

By: Tepper

H.B. No. 2149

A BILL TO BE ENTITLED

AN ACT

relating to nonconforming land uses after the adoption of or change to a zoning regulation or boundary.

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

SECTION 1. Subtitle Z, Title 10, Government Code, is amended by adding Chapter 3001 to read as follows:

CHAPTER 3001. RIGHT TO CONTINUE OR MODIFY NONCONFORMING LAND USE

Sec. 3001.001. DEFINITION. In this chapter, "nonconforming" means a structure or use of property that:

(1) exists on the date of the adoption of or change to a state or local law or regulation; and

(2) is considered to be out of compliance with the adopted or changed law or regulation after and because of the adoption or change.

Sec. 3001.002. RIGHT TO CONTINUE OR MODIFY NONCONFORMING STRUCTURE OR LAND USE. Except as provided by Subchapter A, Chapter 211, Local Government Code, and federal law and federal regulations, this state or a political subdivision of this state may not prohibit or restrict:

(1) the repair of a nonconforming structure;

(2) 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

1 (3) modification or expansion of a nonconforming use
2 of a property if the modification or expansion is necessary to:

3 (A) continue the nonconforming use of the
4 property; or

5 (B) protect the health and safety of the property
6 or occupants.

7 SECTION 2. The heading to Section 211.019, Local Government
8 Code, is amended to read as follows:

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

10 SECTION 3. Section 211.019, Local Government Code, is
11 amended by amending Subsections (b), (d), (e), (f), (g), (h), (i),
12 and (l) and adding Subsections (b-1), (f-1), and (f-2) to read as
13 follows:

14 (b) A person using a property in a manner considered to be a
15 nonconforming use as a result of the adoption of or change to a
16 zoning regulation or boundary may continue to use the property in
17 the same manner unless the person agrees [~~required by a~~
18 ~~municipality~~] to stop the nonconforming use of the property
19 pursuant to an agreement with the municipality in which the
20 property is located under Subsection (b-1).

21 **(b-1) A municipality may not require a person to stop a**
22 **nonconforming use of a property unless the municipality enters into**
23 **an agreement with the person to stop the nonconforming use. Subject**
24 **to Section 211.020, a person may continue the nonconforming use of**
25 **the property unless the person enters into an agreement with the**
26 **municipality as provided by this subsection. An agreement under**
27 **this subsection must stipulate:**

1 (1) the amount of the payment from the municipality to
2 the person as prescribed by Subsection (d)(1); or

3 (2) the period during which the person may continue
4 the nonconforming use of the property as prescribed by Subsection
5 (d)(2).

6 (d) If a municipality and ~~[requires]~~ a property owner or
7 lessee enter into an agreement to stop the nonconforming use of a
8 property as described by Subsection (b), the owner or lessee of the
9 property is entitled to:

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

12 (A) the costs incurred by the owner or lessee of
13 the property that are directly attributable to ceasing the
14 nonconforming use of the property, including expenses related to
15 demolition, relocation, termination of a lease, or discharge of a
16 mortgage; and

17 (B) an amount equal to the greater of, as
18 determined by the municipality, the diminution in the market value
19 of the property, computed by subtracting the current market value
20 of the property after the municipality makes a determination that
21 the municipality seeks ~~[imposition of a requirement]~~ to stop the
22 nonconforming use of the property from:

23 (i) the market value of the property on the
24 day before the date the notice was given under Section
25 [211.006\(a-1\)](#); or

26 (ii) the market value of the property on the
27 day before a person submits an application or request to the

1 municipality to require or the municipality otherwise seeks to
2 require [~~requires~~] a person to stop using the property in a manner
3 that is a nonconforming use as described by Subsection (b); or

4 (2) continued nonconforming use of the property for a
5 period, as determined by the owner or lessee, sufficient for
6 [until] the owner or lessee to recover [~~recovers~~] the amount
7 determined under Subdivision (1) through the owner or lessee's
8 continued business activities according to generally accepted
9 accounting principles.

