FILED FOR RECORD
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BECKY LANDRUM
County Clerk, Hunt County, Tex.
by

RESOLUTION NO. 20384

A RESOLUTION OF THE COMMISSIONERS COURT OF HUNT COUNTY, TEXAS SUPPORTING THE ENACTMENT OF A PROPOSED BILL TO BE ENTITLED THE "COVERED FACILITY LOCATION, SETBACK, AND BUFFER ACT," WHICH WOULD AUTHORIZE COUNTIES TO ADOPT CAPPED SETBACK, BUFFER, AND SCREENING REQUIREMENTS SEPARATING THE ELEMENTS OF CERTAIN HIGH-IMPACT FACILITIES, INCLUDING DATA CENTERS, FROM HOMES, SCHOOLS, CHURCHES, AND OTHER PROTECTED USES.

WHEREAS, distance is the single most effective mitigation for the sound, light, and fire exposure created by the massed buildings, mechanical equipment, battery banks, generator arrays, and fuel storage of a high-impact facility, and it is the one measure a county presently has no authority to require; and

WHEREAS, the Legislature has repeatedly granted counties use-specific distance authority where a use's secondary effects warranted it — for sexually oriented businesses under Chapter 243, Local Government Code, and for game rooms under Subchapter E, Chapter 234, Local Government Code — and the proposed "Covered Facility Location, Setback, and Buffer Act" is built on that established model; and

WHEREAS, the proposed bill binds the county as firmly as the developer: setbacks are capped by statute at 500 feet from a property line and 1,000 feet from an existing home; a willing neighbor may waive the protection by recorded instrument; buffers and screening may trade for distance; a mandatory variance — decided within 60 days or granted automatically, with the landowner's economic circumstances expressly weighed — guarantees that no tract is ever regulated into uselessness; and the rule reaches only projects not yet filed or begun; and

WHEREAS, the Commissioners Court finds that reasonable separation between a family's home and a generator yard is elementary neighborliness written into law, and that enactment of the proposed bill is in the best interest of the residents of this County;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF HUNT COUNTY, TEXAS, THAT:

1. The Commissioners Court supports and endorses the enactment of the proposed "Covered Facility Location, Setback, and Buffer Act" by the 90th Texas Legislature.

2. The Court respectfully requests the County's State Senator, the Honorable Angela Paxton, and the County's State Representative, the Honorable Brent Money, to author, sponsor, co-sponsor, and support the proposed bill, and to work toward its passage.

3. The Court directs that certified copies of this Resolution be transmitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the County's state legislative

delegation, the standing committees of the Senate and House with primary jurisdiction over the bill, and the Texas Association of Counties.

4. This Resolution takes effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the Commissioners Court of Hunt County, Texas, at a duly posted meeting at which a quorum was present and voting, on this the 13th day of October, 2026.

Bobby Stovall, County Judge

ATTEST:

Becky Landrum, County Clerk

By: _____ H.B./S.B. No. _____

(90th Legislature, Regular Session)

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a county to adopt setback, buffer, and screening requirements for certain high-impact facilities, including data centers, in the unincorporated area of the county; providing civil penalties.

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

SECTION 1. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) the scale and character of data centers and other high-impact facilities — massed buildings, continuously operating mechanical equipment, energy storage systems, generator arrays, and fuel storage — create health, safety, and compatibility concerns when those elements are placed at the boundaries of rural homes, schools, and other sensitive uses, and distance is the most effective single mitigation for sound, light, and fire exposure and the one measure a county presently cannot require;

(2) the legislature has repeatedly granted counties narrow, use-specific location and distance authority where the secondary effects of a use warranted it, including for sexually oriented businesses under Chapter 243, Local Government Code, with location and distance restrictions under Section 243.006; for game rooms under Subchapter E, Chapter 234, Local Government Code, with distance restrictions from a school, regular place of religious worship, or residential neighborhood under Section 234.133; and for communication facility structures in certain counties under Section 240.084, Local Government Code; this Act is the next entry in that line;

(3) a bounded distance-and-buffer authority — capped by statute, waivable by the affected neighboring owner, and subject to a variance procedure with a decision deadline — is not zoning: it neither divides territory into districts nor regulates the range of permitted uses of land; and

(4) separation distances for energy storage systems, generation equipment, and fuel storage complement the uniform statewide battery energy storage fire safety standards adopted under Chapter 187, Utilities Code, without establishing any conflicting design, installation, or operational standard.

