LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.001. PURPOSE. The powers granted under this subchapter are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.002. ADOPTION OF REGULATION OR BOUNDARY INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.003. ZONING REGULATIONS GENERALLY. (a) The governing body of a municipality may regulate:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c) The governing body of a home-rule municipality may also regulate the bulk of buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 731, Sec. 2, eff. Sept. 1, 2003.

Sec. 211.0035. ZONING REGULATIONS AND DISTRICT BOUNDARIES APPLICABLE TO PAWNSHOPS. (a) In this section, "pawnshop" has the meaning assigned by Section 371.003, Finance Code.

(b) For the purposes of zoning regulation and determination of zoning district boundaries, the governing body of a municipality shall designate pawnshops that have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as a permitted use in one or more zoning classifications.

(c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop that has been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code.

Added by Acts 1991, 72nd Leg., ch. 687, Sec. 18, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.81, eff. Sept. 1, 1999.

Sec. 211.004. COMPLIANCE WITH COMPREHENSIVE PLAN. (a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

(1) lessen congestion in the streets;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population; or

(7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

(b) Repealed by Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 458, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Sec. 211.005. DISTRICTS. (a) The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) Zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING REGULATIONS AND DISTRICT BOUNDARIES. (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(a-1) In addition to any notice required by this section or Section 211.007, the governing body of a municipality or a zoning

commission, as applicable, shall 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. The notice must:

(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 the following text in bold 14-point type or larger:

"THE [MUNICIPALITY NAME] 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."

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20

percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 52 (S.B. 929), Sec. 1, eff. May 19, 2023.

Sec. 211.007. ZONING COMMISSION. (a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold at least one public hearing on that report before submitting a final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

(c) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the manner provided by Section 211.006(a).

(c-1) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification affecting residential or multifamily zoning shall be sent to each school district in which the property for which the change in classification is proposed is located. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

(c-2) Subsection (c-1) does not apply to a municipality the majority of which is located in a county with a population of 100,000 or less, except that such a municipality must give notice under Subsection (c-1) to a school district that has territory in the municipality and requests the notice. For purposes of this subsection, if a school district makes a request for notice under Subsection (c-1), the municipality must give notice of each public hearing held following the request unless the school district requests that no further notices under Subsection (c-1) be given to the school district.

(d) The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by Section 211.006(a) do not apply.

(e) If a general-law municipality exercises zoning authority without the appointment of a zoning commission, any reference in a law to a municipal zoning commission or planning commission means the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 640 (H.B. 674), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 401 (H.B. 1381), Sec. 1, eff. September 1, 2023.

Sec. 211.0075. COMPLIANCE WITH OPEN MEETINGS LAW. A board or commission established by an ordinance or resolution adopted by the governing body of a municipality to assist the governing body in developing an initial comprehensive zoning plan or initial zoning regulations for the municipality, or a committee of the board or commission that includes one or more members of the board or commission, is subject to Chapter 551, Government Code, regardless of whether the board, commission, or committee has rulemaking or quasi-judicial powers or functions only in an advisory capacity.

Added by Acts 1993, 73rd Leg., ch. 381, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 211.008. BOARD OF ADJUSTMENT. (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor,

to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 1, eff. September 1, 2019.

Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

(2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

(3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building

code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(5) the municipality considers the structure to be a nonconforming structure.

(c) The concurring vote of 75 percent of the members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or

(3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 318 (H.B. 1475), Sec. 1, eff. September 1, 2021.

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(1) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) is aggrieved by the decision and is the owner

of real property within 200 feet of the property that is the subject of the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 2, eff. September 1, 2019.

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the

decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g)

than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES. (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.013. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left

unoccupied, or otherwise imposes higher standards than those required under another statute or local ordinance or regulation, the regulation adopted under this subchapter controls. If the other statute or local ordinance or regulation imposes higher standards, that statute, ordinance, or regulation controls.

(b) This subchapter does not authorize the governing body of a municipality to require the removal or destruction of property that exists at the time the governing body implements this subchapter and that is actually and necessarily used in a public service business.

(c) This subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

(d) This subchapter applies to a privately owned building or other structure and privately owned land when leased to a state agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 476, Sec. 1, eff. June 18, 1999.

Sec. 211.014. PANEL OF BOARD OF ADJUSTMENT. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) A board of adjustment shall consist of one or more panels of at least five members each to be appointed for terms of two years. If more than one panel of the board is appointed, the board consists of the regular members of all of the panels. The board may adopt rules for the assignment of appeals to a panel.

