

By: Wentworth

S.B. No. 2202

A BILL TO BE ENTITLED

AN ACT

1
2 relating to authorizing municipalities and counties to regulate
3 land development in certain unincorporated areas; providing a
4 penalty.

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

6 SECTION 1. The heading to Chapter 242, Local Government
7 Code, is amended to read as follows:

8 CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE
9 SUBDIVISIONS AND LAND DEVELOPMENT IN AND OUTSIDE MUNICIPALITY'S
10 EXTRATERRITORIAL JURISDICTION

11 SECTION 2. Chapter 242, Local Government Code, is amended
12 by designating Sections 242.001, 242.0015, and 242.002 as
13 Subchapter A and adding a heading for Subchapter A to read as
14 follows:

15 SUBCHAPTER A. AUTHORITY TO REGULATE SUBDIVISIONS IN AND OUTSIDE
16 MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION

17 SECTION 3. Chapter 242, Local Government Code, is amended
18 by adding Subchapter B to read as follows:

19 SUBCHAPTER B. AUTHORITY TO REGULATE LAND DEVELOPMENT IN
20 MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION IN CERTAIN COUNTIES

21 Sec. 242.051. REGULATION OF LAND DEVELOPMENT IN
22 EXTRATERRITORIAL JURISDICTION GENERALLY. (a) This subchapter
23 applies only to a county with a population of 800,000 or more and a
24 municipality with a population of 500,000 or more located within 60

1 miles of the Edwards Aquifer.

2 (b) For an area in a municipality's extraterritorial
3 jurisdiction, as determined under Chapter 42, the governing bodies
4 of a municipality and the county acting jointly may adopt and
5 enforce a building code and regulate:

6 (1) the height, number of stories, and size of
7 buildings and other structures;

8 (2) the percentage of a lot that may be occupied;

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

10 (4) population density;

11 (5) the location and use of buildings, other
12 structures, and land for business, industrial, residential, or
13 other purposes; and

14 (6) the pumping, extraction, and use of groundwater by
15 persons other than retail public utilities, as defined by Section
16 13.002, Water Code, for the purpose of preventing the use or contact
17 with groundwater that presents an actual or potential threat to
18 human health.

19 (c) In the case of designated places and areas of
20 historical, cultural, or architectural importance and significance
21 in a municipality's extraterritorial jurisdiction, as determined
22 under Chapter 42, the governing bodies of a municipality and the
23 county acting jointly may regulate the construction,
24 reconstruction, alteration, or razing of buildings and other
25 structures.

26 (d) For an area in a municipality's extraterritorial
27 jurisdiction, as determined under Chapter 42, the governing bodies

1 of a municipality and the county may regulate the bulk of buildings.

2 (e) The municipality and the county may establish a joint
3 zoning commission, joint rules for enforcing the zoning regulations
4 and boundaries, and a joint board of adjustment under this
5 subchapter.

6 (f) Zoning regulations described by Subsections (b)-(d)
7 must be adopted in accordance with a comprehensive plan and zoning
8 procedures approved by the governing bodies of the municipality and
9 the county and must be designed to:

- 10 (1) lessen congestion in the streets;
11 (2) secure safety from fire, panic, and other dangers;
12 (3) promote health and the general welfare;
13 (4) provide adequate light and air;
14 (5) prevent the overcrowding of land;
15 (6) avoid undue concentration of population; or
16 (7) facilitate the adequate provision of
17 transportation, water, sewers, schools, parks, and other public
18 requirements.

19 (g) The comprehensive plan of the county described by
20 Subsection (f) may encompass areas outside the extraterritorial
21 jurisdiction of a municipality.

22 Sec. 242.052. DISTRICTS. (a) The governing bodies of the
23 municipality and the county may divide the extraterritorial
24 jurisdiction of the municipality into districts of a number, shape,
25 and size the governing bodies consider best for carrying out this
26 subchapter. Within each district, the governing bodies may
27 regulate the erection, construction, reconstruction, alteration,

1 repair, or use of buildings, other structures, or land.