(b) The purpose of this Act is to authorize counties to adopt bounded setback, buffer, and screening requirements for certain high-impact facilities in their unincorporated areas, subject to statutory maximums, neighbor waivers, and a mandatory variance procedure, and not to authorize any county to prohibit those facilities.

SECTION 2. Subtitle B, Title 7, Local Government Code, is amended by adding Chapter 250 to read as follows:

CHAPTER 250. COUNTY SETBACK AND BUFFER REQUIREMENTS FOR COVERED FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 250.001. DEFINITIONS. In this chapter:

(1) "Commissioners court" means the commissioners court of a county.

(2) "Covered facility" means a facility described by Section 250.003.

(3) "Data center" means a facility, or a group of facilities at a single location or on contiguous or nearby parcels under common ownership or control, used primarily to house computer systems, servers, and associated equipment for the processing, storage, management, or distribution of data, including a facility used primarily for cryptocurrency mining or other high-density computing.

(4) "Facility element" means a building, exterior mechanical equipment, including cooling equipment, an energy storage system, electric generation equipment, or fuel storage of a covered facility.

(5) "Habitable structure" means a structure used as a residence that is occupied or suitable for occupancy.

(6) "Protected use" means a school, a regular place of religious worship, a hospital or licensed health care facility, or a licensed child-care facility.

(7) "Residential property" means a lot or tract containing a habitable structure, or a platted lot in a recorded residential subdivision.

(8) "Setback order" means an order adopted under Section 250.051.

(9) "Unincorporated area" means the area of a county that is outside the corporate boundaries of a municipality.

Sec. 250.002. APPLICABILITY. This chapter applies to each county and to covered facilities located or proposed to be located wholly or partly in the unincorporated area of a county.

Sec. 250.003. COVERED FACILITY. (a) In this chapter, "covered facility" means a facility in the unincorporated area of a county that is:

(1) a data center, without regard to its electrical or water demand; or

(2) another commercial or industrial facility that requires 75 megawatts or more of electrical load at the point of interconnection, determined by aggregating the load of facilities that are part of a common development or that are located on contiguous parcels under common

ownership or control, or that requires 1,000,000 gallons or more per day of consumptive water use.

(b) Subsection (a)(1) does not apply to a data center that, at full buildout:

(1) requires less than [5] megawatts of electrical load at the point of interconnection, determined by aggregating the load of facilities that are part of a common development or that are located on contiguous parcels under common ownership or control; and

(2) has a gross floor area of less than [25,000] square feet.

Sec. 250.004. RELATIONSHIP TO OTHER LAW. (a) A setback order is not a zoning regulation. This chapter does not authorize a county to divide territory into districts, to regulate the range of permitted uses of land, or to prohibit a covered facility.

(b) This chapter does not authorize a county to regulate any matter within the jurisdiction of the Public Utility Commission of Texas, an independent organization certified under Section 39.151, Utilities Code, the Texas Commission on Environmental Quality, or a groundwater conservation district, or any matter preempted by federal law.

(c) This chapter does not authorize a standard for the design, installation, or operation of a battery energy storage facility that conflicts with the standards adopted under Chapter 187, Utilities Code. A distance requirement of general application adopted under this chapter is not such a standard.

(d) This chapter does not limit the authority of a county under Chapter 241 of this code or under floodplain management requirements, and does not limit the authority of a county and a facility owner to address setbacks, buffers, and screening by enforceable agreement.

SUBCHAPTER B. SETBACK ORDERS

Sec. 250.051. AUTHORITY TO ADOPT SETBACK ORDER. (a) The commissioners court of a county may, by order adopted at an open meeting held after a public hearing, establish minimum setback distances for facility elements of a covered facility from:

(1) the property line of residential property;

(2) a habitable structure not owned or controlled by the owner or operator of the covered facility;

(3) the property line of a protected use; and

(4) the boundary of a recorded residential subdivision.

