|  |
| --- |
| BILL ANALYSIS |

|  |
| --- |
| C.S.S.B. 840 |
| By: Hughes |
| Land & Resource Management |
| Committee Report (Substituted) |

|  |
| --- |
| **BACKGROUND AND PURPOSE** According to the comptroller of public accounts, Texas was more than 300,000 homes short of what was needed as of 2021 in order to meet the growth in population the state has been experiencing over the last decade. The bill sponsor has informed the committee that there are ways for the state government to intervene on behalf of the people to remove overburdensome regulations that have contributed to an artificial scarcity of homes. The bill sponsor has also informed the committee that converting offices into housing has a lower construction impact than new development because the structure and much of the infrastructure, such as electricity, plumbing, and HVAC, are already in place. The bill sponsor has further informed the committee that such conversion, combined with other measures, would add to the housing supply and aid in bringing prices down to a more affordable range for consumers. C.S.S.B. 840 seeks to address this issue by setting out provisions relating to the regulation of mixed-use and multifamily residential use and development in certain municipalities. |
| **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.S.B. 840 amends the Local Government Code to set out provisions relating to the regulation of mixed-use and multifamily residential use and development that are applicable only to a municipality with a population greater than 150,000 that is wholly or partly located in a county with a population greater than 300,000. The bill defines "mixed-use residential" as, when used to describe land use or development, the use or development, as applicable, of a site consisting of residential and nonresidential uses in which the residential uses are at least 65 percent of the total square footage of the development and specifies that the term includes the use or development of a condominium. The bill defines "multifamily residential" as, when used to describe land use or development, the use or development, as applicable, of a site for three or more dwelling units within one or more buildings and specifies that the term includes the use or development of a residential condominium.C.S.S.B. 840 requires a municipality to allow mixed-use residential use and development or multifamily residential use and development in a zoning classification that allows office, commercial, retail, warehouse, or mixed-use use or development as an allowed use under the classification. The bill prohibits a municipality from requiring the change of a zoning district or land use classification or regulation or an approval of an amendment, exception, or variance to a zoning district or land use classification or regulation prior to allowing a mixed-use residential use or development or multifamily residential use or development in an area covered by such a zoning classification. The bill establishes that an amendment, exception, or variance to a zoning district or land use classification or regulation includes a special exception, zoning variance, site development variance, subdivision variance, conditional use approval, special use permit, comprehensive plan amendment, or other discretionary approval to allow a mixed-use residential use or development or multifamily residential use or development. The bill exempts the following from these provisions of the bill: * a zoning classification that allows heavy industrial use;
* land located within the following:
	+ 1,000 feet of an existing heavy industrial use or development site; or
	+ 3,000 feet of an airport or military base; and
* an area designated by a municipality as a clear zone or accident potential zone.

The bill defines "heavy industrial use" as a storage, processing, or manufacturing use:* with processes using flammable or explosive materials;
* with hazardous conditions; or
* that is noxious or offensive from odors, smoke, noise, fumes, or vibrations.

C.S.S.B. 840 prohibits a municipality from adopting or enforcing an ordinance, zoning restriction, or other regulation that does the following:* imposes on a mixed-use residential or multifamily residential development the following:
	+ a limit on density that is more restrictive than the greater of the following:
		- the highest residential density allowed in the municipality; or
		- 36 units per acre;
	+ a limit on building height that is more restrictive than the greater of the following:
		- the highest height that would apply to an office, commercial, retail, or warehouse development constructed on the site; or
		- 45 feet; or
	+ a setback or buffer requirement that is more restrictive than the lesser of the following:
		- a setback or buffer requirement that would apply to an office, commercial, retail, or warehouse development constructed on the site; or
		- 25 feet;
* requires a mixed-use residential or multifamily residential development to provide the following:
	+ more than one parking space per dwelling unit; or
	+ a multilevel parking structure;
* restricts the ratio of the total building floor area of a mixed-use residential or multifamily residential development in relation to the lot area of the development; or
* requires a multifamily residential development not located in an area zoned for mixed‑use residential use to contain nonresidential uses.

The bill, if a municipal authority responsible for approving a building permit or other authorization required for the construction of a mixed-use residential or multifamily residential development determines that a proposed development meets municipal land development regulations in accordance with the bill's provisions relating to zoning and development regulations, requires the municipal authority to administratively approve the permit or other authorization and prohibits the municipal authority from requiring further action by the governing body of the municipality for the approval to take effect.C.S.S.B. 840 sets out provisions relating to fees and regulations applicable to conversion of certain uses that are applicable only to a building or the structural components of the building that:* is being used for office, retail, or warehouse use;
* is proposed to be converted from nonresidential occupancy to mixed-use residential or multifamily residential occupancy for at least 65 percent of the building and at least 65 percent of each floor of the building that is fit for occupancy; and
* was constructed at least five years before the proposed date to start the conversion.

