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Texas



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February 21, 2023

Office of the Attorney General
Open Records Division
PO Box 12548
Austin, TX 78711

Dear Attorney General Paxton,

Please consider this letter to be my request for an Attorney General opinion on a Moratorium regarding commercial solar projects in Franklin County. A copy of the proposed Moratorium is attached for your review.

My request for opinion is sought for clarification on the following:

1. Would adopting the moratorium, as written, be a valid exercise of the Commissioners Court's authority under the Constitution and Laws of the State of Texas?
2. Is the moratorium enforceable by the County?

Thank you in advance for your help in this matter. Please advise if you require additional information or have further instructions.

Sincerely,

/s/Landon Ramsay

Landon Ramsay
Franklin County Attorney

Enclosure

Moratorium

The Franklin County Commissioners Court (Court) does hereby declare a moratorium on the siting, construction, installation, operation, permitting, and licensing of any Commercial, Utility Scale Solar Energy Facility within the County

(1) Date of Applicability:

(a) No person, organization, or entity shall start or engage in the construction or operation of a Commercial Solar Energy Facility or test for the suitability of sites for a Commercial, Utility Scale Solar Energy Facility on or after the October 11, 2022.

(b) During the time this Rule is in effect, no officer, official, employee, office, administrative board, or agency of the Court shall accept, process, approve, deny, or in any other way act upon any application or request for any type of license, road permit, or approval related to a Commercial Solar Energy Facility.

(2) **Effective Date.** This Rule shall become effective immediately upon its adoption by the Commissioners Court Meeting (the "Effective Date") and shall remain in full force and effect for a period of up to but not longer than 180 days from the Date of Applicability, unless extended, repealed, or modified by the Court pursuant to applicable law or until a new Rule regulating Commercial, Utility Scale Solar Energy Facilities or revisions to existing Rules addressing such facilities are adopted by the Court, whichever shall first occur.

(3) **Conflicts; Savings Clause.** Any provisions of the Court's Rules that are inconsistent with or conflict with the provisions of this Rule are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Rule is declared by a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

(4) **Violations.** If any Commercial, Utility Scale Solar Energy Facility is located or operated in the County, in violation of this Rule, each day of any continuing violation shall constitute a separate violation of this Rule and the County shall be entitled to all rights available to it pursuant to and under law, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations. The Commissioners Court of Franklin County, Texas, is hereby authorized to institute any and all actions, either legal or equitable, that it deems necessary or appropriate to enforce the provisions of this Moratorium Rule.

Attached to resolution adopting the above-stated Moratorium; attached as Exhibit A, and incorporated by reference into said resolution the same as if set forth in full in the text of said resolution. Certified by County Clerk, Franklin County, Texas.

10-24-2022

RESOLUTION ADOPTING MORATORIUM
FOR THE BENEFIT AND PROTECTION OF THE PUBLIC

Whereas, Franklin County, Texas, has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, and in preserving the agricultural heritage and economy of Franklin County, Texas (the "county").

Pursuant to TEXAS TRANSPORTATION CODE, Sec. 251.003, CONSTRUCTION AND MAINTENANCE OF PUBLIC ROADS, the commissioners court of a county may (1) make and enforce all necessary rules and orders for the construction and maintenance of public roads.

THEREFORE, it is resolved that the Commissioners Court of Franklin County, Texas, enact the following policies for the benefit and protection of the County:

- ◆ Adopt the attached moratorium (which is attached hereto as Exhibit A, the terms of which are adopted and incorporated as a part of this resolution); which moratorium will serve to require the approval of the use of County Roads for the development and construction of commercial, utility scale solar energy facilities until the County can develop a set of rules and orders to identify, manage and mitigate their impacts on County roads and the health and safety of our citizens. Further, in order to understand the impacts to important farmlands, prime soils, biological habitat, aquatic environments and wetland areas, as well as indigenous cultural resources, develop a template detailing the potential impacts of the siting of commercial, utility scale solar energy facilities on the rural portions of the County which provide agricultural benefits and products.

Exhibit 10/24/2022 - E

The moratorium will allow the County to, among other related tasks, immediately proceed with a study and public hearings to consider policies to understand the impacts to important farmlands, prime soils, biological habitat, aquatic environments and wetland areas, and indigenous cultural resources and minimize the negative effects of such facilities on traffic, safety, noise, risk to human health, and other environmental concerns.

The moratorium will aid developers by providing them with a standardized set of rules and guidelines that will save them time and money, in essence, giving them a "one-stop shop" for successful compliance with the Commissioners Court rules and orders. AND -

- ◆ Create standardized bonds to ensure that commercial, utility scale solar energy facilities which intend to utilize the public roadways of Franklin County, Texas, for repetitive hauling pursuant to development, construction and operation of commercial, utility scale solar energy facilities reimburse Franklin County for the cost of repairs to County roads which, in the sole judgment of Franklin County, were necessitated and occasioned because of the use of said roads.

And which foregoing resolution with the Moratorium attached hereto as Exhibit A is adopted and approved on this

_____ day of October, 2022, by majority vote of the Commissioners Court of Franklin County, Texas, in witness whereof the Clerk of the Court attests:

County Clerk,
Franklin County, Texas

Sec. 251.153. LOAD LIMITS ON COUNTY ROADS AND BRIDGES.

(a) The commissioners court of a county may establish load limits for any county road or bridge in the manner prescribed by Section 621.301.

(b) The commissioners court may authorize a county traffic officer, sheriff, deputy sheriff, constable, or deputy constable to weigh a vehicle to ascertain whether the vehicle's load exceeds the limit prescribed by the commissioners court.