

## **BILL ANALYSIS**

Senate Research Center  
88R16484 DRS-F

C.S.S.B. 929  
By: Parker  
Local Government  
3/28/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Cities can currently change property use regulations, which renders a business owner's previously legal property use as "non-conforming," without triggering takings repayment requirements. Cities then can use a process called "amortization" to force a property owner to cease business operations deemed non-conforming despite being perfectly acceptable before the zoning change. The city never has to pay the landowner a dime for taking away the right to use their property, and instead implements the use of an accounting maneuver to allow the property owner to "compensate themselves."

Amortization occurs all over the state  $\frac{1}{2}$  from Lubbock to Dallas to Corpus Christi. One city put a number of auto-related businesses out of work to establish an "arts-gateway," and instead of offering compensation for lost revenue, the city sought \$1,000 per day fines for those who continued to operate while fighting for their livelihoods. Another city passed new regulations on property leases that would force several landlords out of the rental business. In one case, a city threatened to drive a roofing materials factory that employs 150 workers from their property without giving them a dime even though they legally called the factory their home of 80 years. Facing certain abuse of the city's amortization ordinance, the company relented and plans to shut down its plant in just seven years and vacate the property, likely carrying the expense of hundreds of millions of dollars. Often, businesses facing amortization close for good or move their factories  $\frac{1}{2}$  and jobs  $\frac{1}{2}$  out of Texas.

The amortization process goes against Texas' long tradition of job creation and respect for private property rights. And when a city has a compelling need to deprive landowners of the useful enjoyment of their properties, it should be required, as it is in cases of eminent domain, that it offer financial compensation at fair market value. Amortization hurts Texas businesses, from small auto repair shops to factories employing hundreds of Texans.

S.B. 929 requires the governing body of a municipality or a zoning commission to provide written notice to property owners and occupants 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. The bill also establishes the compensation that the owner or lessee of property with a nonconforming use is entitled to receive if the nonconforming use is required to cease operation due to being a nonconforming use.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 929 amends current law 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.

### **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 Section 211.006, Local Government Code, by adding Subsection (a-1), as follows:

(a-1) Requires the governing body of a municipality or a zoning commission, as applicable, in addition to any notice required by Section 211.006 (Procedures Governing Adoption of Zoning Regulations and District Boundaries) or Section 211.007 (Zoning Commission), to 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. Requires that the notice:

(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 certain text. Sets forth the language required to be included in the notice.

SECTION 2. Amends Subchapter A, Chapter 211, Local Government Code, by adding Section 211.019, as follows:

Sec. 211.019. NONCONFORMING LAND USE. (a) Defines "market value."

(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 required by a municipality to stop the nonconforming use of the property.

(c) Provides that a requirement imposed by a municipality to stop a nonconforming use of a property under this section includes:

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

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

(d) Entitles the owner or lessee of the property, if a municipality requires a property owner or lessee to stop the nonconforming use of a property as described by Subsection (b), to:

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

(A) the costs incurred by the owner or lessee of the property that are directly attributable to ceasing the nonconforming use of the property, including expenses related to demolition, relocation, termination of a lease, or discharge of a mortgage; 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 imposition of a requirement to stop the nonconforming use of the property from:

(i) the market value of the property on the day before the date the notice was given under Section 211.006(a-1); 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 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 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 imposes a requirement to stop a nonconforming use of a property under this section, to give written notice to each owner or lessee of the property, as indicated by the most recently approved municipal tax roll, who is required to stop a nonconforming use of the property of the requirement and of the remedies which an owner or lessee of the property is entitled to under Subsection (d).

(f) Requires the owner or lessee of a property 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. Requires that the owner's choice of remedy, in the event of a conflict in the choice of remedy by the owner and a lessee of the property, control. Requires that the choice of remedy made by an owner or owners holding the greater ownership interest in the property, in the event of a conflict in the choice of remedy by the owners of a property that has more than one owner, control. Authorizes the municipality, if the municipality does not receive timely notice from an owner or lessee, to choose the remedy provided under this section.

- (g) Requires a person receiving a payment under Subsection (d)(1) to stop the nonconforming use not later than the 10th day after the date of the payment.
- (h) Requires a person who continues the nonconforming use under Subsection (d)(2) 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. Authorizes a person to appeal the apportionment in the manner provided by this section.
- (j) Authorizes a person entitled to a remedy under this section to appeal a determination under Subsection (d)(1) or (2) to the board of adjustment of the municipality not later than the 20th day after the date the determination is made. Provides that the municipality, at the hearing before the board of adjustment, has the burden of proof to establish the correctness of its determination.
- (k) Authorizes a municipality or a person aggrieved by the final decision of the board of adjustment under Subsection (j) to seek judicial review of the decision by filing suit as provided by Section 211.011 (Judicial Review of Board Decision) not later than the 20th day after the date the final decision is made. Requires the court to review the decision in the manner provided by Section 211.011 except that:
- (1) the municipality has the burden of proving by clear and convincing evidence that its determination was correct; and
  - (2) the court in reviewing the municipality's decision is prohibited from using a deferential standard in the municipality's favor and is not limited to determining whether a decision of the board meets the requirements of Chapter 211 (Municipal Zoning Authority) or other applicable law.
- (l) Authorizes a person seeking to continue a nonconforming use under Subsection (d)(2) 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 decision shows cause to stay the nonconforming use by certifying in writing to the board of adjustment or court with jurisdiction over the appeal facts supporting the official's opinion that continued nonconforming use of the property would cause imminent peril to life or property. Authorizes the board of adjustment or court with jurisdiction over the appeal, on a showing of cause, after notice to the official, to grant a restraining order to stay continued nonconforming use of the property.
- (m) Provides that, if the board of adjustment or court with jurisdiction over an appeal determines that an owner or lessee is entitled to:
- (1) a payment under this section in an amount different than the amount determined by the municipality under Subsection (d)(1), the board of adjustment or court is required to order, as applicable:
    - (A) additional payment to the owner or lessee; or
    - (B) the owner or lessee to reimburse the municipality; or
  - (2) an amount of time to operate the nonconforming use that is different than the amount of time initially received under Subsection (d)(2), the board of adjustment or court is required to order the municipality to allow an owner or lessee to continue the nonconforming use for additional or less time.
- (n) Authorizes an owner or lessee to waive the rights and remedies provided by this section by providing to the municipality a written waiver.
- (o) Provides that this section does not apply to a nonconforming use that has been intentionally abandoned for at least six months.
- (p) 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 to enforce the rights and remedies under this section.

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

(1) on or after June 1, 2023, the governing body or zoning commission of 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

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

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

SECTION 4. Effective date: upon passage or September 1, 2023.