

1-1 By: Parker S.B. No. 929
 1-2 (In the Senate - Filed February 14, 2023; March 3, 2023,
 1-3 read first time and referred to Committee on Local Government;
 1-4 March 29, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; March 29, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17			X	

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 929 By: Springer

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the notice and compensation a municipality must provide
 1-22 before revoking the right to use property for a use that was allowed
 1-23 before the adoption of or change to a zoning regulation or boundary.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 211.006, Local Government Code, is
 1-26 amended by adding Subsection (a-1) to read as follows:

1-27 (a-1) In addition to any notice required by this section or
 1-28 Section 211.007, the governing body of a municipality or a zoning
 1-29 commission, as applicable, shall provide written notice of each
 1-30 public hearing regarding any proposed adoption of or change to a
 1-31 zoning regulation or boundary under which a current conforming use
 1-32 of a property is a nonconforming use if the regulation or boundary
 1-33 is adopted or changed. The notice must:

1-34 (1) be mailed by United States mail to each owner of
 1-35 real or business personal property where the proposed nonconforming
 1-36 use is located as indicated by the most recently approved municipal
 1-37 tax roll and each occupant of the property not later than the 10th
 1-38 day before the hearing date;

1-39 (2) contain the time and place of the hearing; and

1-40 (3) include the following text in bold 14-point type or
 1-41 larger:

1-42 "THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT
 1-43 WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO
 1-44 CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE.
 1-45 PLEASE READ THIS NOTICE CAREFULLY."

1-46 SECTION 2. Subchapter A, Chapter 211, Local Government
 1-47 Code, is amended by adding Section 211.019 to read as follows:

1-48 Sec. 211.019. NONCONFORMING LAND USE. (a) In this section,
 1-49 "market value" means the price the sale of the property would bring
 1-50 in an arms-length transaction when offered for sale by one who
 1-51 wishes, but is not obliged, to sell and when bought by one who is
 1-52 under no necessity of buying it.

1-53 (b) A person using a property in a manner considered to be a
 1-54 nonconforming use as a result of the adoption of or change to a
 1-55 zoning regulation or boundary may continue to use the property in
 1-56 the same manner unless required by a municipality to stop the
 1-57 nonconforming use of the property.

1-58 (c) A requirement imposed by a municipality to stop a
 1-59 nonconforming use of a property under this section includes:

1-60 (1) an official action by the governing body of the

2-1 municipality or a board, commission, department, or official of
2-2 the municipality; or
2-3 (2) a determination by the municipality that a
2-4 nonconforming use has an adverse effect or other necessary
2-5 determination that a municipality must make before imposing a
2-6 requirement to stop a nonconforming use under applicable law.
2-7 (d) If a municipality requires a property owner or lessee to
2-8 stop the nonconforming use of a property as described by Subsection
2-9 (b), the owner or lessee of the property is entitled to:
2-10 (1) payment from the municipality in an amount equal
2-11 to the sum of:
2-12 (A) the costs incurred by the owner or lessee of
2-13 the property that are directly attributable to ceasing the
2-14 nonconforming use of the property, including expenses related to
2-15 demolition, relocation, termination of a lease, or discharge of a
2-16 mortgage; and
2-17 (B) an amount equal to the greater of, as
2-18 determined by the municipality, the diminution in the market value
2-19 of the property, computed by subtracting the current market value
2-20 of the property after the imposition of a requirement to stop the
2-21 nonconforming use of the property from:
2-22 (i) the market value of the property on the
2-23 day before the date the notice was given under Section
2-24 211.006(a-1); or
2-25 (ii) the market value of the property on the
2-26 day before a person submits an application or request to the
2-27 municipality to require or the municipality otherwise requires a
2-28 person to stop using the property in a manner that is a
2-29 nonconforming use as described by Subsection (b); or
2-30 (2) continued nonconforming use of the property until
2-31 the owner or lessee recovers the amount determined under
2-32 Subdivision (1) through the owner or lessee's continued business
2-33 activities according to generally accepted accounting principles.
2-34 (e) Not later than the 10th day after the date a
2-35 municipality imposes a requirement to stop a nonconforming use of a
2-36 property under this section, the municipality shall give written
2-37 notice to each owner or lessee of the property, as indicated by the
2-38 most recently approved municipal tax roll, who is required to stop a
2-39 nonconforming use of the property of the requirement and of the
2-40 remedies which an owner or lessee of the property is entitled to
2-41 under Subsection (d).
2-42 (f) The owner or lessee of a property that is subject to a
2-43 requirement to stop a nonconforming use of the property under this
2-44 section shall not later than the 30th day after the date the
2-45 municipality gives the notice required by Subsection (e) respond in
2-46 writing to the municipality indicating the remedy under Subsection
2-47 (d) chosen by the owner or lessee. In the event of a conflict in the
2-48 choice of remedy by the owner and a lessee of the property, the
2-49 owner's choice of remedy shall control. In the event of a conflict
2-50 in the choice of remedy by the owners of a property that has more
2-51 than one owner, the choice of remedy made by an owner or owners
2-52 holding the greater ownership interest in the property shall
2-53 control. If the municipality does not receive timely notice from an
2-54 owner or lessee, the municipality may choose the remedy provided
2-55 under this section.
2-56 (g) A person receiving a payment under Subsection (d)(1)
2-57 must stop the nonconforming use not later than the 10th day after
2-58 the date of the payment.
2-59 (h) A person who continues the nonconforming use under
2-60 Subsection (d)(2) must stop the nonconforming use immediately on
2-61 the recovery of the amount determined under Subsection (d)(1).
2-62 (i) If more than one person seeks a payment from the
2-63 municipality under Subsection (d)(1), the municipality shall
2-64 apportion the payment between each person based on the market value
2-65 of the person's interest in the property. A person may appeal the
2-66 apportionment in the manner provided by this section.
2-67 (j) A person entitled to a remedy under this section may
2-68 appeal a determination under Subsection (d)(1) or (2) to the board
2-69 of adjustment of the municipality not later than the 20th day after