The bill prohibits a municipality, in connection with the use, development, construction, or occupancy of a building proposed to be converted to mixed-use residential or multifamily residential use, from requiring the following:* the preparation of a traffic impact analysis or other study relating to the effect the proposed converted building would have on traffic or traffic operations;
* the construction of improvements or payment of a fee in connection with mitigating traffic effects related to the proposed converted building;
* the provision of additional parking spaces, other than the parking spaces that already exist on the site of the proposed converted building;
* the extension, upgrade, replacement, or oversizing of a utility facility except as necessary to provide the minimum capacity needed to serve the proposed converted building; or
* a design requirement, including a requirement related to the exterior, windows, internal environment of a building, or interior space dimensions of an apartment, that is more restrictive than the applicable minimum standard under the International Building Code as adopted as a municipal commercial building code under applicable statutory provisions.

The bill prohibits a municipality from imposing an impact fee, as defined by provisions relating to the financing of capital improvements required by new development in municipalities, counties, and certain other local governments, on land where a building has been converted to mixed-use residential or multifamily residential use unless the land on which the building is located was already subject to an impact fee before a building permit related to the conversion was filed with the municipality. For such purpose, the bill defines "permit" by reference to statutory provisions relating to the issuance of local permits. C.S.S.B. 840 authorizes a housing organization or other person adversely affected or aggrieved by a violation of the bill's provisions relating to the regulation of mixed-use and multifamily residential use and development in certain municipalities to bring an action for declaratory or injunctive relief against a municipality. The bill requires the court to award court costs and reasonable attorney's fees to a claimant who prevails in such an action. The bill requires an action that is brought to be brought in a county in which all or part of the real property that is the subject of the action is located and establishes that the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction over an action brought under these provisions of the bill. The bill defines "housing organization" as follows:* a trade or industry group organized under the laws of the state consisting of local members primarily engaged in the construction or management of housing units;
* a nonprofit organization organized under the laws of the state that:
	+ provides or advocates for increased access or reduced barriers to housing; and
	+ has filed written or oral comments with the legislature; or
* a nonprofit organization that is engaged in public policy research, education, and outreach that includes housing policy-related issues and advocacy.

C.S.S.B. 840 establishes that its provisions relating to the regulation of mixed-use and multifamily residential use and development in certain municipalities expressly do not affect the authority of a municipality to do the following:* apply the municipality's regulations on short-term rental units to a mixed-use residential or multifamily residential development;
* adopt or enforce water quality protection regulations to implement or comply with water quality requirements under state or federal law, including Health and Safety Code provisions relating to on-site sewage disposal systems; or
* adopt or enforce a density bonus program or other voluntary program that allows for site development standards that are less restrictive than the standards described by such bill provisions.

C.S.S.B. 840 subjects the authority under statutory provisions relating to municipal zoning authority related to zoning regulations and the determination of zoning district boundaries in connection with mixed-use residential use and development and multifamily residential use and development to the bill's provisions relating to the regulation of mixed-use and multifamily residential use and development in certain municipalities.C.S.S.B. 840 establishes the following:* its provisions relating to zoning and development regulations apply only to a mixed-use residential or multifamily residential development project initiated on or after the bill's effective date; and
* its provisions relating to fees and regulations applicable to conversion of certain uses apply only to a building proposed to be converted to mixed-use residential or multifamily residential use in which a building permit was submitted to a municipality on or after the bill's effective date.
 |
| **EFFECTIVE DATE** September 1, 2025. |
| **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**While C.S.S.B. 840 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.With respect to the bill's provisions relating to the allowing of mixed-use residential and multifamily residential uses, the engrossed exempted from such provisions land located within 1,000 feet of an airport or military base, whereas the substitute extends that exemption to land located within 3,000 feet of an airport or military base. The substitute additionally exempts an area designated by a municipality as a clear zone or accident potential zone, whereas this additional exemption was not included in the engrossed.The substitute omits provisions from the engrossed that prohibited a municipality from doing the following:* charging a fee in connection with the submission, review, or approval of an application for a permit related to the use, development, or construction of a building proposed to be converted to mixed-use residential or multifamily residential use, including any fee for the following:
	+ acquiring a building permit;
	+ the closure of a street or sidewalk adjacent to the proposed converted building; or
	+ an expedited permit review for the proposed converted building if the municipality has adopted an accelerated residential building permit review process; or
* requiring the dedication of parkland or imposing a parkland dedication fee in connection with a building proposed to be converted to mixed-use residential or multifamily residential use.

While both the engrossed and the substitute authorize a person adversely affected or aggrieved by a violation of the bill's provisions relating to the regulation of mixed-use and multifamily residential use and development in certain municipalities to bring an action for declaratory or injunctive relief against a municipality, the engrossed and the substitute differ as follows:* whereas the engrossed provided for an action for economic damages as an alternative to declaratory or injunctive relief, the substitute does not provide for this alternative;
* whereas the engrossed provided for an action against an officer of a municipality in the officer's official capacity as an alternative to an action against a municipality, the substitute does not provide for this alternative;
* whereas the engrossed authorized a housing organization to bring an action for declaratory or injunctive relief for a violation against a municipality or an officer of a municipality in the officer's official capacity, the substitute instead includes a housing organization as a person adversely affected or aggrieved by a violation who may bring an action for declaratory or injunctive relief against a municipality;
* whereas the engrossed entitled a claimant who prevails in an action to recover court costs and reasonable attorney's fees, the substitute instead requires the court to award such costs and such fees to such a claimant; and
* the substitute omits the provision from the engrossed that waived governmental immunity of a municipality to suit and from liability to the extent of liability created by applicable bill provisions.
 |