

CHAPTER 420

PROPERTY

SENATE BILL 03-251

BY SENATOR(S) Hagedorn, Hillman, Isgar, Johnson S., McElhany, Andrews, Arnold, Jones, Lamborn, May R., and Teck;
also REPRESENTATIVE(S) Mitchell, Carroll, McFadyen, Stafford, Brophy, Cadman, Crane, Fritz, Lee, May M., Merrifield,
Schultheis, and Tochtrop.

AN ACT**CONCERNING A PROHIBITION ON THE USE BY LOCAL GOVERNMENTS OF AMORTIZATION TO ELIMINATE
NONCONFORMING USES OF PROPERTY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) Section 3 of article II of the state constitution declares that all persons have certain inalienable rights, which include the right to acquire, possess, and protect property.

(b) Section 15 of article II of the state constitution prohibits property from being taken or damaged without just compensation and further requires that such compensation be paid to the owner of the property prior to the proprietary rights of the owner in the property being divested.

(c) The general assembly recognizes a duty to protect and defend the fundamental civil rights set forth in paragraphs (a) and (b) of this subsection (1) and to ensure that persons throughout the state are not unjustly deprived of their property rights.

(d) Certain local governments within the state have adopted ordinances, resolutions, or regulations that may infringe upon the inalienable rights of property owners by eliminating or terminating nonconforming uses of property that were lawful uses at their inception through amortization without providing just compensation to the property owners.

(2) Based on the findings specified in subsection (1) of this section, the general

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

assembly concludes that:

(a) The protection of the inalienable property rights of persons whose initially lawful property uses may be terminated or eliminated through amortization of nonconforming uses is a matter of statewide concern; and

(b) In order to protect such inalienable property rights, it is necessary to enact a statewide law that prohibits local governments from eliminating or terminating most nonconforming uses that were lawful at the time of their inception by amortization.

SECTION 2. 38-1-101, Colorado Revised Statutes, is amended to read:

38-1-101. Compensation - commission - jury - court - prohibition on elimination of nonconforming uses by amortization. (1) Private property shall not be taken or damaged for public or private use without just compensation.

(2) In all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a board of commissioners of not less than three disinterested and impartial freeholders pursuant to section 38-1-105 (1) or by a jury when required by the owner of the property as prescribed in section 38-1-106. All questions and issues, except the amount of compensation, shall be determined by the court unless all parties interested in the action stipulate and agree that the compensation may be so ascertained by the court. In the event of such stipulation and agreement, the court shall proceed as provided in this article for the trial of such causes by a board of commissioners or jury.

(3) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A LOCAL GOVERNMENT SHALL NOT ENACT OR ENFORCE AN ORDINANCE, RESOLUTION, OR REGULATION THAT REQUIRES A NONCONFORMING PROPERTY USE THAT WAS LAWFUL AT THE TIME OF ITS INCEPTION TO BE TERMINATED OR ELIMINATED BY AMORTIZATION.

(b) FOR PURPOSES OF THIS SUBSECTION (3), "LOCAL GOVERNMENT" MEANS A COUNTY, CITY AND COUNTY, TOWN, OR HOME RULE OR STATUTORY CITY.

SECTION 3. 30-28-120 (1), Colorado Revised Statutes, is amended to read:

30-28-120. Existing structures - county property. (1) The lawful use of a building or structure or the lawful use of any land, as existing and lawful at the time of the adoption of a zoning resolution or, in the case of an amendment of a resolution, at the time of such amendment, may be continued, although such use does not conform with the provisions of such resolution or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. The addition of a solar energy device to such building shall not necessarily be considered a structural alteration. The board of county commissioners may provide in any zoning resolution for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. ~~The board of county commissioners, in any zoning resolution, may provide for the termination of nonconforming uses, either by specifying the period in which nonconforming uses shall be required to cease or by providing a formula whereby the compulsory~~

~~termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance.~~

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 2003