



TEXAS MUNICIPAL LEAGUE
Empowering Texas cities to serve their citizens

President **David Rutledge**, Mayor, Bridge City
Executive Director **Bennett Sandlin**

March 29, 2023

The Honorable DeWayne Burns
Chairman, Texas House Land and Resource Management Committee
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

Dear Chairman Burns,

I am writing on behalf of the Texas Municipal League in opposition to **H.B. 3490** by **Representative Rogers**. We understand the author's intent to address situations where applying zoning and takings law to specific facts may have resulted in an apparent unfair outcome. The League generally supports the transparency measures spelled out in H.B. 3490. However, as currently drafted, H.B. 3490 would unravel decades of well-established law balancing the rights of property owners and the needs of the public, with additional costs to be borne by local taxpayers.

Property owners affected by a zoning change are not without recourse under current law. Existing law allows uses that pre-date the zoning change to continue if the owner does not abandon or substantially change the size or scope of the use. And if a city finds it necessary to terminate the nonconforming use, it must compensate the property owner through the "amortization" technique.

The Texas Supreme Court held that the amortization technique allows a property owner to recoup their investment in the property at the time of the zoning change. *See City of University Park v. Benners*, 485 S.W.2d 773, 777 (Tex. 1972). This can be done through a lump sum payment or being allowed additional time to operate until the property owner recoups their investment. But the law does not allow a property owner to recoup costs incurred after the zoning change occurs. This rationale weighs the property owner's rights with the city's need to timely address the public necessity for the eventual termination of the use.

Amortization provisions in city ordinances reflect existing law, and those ordinances can and do set different termination periods based upon the nature of the use to ensure predictability and fairness. Cities are able to tailor their zoning regulations to strike the proper balance between community needs as expressed by city residents with the expectations of individual property owners.

H.B. 3490 equates a zoning change that results in the eventual discontinuation of a business in a specific location with the city demolishing a property by providing the same higher level of

compensation in both situations. The bill would undermine local procedures that account for unique scenarios, and potentially impose additional costs to city residents in the process.

For these reasons, we respectfully oppose H.B. 3490 and urge the committee to take no action on the bill at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Wynn". The signature is fluid and cursive, with a prominent "M" and "W".

Monty Wynn
Director, Grassroots and Legislative Services
Texas Municipal League