

- SUBJECT:** Continuing legal land use in newly incorporated municipality
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 5 ayes — Mowery, J. Jones, Goolsby, Pickett, Haggerty, Howard
0 nays
3 absent — Guillen, Hochberg, Noriega
- WITNESSES:** For — Mary Miksa, Texas Association of Business; (*Registered, but did not testify*;) John Cowan, Texas Association of Dairymen; Donnie Dippel, Texas Agricultural Industries Association; Jimmy Gaines, Texas Landowners Council; Kinnan Goleman, TXI Operations; James Grimm, Texas Poultry Federation; Billy Howe, Texas Farm Bureau; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; David Oefinger, Texas Pest Management Association; Stephen Salmon, Riverside and Landowners Protection Coalition; Linda Sickels, Trinity Industries; Shane Sklar, Independent Cattlemen’s Association; Ed Small, Texas and Southwestern Cattleraisers Association; James Terrell, Select Milk Producers; Keller W. Webster
- Against — Hector Gonzales and Thomas Trantham, Village of Webberville
- BACKGROUND:** In 1926, the U.S. Supreme Court upheld the validity of zoning ordinances based on the power of communities to legislate for the health, morals, safety, and welfare of their residents — police power — even though the ordinances may impose burdens on the use and enjoyment of private property. Local Government Code, ch. 211 allows municipalities to create zoning laws based on their police power, including protecting and preserving places and areas of historical, cultural, or architectural importance and significance. Sec. 211.003 specifically authorizes municipalities to zone the size, dimension, coverage, and use of lots in their communities, among other matters.
- The 76th Legislature in 1999 enacted Local Government Code, ch. 245 (HB 1704 by Kuempel and Bosse), requiring a local government to consider an application for a permit in a newly annexed area, including for a plat, based

only on the ordinances and regulations in effect at the time the permit application was filed. Sec. 245.004 exempts from this restriction municipal zoning regulations that do not affect lot size, lot coverage, and building size and regulations that do not change development permitted by a restrictive covenant required by a municipality.

Webberville, a town of about 500, incorporated in February 2003 as a Type C general-law municipality under Local Government Code, sec. 5.003. It is located in Travis County not far from the Colorado River.

DIGEST:

HB 2212 would prohibit a municipality incorporated after January 1, 2003, from prohibiting a person from continuing to use land in the area in the manner in which the land was being used on the date of incorporation if the land use was legal at that time. The municipality could not prohibit a person from beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the incorporation if:

- one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use, and
- a completed application for the initial authorization was filed with the governmental entity before the date of incorporation.

The bill would stipulate that a completed application would be filed if the application included all documents and other information required by the governmental entity in a written notice to the applicant.

HB 2212 would not prohibit a municipality from imposing a regulation relating to the location of sexually oriented businesses; an ordinance or other requirement affecting colonias; a regulation relating to preventing imminent destruction of property or injury to people; or regulations relating to public nuisances, flood control, discharge of firearms, sale and use of fireworks, or storage and use of hazardous substances. The bill would render void any municipal ordinance or rule in conflict with this section.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 2212 would prevent residents of a locality from incorporating suddenly with the intent of taking away others' property rights. It would not establish a new property right for any actor. Without the restrictions that HB 2212 would enact, a group could misuse the state's incorporation statute to usurp a neighbor's property rights by incorporating his or her land and imposing zoning requirements to prohibit the intended land use.

The bill would extend to property owners protections similar to those that benefit landowners in property subject to municipal annexation. HB 2212, like ch. 245, would help protect developers and other land users from surprise changes in government regulation that can compromise or even defeat development plans. Current law does not afford landowners in newly incorporated municipalities any similar protection. Unpredicted government regulations can discourage investments and slow economic growth.

HB 2212 would not make absolute a landowner's rights to property within Webberville or any other municipality. A landowner could use land only in a manner permitted 90 days before it was incorporated, and only in the manner for which the owner had completed application. Also, the municipality still could zone the land to protect against several land uses, including nuisances. The bill would not take away any person's right to sue to stop a particular land use under nuisance or another civil cause of action.

The bill would not be an unconstitutional special law. It would apply indefinitely to landowners of unincorporated areas across Texas.

**OPPONENTS
SAY:**

HB 2212 would deny residents in unincorporated parts of the state, and Webberville residents in particular, the ability to use the state's incorporation law for its intended purpose — to protect human health, safety, and welfare. People incorporate communities under state law to gain municipal zoning and other authorities that help protect and preserve them from unneighborly land uses nearby.

Webberville residents incorporated to prohibit prospective gravel-pit operations by Texas Industries and Trinity Industries that threatened their safety and property values. Without incorporation, the pit operations could have encroached on Ebenezer Baptist Church, a historical landmark, and could have disturbed the water table on which residents rely. Webberville

needed to incorporate to protect its residents because Travis County could not do so — counties have little authority to regulate land use — and because the Aggregate Quarry and Pit Safety Act (Natural Resources Code, ch. 133) would not prohibit pit operations in close proximity to area homes. HB 2212 would remove Webberville's only authority to prohibit gravel pits within the municipality's own boundaries.

HB 2212 would enact an unconstitutional special law regulating the affairs of a city, which is prohibited by Texas Constitution, Art. 3, sec. 56(a)(2). Only Webberville and one other community have incorporated in Texas since January 1, 2003.

NOTES:

The companion bill, SB 1569 by Madla, was reported favorably, without amendment, by the Senate Intergovernmental Relations Committee on April 3. It was placed on the Local and Uncontested Calendar and then removed.