

By: Elkins/Kendall County

A BILL TO BE ENTITLED

AN ACT

relating to granting a fast growth rural Hill Country county, Kendall, authority to regulate certain land use and impose certain development fees; providing penalties.

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

SECTION 1. The heading to Chapter 231, Local Government Code, is amended to read as follows:

CHAPTER 231. SPECIFIC COUNTY LAND USE PLANNING

~~[ZONING]~~ AUTHORITY

SECTION 2. Chapter 231, Local Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. DEVELOPMENT REGULATIONS IN a fast growth rural

HILL COUNTRY COUNTY

Sec. 231.281. DEFINITIONS. In this subchapter:

(1) "Hill Country county" means Kendall County.

(2) "Infrastructure" means any of the following facilities:

(A) water supply, treatment, and distribution facilities;

(B) wastewater collection and treatment facilities;

(C) storm water, drainage, and flood control facilities; or

(D) roadway facilities.

(3) "Infrastructure cost recovery fee" means a fee imposed by the county on the owner of new development to pay for or recover costs of infrastructure improvements necessitated by and attributable to the new development. The fee is assessed on a cost per service unit basis.

(4) "New development" means any of the following

activities that increase the number of service units:

(A) the subdivision of land;

(B) the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or

(C) any use or extension of the use of land.

(5) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends for the preceding 10 years applicable to the county in which the individual unit of development is located.

Sec. 231.282. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) the natural areas surrounding Boerne Lake reservoir and Guadalupe River (which is the main source of water for the Canyon Lake reservoir); 14 Creeks like the Balcones and Cibolo; public caverns and karst areas; numerous small lakes, tributaries, in Kendall county:

(A) are or will be frequented for recreational and tourism purposes by residents from every part of the state; and

(B) is a designated "Primary Ground Water Management Area", critical recharge zones for Edward, Trinity, Cow Creek aquifers, karst areas and eventually to the bays and estuaries in the Gulf of Mexico;

(2) orderly development of Kendall county is of concern to the citizens of the county to preserve the natural scenic beauty, native wildlife, as well as local historical and cultural heritage of this unique region of the Hill Country; and

(3) without adequate development regulations, Kendall county will be developed in ways that endanger and interfere with the proper use of that area as a place to live and the support of business, tourism and recreation activities, to the detriment of

public health, safety, morals, and general welfare.

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

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

(2) encouraging business, tourism and recreation; and

(3) safeguarding and preventing the pollution of our States aquifers, rivers, lakes and sky.

Sec. 231.283. AREAS SUBJECT TO REGULATION. This subchapter applies only to the unincorporated areas of Kendall a fast growth rural Hill Country county.

Sec. 231.284. DEVELOPMENT REGULATIONS GENERALLY. (a) The commissioner's court of Kendall county by order may adopt land development reasonable regulations to promote the health, safety, morals, general welfare of the county and provide for the safe, orderly, and healthful development in the unincorporated area of the county, including regulations to establish:

(1) reasonable minimum or average lot sizes within a development in designated county area;

(2) reasonable building and set-back lines on all sides of any building or property used for business, industrial, residential, or other purposes; and

(3) reasonable lot frontages and reasonable lot frontages in relation to curves in the road.

(4) Nighttime lighting requirements to preserve the night sky for the protection of tourism, military nighttime training, and the benefit of residents

(5) an infrastructure cost recovery fee of

(i) one and half percent of the sales cost of each Service unit, or

(ii) construction cost of rented or leased buildings,

or

(iii) as described by Section 231.294.

(b) A determination of the reasonableness of a set-back line under Subsection (a)(2) may include consideration of an incompatible land use.

(c) Unless otherwise authorized by state law, a commissioner's court may not regulate under this subchapter:

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

(2) a plat or subdivision in an adjoining county.

Sec. 231.285. ELECTION TO APPROVE REGULATORY AUTHORITY REQUIRED. (a) Regulatory authority granted under Section 231.284 is not effective until it is approved by a majority of the county residents voting in an election held under this section.

