

SUBJECT: Eminent domain procedures for multifamily rental buildings in Houston

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 8 ayes — Oliveira, Kleinschmidt, Anchia, Anderson, Brown, Kolkhorst, Lavender, Margo

1 nay — Garza

WITNESSES: For — David Feldman, City of Houston; Wayne Norden, Near Northwest Management District; Andy Teas, Texas Apartment Association;
(*Registered, but did not testify*: David Mintz, Texas Apartment Association)

Against — (*Registered, but did not testify*: Jimmy Gaines, Texas Landowners Council)

BACKGROUND: Local Government Code, sec. 54.018 allows a municipality to require 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 must 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 365 would allow a city with a population of more than 1.9 million (Houston) to take a multifamily rental building through eminent domain if:

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

The bill would define multifamily rental building as a building that had three or more single-family residential units.

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 365 would provide necessary authority to cities like Houston to address mounting issues associated with abandoned apartment complexes. The bill would explicitly authorize the city to exercise eminent domain on a blighted apartment complex 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 apartment complexes experienced by few other cities in Texas.

Once abandoned, many apartment complexes become a magnet for violent crimes and other illegal activities. Even if the city is able to exercise its authority to demolish an apartment that has become a health and safety hazard, the city may become responsible for maintaining the land on which the apartment was situated. This is an ongoing expense for the city, and abandoned properties contribute little if any tax revenue to offset the costs.

The only clear way to resolve the health and safety hazards that an abandoned multifamily building poses is through the use of eminent

domain. Without this power, the title to the land rests with the owners of the building or the land, and redevelopment of the property is not possible. 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 apartment complexes 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 apartment complex. HB 365 would ensure that the city had this authority for very narrow purposes that were tailored to suit a problem specific to cities like Houston.

**OPPONENTS
SAY:**

HB 365 would set a worrisome precedent by relaxing eminent domain restrictions in specific areas. The bill 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, which allowed use of eminent domain authority to seize private property for economic development purposes unless such authority specifically was restricted or prohibited, 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 365 would provide Houston with an inappropriate means to address a legitimate problem. Current law provides a path for the city to condemn abandoned apartment complexes that are blighted. The city already may condemn the apartments 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 private 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 365 would make, the revision could have unintended consequences. For instance, language in the bill that would allow the city of Houston to condemn a multifamily rental building if lawful “occupation or construction” ceased for a year could encompass multifamily projects that were initiated at the peak of the market and have since lost their financing. Some multifamily 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.

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 apartment complexes 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 365 is necessary for Houston, then it should be for other major metropolitan areas.

The bill would allow the condemnation of a “multifamily rental building.” This language could be taken to imply that only the building could be condemned, not the land on which the building sits. If the city wishes to condemn an entire apartment complex, and not just the building, the language should be changed to clearly reflect that intent in the bill.

NOTES:

A related bill, HB 364 by Turner, which includes similar provisions for taking condominiums, was on the General State Calendar for April 8, but was postponed until today’s 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 parcel of property by adopting a resolution with specific information about the proposed urban renewal plan, has been referred to the Urban Affairs Committee.