

BILL ANALYSIS

C.S.H.B. 3490
By: Rogers
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised about the ability of municipalities to revoke the conforming use of a property through the adoption of or change to a zoning regulation or boundary that results in such use becoming a nonconforming use. C.S.H.B. 3490 seeks to address this issue by requiring certain notice of a hearing regarding such an adoption or change and providing for certain remedies when a conforming use becomes a nonconforming use.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3490 amends the Local Government Code to require a municipality's governing body or a municipal zoning commission, as applicable and in addition to any other notice required for the adoption of zoning regulations or boundaries, to provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The bill sets out content and mailing requirements for the notice.

C.S.H.B. 3490 authorizes a person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary to continue to use the property in the same manner unless required by a municipality to stop the nonconforming use of the property. The bill establishes that a requirement imposed by a municipality to stop a nonconforming use of a property includes the following:

- an official action by the municipality's governing body or a board, commission, department, or official of the municipality; or
- a determination by the municipality that a nonconforming use has an adverse effect or other necessary determination that a municipality must make before imposing a requirement to stop a nonconforming use under applicable law.

C.S.H.B. 3490, if a municipality requires a property owner or lessee to stop the nonconforming use of a property, entitles the owner or lessee to the following:

- payment from the municipality in an amount equal to the sum of the following:

- the costs incurred by the owner or lessee that are directly attributable to ceasing the nonconforming use of the property, including expenses related to demolition, relocation, termination of a lease, or discharge of a mortgage; and
- an amount equal to the greater of, as determined by the municipality, the diminution in the property's market value, computed by subtracting the property's current market value after the imposition of a requirement to stop the nonconforming use of the property from the following:
 - the property's market value on the day before the date applicable notice was given of a public hearing relating to the property's conforming use potentially becoming a nonconforming use; or
 - the property's market value on the day before a person submits an application or request to the municipality to require or the municipality otherwise requires a person to stop using the property in a manner that is a nonconforming use; or
- continued nonconforming use of the property until the owner or lessee recovers the applicable diminution amount through the owner or lessee's continued business activities according to generally accepted accounting principles.

The bill defines "market value" as 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.

C.S.H.B. 3490 requires a municipality, not later than the 10th day after the date the municipality imposes a requirement to stop a property's nonconforming use, to give written notice to each owner or lessee of the property, as indicated by the most recently approved municipal tax roll, who is required to stop the nonconforming use of the requirement and of the remedies which the owner or lessee is entitled. The bill requires the owner or lessee of a property that is subject to a requirement to stop a nonconforming use of the property, not later than the 30th day after the date the municipality gives the notice, to respond in writing to the municipality indicating the remedy chosen by the owner or lessee. The bill provides for the control and selection of a remedy in the event of conflict between an owner and lessee, and between multiple owners, and in the event that the municipality does not receive timely notice from an owner or lessee.

C.S.H.B. 3490 requires a person receiving a payment to stop the nonconforming use not later than the 10th day after the date of the payment and requires a person who continues the nonconforming use to stop the nonconforming use immediately on the recovery of the applicable diminution amount. The bill provides for the apportionment of a payment if more than one person seeks a payment and for the appeal of the apportionment.

C.S.H.B. 3490 provides for the following:

- the appeal of a remedy determination to the municipality's board of adjustment by a person entitled to a remedy, including certain appeal procedures;
- judicial review of a final decision of the board of adjustment sought by a municipality or a person aggrieved by the final decision, including certain review procedures;
- the certain continued nonconforming use of a property pending appeal, unless the appellate entity grants a restraining order staying further nonconforming use due to the fact that the continued use would cause imminent peril to life or property;
- the adjustment by the appellate entity of the payment and of the amount of time for the operation of a nonconforming use to allow for additional or less time; and
- an optional waiver of the bill's applicable rights and remedies by an owner or lessee.

C.S.H.B. 3490 exempts from its nonconforming land use provisions a nonconforming use that has been intentionally abandoned for at least six months. The bill waives a municipality's immunity from suit and governmental immunity from liability for purposes of an action brought by a property owner or lessee to enforce the rights and remedies under such provisions.

C.S.H.B. 3490 applies to a property for which:

- 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 under which a current conforming use of the property is a nonconforming use; or
- 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 person to stop nonconforming use of the property due to its nonconformity with the property's current zoning, regardless of whether the entity is required by applicable law to make a determination that the nonconforming use has an adverse effect or other determination before the nonconforming use is required to stop.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

C.S.H.B. 3490 differs from the introduced in minor or nonsubstantive ways by conforming to certain bill drafting conventions.