

BILL ANALYSIS

Senate Research Center

H.B. 2149
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Local Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2024, the City of Lubbock's Amortization & Strategic Downzoning Study Committee met to consider whether the city should incorporate amortization into its Unified Development Code. Although the Lubbock City Council ultimately decided against adopting amortization, according to reporting by KCBD News, the bill author has informed the committee that various municipalities use amortization, a process whereby a municipality changes the zoning in an area in which a legal and conforming business sits, which makes that business an illegal and nonconforming use, and then the municipality gives the business a certain time period to earn back, or "amortize," its investment in the property and either bring the property into compliance or cease operation by the end of the period. The 88th Texas Legislature enacted S.B. 929, which entitles a property owner or lessee who is required by a municipality to stop a nonconforming use to certain payment from the municipality to compensate for such stoppage or to continue the nonconforming use of the property until the owner or lessee recovers the applicable amount of the property's market value. H.B. 2149 seeks to strengthen private property rights by amending amortization and nonconforming land use procedures to prohibit a municipality from requiring a person to stop a nonconforming use of a property unless the person and municipality enter into an agreement regarding the stoppage and to provide for the resumption of a nonconforming use of a property within five years of the nonconforming use being changed or discontinued.

H.B. 2149 amends current law relating to nonconforming land uses after 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 Subtitle Z, Title 10, Government Code, by adding Chapter 3001, as follows:

CHAPTER 3001. RIGHT TO CONTINUE OR MODIFY NONCONFORMING LAND USE

Sec. 3001.001. DEFINITION. Defines "nonconforming."

Sec. 3001.002. RIGHT TO CONTINUE OR MODIFY NONCONFORMING STRUCTURE OR LAND USE. Prohibits this state or a political subdivision of this state, except as provided by Subchapter A (General Zoning Regulations), Chapter 211 (Municipal Zoning Authority), Local Government Code, and federal law and federal regulations, from prohibiting or restricting the repair of a nonconforming structure, a person from continuing a nonconforming use of a property after the repair of a nonconforming structure or construction of a new building or structure to replace a damaged nonconforming structure, or modification or expansion of a nonconforming use of a property if the modification or expansion is necessary to continue the nonconforming use of the property or protect the health and safety of the property or occupants.

SECTION 2. Amends the heading to Section 211.019, Local Government Code, to read as follows:

Sec. 211.019. NONCONFORMING LAND USE; REMEDY; AGREEMENT.

SECTION 3. Amends Section 211.019, Local Government Code, by amending Subsections (b), (d), (e), (f), (g), (h), (i), and (l) and adding Subsections (b-1), (f-1), and (f-2), as follows:

(b) Authorizes a person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary to continue to use the property in the same manner unless the person agrees, rather than unless required by a municipality, to stop the nonconforming use of the property pursuant to an agreement with the municipality in which the property is located under Subsection (b-1).

(b-1) Prohibits a municipality from requiring a person to stop a nonconforming use of a property unless the municipality enters into an agreement with the person to stop the nonconforming use. Authorizes a person, subject to Section 211.020, to continue the nonconforming use of the property unless the person enters into an agreement with the municipality as provided by this subsection. Requires that an agreement under this subsection stipulate the amount of the payment from the municipality to the person as prescribed by Subsection (d)(1) or the period during which the person is authorized to continue the nonconforming use of the property as prescribed by Subsection (d)(2).

(d) Entitles an owner or lessee of a property, if a municipality and the property owner or lessee enter into an agreement to stop the nonconforming use of the property as described by Subsection (b), rather than if a municipality requires a property owner or lessee to stop the nonconforming use of the property, to:

(1) payment from the municipality in an amount equal to the sum of:

(A) makes no changes to this paragraph; and

(B) an amount equal to the greater of, as determined by the municipality, the diminution in the market value of the property, computed by subtracting the current market value of the property after the municipality makes a determination that the municipality seeks, rather than after the imposition of a requirement, to stop the nonconforming use of the property from:

(i) makes no changes to this subparagraph; or

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

(2) continued nonconforming use of the property for a period, as determined by the owner or lessee, sufficient for, the owner or lessee to recover, rather than until the owner or lessee recovers, the amount determined under Subdivision (1) through the owner or lessee's continued business activities according to generally accepted accounting principles.

(e) Requires a municipality, not later than the 10th day after the date the municipality makes a determination that the municipality seeks to stop a nonconforming use of a property under this section, rather than imposes a requirement to stop a nonconforming use of a property, to give written notice to each owner or lessee of the property, as indicated by the most recently approved municipal tax roll, who is operating, rather than required to stop, a nonconforming use of the property:

(1) that the municipality seeks to stop the nonconforming use of the property;

(2) if the owner or lessee of the property agrees to stop the nonconforming use, of the remedies to which an owner or lessee of the property is entitled under Subsection (d), rather than of the requirement and of the remedies which an owner or lessee of the property is entitled to under Subsection (d); and

(3) that the municipality is required to enter into an agreement with the owner or lessee of the property for the purpose of stopping the nonconforming use and deciding which remedy under Subsection (d) the owner or lessee will choose.

