

By: Rogers

H.B. No. 3490

Substitute the following for H.B. No. 3490:

By: Burns

C.S.H.B. No. 3490

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the notice and compensation a municipality must provide  
3 before revoking the right to use property for a use that was allowed  
4 before the adoption of or change to a zoning regulation or  
5 boundary.

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

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

9 (a-1) In addition to any notice required by this section or  
10 Section 211.007, the governing body of a municipality or a zoning  
11 commission, as applicable, shall provide written notice of each  
12 public hearing regarding any proposed adoption of or change to a  
13 zoning regulation or boundary under which a current conforming use  
14 of a property is a nonconforming use if the regulation or boundary  
15 is adopted or changed. The notice must:

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

21 (2) contain the time and place of the hearing; and

22 (3) include the following text in bold 14-point type or  
23 larger:

24 "THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT

1 WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO  
2 CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE.  
3 PLEASE READ THIS NOTICE CAREFULLY."

4 SECTION 2. Subchapter A, Chapter 211, Local Government  
5 Code, is amended by adding Section 211.019 to read as follows:

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

11 (b) A person using a property in a manner considered to be a  
12 nonconforming use as a result of the adoption of or change to a  
13 zoning regulation or boundary may continue to use the property in  
14 the same manner unless required by a municipality to stop the  
15 nonconforming use of the property.

16 (c) A requirement imposed by a municipality to stop a  
17 nonconforming use of a property under this section includes:

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

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

25 (d) If a municipality requires a property owner or lessee to  
26 stop the nonconforming use of a property as described by Subsection  
27 (b), the owner or lessee of the property is entitled to:

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

3           (A) the costs incurred by the owner or lessee of  
4 the property that are directly attributable to ceasing the  
5 nonconforming use of the property, including expenses related to  
6 demolition, relocation, termination of a lease, or discharge of a  
7 mortgage; and

8           (B) an amount equal to the greater of, as  
9 determined by the municipality, the diminution in the market value  
10 of the property, computed by subtracting the current market value  
11 of the property after the imposition of a requirement to stop the  
12 nonconforming use of the property from:

13                   (i) the market value of the property on the  
14 day before the date the notice was given under Section  
15 [211.006\(a-1\)](#); or

16                   (ii) the market value of the property on the  
17 day before a person submits an application or request to the  
18 municipality to require or the municipality otherwise requires a  
19 person to stop using the property in a manner that is a  
20 nonconforming use as described by Subsection (b); or

21           (2) continued nonconforming use of the property until  
22 the owner or lessee recovers the amount determined under  
23 Subdivision (1) through the owner or lessee's continued business  
24 activities according to generally accepted accounting principles.

25           (e) Not later than the 10th day after the date a  
26 municipality imposes a requirement to stop a nonconforming use of a  
27 property under this section, the municipality shall give written

1 notice to each owner or lessee of the property, as indicated by the  
2 most recently approved municipal tax roll, who is required to stop a  
3 nonconforming use of the property of the requirement and of the  
4 remedies which an owner or lessee of the property is entitled to  
5 under Subsection (d).

6 (f) The owner or lessee of a property that is subject to a  
7 requirement to stop a nonconforming use of the property under this  
8 section shall not later than the 30th day after the date the  
9 municipality gives the notice required by Subsection (e) respond in  
10 writing to the municipality indicating the remedy under Subsection  
11 (d) chosen by the owner or lessee. In the event of a conflict in the  
12 choice of remedy by the owner and a lessee of the property, the  
13 owner's choice of remedy shall control. In the event of a conflict  
14 in the choice of remedy by the owners of a property that has more  
15 than one owner, the choice of remedy made by an owner or owners  
16 holding the greater ownership interest in the property shall  
17 control. If the municipality does not receive timely notice from an  
18 owner or lessee, the municipality may choose the remedy provided  
19 under this section.

20 (g) A person receiving a payment under Subsection (d)(1)  
21 must stop the nonconforming use not later than the 10th day after  
22 the date of the payment.

23 (h) A person who continues the nonconforming use under  
24 Subsection (d)(2) must stop the nonconforming use immediately on  
25 the recovery of the amount determined under Subsection (d)(1).

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

1 apportion the payment between each person based on the market value  
2 of the person's interest in the property. A person may appeal the  
3 apportionment in the manner provided by this section.

4 (j) A person entitled to a remedy under this section may  
5 appeal a determination under Subsection (d)(1) or (2) to the board  
6 of adjustment of the municipality not later than the 20th day after  
7 the date the determination is made. At the hearing before the board  
8 of adjustment, the municipality has the burden of proof to  
9 establish the correctness of its determination.

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

16 (1) the municipality has the burden of proving by clear  
17 and convincing evidence that its determination was correct; and

18 (2) the court:

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

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

24 (l) A person seeking to continue a nonconforming use under  
25 Subsection (d)(2) who appeals the decision of the municipality or  
26 board of adjustment may continue to use the property in the same  
27 manner pending the appeal unless an official of the body that made

1 the decision shows cause to stay the nonconforming use by  
2 certifying in writing to the board of adjustment or court with  
3 jurisdiction over the appeal facts supporting the official's  
4 opinion that continued nonconforming use of the property would  
5 cause imminent peril to life or property. On a showing of cause the  
6 board of adjustment or court with jurisdiction over the appeal may,  
7 after notice to the official, grant a restraining order to stay  
8 continued nonconforming use of the property.

9 (m) If the board of adjustment or court with jurisdiction  
10 over an appeal determines that an owner or lessee is entitled to:

11 (1) a payment under this section in an amount  
12 different than the amount determined by the municipality under  
13 Subsection (d)(1), the board of adjustment or court shall order, as  
14 applicable:

15 (A) additional payment to the owner or lessee; or

16 (B) the owner or lessee to reimburse the  
17 municipality; or

18 (2) an amount of time to operate the nonconforming use  
19 that is different than the amount of time initially received under  
20 Subsection (d)(2), the board of adjustment or court shall order the  
21 municipality to allow an owner or lessee to continue the  
22 nonconforming use for additional or less time.

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

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

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

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

8           (1) on or after June 1, 2023, the governing body or  
9 zoning commission of a municipality considers a proposed adoption  
10 of or change to a zoning regulation or boundary under which a  
11 current conforming use of the property is a nonconforming use; or

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

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

24       SECTION 4. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2023.