

AN ACT

relating to enforcement of certain types of restrictions in certain municipalities.

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

SECTION 1. Section 212.132, Local Government Code, as redesignated by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 212.132. DEFINITION. In this subchapter, "restriction" means a land-use regulation [~~limitation~~] that:

(1) affects the character of the use to which real property, including residential and rental property, may be put;

(2) fixes the distance that a structure must be set back from property lines, street lines, or lot lines; [~~or~~]

(3) affects the size of a lot or the size, type, and number of structures that may be built on the lot;

(4) regulates or restricts the type of activities that may take place on the property, including commercial activities, sweepstakes activities, keeping of animals, use of fire, nuisance activities, vehicle storage, and parking;

(5) regulates architectural features of a structure, construction of fences, landscaping, garbage disposal, or noise levels; or

(6) specifies the type of maintenance that must be performed on a lot or structure, including maintenance of a yard or

1 fence.

2 SECTION 2. Section 212.133, Local Government Code, as
3 redesignated by Chapter 1420, Acts of the 77th Legislature, Regular
4 Session, 2001, is amended to read as follows:

5 Sec. 212.133. SUIT TO ENFORCE RESTRICTIONS. (a) Except as
6 provided by Subsection (b), the [The] municipality may sue in any
7 court of competent jurisdiction to enjoin or abate a violation of a
8 restriction contained or incorporated by reference in a properly
9 recorded plan, plat, or other instrument that affects a subdivision
10 located inside the boundaries of the municipality.

11 (b) The municipality may not initiate or maintain a suit to
12 enjoin or abate a violation of a restriction if a property owners'
13 association with the authority to enforce the restriction files
14 suit to enforce the restriction.

15 (c) In a suit by a property owners' association to enforce a
16 restriction, the association may not submit into evidence or
17 otherwise use the work product of the municipality's legal counsel.

18 (d) In a suit filed under this section alleging that any of
19 the following activities violates a restriction limiting property
20 to residential use, it is not a defense that the activity is
21 incidental to the residential use of the property:

22 (1) storing a tow truck, crane, moving van or truck,
23 dump truck, cement mixer, earth-moving device, or trailer longer
24 than 20 feet; or

25 (2) repairing or offering for sale more than two motor
26 vehicles in a 12-month period.

27 (e) A municipality may not enforce a deed restriction which

1 purports to regulate or restrict the rights granted to public
2 utilities to install, operate, maintain, replace, and remove
3 facilities within easements and private or public rights-of-way.

4 SECTION 3. Section 212.133, Local Government Code, as
5 redesignated by Chapter 1420, Acts of the 77th Legislature, Regular
6 Session, 2001, and amended by this Act, applies only to a suit filed
7 on or after the effective date of this Act. A suit filed before the
8 effective date of this Act is governed by the law in effect
9 immediately before that date, and that law is continued in effect
10 for that purpose.

11 SECTION 4. Subchapter E, Chapter 212, Local Government
12 Code, as redesignated by Chapter 1420, Acts of the 77th
13 Legislature, Regular Session, 2001, is amended by adding Section
14 212.1335 to read as follows:

15 Sec. 212.1335. FORECLOSURE BY PROPERTY OWNERS'
16 ASSOCIATION. (a) A municipality may not participate in a suit or
17 other proceeding to foreclose a property owners' association's lien
18 on real property.

19 (b) In a suit or other proceeding to foreclose a property
20 owners' association's lien on real property in the subdivision, the
21 association may not submit into evidence or otherwise use the work
22 product of the municipality's legal counsel.

23 SECTION 5. Subchapter E, Chapter 212, Local Government
24 Code, as redesignated by Chapter 1420, Acts of the 77th
25 Legislature, Regular Session, 2001, is amended by adding Section
26 212.138 to read as follows:

27 Sec. 212.138. EFFECT ON OTHER LAW. This subchapter does not

1 prohibit the exhibition, play, or necessary incidental action
2 thereto of a sweepstakes not prohibited by Chapter 43, Business &
3 Commerce Code, as added by Chapter 1119, Acts of the 77th
4 Legislature, Regular Session, 2001.

5 SECTION 6. Section 212.1335, Local Government Code, as
6 added by this Act, applies only to a suit filed on or after the
7 effective date of this Act. A suit filed before the effective date
8 of this Act is governed by the law in effect immediately before that
9 date, and that law is continued in effect for that purpose.

10 SECTION 7. This Act takes effect September 1, 2003.

H.B. No. 1129

President of the Senate

Speaker of the House

I certify that H.B. No. 1129 was passed by the House on May 6, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1129 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1129 on May 31, 2003, by a non-record vote.

Chief Clerk of the House

H.B. No. 1129

I certify that H.B. No. 1129 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1129 on June 1, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor