

- SUBJECT:** Eminent domain procedures for abandoned condominiums in Houston
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 8 ayes — Oliveira, Kleinschmidt, Anchia, R. Anderson, Brown, Kolkhorst, Lavender, Margo
- 1 nay — Garza
- WITNESSES:** For — David Feldman, City of Houston; Kenneth K. Miller and Wayne Norden, Near Northwest Management District; Andy Teas, Texas Apartment Association; (*Registered, but did not testify:* Scott Houston, Texas Municipal League; David Mintz, Texas Apartment Association)
- Against — None
- BACKGROUND:** Property Code, ch. 82, the Uniform Condominium Act, defines “condominium” as a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions.
- Local Government Code, sec. 54.018 allows a municipality to force the repair or demolition of a structure that poses a health and safety risk or to get approval to remove the structure and recover removal costs.
- The 79th Texas Legislature, in its second called session in 2005, enacted SB 7 by Janek, which prohibits government or private entities from using the power of eminent domain to take private property if the taking:
- confers a private benefit on a particular private party through the use of the property;
  - is for a public use that merely is a pretext to confer a private benefit on a particular private party; or
  - is for economic development purposes, unless economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.

Local Government Code, chs. 373 and 374 govern community development and urban renewal policies available to municipalities. A municipality may engage in community development activities in areas that are identified as slums, blighted areas, or federally assisted new communities. For an area to be designated as blighted, the governing body of the municipality has to adopt by majority vote a resolution finding that a slum area or blighted area exists and that the renewal of the area is necessary for the public health, safety, morals, or welfare of residents.

**DIGEST:** HB 364 would allow a city with a population of more than 1.9 million (Houston) to take a condominium through eminent domain if:

- all lawful occupation or construction activity for the condominium had ceased for more than 365 days; and
- the taking was to eliminate urban blight on the particular parcel where the condominium was located.

A condominium owner who changed a mailing address would have to provide written notice of the new address to the appropriate appraisal district within 90 days.

The bill would be effective September 1, 2011, and would apply only to proceedings with condemnation petitions filed on or after that date.

**SUPPORTERS  
SAY:**

HB 364 would provide necessary authority to cities like Houston to address mounting issues associated with abandoned condominium complexes. The bill includes two provisions that will allow the city to address major problems that have arisen with abandoned condos.

**Eminent domain for blight.** The bill would explicitly authorize the city to exercise eminent domain on a blighted condominium that was abandoned for over a year. This is necessary to combat a highly complex and long-standing issue that has increasingly plagued parts of the city. Houston is the only major municipality in the country that does not have any zoning laws. The city's inability to control development through zoning, combined with various recent economic and weather events, has caused a salient problem of overdevelopment and abandonment of condos experienced by few other cities in Texas.

Once abandoned, many condo complexes become a magnet for violent crimes and other illegal activities. Due to the complicated ownership

structure of condominiums — wherein each owner has legal title to his or her unit and an undivided legal interest in the common areas of the entire complex — the process of condemning a blighted condominium complex is extremely complex and time consuming.

Even if the city is able to exercise its power to demolish a condo building that has become a health and safety hazard, the land underlying the condo development may have hundreds of owners. The only clear way to resolve the title for all the property owners is to use eminent domain. Without this power, the title issues associated with even an empty lot are so complex as to render any redevelopment all but impossible. The Legislature, however, enacted a law in 2005 that prohibited taking property for economic development purposes except by means of community development or urban renewal activities specifically defined in statute on a slum or blighted area.

In order to use eminent domain to take abandoned condominiums under current law, the city would have to use provisions for urban renewal as defined in statute. Unlike some cities, Houston is not exempt from the requirement of holding a vote to designate a blighted area for urban renewal. As a result, obtaining a blight designation for even a single parcel requires a citywide vote — a massive and expensive undertaking for a city the size of Houston. Holding an election for a parcel-level issue would be tantamount to asking the whole city to vote on a neighborhood-specific issue, a problem in itself, and would be prohibitively costly.

