



# PLANNING DEPARTMENT

## County Of Hidalgo

Raul E. Segin, P.E., CFM  
PLANNING ADMINISTRATOR

### MEMORANDUM

**To:** Hidalgo County Commissioners Court

**From:** Raul E. Segin, P.E., C.F.M., Planning Administrator

**Date:** April 13, 2011

**Via:** Posted Agenda

**Re:** Legislative Issues for 2011

**C:** Valde Guerra, Commissioners' Court Executive Officer

*Handwritten signature and date:*  
R. E. Segin  
04/13/11

Mr. T.J. Arredondo and I had met with the then County Judge staffer Richard Sanchez late last year to discuss proposals for the 2011 legislative session. Our focus was on having legislation passed that would grant our County the authority to enforce and regulate development issues. As the Court recalls we had a temporary injunction on funding from the TWDB until the County proved to the Board that enforcement of the "one single family detached dwelling" restriction was being adhered to. The end result of these discussions produced HB 1767 authored by State Representative Sergio Munoz which proposes to amend Section 16.352 of the Water Code by adding an option to enforce multiple dwelling violators through JP courts. This change applies only to subdivisions that contain the restriction as required by the "Model Subdivision Rules". Currently, this bill is out of committee and was sent to local and consent calendar on April 3, 2011.

Another issue that was initially brought forth by business owners and property owners alike dealt with the roadside vendors which accumulated alongside major roads generally after 5p.m. and on weekends. It has been difficult to address these problems without the proper authority being granted to counties by statute. Hence, another House Bill by Representative Munoz was laid out and tabbed HB 1768. This Bill would amend Transportation Code Sec 285.001 to allow Counties with a population of 450,000 or more to regulate roadside vendors and solicitors. Current law limits the authority found in this Code to Counties of a population of 1.3 million or more. This bill is out of committee and was sent to local and consent calendar on April 3, 2011.

A bill that was originally authored by Rep. Munoz which was HB 1769 and now has been partnered with HB 1649 by Rep. Marquez out of El Paso County proposes to allow Counties to charge fees for incorporating the program as set out in Subchapter F, Chapter 233 of the Texas Local Government Code. The program does not give Hidalgo County the authority to perform building inspections but rather it enables the County to receive information from contractors regarding certain building inspections. The bill is currently out of committee and has been placed on local and consent calendar as of April 7, 2011.

Senate Bill 1362, 1363 and 1364 sponsored by Senator Lucio propose to give Hidalgo County in all instances the authority to regulate land use and adopt true building codes that are enforced by the County. HB 1362 which calls for a statewide option to adopt these regulations was referred to intergovernmental relations on March 22, 2011. HB 1363 which limits the proposed statute to the border counties is currently out of committee and was printed and distributed on April 6, 2011. Finally, HB 1364 which is bracketed to Cameron County and Hidalgo County was placed on local and uncontested calendar for April 14, 2011.

HB 1604 sponsored by Guillen proposes several changes to Chapter 232 of the Texas Local Government Code and Water Code. Below are the bill analysis and our recommendations on the proposed changes.

BILL ANALYSIS

ANALYSIS

*C.S.H.B. 1604 amends the Local Government Code, in a provision prohibiting a county from imposing a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of streets or roads with a similar type and amount of traffic, to specify such construction as the construction of new streets or roads with a similar type and amount of traffic.*

*C.S.H.B. 1604 specifies that provisions relating to subdivision platting requirements in a county near an international border are inapplicable if all of the lots of a subdivision are more than 10 acres, rather than 10 or more acres. The bill, under such provisions, makes the requirement that a subdivider of land have a plat of a subdivision prepared conditional on at least one of the lots of the subdivision being five acres or less and authorizes a commissioners court of a county by order to require each subdivider of land to prepare a plat if at least one of the lots of a subdivision is more than five acres but not more than 10 acres.*

*C.S.H.B. 1604, in a provision prohibiting brochures, publications, and advertising from containing any misrepresentation and requiring such brochures, publications, and advertising to accurately describe the availability of water and sewer service facilities and electric and gas utilities, specifies the brochures, publications, and advertising of any form relating to land required to be platted under provisions relating to subdivision platting requirements in a county near an international border, rather than brochures, publications, and advertising of any form relating to subdivided land. The bill requires the brochures, publications, and advertising, if a plat for the land has not been finally approved and recorded, to include a notice that, subject to certain bill provisions, a contract for the sale of any portion of the land may not be entered into until the land receives final plat approval and the land may not be possessed or occupied until the land receives final plat approval and all water and sewer service facilities for the lot are connected or installed in compliance with the model rules adopted under Water Code provisions relating to economically distressed areas regarding minimum state standards and model political subdivision rules. The bill authorizes a person who is a seller or subdivider and who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state law, federal law, and the Nationwide Mortgage Licensing System and Registry, before a plat has been finally approved and recorded for the land, to enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less and advertise in accordance with provisions relating to advertising standards and other requirements before a sale, as amended by provisions of the bill. The bill establishes that such authorization applies in addition to other applicable law and that the authorization prevails to the extent of a conflict with that other law.*