(f) Requires the owner or lessee of a property that agrees to stop, rather than that is subject to a requirement to stop, a nonconforming use of the property under this section, not later than the 30th day after the date the municipality gives the notice required by Subsection (e), to respond in writing to the municipality indicating the remedy under Subsection (d) chosen by the owner or lessee.

(f-1) Requires that, in the event of a conflict in the choice of remedy as described by Subsection (f), an agreement under Subsection (b-1) incorporate the choice of remedy that controls under Subsection (f).

(f-2) Requires the owner or lessee and the municipality, in a timely manner after responding to the notice given under Subsection (e), if the owner or lessee agrees to stop the nonconforming use, to enter into an agreement to stop the nonconforming use of the property as provided by this section.

(g) Requires a person receiving a payment under Subsection (d)(1) pursuant to an agreement entered into under Subsection (b-1) to stop the nonconforming use not later than the 10th day after the date of the payment.

(h) Requires a person receiving a payment under Subsection (d)(2) pursuant to an agreement entered into under Subsection (b-1) to stop the nonconforming use immediately on the recovery of the amount determined under Subsection (d)(1).

(i) Requires the municipality, if more than one person seeks a payment from the municipality under Subsection (d)(1), to apportion the payment between each person based on the market value of the person's interest in the property and explicitly state the apportionment in the agreement entered into with the person under Subsection (b-1). Deletes existing text authorizing a person to appeal the apportionment in the manner provided by this section. Makes nonsubstantive changes.

(l) Authorizes a person seeking to continue a nonconforming use under Subsection (d)(2) who brings an action for declaratory relief under Section 211.0202, to continue to use the property in the same manner while the action is pending unless an official of the body that made the decision shows cause to stay the nonconforming use by certifying in writing to the court facts supporting the official's opinion that continued nonconforming use of the property would cause imminent peril to life or property.

Deletes existing text authorizing a person seeking to continue a nonconforming use who appeals the decision of the municipality or board of adjustment to continue to use the property in the same manner pending the appeal unless an official of the body that made the division shows cause to stay the nonconforming use by certifying in writing to the board of adjustment or court with jurisdiction over the appeal certain facts. Makes conforming changes.

SECTION 4. Amends Subchapter A, Chapter 211, Local Government Code, by adding Sections 211.020, 211.0201, and 211.0202, as follows:

Sec. 211.020. RIGHT TO RESUME NONCONFORMING LAND USE. (a) Provides that this section does not apply to a person who changes or stops a nonconforming use of

a property and receives a payment or continues the nonconforming use for a period of time, pursuant to an agreement under Section 211.019(b-1).

(b) Authorizes a person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary who changes the use of the property to a conforming use or otherwise stops the nonconforming use of the property to resume the nonconforming use of the property if the person resumes the nonconforming use of the property before the fifth anniversary of the date the person changed or stopped the nonconforming use.

Sec. 211.0201. RIGHT TO CONTINUE OR MODIFY NONCONFORMING LAND USE. Prohibits a municipality from prohibiting or restricting the repair of a nonconforming structure, a person from continuing a nonconforming use of a property in accordance with this subchapter after the repair of a nonconforming structure or construction of a new building or structure to replace a damaged nonconforming structure, or modification or expansion of a nonconforming use of a property if the modification or expansion is necessary to continue the nonconforming use of the property or protect the health and safety of the property or occupants.

Sec. 211.0202. NONCONFORMING LAND USE; DECLARATORY JUDGMENT ACTION. (a) Authorizes a person to bring an action against a municipality for declaratory relief under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, for a claimed violation of Section 211.019, 211.020, or 211.0201.

(b) Provides that a municipality's immunity from suit and governmental immunity from liability are waived for purposes of an action brought by a property owner or lessee under this section.

SECTION 5. Repealers: Sections 211.019(j) (relating to authorizing a person entitled to a certain remedy to appeal a certain determination to the board of adjustment) and (k) (relating to authorizing a municipality or a person aggrieved by the final decision of the board of adjustment to seek judicial review of the decision by filing suit), Local Government Code.

Repealers: Sections 211.019(m) (relating to providing that the board of adjustment or court is required to order certain payments and reimbursements or to order the municipality to allow an owner or lessee to continue the nonconforming use for additional or less time under certain circumstances) and (o) (relating to providing that this section does not apply to a nonconforming use that has been intentionally abandoned for at least six months), Local Government Code.

Repealer: Section 211.019(p) (relating to providing that a municipality's immunity from suit and governmental immunity from liability are waived for certain purposes), Local Government Code.

SECTION 6. (a) Makes application of Chapter 3001, Government Code, as added by this Act, prospective.

(b) Provides that a property for which this state or a political subdivision of this state considers a proposed adoption of or change to a zoning regulation or boundary or other law or regulation under which a current conforming use of the property is a nonconforming use before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7. (a) Makes application of Section 211.019, Local Government Code, as amended by this Act, and Sections 211.020, 211.0201, and 211.0202, Local Government Code, as added by this Act, prospective.

(b) Provides that a property for which a municipality considers a proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of the property is a nonconforming use or receives a request to require a person to stop a nonconforming use before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 8. Effective date: September 1, 2025.