3-1 the date the determination is made. At the hearing before the board
 3-2 of adjustment, the municipality has the burden of proof to
 3-3 establish the correctness of its determination.

3-4 (k) A municipality or a person aggrieved by the final
 3-5 decision of the board of adjustment under Subsection (j) may seek
 3-6 judicial review of the decision by filing suit as provided by
 3-7 Section 211.011 not later than the 20th day after the date the final
 3-8 decision is made. The court shall review the decision in the manner
 3-9 provided by Section 211.011 except that:

3-10 (1) the municipality has the burden of proving by clear
 3-11 and convincing evidence that its determination was correct; and

3-12 (2) the court:

3-13 (A) in reviewing the municipality's decision may
 3-14 not use a deferential standard in the municipality's favor; and

3-15 (B) is not limited to determining whether a
 3-16 decision of the board meets the requirements of this chapter or
 3-17 other applicable law.

3-18 (l) A person seeking to continue a nonconforming use under
 3-19 Subsection (d)(2) who appeals the decision of the municipality or
 3-20 board of adjustment may continue to use the property in the same
 3-21 manner pending the appeal unless an official of the body that made
 3-22 the decision shows cause to stay the nonconforming use by
 3-23 certifying in writing to the board of adjustment or court with
 3-24 jurisdiction over the appeal facts supporting the official's
 3-25 opinion that continued nonconforming use of the property would
 3-26 cause imminent peril to life or property. On a showing of cause the
 3-27 board of adjustment or court with jurisdiction over the appeal may,
 3-28 after notice to the official, grant a restraining order to stay
 3-29 continued nonconforming use of the property.

3-30 (m) If the board of adjustment or court with jurisdiction
 3-31 over an appeal determines that an owner or lessee is entitled to:

3-32 (1) a payment under this section in an amount
 3-33 different than the amount determined by the municipality under
 3-34 Subsection (d)(1), the board of adjustment or court shall order, as
 3-35 applicable:

3-36 (A) additional payment to the owner or lessee; or
 3-37 (B) the owner or lessee to reimburse the

3-38 municipality; or

3-39 (2) an amount of time to operate the nonconforming use
 3-40 that is different than the amount of time initially received under
 3-41 Subsection (d)(2), the board of adjustment or court shall order the
 3-42 municipality to allow an owner or lessee to continue the
 3-43 nonconforming use for additional or less time.

3-44 (n) An owner or lessee may waive the rights and remedies
 3-45 provided by this section by providing to the municipality a written
 3-46 waiver.

3-47 (o) This section does not apply to a nonconforming use that
 3-48 has been intentionally abandoned for at least six months.

3-49 (p) A municipality's immunity from suit and governmental
 3-50 immunity from liability are waived for purposes of an action
 3-51 brought by a property owner or lessee to enforce the rights and
 3-52 remedies under this section.

3-53 SECTION 3. (a) Section 211.006, Local Government Code, as
 3-54 amended by this Act, and Section 211.019, Local Government Code, as
 3-55 added by this Act, apply to a property for which:

3-56 (1) on or after June 1, 2023, the governing body or
 3-57 zoning commission of a municipality considers a proposed adoption
 3-58 of or change to a zoning regulation or boundary under which a
 3-59 current conforming use of the property is a nonconforming use; or

3-60 (2) on or after February 1, 2023, the governing body or
 3-61 a board, commission, department, or official of a municipality
 3-62 requires, by ordinance or otherwise, or receives an application or
 3-63 request to require a person to stop nonconforming use of the
 3-64 property due to its nonconformity with the property's current
 3-65 zoning.

3-66 (b) Subsection (a)(2) of this section applies to a property
 3-67 regardless of whether the governing body or a board, commission,
 3-68 department, or official of the municipality is required by
 3-69 applicable law to make a determination that the nonconforming use

4-1 has an adverse effect or other determination before the
4-2 nonconforming use is required to stop.

4-3 SECTION 4. This Act takes effect immediately if it receives
4-4 a vote of two-thirds of all the members elected to each house, as
4-5 provided by Section 39, Article III, Texas Constitution. If this
4-6 Act does not receive the vote necessary for immediate effect, this
4-7 Act takes effect September 1, 2023.

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