

By: Parker, Flores

S.B. No. 929

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Section 211.006, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In addition to any notice required by this section or Section 211.007, the governing body of a municipality or a zoning commission, as applicable, shall provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

(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 of the property not later than the 10th day before the hearing date;

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

(3) include the following text in bold 14-point type or larger:

"THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO

1 CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE.

2 PLEASE READ THIS NOTICE CAREFULLY."

3 SECTION 2. Subchapter A, Chapter 211, Local Government
4 Code, is amended by adding Section 211.019 to read as follows:

5 Sec. 211.019. NONCONFORMING LAND USE. (a) In this section,
6 "market value" means the price the sale of the property would bring
7 in an arms-length transaction when offered for sale by one who
8 wishes, but is not obliged, to sell and when bought by one who is
9 under no necessity of buying it.

10 (b) A person using a property in a manner considered to be a
11 nonconforming use as a result of the adoption of or change to a
12 zoning regulation or boundary may continue to use the property in
13 the same manner unless required by a municipality to stop the
14 nonconforming use of the property.

15 (c) A requirement imposed by a municipality to stop a
16 nonconforming use of a property under this section includes:

17 (1) an official action by the governing body of the
18 municipality or a board, commission, department, or official of
19 the municipality; or

20 (2) a determination by the municipality that a
21 nonconforming use has an adverse effect or other necessary
22 determination that a municipality must make before imposing a
23 requirement to stop a nonconforming use under applicable law.

24 (d) If a municipality requires a property owner or lessee to
25 stop the nonconforming use of a property as described by Subsection
26 (b), the owner or lessee of the property is entitled to:

27 (1) payment from the municipality in an amount equal

1 to the sum of:

2 (A) the costs incurred by the owner or lessee of
3 the property that are directly attributable to ceasing the
4 nonconforming use of the property, including expenses related to
5 demolition, relocation, termination of a lease, or discharge of a
6 mortgage; and

7 (B) an amount equal to the greater of, as
8 determined by the municipality, the diminution in the market value
9 of the property, computed by subtracting the current market value
10 of the property after the imposition of a requirement to stop the
11 nonconforming use of the property from:

12 (i) the market value of the property on the
13 day before the date the notice was given under Section
14 211.006(a-1); or

15 (ii) the market value of the property on the
16 day before a person submits an application or request to the
17 municipality to require or the municipality otherwise requires a
18 person to stop using the property in a manner that is a
19 nonconforming use as described by Subsection (b); or

20 (2) continued nonconforming use of the property until
21 the owner or lessee recovers the amount determined under
22 Subdivision (1) through the owner or lessee's continued business
23 activities according to generally accepted accounting principles.

24 (e) Not later than the 10th day after the date a
25 municipality imposes a requirement to stop a nonconforming use of a
26 property under this section, the municipality shall give written
27 notice to each owner or lessee of the property, as indicated by the

1 most recently approved municipal tax roll, who is required to stop a
2 nonconforming use of the property of the requirement and of the
3 remedies which an owner or lessee of the property is entitled to
4 under Subsection (d).

5 (f) The owner or lessee of a property that is subject to a
6 requirement to stop a nonconforming use of the property under this
7 section shall not later than the 30th day after the date the
8 municipality gives the notice required by Subsection (e) respond in
9 writing to the municipality indicating the remedy under Subsection
10 (d) chosen by the owner or lessee. In the event of a conflict in the
11 choice of remedy by the owner and a lessee of the property, the
12 owner's choice of remedy shall control. In the event of a conflict
13 in the choice of remedy by the owners of a property that has more
14 than one owner, the choice of remedy made by an owner or owners
15 holding the greater ownership interest in the property shall
16 control. If the municipality does not receive timely notice from an
17 owner or lessee, the municipality may choose the remedy provided
18 under this section.

19 (g) A person receiving a payment under Subsection (d)(1)
20 must stop the nonconforming use not later than the 10th day after
21 the date of the payment.

22 (h) A person who continues the nonconforming use under
23 Subsection (d)(2) must stop the nonconforming use immediately on
24 the recovery of the amount determined under Subsection (d)(1).

25 (i) If more than one person seeks a payment from the
26 municipality under Subsection (d)(1), the municipality shall
27 apportion the payment between each person based on the market value

1 of the person's interest in the property. A person may appeal the
2 apportionment in the manner provided by this section.

3 (j) A person entitled to a remedy under this section may
4 appeal a determination under Subsection (d)(1) or (2) to the board
5 of adjustment of the municipality not later than the 20th day after
6 the date the determination is made. At the hearing before the board
7 of adjustment, the municipality has the burden of proof to
8 establish the correctness of its determination.

9 (k) A municipality or a person aggrieved by the final
10 decision of the board of adjustment under Subsection (j) may seek
11 judicial review of the decision by filing suit as provided by
12 Section 211.011 not later than the 20th day after the date the final
13 decision is made. The court shall review the decision in the manner
14 provided by Section 211.011 except that:

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

17 (2) the court:

18 (A) in reviewing the municipality's decision may
19 not use a deferential standard in the municipality's favor; and

20 (B) is not limited to determining whether a
21 decision of the board meets the requirements of this chapter or
22 other applicable law.

23 (l) A person seeking to continue a nonconforming use under
24 Subsection (d)(2) who appeals the decision of the municipality or
25 board of adjustment may continue to use the property in the same
26 manner pending the appeal unless an official of the body that made
27 the decision shows cause to stay the nonconforming use by

1 certifying in writing to the board of adjustment or court with
2 jurisdiction over the appeal facts supporting the official's
3 opinion that continued nonconforming use of the property would
4 cause imminent peril to life or property. On a showing of cause the
5 board of adjustment or court with jurisdiction over the appeal may,
6 after notice to the official, grant a restraining order to stay
7 continued nonconforming use of the property.

8 (m) If the board of adjustment or court with jurisdiction
9 over an appeal determines that an owner or lessee is entitled to:

10 (1) a payment under this section in an amount
11 different than the amount determined by the municipality under
12 Subsection (d)(1), the board of adjustment or court shall order, as
13 applicable:

14 (A) additional payment to the owner or lessee; or

15 (B) the owner or lessee to reimburse the
16 municipality; or

17 (2) an amount of time to operate the nonconforming use
18 that is different than the amount of time initially received under
19 Subsection (d)(2), the board of adjustment or court shall order the
20 municipality to allow an owner or lessee to continue the
21 nonconforming use for additional or less time.

22 (n) An owner or lessee may waive the rights and remedies
23 provided by this section by providing to the municipality a written
24 waiver.

25 (o) This section does not apply to a nonconforming use that
26 has been intentionally abandoned for at least six months.

27 (p) A municipality's immunity from suit and governmental

1 immunity from liability are waived for purposes of an action
2 brought by a property owner or lessee to enforce the rights and
3 remedies under this section.

4 SECTION 3. (a) Section 211.006, Local Government Code, as
5 amended by this Act, and Section 211.019, Local Government Code, as
6 added by this Act, apply to a property for which:

7 (1) on or after June 1, 2023, the governing body or
8 zoning commission of a municipality considers a proposed adoption
9 of or change to a zoning regulation or boundary under which a
10 current conforming use of the property is a nonconforming use; or

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

17 (b) Subsection (a)(2) of this section applies to a property
18 regardless of whether the governing body or a board, commission,
19 department, or official of the municipality is required by
20 applicable law to make a determination that the nonconforming use
21 has an adverse effect or other determination before the
22 nonconforming use is required to stop.

23 SECTION 4. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2023.