

By: Parker

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 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. 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 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 the following text in bold fourteen-point type or larger:

1 "THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT
2 WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO
3 CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE.
4 PLEASE READ THIS NOTICE CAREFULLY."

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

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

12 (b) Except as provided by this section, the operator of
13 property with a nonconforming use as a result of the adoption of or
14 change to a zoning regulation or boundary may continue to use the
15 property in the same manner the property was used before the use
16 became nonconforming.

17 (c) If a nonconforming use on a property described by
18 Subsection (b) is required by a municipality to cease operation due
19 to being a nonconforming use, the owner or the lessee of the
20 property is entitled to receive either:

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

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

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

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

15 (d) A municipal requirement to cease operation due to
16 nonconformity under this section includes:

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

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

22 (e) The municipality must notify each owner of real or
23 business personal property, as indicated by the most recently
24 approved municipal tax roll, with a nonconforming use subject to a
25 municipal requirement to cease operation due to being a
26 nonconforming use and each occupant at that property in writing of
27 its requirement and the remedies described in Subsection (c) not

1 later than the 10th day after the date the municipality imposes the
2 requirement.

3 (f) The owner and any lessee of the real property must
4 notify the municipality in writing of the remedy chosen under
5 Subsection (c) not later than the 30th day after the date the
6 municipality sent the notice required by Subsection (e). If the
7 owner of real property and a lessee choose different remedies, the
8 owner's choice of remedy controls. If there is more than one owner
9 of the real property and they choose different remedies, the choice
10 of remedy by owners who have a greater ownership interest in the
11 property controls. If the property owner and lessee fail to provide
12 timely notice, the municipality may choose the remedy.

13 (g) A person receiving payment under Subsection (c)(1) must
14 cease operating the nonconforming use not later than the 10th day
15 after the date of the payment.

16 (h) A person receiving additional time to operate the
17 nonconforming use under Subsection (c)(2) must cease operating that
18 use immediately on the expiration of the additional time.

19 (i) If both the owner and lessee of the property seek a
20 payment from the municipality under Subsection (c)(1), the
21 municipality shall apportion the payment between each based on the
22 market value of their interests in the property. The municipality's
23 apportionment may be appealed by either the owner or lessee in the
24 same manner as other appeals allowed by this section.

25 (j) If the owner or lessee does not accept the
26 municipality's determination under Subsection (c)(1) or (2),
27 either person may appeal the determination to the board of

1 adjustment of the municipality not later than the 20th day after the
2 date the determination is made. At the hearing before the board of
3 adjustment, the municipality has the burden of proof to establish
4 the correctness of its determination.

5 (k) The municipality or a person aggrieved by the final
6 decision of the board of adjustment may seek judicial review of the
7 decision in the manner provided by Section 211.011 by filing suit
8 not later than the 20th day after the date the final decision is
9 made except that:

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

12 (2) in reviewing the municipality's decision, the
13 court:

14 (A) may not use a deferential standard in the
15 municipality's favor; and

16 (B) is not limited to determining whether a
17 decision of the board is illegal.

18 (l) A person seeking additional time to operate under
19 Subsection (c)(2) who appeals the decision of the municipality or
20 board of adjustment may continue to use the property in the same
21 manner as before the use became nonconforming pending the appeal
22 unless an official of the body who made the decision certifies in
23 writing to the entity with jurisdiction over the appeal facts
24 supporting the official's opinion that continued nonconforming use
25 of the property would cause imminent peril to life or property. In
26 that case, continued nonconforming use of the property may be
27 stayed only by a restraining order granted by the entity with

1 jurisdiction over the appeal, after notice to the official, if due
2 cause is shown.

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

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

15 (o) An owner or lessee of the real property may waive the
16 rights and remedies provided by this section by notifying the
17 municipality in writing of the waiver.

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

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

24 SECTION 3. (a) The changes in law made by this Act apply to
25 property for which:

26 (1) on or after June 1, 2023, the governing body or
27 zoning commission of a municipality considers a proposed adoption

1 of or change to a zoning regulation or boundary that could result in
2 a current conforming use of a property becoming a nonconforming
3 use; or

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

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

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