(b) County residents voting in an election held under this section:

(1) may approve regulatory authority granted under Section 231.284 in its entirety; or

(2) may approve specific regulatory authority granted under Section 231.284 without approving other specific regulatory authority granted under Section 231.284.

(c) The commissioners court of Kendall county:

(1) may, on its own motion, order and hold an election in the county to approve a grant of authority under Section 231.284; and

(2) shall order and hold an election in the county to approve a grant of authority under Section 231.284 if the commissioners court receives a petition requesting the election signed by registered voters of the county in a number equal to 10 percent of the number of votes received by all candidates for governor in the county in the most recent gubernatorial election.

(d) Notwithstanding Section 277.002, Election Code:

(1) a petition must include each signer's zip code with the signer's residence address; and

(2) a signature is not considered valid if the date of

signing is before the 90th day before the date the petition is submitted to the commissioner's court.

(e) Not later than the fifth day after the date a petition is received by the commissioners court, the county judge shall submit the petition for verification to the county clerk. The county clerk shall determine whether the petition meets the requirements prescribed by this section and Section 277.002, Election Code. Not later than the 30th day after the date the petition is submitted to the county clerk for verification, the county clerk shall certify in writing to the commissioner's court whether the petition is valid. If the county clerk determines that the petition is invalid, the county clerk shall state the reasons for that determination.

(f) If the county clerk certifies that a petition is valid, the commissioners court shall order the election to be held on the first November uniform election date authorized by Section 41.001, Election Code that occurs after the 35th day after the date the court receives the county clerk's certification.

(g) 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 (Kendall county) to regulate land development in the unincorporated area of the county by (insert description of general authority or specific regulation, as applicable)." As applicable, the ballot shall be prepared to permit voting for or against separate propositions as provided by Subsection (b) (2).

(h) The approval authority granted under this section includes the authority to repeal, revise, or amend a previous decision to operate under this subchapter.

Sec. 231.286. COMPLIANCE WITH COUNTY AND MUNICIPAL PLANS. Development regulations must be:

(1) adopted in accordance with any county plan for growth and development of the county if a county plan has been

adopted by the commissioners court; and

(2) coordinated with the comprehensive plans of municipalities located in the county.

Sec. 231.287. DISTRICTS. (a) The commissioner's court of a Hill Country county may divide the unincorporated area of the county into districts of a number, shape, and size the commissioner's court considers best for exercising the authority granted by this subchapter.

(b) Development regulations may vary from district to district.

Sec. 231.288. PROCEDURE GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) A development regulation adopted under this subchapter is not effective until the regulation is adopted by the commissioner's court of the county after a public hearing. Before the 15th day before the date of the hearing, the commissioner's court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioner's court may establish or amend a development regulation only by an order passed by a majority vote of the full membership of the commissioner's court.

Sec. 231.289. DEVELOPMENT COMMISSION. (a) The commissioners court of a Hill Country county may appoint a development commission to assist in the implementation and enforcement of development regulations adopted under this subchapter.

(b) The development commission must consist of:

(1) an ex officio chair who must be a public official, other than a county commissioner, in the county; and

(2) four additional members who are all residents of the county.

(c) The development commission is advisory only and may recommend appropriate development regulations for the county.

(d) The members of the development commission are subject to the same requirements relating to conflicts of interest that are

applicable to the commissioner's court under Chapter 171.

Sec. 231.290. SPECIAL EXCEPTION. (a) A person aggrieved by a development regulation adopted under this subchapter may petition the commissioner's court of the county that adopted the regulation or the development commission, if the commissioner's court has established a development commission, for a special exception to the development regulation.

(b) The commissioner's court of each county that exercises the authority granted by this subchapter shall adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Sec. 231.291. ENFORCEMENT; PENALTY. (a) The commissioner's court of a Hill Country county may adopt orders to enforce this subchapter or an order or development regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an order or development regulation adopted under this subchapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Each day that a violation occurs constitutes a separate offense.

