IN CERTAIN CIRCUMSTANCES; EXTENSION. (a) A moratorium on
 2-67 commercial property adopted under Section 212.1352 expires on the
 2-68 90th day after the date the moratorium is adopted unless the
 2-69 municipality extends the moratorium by:

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

3-3 (2) adopting written findings that:

3-4 (A) identify the problem requiring the need for
3-5 extending the moratorium;

3-6 (B) describe the reasonable progress made to
3-7 alleviate the problem;

3-8 (C) specify a definite duration for the renewal
3-9 period of the moratorium; and

3-10 (D) include a summary of evidence demonstrating
3-11 that the problem will be resolved within the extended duration of
3-12 the moratorium.

3-13 (b) A municipality may not adopt a moratorium on commercial
3-14 property under Section 212.1352 that exceeds an aggregate of 180
3-15 days. A municipality may not adopt a moratorium on commercial
3-16 property under Section 212.1352 before the second anniversary of
3-17 the expiration date of a previous moratorium if the subsequent
3-18 moratorium addresses the same harm, affects the same type of
3-19 commercial property, or affects the same geographical area
3-20 identified by the previous moratorium.

3-21 Sec. 212.137. WAIVER PROCEDURES REQUIRED. (a) A
3-22 moratorium adopted under this subchapter must allow a permit
3-23 applicant to apply for a waiver from the moratorium relating to the
3-24 property subject to the permit by:

3-25 (1) claiming a right obtained under a development
3-26 agreement; or

3-27 (2) ~~claiming a vested right under Chapter 245 or~~
3-28 ~~common law; or~~

3-29 ~~[(3)] providing the public facilities that are the~~
3-30 ~~subject of the moratorium at the landowner's cost.~~

3-31 (b) The permit applicant must submit the reasons for the
3-32 request to the governing body of the municipality in writing. The
3-33 governing body of the municipality must vote on whether to grant the
3-34 waiver request within 10 days after the date of receiving the
3-35 written request.

3-36 Sec. 212.139. LIMITATION ON MORATORIUM. (a) A moratorium
3-37 adopted under this subchapter does not affect an application for a
3-38 project in progress under Chapter 245.

3-39 (b) A municipality may not adopt a moratorium under this
3-40 subchapter that:

3-41 (1) prohibits a person from filing or processing an
3-42 application for a project in progress under Chapter 245; or

3-43 (2) prohibits or delays the processing of an
3-44 application for zoning filed before the effective date of the
3-45 moratorium.

3-46 SECTION 3. (a) This Act applies to a moratorium adopted on
3-47 or after the effective date of this Act.

3-48 (b) If a moratorium affecting commercial property was
3-49 adopted by a municipality before the effective date of this Act and,
3-50 under the terms of the moratorium, remains in effect later than the
3-51 120th day after the effective date of this Act, the municipality
3-52 must comply with Section 212.136, Local Government Code, as amended
3-53 by this Act, or Section 212.1362(a), Local Government Code, as
3-54 added by this Act, as applicable, to continue the moratorium in
3-55 effect later than the 120th day after the effective date of this
3-56 Act.

3-57 SECTION 4. This Act takes effect September 1, 2005.

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