10 (e) Not later than the 10th day after the date a
11 municipality makes a determination that the municipality seeks
12 [imposes a requirement] to stop a nonconforming use of a property
13 under this section, the municipality shall give written notice to
14 each owner or lessee of the property, as indicated by the most
15 recently approved municipal tax roll, who is operating [~~required to~~
16 ~~stop~~] a nonconforming use of the property:

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

19 (2) if the owner or lessee of the property agrees to
20 stop the nonconforming use, of the [~~requirement and of the~~]
21 remedies to which an owner or lessee of the property is entitled
22 [to] under Subsection (d); and

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

27 (f) The owner or lessee of a property that agrees [~~is~~

~~subject to a requirement]~~ to stop a nonconforming use of the property under this section shall not later than the 30th day after the date the municipality gives the notice required by Subsection (e) respond in writing to the municipality indicating the remedy under Subsection (d) chosen by the owner or lessee. In the event of a conflict in the choice of remedy by the owner and a lessee of the property, the owner's choice of remedy shall control. In the event of a conflict in the choice of remedy by the owners of a property that has more than one owner, the choice of remedy made by an owner or owners holding the greater ownership interest in the property shall control. If the municipality does not receive timely notice from an owner or lessee, the municipality may choose the remedy provided under this section.

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

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

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

(h) A person who continues the nonconforming use under

1 Subsection (d)(2) pursuant to an agreement entered into under
2 Subsection (b-1) must stop the nonconforming use immediately on the
3 recovery of the amount determined under Subsection (d)(1).

4 (i) If more than one person seeks a payment from the
5 municipality under Subsection (d)(1), the municipality shall:

6 (1) apportion the payment between each person based on
7 the market value of the person's interest in the property; and

8 (2) explicitly state the apportionment in the
9 agreement entered into with the person under Subsection (b-1). [~~A~~
10 ~~person may appeal the apportionment in the manner provided by this~~
11 ~~section.~~]

12 (1) A person seeking to continue a nonconforming use under
13 Subsection (d)(2) who brings an action for declaratory relief under
14 Section 211.0202 [~~appeals the decision of the municipality or board~~
15 ~~of adjustment~~] may continue to use the property in the same manner
16 while the action is pending [~~the appeal~~] unless an official of the
17 body that made the decision shows cause to stay the nonconforming
18 use by certifying in writing to the [~~board of adjustment or~~] court
19 [~~with jurisdiction over the appeal~~] facts supporting the official's
20 opinion that continued nonconforming use of the property would
21 cause imminent peril to life or property. On a showing of cause the
22 [~~board of adjustment or~~] court [~~with jurisdiction over the appeal~~]
23 may, after notice to the official, grant a restraining order to stay
24 continued nonconforming use of the property.

25 SECTION 4. Subchapter A, Chapter 211, Local Government
26 Code, is amended by adding Sections 211.020, 211.0201, and 211.0202
27 to read as follows:

Sec. 211.020. RIGHT TO RESUME NONCONFORMING LAND USE. (a)

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) 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 may 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. A municipality may not prohibit or restrict:

(1) the repair of a nonconforming structure;
(2) 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

(3) modification or expansion of a nonconforming use of a property if the modification or expansion is necessary to:

(A) continue the nonconforming use of the property; or

(B) protect the health and safety of the property or occupants.

Sec. 211.0202. NONCONFORMING LAND USE; DECLARATORY

1 JUDGMENT ACTION. (a) A person may bring an action against a
2 municipality for declaratory relief under Chapter 37, Civil
3 Practice and Remedies Code, for a claimed violation of Section
4 211.019, 211.020, or 211.0201.

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

8 SECTION 5. Sections 211.019(j), (k), (m), (o), and (p),
9 Local Government Code, are repealed.

10 SECTION 6. (a) Chapter 3001, Government Code, as added by
11 this Act, applies to a property for which, on or after the effective
12 date of this Act, this state or a political subdivision of this
13 state considers a proposed adoption of or change to a zoning
14 regulation or boundary or other law or regulation under which a
15 current conforming use of the property is a nonconforming use.

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

23 SECTION 7. (a) Section 211.019, Local Government Code, as
24 amended by this Act, and Sections 211.020, 211.0201, and 211.0202,
25 Local Government Code, as added by this Act, apply to a property for
26 which, on or after the effective date of this Act, a municipality:

27 (1) considers a proposed adoption of or change to a

1 zoning regulation or boundary under which a current conforming use
2 of the property is a nonconforming use; or

3 (2) receives a request to require a person to stop a
4 nonconforming use of the property.

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

12 SECTION 8. This Act takes effect September 1, 2025.