



## PLANNING

**To:** Planning & Zoning Commission **Item No. 6**

**From:** Terrence S. Welch, Town Attorney

**Through:** David Hoover, Director of Development Services

**Re:** Planning & Zoning Commission Meeting – September 19, 2023

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**Agenda Item:**

Conduct a Public Hearing to Consider an Ordinance Amending Chapter 1, “General Provisions, Administration and Procedures,” of the Town’s Zoning Ordinance, by Amending Subpart (E) of Subsection 7.11, “Amortization of Nonconforming Uses or Structures,” of Section 7, “Nonconforming Uses and Structures,” by Providing for Amortization Procedures consistent with Senate Bill 929, and Subpart (A), “Zoning Changes,” of Subsection 8.2, “Public Hearing and Notice,” of Section 8, “Changes and Amendments to all Zoning Ordinances and Districts and Administrative Procedures,” by Providing for Notices relative to a Change in a Zoning Regulation that Could Result in a Nonconforming Use, Consistent with Senate Bill 929.

**Description of Agenda Item:**

The Legislature recently passed, and the Governor signed, Senate Bill No. 929 (“SB 929”), which (1) provided for significant changes to the method by which municipal governments amortize nonconforming uses of property as well as (2) a change in notice language when a zoning change is under consideration and which, if approved, would result in the creation of a nonconforming use on the property in question.

**Comprehensive Factors:**

First, for literally decades, when a municipality wished to terminate a nonconforming use of property, one method by which to accomplish such result was to amortize the nonconforming use. In such instance, the Zoning Board of Adjustment would determine the amount of time it would take for a property owner to recoup his or her investment in the property. If the nonconforming use was longstanding, it was often the case that the value of the use had been fully recouped, and the nonconforming use then was allowed a certain amount of time before ceasing operations on the property. SB 929 dramatically changed the method by which to compensate the owners of such nonconforming property—rather than considering the recoupment of investment in the use, now municipalities must determine that the nonconforming use has an adverse impact, and the owner must receive fair market value of the use as well as a “wind down” time prior to ceasing

the nonconforming use of the property. SB 929 describes the amortization process in detail and the proposed amendment to the Town's Zoning Ordinance simply incorporates those provisions from SB 929 (now found in Section 211.019 of the Texas Local Government Code).

Second, a minor change to notice requirements is contained in SB 929. When a municipality is considering a zoning change on property that could result in the current use of the property becoming a nonconforming use if the zoning change is approved, the municipality must provide notice to the property owner of every public hearing on the zoning change, which notice must include the time and place of each hearing and notice in bold, 14-point font that "THE TOWN OF PROSPER IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY." The proposed ordinance adds this notice provision now required by SB 929.

**Legal Obligations and Review:**

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached ordinance as to form and legality.

**Attachments:**

1. Ordinance

**Staff Recommendation:**

The Town Attorney recommends that the Town Council adopt the attached ordinance to be compliance with SB 929.

**Town Council Public Hearing:**

Upon a recommendation by the Planning & Zoning Commission, a Public Hearing for this item will be scheduled for the Town Council at their Regular meeting on September 26, 2023.