

BILL ANALYSIS

Senate Research Center

S.B. 929
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Local Government
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cities can currently change property use regulations, which renders a business owner's previously legal property use as "non-conforming," without triggering takings repayment requirements. Cities then can use a process called "amortization" to force a property owner to cease business operations deemed non-conforming despite being perfectly acceptable before the zoning change. The city never has to pay the landowner a dime for taking away the right to use their property, and instead implements the use of an accounting maneuver to allow the property owner to "compensate themselves."

Amortization occurs all over the state – from Lubbock to Dallas to Corpus Christi. One city put a number of auto-related businesses out of work to establish an "arts-gateway," and instead of offering compensation for lost revenue, the city sought \$1,000 per day fines for those who continued to operate while fighting for their livelihoods. Another city passed new regulations on property leases that would force several landlords out of the rental business. In one case, a city threatened to drive a roofing materials factory that employs 150 workers from their property without giving them a dime even though they legally called the factory their home of 80 years. Facing certain abuse of the city's amortization ordinance, the company relented and plans to shut down its plant in just seven years and vacate the property, likely carrying the expense of hundreds of millions of dollars. Often, businesses facing amortization close for good or move their factories – and jobs – out of Texas.

The amortization process goes against Texas' long tradition of job creation and respect for private property rights. And when a city has a compelling need to deprive landowners of the useful enjoyment of their properties, it should be required, as it is in cases of eminent domain, that it offer financial compensation at fair market value. Amortization hurts Texas businesses, from small auto repair shops to factories employing hundreds of Texans.

S.B. 929 requires the governing body of a municipality or a zoning commission to provide written notice to property owners and occupants of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary that could result in a current conforming use of a property becoming a nonconforming use. The bill also establishes the compensation that the owner or lessee of property with a nonconforming use is entitled to receive if the nonconforming use is required to cease operation due to being a nonconforming use.

As proposed, S.B. 929 amends current law relating to the notice and compensation a municipality must provide before revoking the right to use property for a use that was allowed before the adoption of or change to a zoning regulation or boundary.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 211.006, Local Government Code, by adding Subsection (a-1), as follows:

(a-1) Requires the governing body of a municipality or a zoning commission, in addition to any notice required by Section 211.006 (Procedures Governing Adoption of Zoning Regulations and District Boundaries) or Section 211.007 (Zoning Commission), as applicable, to provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary that could result in a current conforming use of a property becoming a nonconforming use if the regulation or boundary were to be adopted or changed. Requires that the notice:

(1) be mailed by United States mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant at that property not later than the 10th day before the hearing date;

(2) contain the time and place of the hearing; and

(3) include certain text. Sets forth the language required to be included in the notice.

SECTION 2. Amends Subchapter A, Chapter 211, Local Government Code, by adding Section 211.019, as follows:

Sec. 211.019. NONCONFORMING LAND USE. (a) Defines "market value."

(b) Authorizes the operator of property with a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary, except as provided by this section, to continue to use the property in the same manner the property was used before the use became nonconforming.

(c) Entitles the owner or the lessee of the property, if a nonconforming use on a property described by Subsection (b) is required by a municipality to cease operation due to being a nonconforming use, to receive either:

(1) a payment from the municipality composed of costs that are directly attributable to the municipal requirement of ceasing operation including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages, and an amount equaling the diminution, if any, of the greater of, as determined by the municipality, the market value of the property on the day before:

(A) the notice under Section 211.006(a-1) was required to be sent to the property's owner of the adoption of or change to a zoning regulation or boundary that made the use nonconforming and the property's market value as a result of the use becoming nonconforming; or

(B) a person submits an application or request to the municipality to require or the municipality otherwise requires the nonconforming use to cease operation due to being a nonconforming use and the property's market value as a result of a municipal requirement that the use cease operation; or

(2) additional time to operate the nonconforming use until the property owner or lessee has recovered, through its business activities using generally accepted accounting principles, the amount determined under Subsection (c)(1).

(d) Provides that a municipal requirement to cease operation due to nonconformity under this section includes:

(1) an action of the governing body, board, commission, department, or official of the municipality; and

(2) a determination by the municipality that is required to be made before the nonconforming use is required to cease operation such as determining the use has an adverse effect.