(b) Notice of the hearing must be published in a newspaper of general circulation in the county and posted on the county's Internet website not later than the 15th day before the date of the hearing.

(c) A setback order may establish different distances for different facility elements, including greater distances for energy storage systems, electric generation equipment, and fuel storage than for buildings.

(d) A setback distance is measured horizontally from the nearest point of the facility element to the nearest point of the line or structure from which the setback is required.

Sec. 250.052. STATUTORY MAXIMUMS. A setback order may not require a setback exceeding:

(1) 500 feet from the property line of residential property, the property line of a protected use, or the boundary of a recorded residential subdivision; or

(2) 1,000 feet from a habitable structure in existence on the date the owner of the covered facility files the first development application for the facility or, if no development application is required, commences construction.

Sec. 250.053. BUFFERS AND SCREENING. A setback order may require or permit berms, walls, vegetative screening, equipment enclosures, or enhanced lighting shielding, and may provide for reduced setback distances where specified buffers or screening are installed and maintained.

Sec. 250.054. WAIVER BY AFFECTED OWNER. The owner of residential property, of a protected use, or of a habitable structure may execute and record in the real property records of the county a written waiver of a setback as to a specified covered facility. A recorded waiver runs with the land, may be limited by its terms, and removes the waived protection as to that facility.

Sec. 250.055. VARIANCE. (a) The owner of a proposed covered facility may apply to the commissioners court for a variance from a setback order.

(b) The commissioners court shall grant a variance, in whole or in part, if the court finds that:

(1) strict application of the order creates an unnecessary hardship; or

(2) mitigation measures, including buffers, walls, equipment enclosure, or facility orientation, will provide protection substantially equivalent to the setback.

In determining whether an unnecessary hardship exists under Subdivision (1), the commissioners court shall consider, among other relevant factors, the economic impact of strict application of the order on the use of the tract.

(c) The commissioners court shall grant a variance to the extent necessary to avoid depriving a tract of all economically viable use.

(d) The commissioners court shall act on a complete variance application, at an open meeting, not later than the 60th day after the date the complete application is filed. If the court does not act within that period, the variance is granted as requested.

(e) A variance may be conditioned on enforceable mitigation commitments, which are enforceable as part of the setback order.

(f) An applicant may appeal the denial of a variance to a district court of the county, which shall review the denial under the substantial evidence rule.

Sec. 250.056. PROSPECTIVE APPLICATION. (a) A setback order applies only to a covered facility for which, on the effective date of the order:

(1) construction has not commenced;

(2) no development application has been filed with the county; and

(3) no final county approvals have been granted.

(b) The application of a setback order is subject to Chapter 245.

SUBCHAPTER C. ENFORCEMENT

Sec. 250.101. PROHIBITION. A person may not construct a facility element in violation of an applicable setback order, except in accordance with a recorded waiver under Section 250.054 or a variance under Section 250.055.

Sec. 250.102. CIVIL PENALTY. (a) A person that violates Section 250.101 is liable to the county for a civil penalty of not less than $1,000 or more than $10,000 for each day the violation continues. Each day a violation continues is a separate violation.

(b) In determining the amount of the penalty, the court shall consider the seriousness of the violation, the person's culpability and history of previous violations, the person's good-faith efforts to comply, and the economic benefit of noncompliance.

(c) The county attorney or district attorney with jurisdiction in the county, or the attorney general at the request of the commissioners court, may bring an action under this section on behalf of the county. Venue is in a district court of the county.

(d) A penalty recovered under this section shall be deposited to the credit of the general fund of the county.

Sec. 250.103. INJUNCTIVE RELIEF. A district court of the county may enjoin construction of a facility element in violation of an applicable setback order and, for a facility element constructed in knowing violation, may order its relocation or removal. The county is not required to give bond as a condition of relief under this section.

Sec. 250.104. REMEDIES CUMULATIVE. The remedies provided by this subchapter are cumulative of other remedies provided by law.

SECTION 3. Chapter 250, Local Government Code, as added by this Act, applies only to a setback order adopted on or after the effective date of this Act.

SECTION 4. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.