



Kriss Worthington

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CONSENT CALENDAR

December 11, 2007

To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: Opposition to Initiative 1248 - California Property Owners and Farmland Protection Act

RECOMMENDATION:

Express opposition to Initiative 1248, the California Property Owners and Farmland Protection Act which undermines environmental protections, local control over land use, and affordable housing laws.

BACKGROUND:

In 2005, the United States Supreme Court issued a controversial decision in *Kelo v. the City of New London*, which ruled that governments could use its eminent domain powers to take private property for the purposes of economic development.

Eminent domain has been a controversial tool of governments to promote community development. Therefore, any expansion of eminent domain powers has been heavily criticized by the public. When the *Kelo* decision was issued, politicians and the public responded with anger and fear to the possibility of local governments unfairly seizing private property to promote the interests of private developers. Others argued that it was a misrepresentation of the Fifth Amendment of the United States Constitution, which prohibits the taking of private property without compensation.

Because of these concerns many states passed laws limiting the government's eminent domain powers. In California, property rights advocates used the *Kelo* decision as an opportunity to promote their agenda for limited economic regulation. They joined forces with concerned homeowners and merchants and placed Proposition 90 on the November 2006 ballot. Proposition 90 would have significantly limited the power of state and local governments to regulate private property and business owners and would have wiped out over 40 years of environmental, labor and affordable housing laws. The initiative almost won, losing by 52% to 47%.

Because of the measures close defeat, property rights advocates and the Howard Jarvis Taxpayers Association have been collecting signatures to put the California Property Owners and Farmland Protection Act on the June 2008 ballot.

The measure is far more deceptive than Proposition 90 using the specter of eminent domain to curtail the ability of local government to protect the public health, safety and welfare of its residents.

In a recent analysis by the firm Nielsen, Merksamer, Parrinello, Mueller and Naylor, which specializes in ballot measures, they concluded that “Without a doubt, the CPOFPA (California Property Owners and Farmland Protection Act) **is even more deceptive and draconian than Proposition 90**”. They further added that “Because of the prohibitory nature of the regulatory and eminent domain provisions, the initiative appears to be designed to shut down much of what government does to protect the public health, safety and welfare through the control of land use and the provision of water”.

One of the most alarming aspects of the measure is its attack on affordable housing laws, such as inclusionary zoning and rent control.

Berkeley has a strong affordable housing program that includes inclusionary zoning and rent stabilization ordinances. The inclusionary program has created hundreds of new affordable units throughout the city and the Rent Stabilization and Eviction for Good Cause Ordinance maintained affordable housing and provided important protections for many seniors, disabled residents, working families and students in our community.

However, the affordable housing crisis is not only a problem in the City of Berkeley, it is also a problem statewide. With skyrocketing single-family home costs and high rents these laws have been helpful to keeping people in their homes.

The initiative claims to stop the government from taking people’s homes, but what it will in fact do is take housing away from thousands of Californians.

The League of California Cities overwhelmingly opposes the initiative and has started circulating a competing measure that protects local authority over land use, environmental laws and affordable housing programs while providing protection to homeowners from abusive eminent domain actions.

The measure will severely restrict the power of local governments, including the City of Berkeley to regulate its own land. It also erodes over 30 years of environmental laws and ends many critical programs that have successfully provided affordable housing for our state’s growing population. It is important that the City of Berkeley stand up against this power grab and join the League of California Cities and many other organizations in opposing this draconian measure.

FINANCIAL IMPLICATIONS:

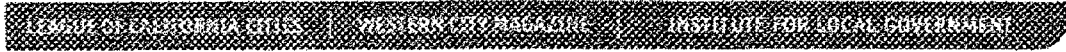
NONE

CONTACT PERSON:

Councilmember Kriss Worthington, 981-7170.

Attachments:

1. Information from League of California Cities website entitled “So-Called ‘Eminent Domain Reform’ Initiative More Deceptive Than Proposition 90”.



Tuesday, November 20, 2007

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So-Called 'Eminent Domain Reform' Initiative More Deceptive Than Proposition 90

A legal analysis published last week by a law firm that specializes in ballot measures has concluded that the California Property Owners and Farmland Protection Act (CPOFPA) contains far-reaching, hidden provisions that would dramatically curtail the ability of cities and other governmental entities to protect public health, safety and welfare.

CPOFPA, a so-called "eminent domain reform" measure was analyzed by attorneys with Nielsen, Merksamer, Païrinello, Mueller & Naylor, LLP, a Sacramento law firm that provides legal counsel to the Eminent Domain Reform Now Coalition, in which the League of California Cities participates.

The analysis identifies in great detail the secretive and deceptive way the authors of CPOFPA set out to hide broad restrictions on zoning and other land use and environmental regulations, the ability of public entities to acquire property for public water supply facilities, and city and county affordable housing and rent control programs.

The analysis closes with this conclusion:

"Without a doubt, the CPOFPA is **even more deceptive and draconian than Proposition 90** (emphasis added). With the exception of the rent control feature, the regulatory prohibitions concerning land use decisions and the prohibition against the use of eminent domain for the acquisition of property for the consumption of natural resources are hidden in the definition of private use. But the impact is nonetheless dramatic. Those obscure provisions are the only reference in the initiative to any form of "regulation" or prohibition against taking property for the "consumption of natural resources." Because of the prohibitory nature of the regulatory and eminent domain provisions, the initiative appears to be designed to shut down much of what government does to protect the public health, safety and welfare through the control of land use and the provision of water. If there is any doubt on that point, the initiative Constitutional amendment provides the express right to seek injunctive relief against any action that violates its terms."

On Sept. 26, the League board of directors voted overwhelmingly to oppose CPOFPA and to support gathering signatures to qualify the *Homeowners Protection Act* for the June 2008 ballot. The *Homeowners Protection Act* (HPA) provides constitutional protection for homeowners from the use of eminent domain to acquire single-family homes for transfer to private developers.

HPA is a direct and honest response to the 2005 U.S. Supreme Court decision in *Kelo v. City of New London*, and it contains no hidden, deceptive provisions. Recent polling by the Eminent Domain Reform Now Coalition suggests HPA will be overwhelmingly supported by voters, while the fate of CPOFPA is more troubled because of its stealth agenda that does not concern eminent domain, such as invalidating rent control, zoning, environmental regulations, and inclusionary housing programs.

How You Can Get Involved

City officials that want to help gather signatures in their private time for the Homeowners

Protection Act are urged to contact their League Regional Public Affairs Manager. Copies of the legal opinion on CPOFPA are being sent to city attorneys and are available to other city officials upon request. Contact your Regional Public Affairs Manager (look yours up at www.cacities.org/legresources) or city attorney for a copy.

last updated : 10/19/2007

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