

SUBJECT: Notice of health and safety violations sent by a municipality

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Carter, Burnam, Clark, Edwards, Najera

1 nay — Hodge

1 present, not voting — Ehrhardt

2 absent — Bailey, Hill

SENATE VOTE: On final passage, May 3 — 30-0

WITNESSES: For — Joe Paniagua, City of Fort Worth and Fort Worth City Council

Against — None

DIGEST: CSSB 1268 would amend notice and enforcement procedures for sanitation and public nuisance.

The bill would amend the Health and Safety Code to require that a letter notifying a property owner of noncompliance with a municipal ordinance or requirement be sent to the address of the property as recorded in appraisal district records, rather than to the owner's post office address. If a municipality mailed notice to a property owner in a legal manner and the U.S. Postal Service returned it as "refused" or "unclaimed," the notice would be considered delivered and would be valid.

CSSB 1268 also would amend the Local Government Code to provide that a municipality enforcing an ordinance that required notice to a property owner, lienholder, or mortgagee would have to exercise due diligence to determine the address and identity of the person notified. Due diligence would include a search in county real property records, appraisal district records, records of the secretary of the state, assumed name records, tax records, and utility records. If a municipality mailed notice legally and the postal service returned it as "refused" or "unclaimed," the notice would be considered delivered.

Notice of all proceedings before a panel of the local building and standards commission would have to be given to the affected property owner or lienholder by personal delivery or certified mail. Notice would have to state the date, time, and place of the panel proceeding and be delivered on or before the fifth day before the date of the proceeding.

Alternative enforcement procedures. CSSB 1268 would add a new section to the Local Government Code regarding alternative procedures for enforcing municipal ordinances. A municipality could adopt a procedure for an administrative adjudication hearing to enforce an ordinance. This procedure would have to entitle the charged person with a hearing and to provide for the period during which a hearing would be held, the appointment of a hearing officer, and the amount and disposition of administrative penalties, costs, and fees. A municipal court could enforce an order of a hearing officer to compel the attendance of a witness or the production of a document.

A citation or summons issued as part of an administrative adjudication procedure would have to include notification that the person charged with violating the ordinance had a right to a hearing, as well as the time, date, and place of the hearing. The municipality would have to keep the original or a copy of the citation or summons, which would be rebuttable proof of the facts it stated. The person who issued the citation or summons would not have to attend the hearing. A charged person who failed to attend a hearing would be considered to admit liability.

The hearing officer would have to issue an order at the hearing stating whether the person charged was liable, the amount of an assessment against the person, the payment deadline, and the date by which the person would have to comply with the ordinance. An order could be enforced by filing a civil suit to collect a penalty assessed against the person or by obtaining an injunction.

A person found by a hearing officer to have violated an ordinance could appeal the determination by filing a petition in municipal court before the 31st day after the date the determination was filed. An appeal would not stay enforcement and collection of the judgment unless the person, before filing the appeal, posted a bond with an agency designated by the municipality.

The bill would add personal delivery as an option for delivering notice that a building must be vacated, secured, repaired, removed, or demolished and for delivering the hearing panel's final decision. Notice for abatement and removal of a public nuisance also could be delivered personally, and the notice could be placed on the nuisance if the owner could not be located.

This bill would take effect September 1, 1999, and would apply to notices of violations given on or after that date.

**SUPPORTERS
SAY:**

CSSB 1268 would allow municipalities to give notice of violation of a health and safety or public nuisance law by either personal delivery or certified mail. If the notice by certified mail was returned as refused or unclaimed, the municipality still could consider the person notified. These small changes would make it much easier for municipalities to notify property owners of violations. Notification of the property owner is the necessary first step in taking action against a violator.

Some property owners do not take care of their property and are in violation of city ordinances. When such a property owner is notified by certified mail, the owner can send the letter back and refuse to be notified. In this case, the municipality has no recourse but to keep sending the certified letter. CSSB 1268 would give a municipality more notification options.

The bill would allow a municipality to send a notification letter to the address listed in appraisal district records of the owner's property. Owners often move without leaving forwarding addresses at the post office, but they tend to keep their mailing addresses with the appraisal district current. The bill also would define due diligence in searching for the property owner's address so that the municipality could not be accused of lack of diligence.

The bill also would establish a procedure for enforcing municipal ordinances through an administrative adjudication hearing process. This would enable municipalities to enforce ordinances through a less difficult civil process as an alternative to the current and complicated criminal process.

**OPPONENTS
SAY:**

CSSB 1268 would create an administrative adjudication hearing process for alleged violations of local health and safety and nuisance laws. The lower standard of proof required in these civil proceedings, as compared to that in a criminal proceeding, could jeopardize defendants' due-process rights. Also, a

defendant who did not show up at the adjudication hearing would be considered to admit to the charge. This seems unfair, as the defendant might have a good reason for missing the hearing.

Parts of this bill are substantially similar to HB 1110, which already has been passed by both houses and sent to the governor. If CSSB 1268 also were passed, this could create confusion as to which changes the Legislature wanted in place.

NOTES:

The Senate passed version of this bill included only the provisions that a municipality could send a notification letter to the address in the appraisal district records and that the notice by certified mail could be considered delivered even if the letter was returned “refused” or “unclaimed.”

The companion bill, HB 1110 by Smith, which was sent to the governor on May 14, is substantially similar to the original version of SB 1268.