

By: Rogers

H.B. No. 3490

A BILL TO BE ENTITLED

AN ACT

1  
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 boundary.

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

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

8 (a-1) In addition to any notice required by this section or  
9 Section 211.007, the governing body of a municipality or a zoning  
10 commission, as applicable, shall provide written notice of each  
11 public hearing regarding any proposed adoption of or change to a  
12 zoning regulation or boundary that could result in a current  
13 conforming use of a property becoming a nonconforming use if the  
14 regulation or boundary were to be adopted or changed. The notice  
15 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 at that 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 fourteen-point  
23 type or 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) Except as provided by this section, the operator of  
12 property with a nonconforming use as a result of the adoption of or  
13 change to a zoning regulation or boundary may continue to use the  
14 property in the same manner the property was used before the use  
15 became nonconforming.

16 (c) If a nonconforming use on a property described by  
17 Subsection (b) is required by a municipality to cease operation due  
18 to being a nonconforming use, the owner or the lessee of the  
19 property is entitled to receive either:

20 (1) a payment from the municipality composed of costs  
21 that are directly attributable to the municipal requirement of  
22 ceasing operation including demolition expenses, relocation  
23 expenses, termination of leases, and discharge of mortgages, and an  
24 amount equaling the diminution, if any, of the greater of, as  
25 determined by the municipality, the market value of the property on  
26 the day before:

27 (A) the notice under Section 211.006(a-1) was

1 required to be sent to the property's owner of the adoption of or  
2 change to a zoning regulation or boundary that made the use  
3 nonconforming and the property's market value as a result of the use  
4 becoming nonconforming; or

5 (B) a person submits an application or request to  
6 the municipality to require or the municipality otherwise requires  
7 the nonconforming use to cease operation due to being a  
8 nonconforming use and the property's market value as a result of a  
9 municipal requirement that the use cease operation; or

10 (2) additional time to operate the nonconforming use  
11 until the property owner or lessee has recovered, through its  
12 business activities using generally accepted accounting  
13 principles, the amount determined under Subsection (c)(1).

14 (d) A municipal requirement to cease operation due to  
15 nonconformity under this section includes:

16 (1) an action of the governing body, board,  
17 commission, department, or official of the municipality; and

18 (2) a determination by the municipality that must be  
19 made before the nonconforming use is required to cease operation  
20 such as determining the use has an adverse effect.

21 (e) The municipality must notify each owner of real or  
22 business personal property, as indicated by the most recently  
23 approved municipal tax roll, with a nonconforming use subject to a  
24 municipal requirement to cease operation due to being a  
25 nonconforming use and each occupant at that property in writing of  
26 its requirement and the remedies described in Subsection (c) not  
27 later than the 10th day after the date the municipality imposes the

1 requirement.

2 (f) The owner and any lessee of the real property must  
3 notify the municipality in writing of the remedy chosen under  
4 Subsection (c) not later than the 30th day after the date the  
5 municipality sent the notice required by Subsection (e). If the  
6 owner of real property and a lessee choose different remedies, the  
7 owner's choice of remedy controls. If there is more than one owner  
8 of the real property and they choose different remedies, the choice  
9 of remedy by owners who have a greater ownership interest in the  
10 property controls. If the property owner and lessee fail to provide  
11 timely notice, the municipality may choose the remedy.

12 (g) A person receiving payment under Subsection (c)(1) must  
13 cease operating the nonconforming use not later than the 10th day  
14 after the date of the payment.

15 (h) A person receiving additional time to operate the  
16 nonconforming use under Subsection (c)(2) must cease operating that  
17 use immediately on the expiration of the additional time.

18 (i) If both the owner and lessee of the property seek a  
19 payment from the municipality under Subsection (c)(1), the  
20 municipality shall apportion the payment between each based on the  
21 market value of their interests in the property. The  
22 municipality's apportionment may be appealed by either the owner or  
23 lessee in the same manner as other appeals allowed by this section.

24 (j) If the owner or lessee does not accept the  
25 municipality's determination under Subsection (c)(1) or (2),  
26 either person may appeal the determination to the board of  
27 adjustment of the municipality not later than the 20th day after the

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

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

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

11 (2) in reviewing the municipality's decision, the  
12 court:

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

15 (B) is not limited to determining whether a  
16 decision of the board is illegal.

17 (l) A person seeking additional time to operate under  
18 Subsection (c)(2) who appeals the decision of the municipality or  
19 board of adjustment may continue to use the property in the same  
20 manner as before the use became nonconforming pending the appeal  
21 unless an official of the body who made the decision certifies in  
22 writing to the entity with jurisdiction over the appeal facts  
23 supporting the official's opinion that continued nonconforming use  
24 of the property would cause imminent peril to life or property. In  
25 that case, continued nonconforming use of the property may be  
26 stayed only by a restraining order granted by the entity with  
27 jurisdiction over the appeal, after notice to the official, if due

1 cause is shown.

2 (m) If following an appeal it is determined that the amount  
3 of compensation that a person is ultimately entitled to under this  
4 section is different from the amount initially received under  
5 Subsection (c)(1), the entity with jurisdiction over the appeal  
6 shall order additional compensation to the person or reimbursement  
7 to the municipality, as appropriate.

8 (n) If following an appeal it is determined that the amount  
9 of additional time to operate the nonconforming use that a person is  
10 ultimately entitled to under this section is different from the  
11 amount initially received under Subsection (c)(2), the entity with  
12 jurisdiction over the appeal shall order additional or less time to  
13 the person, as appropriate.

14 (o) An owner or lessee of the real property may waive the  
15 rights and remedies provided by this section by notifying the  
16 municipality in writing of the waiver.

17 (p) This section does not apply to a nonconforming use that  
18 has been intentionally abandoned for six months or more.

19 (q) A municipality's or board of adjustment's immunity from  
20 suit and liability is waived in an action brought by a property  
21 owner or lessee to enforce the rights and remedies under this  
22 section.

23 SECTION 3. (a) The changes in law made by this Act apply to  
24 property for which:

25 (1) on or after June 1, 2023, the governing body or  
26 zoning commission of a municipality considers a proposed adoption  
27 of or change to a zoning regulation or boundary that could result in

1 a current conforming use of a property becoming a nonconforming  
2 use; or

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

8 (b) Subsection (a)(2) of this section applies to a property  
9 even if the governing body or a board, commission, department, or  
10 official of the municipality is required to make a determination,  
11 such as determining the nonconforming use has an adverse effect,  
12 before the nonconforming use is required to cease operation.

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