Sec. 231.292. COOPERATION WITH MUNICIPALITIES. The commissioner's court of Kendall county by order may enter into agreements with any municipality located in the county to assist in the implementation and enforcement of development regulations adopted under this subchapter.

Sec. 231.293. CONFLICT WITH OTHER LAWS. If a development regulation adopted under this subchapter imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls in the area subject to regulation. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

Sec. 231.294. INFRASTRUCTURE COST RECOVERY FEE. (a) A Hill

Country county may impose an infrastructure cost recovery fee to provide necessary infrastructure to serve new development in the unincorporated area of the county as provided by this section and Sections 231.295 and 231.296.

(b) The county may impose the fee only to pay for or recover the costs of constructing, acquiring, or expanding infrastructure necessary to serve new development. The fee may not be:

(1) applied to infrastructure improvements that do not serve the new development or to which the new development does not have access; or

(2) imposed to pay for:

(A) repairing, operating, or maintaining existing or new infrastructure improvements; or

(B) upgrading, replacing, or expanding existing development to meet stricter safety, efficiency, environmental, or regulatory standards.

(c) Before the county may impose the fee to recover costs of roadway improvements, an infrastructure development plan must be prepared. The plan must include a road traffic study conducted by a qualified engineer. The county may not impose the fee to recover costs of roadway improvements unless the road traffic study projects a minimum of a 25 percent increase in road traffic attributable to the new development.

(d) Any interest earned on the fee is considered part of the fee and is subject to the same restrictions under this section.

(e) The county may assess the fee before or at the time a subdivision plat is recorded. The fee may be collected at the time the county issues a building permit or a certificate of occupancy, unless the county and the owner of the development enter into an agreed payment plan.

(f) The county may reduce or waive the assessment of the fee if the new development qualifies as affordable housing under 42 U.S.C. Section 12745.

(g) After the fee has been assessed, the fee may not be increased unless additional service units are added. If additional service units are added, the fee may be assessed only at the cost per service unit originally imposed.

(h) The infrastructure improvement for which the fee is imposed must be completed not later than the first anniversary of the date the fee is paid. The time prescribed for completion may be extended by a majority vote of the commissioner's court if the commissioner's court makes a finding that the infrastructure improvement is exceptionally complicated or intensive and reasonably requires additional time. An extension granted under this subsection may not exceed the second anniversary of the date the fee is paid. Any portion of the fee that remains after the time prescribed expires shall be refunded to the owner of the development.

Sec. 231.295. PROCEDURES FOR ASSESSING INFRASTRUCTURE COST RECOVERY FEES GENERALLY. (a) The commissioner's court of a Hill Country county shall hold a public hearing to consider the infrastructure improvements and the infrastructure cost recovery fee. On or before the date the notice of hearing is published, the commissioner's court shall make available to the public a description of any proposed infrastructure improvements and a description of any proposed fee.

(b) On or before the 30th day before the date of the hearing, the commissioner's court shall:

(1) publish notice of the hearing in one or more newspapers of general circulation in the county; and

(2) send written notice by certified mail to the owner of the new development for which a fee is proposed.

(c) The notice under Subsection (b)(1) shall include:

(1) a relevant heading;

(2) the time, date, and location for the hearing;

(3) a statement that the hearing is open to public

comment; and

(4) a general statement of the subject matter of the hearing.

(d) Not later than the 30th day after the date of the public hearing, the commissioners court by order shall adopt or reject the proposed assessment of the fee. An order approving the assessment of the fee may not be adopted as an emergency measure.

Sec. 231.296. CERTIFICATION OF COMPLIANCE REQUIRED. (a) A Hill Country county that imposes an infrastructure improvement cost recovery fee shall submit a written certification verifying compliance with this subchapter to the attorney general each year not later than the last day of the county's fiscal year. The certification must be signed by the county judge.

(b) A county that fails to submit a certification for a fiscal year as required by this section is liable to the state for a civil penalty in an amount equal to 10 percent of the amount of the fee assessed in that fiscal year. A penalty collected under this subsection shall be deposited to the credit of the housing trust fund.

SECTION 3. This Act takes effect _____ 2021.