By:  Rogers H.B. No. 3490

A BILL TO BE ENTITLED

AN ACT

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

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

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

(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 that could result in a current conforming use of a property becoming a nonconforming use if the regulation or boundary were to be 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 at that 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 fourteen-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."

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

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) Except as provided by this section, the operator of property with 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 the property was used before the use became nonconforming.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j)  If the owner or lessee does not accept the municipality's determination under Subsection (c)(1) or (2), either person may appeal the determination 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)  The municipality or a person aggrieved by the final decision of the board of adjustment may seek judicial review of the decision in the manner provided by Section 211.011 by filing suit not later than the 20th day after the date the final decision is made except that:

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

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

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

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

(l)  A person seeking additional time to operate under Subsection (c)(2) who appeals the decision of the municipality or board of adjustment may continue to use the property in the same manner as before the use became nonconforming pending the appeal unless an official of the body who made the decision certifies in writing to the entity 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. In that case, continued nonconforming use of the property may be stayed only by a restraining order granted by the entity with jurisdiction over the appeal, after notice to the official, if due cause is shown.

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

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

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

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

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

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

(1)  on or after June 1, 2023, the governing body or zoning commission of a municipality considers a proposed adoption of or change to a zoning regulation or boundary that could result in a current conforming use of a property becoming a nonconforming use; or

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

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

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