(c) If the board consists of more than one panel, only one panel may hear, handle, or render a decision in a particular case. A decision of a panel of the board on a case constitutes the decision of the board.

(d) Meetings of a panel of the board are held at the call of the presiding officer of the panel and at other times as determined by the panel or the board.

(e) A panel of a board of adjustment:

(1) has the powers and duties that a board of adjustment has under Sections 211.008, 211.009, 211.010, and

211.011; and

(2) is to be treated as a board of adjustment for purposes of the requirement imposed by Section 211.008(d).

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 2001, 77th Leg., ch. 402, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 73, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 24 (S.B. 177), Sec. 1, eff. May 9, 2005.

Sec. 211.015. ZONING REFERENDUM IN HOME-RULE MUNICIPALITY. (a) Notwithstanding other requirements of this subchapter, the voters of a home-rule municipality may repeal the municipality's zoning regulations adopted under this subchapter by either:

(1) a charter election conducted under law; or

(2) on the initial adoption of zoning regulations by a municipality, the use of any referendum process that is authorized under the charter of the municipality for public protest of the adoption of an ordinance.

(b) Notwithstanding any procedural or other requirements of this chapter to the contrary, the governing body of a home-rule municipality may on its own motion submit the repeal of the municipality's zoning regulations, as adopted under this chapter, in their entirety to the electors by use of any process that is authorized under the charter of the municipality for a popular vote on the rejection or repeal of ordinances in general.

(c) The provisions of this chapter shall not be construed to prohibit the adoption or application of any charter provision of a home-rule municipality that requires a waiting period prior to the adoption of zoning regulations or the submission of the initial adoption of zoning regulations to a binding referendum election, or both, provided that all procedural requirements of this chapter for the adoption of the zoning regulation are otherwise complied with. This subsection does not apply to the adoption of airport zoning regulations under Chapter 241.

(d) Notwithstanding any charter provision to the contrary, a governing body of a municipality may adopt a zoning ordinance and

condition its taking effect upon the ordinance receiving the approval of the electors at an election held for that purpose.

(e) The provisions of this section may only be utilized for the repeal of a municipality's zoning regulations in their entirety or for determinations of whether a municipality should initially adopt zoning regulations, except the governing body of a municipality may amend, modify, or repeal a zoning ordinance adopted, approved, or ratified at an election conducted pursuant to this section.

(f) The provisions of this section shall not authorize the repeal of:

(1) an ordinance approving land-use regulations adopted under the provisions of this chapter by a board of directors of a reinvestment zone under the authority of Section 311.010(c), Tax Code; or

(2) an ordinance approving airport zoning regulations adopted under Chapter 241.

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 4, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 190 (S.B. 1360), Sec. 1, eff. May 23, 2007.

Sec. 211.016. ZONING REGULATION AFFECTING APPEARANCE OF BUILDINGS OR OPEN SPACE. (a) This section applies only to a zoning regulation that affects:

(1) the exterior appearance of a single-family house, including the type and amount of building materials; or

(2) the landscaping of a single-family residential lot, including the type and amount of plants or landscaping materials.

(b) A zoning regulation adopted after the approval of a residential subdivision plat does not apply to that subdivision until the second anniversary of the later of:

(1) the date the plat was approved; or

(2) the date the municipality accepts the subdivision improvements offered for public dedication.

(c) This section does not prevent a municipality from

adopting or enforcing applicable building codes or prohibiting the use of building materials that have been proven to be inherently dangerous.

Added by Acts 2003, 78th Leg., ch. 524, Sec. 1, eff. Sept. 1, 2003.

Sec. 211.0165. DESIGNATION OF HISTORIC LANDMARK OR DISTRICT. (a) Except as provided by Subsection (b), a municipality that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark or include a property within the boundaries of a local historic district unless:

(1) the owner of the property consents to the designation or inclusion; or

(2) if the owner does not consent, the designation or inclusion of the owner's property is approved by a three-fourths vote of:

(A) the governing body of the municipality; and

(B) the zoning, planning, or historical commission of the municipality, if any.

(a-1) If a municipality has more than one commission described by Subsection (a)(2)(B), the municipality shall designate one of those commissions as the entity with exclusive authority to approve the designations of properties as local historic landmarks and the inclusion of properties in a local historic district under that paragraph.