(e) Requires the municipality to notify each owner of real or business personal property, as indicated by the most recently approved municipal tax roll, with a nonconforming use subject to a municipal requirement to cease operation due to being a nonconforming use and each occupant at that property in writing of its requirement and the remedies described in Subsection (c) not later than the 10th day after the date the municipality imposes the requirement.

(f) Requires the owner and any lessee of the real property to notify the municipality in writing of the remedy chosen under Subsection (c) not later than the 30th day after the date the municipality sent the notice required by Subsection (e). Provides that the owner's choice of remedy, if the owner of real property and a lessee choose different remedies, controls. Provides that the choice of remedy by owners who have a greater ownership interest in the property, if there is more than one owner of the real property and they choose different remedies, controls. Authorizes the municipality, if the property owner and lessee fail to provide timely notice, to choose the remedy.

(g) Requires a person receiving payment under Subsection (c)(1) to cease operating the nonconforming use not later than the 10th day after the date of the payment.

(h) Requires a person receiving additional time to operate the nonconforming use under Subsection (c)(2) to cease operating that use immediately on the expiration of the additional time.

(i) Requires the municipality, if both the owner and lessee of the property seek a payment from the municipality under Subsection (c)(1), to apportion the payment between each based on the market value of their interests in the property. Authorizes the municipality's apportionment to be appealed by either the owner or lessee in the same manner as other appeals allowed by this section.

(j) Authorizes either person, if the owner or lessee does not accept the municipality's determination under Subsection (c)(1) or (2), to appeal the determination to the board of adjustment of the municipality not later than the 20th day after the date the determination is made. Provides that the municipality, at the hearing before the board of adjustment, has the burden of proof to establish the correctness of its determination.

(k) Authorizes the municipality or a person aggrieved by the final decision of the board of adjustment to seek judicial review of the decision in the manner provided by Section 211.011 (Judicial Review of Board Decision) by filing suit not later than the 20th day after the date the final decision is made except that:

(1) the municipality has the burden of proving by clear and convincing evidence that its determination was correct; and

(2) in reviewing the municipality's decision, the court is prohibited from using a deferential standard in the municipality's favor and is not limited to determining whether a decision of the board is illegal.

(l) Authorizes a person seeking additional time to operate under Subsection (c)(2) who appeals the decision of the municipality or board of adjustment to continue to use the property in the same manner as before the use became nonconforming

pending the appeal unless an official of the body who made the decision certifies in writing to the entity with jurisdiction over the appeal facts supporting the official's opinion that continued nonconforming use of the property would cause imminent peril to life or property. Authorizes continued nonconforming use of the property, in that case, to be stayed only by a restraining order granted by the entity with jurisdiction over the appeal, after notice to the official, if due cause is shown.

(m) Requires the entity with jurisdiction over the appeal, if following an appeal it is determined that the amount of compensation that a person is ultimately entitled to under this section is different from the amount initially received under Subsection (c)(1), to order additional compensation to the person or reimbursement to the municipality, as appropriate.

(n) Requires the entity with jurisdiction over the appeal, if following an appeal it is determined that the amount of additional time to operate the nonconforming use that a person is ultimately entitled to under this section is different from the amount initially received under Subsection (c)(2), to order additional or less time to the person, as appropriate.

(o) Authorizes an owner or lessee of the real property to waive the rights and remedies provided by this section by notifying the municipality in writing of the waiver.

(p) Provides that this section does not apply to a nonconforming use that has been intentionally abandoned for six months or more.

(q) Provides that a municipality's or board of adjustment's immunity from suit and liability is waived in an action brought by a property owner or lessee to enforce the rights and remedies under this section.

SECTION 3. (a) Provides that the changes in law made by this Act apply to property for which:

(1) on or after June 1, 2023, the governing body or zoning commission of a municipality considers a proposed adoption of or change to a zoning regulation or boundary that could result in a current conforming use of a property becoming a nonconforming use; or

(2) on or after February 1, 2023, the governing body or a board, commission, department, or official of a municipality requires, by ordinance or otherwise, or receives an application or request to require a nonconforming use to cease operation due to its nonconformity with the property's current zoning.

(b) Provides that Subsection (a)(2) of this section applies to a property even if the governing body or a board, commission, department, or official of the municipality is required to make a determination, such as determining the nonconforming use has an adverse effect, before the nonconforming use is required to cease operation.

SECTION 4. Effective date: upon passage or September 1, 2023.