2 (b) Zoning regulations must be uniform for each class or
3 kind of building in a district, but the regulations may vary from
4 district to district. The regulations shall be adopted with
5 reasonable consideration, among other things, for the character of
6 each district and its peculiar suitability for particular uses,
7 with a view of conserving the value of buildings and encouraging the
8 most appropriate use of land throughout the area.

9 Sec. 242.053. JOINT PROCEDURES GOVERNING ADOPTION OF ZONING
10 REGULATIONS AND DISTRICT BOUNDARIES. (a) The governing bodies of
11 the municipality and the county shall establish joint procedures
12 for adopting and enforcing the regulations and district boundaries.
13 A regulation or boundary is not effective until it is adopted by the
14 governing bodies of the municipality and the county after a public
15 hearing on the matter at which parties in interest and citizens have
16 an opportunity to be heard. Before the 15th day before the date of
17 the hearing, the governing bodies of the municipality and the
18 county must publish notice of the time and place of the hearing in
19 an official newspaper or a newspaper of general circulation in the
20 extraterritorial jurisdiction.

21 (b) A rule or regulation established under this section may
22 be amended only if the amended rule is adopted by the governing
23 bodies of the municipality and the county.

24 Sec. 242.054. JOINT ZONING COMMISSION. (a) To exercise the
25 powers authorized by this subchapter, the governing bodies of the
26 municipality and the county may appoint a zoning commission. The
27 commission shall recommend boundaries for the original zoning

1 districts and appropriate zoning regulations for each district.

2 (b) The zoning commission shall make a preliminary report
3 and hold public hearings on that report before submitting a final
4 report to the governing bodies of the municipality and the county.
5 The governing bodies of the municipality and the county may not hold
6 a public hearing until each receives the final report of the zoning
7 commission.

8 Sec. 242.055. COMPLIANCE WITH OPEN MEETINGS LAW. A joint
9 board of adjustment or joint zoning commission established by an
10 ordinance or resolution adopted by the governing bodies of the
11 municipality and the county to assist the governing bodies of the
12 municipality and the county in developing an initial comprehensive
13 zoning plan or initial zoning regulations, or a committee of the
14 joint board of adjustment or joint zoning commission that includes
15 one or more members of the board or commission, is subject to
16 Chapter 551, Government Code.

17 Sec. 242.056. JOINT BOARD OF ADJUSTMENT. (a) The
18 governing bodies of the municipality and the county may provide for
19 the appointment of a joint board of adjustment. In the regulations
20 adopted under this subchapter, the governing bodies of the
21 municipality and the county may authorize the board of adjustment,
22 in appropriate cases and subject to appropriate conditions and
23 safeguards, to make special exceptions to the terms of a zoning
24 regulation that are consistent with the general purpose and intent
25 of the regulation and in accordance with any applicable rules
26 contained in the regulation.

27 (b) A board of adjustment must consist of at least five

1 members to be appointed for terms of two years. The governing
2 bodies of the municipality and the county must provide the
3 procedure for appointment. The governing bodies of the
4 municipality and the county may authorize each member of each
5 governing body to appoint one member to the board. The appointing
6 governing body may remove a board member for cause, as found by the
7 appointing governing body, on a written charge after a public
8 hearing. A vacancy on the board shall be filled for the unexpired
9 term.

10 (c) The appointing governing body may provide for the
11 appointment of alternate board members to serve in the absence of
12 one or more regular members when requested to do so by the presiding
13 officer of the appointing governing body. An alternate member
14 serves for the same period as a regular member and is subject to
15 removal in the same manner as a regular member. A vacancy among the
16 alternate members is filled in the same manner as a vacancy among
17 the regular members.

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

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

27 (f) The board shall keep minutes of its proceedings that

1 indicate the vote of each member on each question or the fact that a
2 member is absent or fails to vote. The board shall keep records of
3 its examinations and other official actions. The minutes and
4 records shall be filed immediately in the board's office and are
5 public records.

6 Sec. 242.057. AUTHORITY OF BOARD. (a) The board of
7 adjustment may:

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

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

14 (3) authorize in specific cases a variance from the
15 terms of a zoning regulation if the variance is not contrary to the
16 public interest and, due to special conditions, a literal
17 enforcement of the regulation would result in unnecessary hardship,
18 and so that the spirit of the regulation is observed and substantial
19 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 wholly or partly reverse or affirm 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, and for that
27 purpose the board has the same authority as the administrative

1 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. 242.058. 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 municipality or 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 governing bodies of the municipality and
9 the county who serves on the board of adjustment may not bring an
10 appeal under this section.

11 Sec. 242.059. 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 municipality or 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 wholly or partly reverse or affirm 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 governing bodies of a municipality and a county than is
24 applied to a decision of a board of adjustment that is not composed
25 of members of the governing body of a municipality or a county.

26 Sec. 242.060. ENFORCEMENT; PENALTY; REMEDIES. (a) The
27 governing bodies of the municipality and the county may adopt a

1 regulation to enforce this subchapter or any regulation adopted
2 under this subchapter.

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

10 (c) If a building or other structure is erected,
11 constructed, reconstructed, altered, repaired, converted, or
12 maintained or if a building, other structure, or land is used in
13 violation of this subchapter or a regulation adopted under this
14 subchapter, the appropriate municipal or county authority, in
15 addition to other remedies, may institute appropriate action to:

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

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

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

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

24 Sec. 242.061. CONFLICT WITH OTHER LAWS;
25 EXCEPTIONS. (a) If a zoning regulation adopted under this
26 subchapter requires a greater width or size of a yard, court, or
27 other open space, requires a lower building height or fewer number

1 of stories for a building, requires a greater percentage of lot to
2 be left unoccupied, or otherwise imposes higher standards than
3 those required under another statute or local ordinance or
4 regulation, the regulation adopted under this subchapter controls.
5 If the other statute or local ordinance or regulation imposes
6 higher standards, that statute, ordinance, or regulation controls.

7 (b) This subchapter does not authorize the governing bodies
8 of the municipality and the county to require the removal or
9 destruction of property that exists at the time the governing
10 bodies of the municipality and the county implement this subchapter
11 and that is actually and necessarily used in a public service
12 business.

13 (c) This subchapter does not apply to a building, other
14 structure, or land under the control, administration, or
15 jurisdiction of a state or federal agency.

16 (d) This subchapter applies to a privately owned building or
17 other structure and privately owned land when leased to a state
18 agency.

19 Sec. 242.062. CONTINUATION OF LAND USE. The governing
20 bodies of the municipality and the county may not prohibit a person
21 from continuing to use land in the manner in which the land was
22 being used on January 1, 2010, if the land use was legal at that
23 time.

24 SECTION 4. Section 212.003(a), Local Government Code, is
25 amended to read as follows:

26 (a) The governing body of a municipality by ordinance may
27 extend to the extraterritorial jurisdiction of the municipality the

1 application of municipal ordinances adopted under Section 212.002
2 and other municipal ordinances relating to access to public roads
3 or the pumping, extraction, and use of groundwater by persons other
4 than retail public utilities, as defined by Section 13.002, Water
5 Code, for the purpose of preventing the use or contact with
6 groundwater that presents an actual or potential threat to human
7 health. However, unless authorized by Subchapter B, Chapter 242,
8 or otherwise authorized by state law, in its extraterritorial
9 jurisdiction a municipality shall not regulate:

10 (1) the use of any building or property for business,
11 industrial, residential, or other purposes;

12 (2) the bulk, height, or number of buildings
13 constructed on a particular tract of land;

14 (3) the size of a building that can be constructed on a
15 particular tract of land, including without limitation any
16 restriction on the ratio of building floor space to the land square
17 footage;

18 (4) the number of residential units that can be built
19 per acre of land; or

20 (5) the size, type, or method of construction of a
21 water or wastewater facility that can be constructed to serve a
22 developed tract of land if:

23 (A) the facility meets the minimum standards
24 established for water or wastewater facilities by state and federal
25 regulatory entities; and

26 (B) the developed tract of land is:

27 (i) located in a county with a population of

1 2.8 million or more; and

2 (ii) served by:

3 (a) on-site septic systems
4 constructed before September 1, 2001, that fail to provide adequate
5 services; or

6 (b) on-site water wells constructed
7 before September 1, 2001, that fail to provide an adequate supply of
8 safe drinking water.

9 SECTION 5. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2009.