(b) If the property is owned by an organization that qualifies as a religious organization under Section 11.20, Tax Code, the municipality may designate the property as a local historic landmark or include the property in a local historic district only if the organization consents to the designation or inclusion.

(c) The municipality must provide the property owner a statement that describes the impact that a historic designation or inclusion in a local historic district of the owner's property may have on the owner and the owner's property. The municipality must

provide the statement to the owner not later than the 15th day before the date of the initial hearing on the historic designation or inclusion in a local historic district of the property of:

(1) the zoning, planning, or historical commission, if any; or

(2) the governing body of the municipality.

(d) The historic designation impact statement must include lists of the:

(1) regulations that may be applied to any structure on the property after the designation;

(2) procedures for the designation;

(3) tax benefits that may be applied to the property after the designation; and

(4) rehabilitation or repair programs that the municipality offers for a property designated as historic.

(e) The municipality must allow an owner to withdraw consent at any time during the designation process.

Added by Acts 2019, 86th Leg., R.S., Ch. 231 (H.B. 2496), Sec. 1, eff. May 25, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 405 (S.B. 1585), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 405 (S.B. 1585), Sec. 2, eff. September 1, 2021.

Sec. 211.0166. EXCLUSION FROM CERTAIN CONSERVATION DISTRICTS. (a) In this section, "conservation district" means a local preservation district authorized by ordinance by a municipality described by Subsection (b) to preserve, maintain, and protect the physical elements of development and the community character and heritage of neighborhoods having distinctive characteristics and patterns of development.

(b) This subsection applies only to a property located in a municipality with a population of two million or more. Notwithstanding any other law, this subsection applies regardless of whether the municipality has established a process for designating places or areas of historical, cultural, or

architectural importance and significance through the adoption of zoning regulations or zoning district boundaries. The owner of a property included within the boundaries of a conservation district authorized by ordinance may elect to exclude the property from the district by filing in the real property records for the county in which the property is located an acknowledged statement:

(1) describing the property by reference to a map or plat of the subdivision; and

(2) stating that the owner elects to have the property excluded from the district.

(c) Subsection (b) does not apply to:

(1) the designation of a property as a local historic landmark described by Section 211.0165(a); or

(2) the inclusion of a property within the boundaries of a local historic district described by Section 211.0165(a).

(d) A statement filed under Subsection (b) must be filed before the first anniversary of the date of the inclusion in a conservation district. The exclusion of a property takes effect on the filing of the statement by the owner of the property.

Added by Acts 2023, 88th Leg., R.S., Ch. 545 (H.B. 4057), Sec. 1, eff. June 10, 2023.

Sec. 211.017. CONTINUATION OF LAND USE IN NEWLY INCORPORATED AREAS. (a) A municipality incorporated after September 1, 2003, may not prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date of incorporation if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the incorporation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date of incorporation.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances;

(7) a regulation relating to the sale and use of fireworks; or

(8) a regulation relating to the discharge of firearms.

(d) A municipal ordinance or rule in conflict with this section is void.

Added by Acts 2003, 78th Leg., ch. 279, Sec. 1, eff. Sept. 1, 2003.
Renumbered from Local Government Code, Section 211.016 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(66), eff. September 1, 2005.

Sec. 211.018. CONTINUATION OF LAND USE REGARDING MANUFACTURED HOME COMMUNITIES. (a) In this section, "manufactured home," "manufactured home community," and "manufactured home lot" have the meanings assigned by Section 94.001, Property Code.

(b) The governing body of a municipality may not require a change in the nonconforming use of any manufactured home lot within the boundaries of a manufactured home community if:

(1) the nonconforming use of the land constituting the

manufactured home community is authorized by law; and

(2) at least 50 percent of the manufactured home lots in the manufactured home community are physically occupied by a manufactured home used as a residence.

(c) For purposes of Subsection (b), requiring a change in the nonconforming use includes:

(1) requiring the number of manufactured home lots designated as a nonconforming use to be decreased; and

(2) declaring that the nonconforming use of the manufactured home lots has been abandoned based on a period of continuous abandonment of use as a manufactured home lot of any lot for less than 12 months.

(d) A manufactured home owner may install a new or used manufactured home, regardless of the size, or any appurtenance on a manufactured home lot located in a manufactured home community for which a nonconforming use is authorized by law, provided that the manufactured home or appurtenance and the installation of the manufactured home or appurtenance comply with:

(1) nonconforming land use standards, including standards relating to separation and setback distances and lot size, applicable on the date the nonconforming use of the land constituting the manufactured home community was authorized by law; and

(2) all applicable state and federal law and standards in effect on the date of the installation of the manufactured home or appurtenance.

