



Agenda Item C.1
DISCUSSION/ACTION ITEM
Meeting Date: May 20, 2008

TO: Mayor and Councilmembers

FROM: Daniel Singer, City Manager

CONTACT: Kirsten Z. Deshler, Management Analyst

SUBJECT: Eminent Domain June Ballot Initiatives: Proposition 98 and 99 and Update on California State Budget Issues

RECOMMENDATION:

- A. Oppose Proposition 98, the California Property Owners and Farmland Protection Act (CPOFPA) and support Proposition 99, the Homeowners and Private Property Protection Act (HPPA).
- B. Receive an update on the California budget situation, pending the release of the Governor's May Budget Revise.

BACKGROUND:

The June 3, California Primary Election contains two initiatives that relate to the issue of eminent domain: Proposition 98, the California Property Owners and Farmland Protection Act and Proposition 99, the Homeowners and Private Property Protection Act.

The U.S. Constitution grants government the power to seize private property for public use by invoking eminent domain and justly compensating the owner. The California Constitution requires that just compensation, if challenged, be determined by a jury, but remains vague with regard to other aspects of the use of eminent domain. This allows state and local governments to interpret when and how eminent domain can be used. In California, eminent domain is generally used for redevelopment projects in "blighted" areas and for public infrastructure projects. Most property is acquired from willing sellers.¹

In 2005, the U.S. Supreme Court ruled in *Kelo v. City of New London* that private property could be taken and transferred from one private party to another, if

¹ Overview of Propositions 98 and 99; Legislative Analyst's Office April 24, 2008

doing so provided significant benefit to the public as a whole. This was a controversial decision and many states responded by enacting more restrictive eminent domain measures.

In 2006 Proposition 90 qualified for the November ballot. The League of California Cities, and a broad coalition of labor, business, government, education, and environmental groups, opposed this measure arguing that it went well beyond eminent domain and would have increased costs for public works and infrastructure developments and would lead to costly litigation.

Proposition 90 would have accomplished two goals: (1) require the government to compensate private property owners when governmental regulatory action reduced the value of private property and, (2) prohibit the use of eminent domain to facilitate private economic development. Prop. 90 was defeated by a vote of 47.6% in favor and 52.4% opposed.

Given the close vote and the resonance of the eminent domain message, the League of California Cities spearheaded a coalition to work with the Legislature on compromise eminent domain reform. Due to many factors, this effort was unsuccessful. After the collapse of negotiations, the Howard Jarvis Taxpayers Association gathered enough signatures to qualify Proposition 98 on the June 2008 ballot. Shortly thereafter, the League of Cities and several other groups qualified Proposition 99 for the June ballot.

DISCUSSION:

Proposition 98: The California Property Owners and Farmland Protection Act (CPOFPA) would:

- Ban government from using eminent domain to take property to transfer to a private party; or use the property for a similar purpose as how the previous private owner used it; or to consume its natural resources.
- Change the rules regarding property owners' eminent domain challenges and compensation.
- Define as "taking" any government action that limits the price that owners may charge others to purchase, occupy or use their land or building.
- Ban government from enacting any new rent control ordinance and phases out rent control measures enacted before January 1, 2007

Critics argue that the provisions of Prop. 98 will have a significant impact on state and local government's authority regarding infrastructure projects, land use, zoning, and environmental decisions. Critics also warn that the language of Proposition 98 is very broad and open to interpretation which will likely result in costly litigation.

Proposition 98 is opposed by the League of California Cities, the California Chamber of Commerce, Governor Schwarzenegger, and many environmental, labor, redevelopment, education, public safety, housing and tenant advocates and agriculture groups. Supporters of Proposition 98 include the Howard Jarvis Taxpayers Association, mobile home park owners, rental property owners, the California Farm Bureau, and other taxpayer groups.

Proposition 99: The Homeowners and Private Property Protection Act (HPPPA), would work to prohibit state and local government from using eminent domain to take a single-family home and transferring it to another private party. Exceptions to this would be to protect public health and safety, respond to an emergency; remedy environmental contamination, or prevent serious, repeated criminal activity.

According to the Legislative Analyst's Office, Proposition 99 would not significantly change current government land acquisition practices because under current law and practice, state and local government seldom use eminent domain to acquire single family homes and when they do, it is often providing a "public goods" which is a permissible circumstance for eminent domain use.²

Supporters of the "No on 98; Yes on 99" campaign include: League of California Cities, League of Conservation Voters, and environmental, business, senior, labor, consumer, public safety, homeowner, education, and affordable housing groups.

Known as the "poison pill", Proposition 99 is written so that if both measures are approved, Proposition 99 will prevail in it's entirety, even if a majority of voters also support Proposition 98.

There are many groups who are supportive of Proposition 99 simply because it is a poison pill for Proposition 98. There are equally as many groups that oppose both: Proposition 98 because it goes too far, and Proposition 99, because it does not go far enough.

Given the Council's long standing commitment to rent control and given the concern expressed by the Legislative Analyst's Office, the League of California Cities and other groups about the potential negative impact of Proposition 98 on rent control, land use, zoning, and environmental decisions, staff recommends the Council go on record as being officially opposed to Proposition 98. Staff also recommends that Council go on record as supporting Proposition 99 given that it simply affirms existing practice and law and may in fact prevent Proposition 90 or 98-type measures in the future.

² California Legislative Analyst's Office: Proposition 99: Eminent Domain, Acquisition of Owner-Occupied Residence. 2/14/08

As a final note, Council should be aware that while they may take a formal position on California ballot measures, no public funds may be expended to advocate in support or opposition to any ballot measures. This type of activity, if done at all, must be done as a private citizen.

Update on California Budget Issues:

On May 15, Governor Schwarzenegger will release his May Revised Budget. At the time of writing this staff report, these numbers were not yet made public. As part of its oral report to Council, staff will provide an update and overview of the California budget situation.

GOLETA STRATEGIC PLAN:

Consideration of Proposition 98 and 99 is consistent with the Goal in the Goleta Strategic Plan entitled, "Advance Goleta's Interests with Other Jurisdictions" Specifically; this issue meets Objective "Participate/Advocate Legislative Issues" and moves the City closer towards realizing its vision as defined within the City's Strategic Plan.

ALTERNATIVES:

The Council could choose:

1. Not to take a position on either one of these ballot initiatives;
2. To oppose both Propositions 98 and 99;
3. To support Proposition 98, although such action would be contradictory to the Council's commitment to rent control.

Submitted By:

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