*C.S.H.B. 1604 makes it an Class A misdemeanor for a person who is a seller of lots for which a plat is required under provisions relating to subdivision platting requirements in a county near an international border, rather than a person who is a seller of lots in a subdivision, to knowingly authorize or assist in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning any land offered for sale or lease.*

*C.S.H.B. 1604, under provisions relating to subdivision platting requirements in certain economically distressed counties, authorizes a commissioners court of a county by order to require each subdivider of land to prepare a plat if at least one of the lots of a subdivision is more than five acres but not more than 10 acres.*

*C.S.H.B. 1604 amends the Local Government Code and Water Code to require, before a civil enforcement action may be filed against a subdivider under provisions relating to subdivision platting requirements in a county near an international border, subdivision platting requirements in certain economically distressed counties, or economically distressed areas, that the subdivider be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation. The bill authorizes the enforcement action to proceed after the 90th day after the date of the notification. The bill makes these provisions relating to notice and opportunity to cure inapplicable to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person or that a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county. The bill makes such provisions inapplicable if an enforcement action has previously been filed against the subdivider for the same or another alleged violation. The bill provides for the meaning of "subdivider" by reference.*

*C.S.H.B. 1604 amends the Water Code to remove provisions requiring, before an application for funds under Texas water assistance program provisions relating to facility engineering in economically distressed areas or the colonia self-help program or public funding provisions relating to assistance to economically distressed areas for water supply and sewer service projects may be considered by the Texas Water Development Board (TWDB), a political subdivision to adopt the model rules pursuant to provisions relating to minimum state standards and model political subdivision rules and an applicant that is a district, nonprofit water supply corporation, or colonia to be located in a city or county that has adopted such rules. The bill removes a provision prohibiting an applicant for such funds from receiving the funds unless the applicable political subdivision adopts and enforces the model rules. The bill instead establishes that before an application for such funds may be considered by the TWDB, if the area for which the funds are proposed to be used is located in a municipality, the municipality must adopt the model rules; if such area is located in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that model rules have been adopted and are enforced in the extraterritorial jurisdiction by either the municipality or the county; or if such area is located outside the extraterritorial jurisdiction of a municipality, the county must adopt the model rules.*

*C.S.H.B. 1604 makes conforming and nonsubstantive changes.*

*C.S.H.B. 1604 repeals Section 232.021(9) of the Local Government Code relating to the definition of "sell" applicable to provisions relating to subdivision platting requirements in a county near an international*

**No objection to the minimum road requirements since we currently build roads that meet or exceed minimum requirements for roads within a subdivision.**

**Hidalgo County Commissioners Court**

**Legislative Issues for 2011**

**April 13, 2011**

**Page 4**

**No objection to the 10 acre wording change since we currently only enforce divisions that are less than 10 acres. The only time we get involved in 10 ac or greater divisions are when people do not comply with Title A of TXLGC 232 which applies to all counties and delineates platting requirements with certain limitations.**

**Neutral on the proposed 5 ac to 10 ac platting requirement rule change. The proposed change is to make it mandatory to plat for 5 acres or less and optional between 5 to 10 acres if adopted by Commissioner's court through an order. Currently we apply the residential requirement to all tracts that are less than 10 acres. It has been our experience that people want to occupy land for full time living and not just a "ranchito" so we request that the subdivider plat and provide the water, sewer, streets, drainage, etc. for divisions up to 10 acres.**

**No objection to the advertisement of the proposed subdivision but we believe it must first receive commissioner's court approval before you can advertise. Strong objection to the exchange of money through an earnest money contract. It has been our experience that when money gets exchanged people tend to not follow the rules. We feel this is going to cause more harm than good.**

**We object to allowing sub dividers to have a 90 day period to cure violations. Currently the AG does a great job of communicating with the alleged violator, verbally and in writing, prior to suing for the alleged violation. If we agree to this than we may be sending the message that it's ok for the developer to be careless and not follow the law since you have 90 days to cure it. Currently I do not know of one case that the AG has used the penalty clause stated in the current law. They have sued and fined the developer but not the daily fines allowed by law. Opening this up could lead to individuals claiming that they did not know the law and hide behind the 90 day rule to cure improprieties while all the time collecting money from individuals.**

**HB 1604 is currently out of committee and has been placed on calendars as of March 30, 2011.**

**We feel that most of these Bills will have a positive impact on our County and would like to have the input of the Commissioners' Court.**

**Thank You.**

**\* \* \* END OF MEMORANDUM \* \* \***