(e) A municipality that prohibits the construction of new single-family residences or the construction of additions to existing single-family residences on a site located in a designated floodplain may, notwithstanding Subsection (b), (c), or (d), prohibit the installation of a manufactured home in a manufactured home community on a manufactured home lot that is located in an equivalently designated floodplain.

Added by Acts 2017, 85th Leg., R.S., Ch. 741 (S.B. 1248), Sec. 1, eff. September 1, 2017.

Sec. 211.019. NONCONFORMING LAND USE. (a) In this

section, "market value" means the price the sale of the property would bring in an arms-length transaction when offered for sale by one who wishes, but is not obliged, to sell and when bought by one who is under no necessity of buying it.

(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 may continue to use the property in the same manner unless required by a municipality to stop the nonconforming use of the property.

(c) 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 must make before imposing a requirement to stop a nonconforming use under applicable law.

(d) If a municipality requires a property owner or lessee to stop the nonconforming use of a property as described by Subsection (b), the owner or lessee of the property is entitled 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) Not later than the 10th day after the date a municipality imposes a requirement to stop a nonconforming use of a property under this section, the municipality shall 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) The owner or lessee of a property that 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.

(g) A person receiving a payment under Subsection (d)(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 Subsection (d)(2) must stop the nonconforming use immediately on the recovery of the amount determined under Subsection (d)(1).

(i) If more than one person seeks a payment from the

municipality under Subsection (d)(1), the municipality shall apportion the payment between each person based on the market value of the person's interest in the property. A person may appeal the apportionment in the manner provided by this section.

(j) A person entitled to a remedy under this section may 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. At the hearing before the board of adjustment, the municipality has the burden of proof to establish the correctness of its determination.

(k) A municipality or a person aggrieved by the final decision of the board of adjustment under Subsection (j) may seek judicial review of the decision by filing suit as provided by Section 211.011 not later than the 20th day after the date the final decision is made. The court shall 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:

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

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

(l) A person seeking to continue a nonconforming use under Subsection (d)(2) who appeals the decision of the municipality or board of adjustment may 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. On a showing of cause the board of adjustment or court with jurisdiction over the appeal may, after notice to the official, grant a restraining order to stay continued nonconforming use of the property.

(m) 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 shall 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 shall order the municipality to allow an owner or lessee to continue the nonconforming use for additional or less time.

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

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

(p) 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.

Added by Acts 2023, 88th Leg., R.S., Ch. 52 (S.B. 929), Sec. 2, eff. May 19, 2023.

SUBCHAPTER B. ADDITIONAL ZONING REGULATIONS IN MUNICIPALITY WITH POPULATION OF MORE THAN 290,000

Sec. 211.021. ADDITIONAL ZONING REGULATIONS. (a) The governing body of a municipality with a population of more than 290,000 that has adopted a comprehensive zoning ordinance under Subchapter A may, by ordinance, divide the municipality into neighborhood zoning areas after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the

municipality.

(b) The mayor of the municipality, with the approval of the governing body, may appoint a neighborhood advisory zoning council for each of the neighborhood zoning areas. Each zoning council must be composed of five citizens who reside in the neighborhood zoning area. A zoning council member is appointed for a term of two years.

(c) Each neighborhood advisory zoning council shall provide the zoning commission with information, advice, and recommendations relating to each application filed with the zoning commission for zoning regulation changes that affect property within that neighborhood zoning area.

(d) On the filing of a zoning change application with the zoning commission, the zoning commission shall provide the appropriate neighborhood advisory zoning council with a copy of the application. The zoning council shall conduct a public hearing on the application and must publish notice of the time and place of the hearing in an official newspaper or a newspaper of general circulation in the municipality before the 10th day before the date of the hearing.

(e) At or before the zoning commission's hearing on the zoning change application, the neighborhood advisory zoning council shall submit to the zoning commission any information, advice, and recommendations relating to that application that the zoning council considers proper. The zoning commission may not overrule a recommendation of the zoning council with respect to the disposition of the application unless at least three-fourths of the members of the zoning commission who are present at the meeting vote to overrule the recommendation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 211.031. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section 437.001, Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A municipal zoning ordinance may not prohibit the use of a home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. This subchapter does not affect the right of a person to bring a cause of action under other law against an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.