Unfortunately, eminent domain is the only clear route for the city to gain clear title to an abandoned condominium property. HB 364 would ensure that the city had this authority for very narrow purposes that were tailored to suit a problem specific to cities like Houston.

**Required notice of relocation.** HB 364 also would help resolve severe and ongoing difficulties that Houston has experienced in locating condominium owners by requiring owners who live within the city limits to update their mailing addresses with the appropriate appraisal district within 90 days of making a change. This is necessary in light of recent legal changes and a court decision.

Last session, the Legislature enacted HB 3128 by Turner, which allowed Houston to serve condominium owners process for a judicial or administrative proceeding at their last address. The El Paso court of

appeals, however, last year ruled on an unrelated matter that the Tax Code did not require a property owner to inform the appraisal district of a current address and that failing to do so did not waive the right to receive notice.

This ruling could form a potential legal basis for property owners to sidestep the service of process provision added last session. If the city was unable to serve at the last known address, it would have to return to the previous service of process methods that were much more cumbersome and costly. HB 364 would address this potential vulnerability by explicitly requiring condominium owners to report a change of address. This provision also would help the appraisal district and city provide notice to property owners for various other purposes.

OPPONENTS  
SAY:

HB 364 would set a worrisome precedent by relaxing eminent domain restrictions in specific areas and would impose an unrealistic and unenforceable reporting requirement on condo owners in Houston.

**Eminent domain for blight.** HB 364 would risk creating a precedent of carving specific municipalities out of increasingly restrictive eminent domain laws. Significant measures enacted in the last several years have limited the use of eminent domain, especially of taking property for economic development. These reforms were prompted by the U.S. Supreme Court's *Kelo* decision as well as numerous conspicuous property rights abuses around the state. The Legislature and the public have expressed their support of strong property rights protections against the unnecessary use of eminent domain.

HB 364 would provide Houston with an inappropriate means to address a legitimate problem. Current law provides a path for the city to condemn abandoned condominiums that are blighted. The city already may condemn the condominiums for a legitimate public use, such as parkland. Alternatively, the city could condemn the land for economic development through urban renewal powers. While these procedures involve greater hassle and cost, this was precisely the intent of the Legislature when it enacted SB 7 by Janek, restricting the uses of eminent domain for economic development. Taking property should not be convenient or easy. Making the condemnation process difficult helps prevent abuses by entities with the power to take property.

While Houston may have legitimate reasons for requesting the change that HB 364 would make, the revision could have unintended consequences. For instance, language in the bill that would allow the city of Houston to condemn a condominium if lawful “occupation *or* construction” ceased for a year could encompass condo projects that were initiated at the peak of the market and have since lost their financing. Some condo projects may be half built, and even if their owners intend to complete them when financing materializes, this provision could make it easier for the city to take them through eminent domain. The statutory definition of blight is not sufficiently restrictive to prevent abuses of the powers that would be granted by the bill.

**Required notice of relocation.** The requirement for all condo owners in Houston to provide notice of a change in address is unrealistic and unenforceable. Houston is an enormous city with untold numbers of condo owners. The bill provides no mechanism for informing owners of the 90-day notice requirement and no mechanism for ensuring that it happens.

In addition, the bill unfairly would single out condominium owners. There is no compelling reason that single-family homeowners should not be subjected to the same notice requirements as condo owners.

OTHER  
OPPONENTS  
SAY:

The bill should not be bracketed to cities with populations of more than 1.9 million. There is no reason to believe that issues with abandoned condominiums are exclusive to cities like Houston. Limiting the scope of the bill would raise issues of equitable treatment, as an issue of this nature is not likely to be confined to one city. If HB 364 is necessary for Houston, then it should be for other major metropolitan areas.

NOTES:

A related bill, HB 365 by Turner, which includes similar provisions for taking multifamily residences, has been placed on the Monday, April 11, General State Calendar.

Another related bill, HB 363 by Turner, which would revise the Texas Urban Renewal Law to amend the definition of “blighted area” and would allow Houston to exercise urban renewal powers on a specific parcel of property by adopting a resolution with specific information about the proposed urban renewal plan, has been referred to the Urban Affairs Committee.