

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: February 21, 2008

RE: A REPORT AND RESOLUTIONS TO OPPOSE THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT AND TO ENDORSE THE HOMEOWNERS AND PRIVATE PROPERTY PROTECTION ACT

SUMMARY

Resolutions have been prepared for the City Council to take positions on two competing initiatives that have qualified for the June 2008 California ballot. While both measures make amendments to the State Constitution to limit the ability of public agencies to use the power of eminent domain, they do so in markedly different ways.

Staff recommends that the City Council oppose the California Property Owners and Farmland Protection Act (CPOFPA), which would sharply limit the use of eminent domain and redefine *the concept of a governmental taking to include any regulatory measure that reduces the value of real property, even if the measure still provides for an economically viable use of the property.* The measure would require government agencies to provide compensation to property owners for any such loss of value, and would effectively eliminate rent control, inclusionary zoning and many other forms of land use regulation such as environmental controls and density bonus housing.

Staff also recommends that the City Council endorse the Homeowners and Private Property Protection Act (HPPPA), which places less restrictive limits on the use of eminent domain while protecting owner-occupied, single-family homes from condemnation for private projects, and does not eliminate the ability of local agencies to enforce rent control, inclusionary housing and other land use regulations.

FISCAL IMPACT

The fiscal impact of these provisions is difficult to determine. The use of eminent domain has made possible a number of redevelopment projects that have bolstered property tax and sales tax revenues, as well as increasing economic activity with multiplier effects on local revenues. On the other hand, it is conceivable that in the case of the California Property Owners and Farmland

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Protection Act, the elimination of rent control, for example, could lead to an increase in rents that would also generate higher business tax revenues and higher property taxes.

The costs to the City and the Redevelopment Agency to mitigate the effects of such limitations on land use regulation could be significant. Furthermore, because the measure would impose costs on localities for compensation to property owners for any loss of value as a result of land use regulation, it could have severe negative fiscal impacts on the City and the Agency.

BACKGROUND

In 2005, in the case of *Kelo vs. New London* (the “Kelo Decision”), the U.S. Supreme Court ruled that the condemnation and taking by eminent domain of privately owned real property in order to transfer it to another private owner to further economic development was permissible under the takings clause of the Fifth Amendment to the Constitution.

The decision sparked legislative and ballot measures in many states designed to limit the scope of eminent domain authority. While California already has standards that are stricter than the *Kelo Decision* provisions, a measure that would restrict eminent domain and also sharply limit the ability of governmental bodies to otherwise regulate land use did qualify for the California ballot in 2006 as Proposition 90. However, Proposition 90 was defeated leaving existing law intact.

There are now two competing measures that have been placed on the June 2008 California ballot as Proposition 98 (the CFPOPA) and Proposition 99 (the HPPPA). While both measures claim to prevent abuses of eminent domain authority and protect private property interests, particularly owner-occupied residences, they take radically different approaches, as described below.

At the January 24, 2008 Rules Committee meeting, staff was directed to prepare an analysis of the two measures along with resolutions of support and/or opposition. This report responds to that request.

KEY ISSUES AND IMPACTS

Under California law, redevelopment agencies may use the power of eminent domain to acquire property to eliminate blight, promote economic development and pursue public development projects. This includes the ability, under specified circumstances, to acquire owner-occupied single-family homes.

Some of Oakland's redevelopment plans allow for the use of eminent domain to acquire owner occupied residential properties without restriction (Central District, Oak Knoll, Oakland Army

Base) , while other plans prohibit such acquisitions completely (West Oakland, Coliseum) or severely limit such acquisitions (Central City East, Broadway/MacArthur/San Pablo). The time limit on using eminent domain in the Acorn, Oak Center and Stanford/Adeline project areas has expired, so the Agency has no powers of eminent domain in those areas. The time limit in the Coliseum area has also expired, although staff is pursuing a plan amendment that would extend that limit.

As a practical matter, the Agency has not used its eminent domain powers to acquire owner occupied housing in at least several decades. Since at least 1990, the Agency's use of eminent domain has been limited to a small number of acquisitions, all of which involved commercial properties, vacant properties, or non-owner occupied residential properties. However, these actions have been essential for the implementation of several major downtown redevelopment projects, including the Housewives Market housing development, the Uptown housing development, and the Bermuda Building project.

Cities employ a wide range of measures to achieve public purposes such as regulation of land use, stabilization of rents, promotion of affordable housing and protection of the environment. While such regulatory actions by their very nature have an economic impact that may reduce the value of some properties, the courts have generally held that such actions do not constitute constitutionally prohibited takings unless they deny an owner all or virtually all economically viable use of the property.

DESCRIPTION OF INITIATIVES

Summaries of both initiatives, along with the full text of each measure and a list of supporters, are contained respectively as Attachment A and Attachment B.

Summary of CPFOPA

The CPOFPA would make sweeping changes in California law regarding eminent domain, governmental takings, and government regulation of land use and real property.

The measure would prohibit the use of eminent domain to transfer real property from one private owner to another. This would effectively eliminate the ability of redevelopment agencies to use eminent domain to facilitate private redevelopment projects. The measure would also make a number of changes to eminent domain law that would make the use of eminent domain more difficult and more expensive for public projects. The measure would change the definition of just compensation to make it more favorable to property owners, and would make the acquisition of immediate possession of property through eminent domain more complicated.

In addition, the CPOFPA would define a regulation of property that limits the price a private owner may charge another person to purchase, occupy or use his or her real property as an

unconstitutional “taking.” This would make rent control laws, inclusionary housing ordinances, and other laws that regulate the price of housing illegal.

The initiative requires a public agency to pay “just compensation” when it regulates the use of land if the regulation transfers an economic benefit from the person who owns the land to another person. Under existing law, public agencies use their police power to enact regulations governing the use of privately owned real property. In Oakland, these regulations range from traditional zoning to nuisance regulations and include conditions imposed on the new development of property. Nearly all of these regulations have an economic impact. Some properties are benefited while others are burdened. Read literally, this provision would make unconstitutional virtually all regulation of land use unless just compensation is paid the property owner for the economic impact resulting from the regulation. This could severely limit the ability of the City to enact or enforce its zoning and land use regulations.

Use of eminent domain for “consumption of natural resources” would be prohibited, which could make it impossible for agencies to use eminent domain to acquire new drinking water resources. Because the ordinance would also prohibit the use of eminent domain if the property will be used for the same or substantially similar purposes as the current use, the measure could also prevent the use of eminent domain to acquire conservation and open space easements.

Taken together, the CPOFPA would have the following impacts on City and Agency activities:

- Since it prohibits the use of eminent domain for “private” redevelopment projects, the CPOFPA would restrict the ability of the Agency to pursue similar projects in the future.
- The prohibition on price limitation in the CPOFPA would render the City’s Rent Stabilization Ordinance illegal, and would prohibit the City from adopting an inclusionary housing ordinance. It may also prohibit the application of the City’s density bonus law, although this is unclear.
- The requirement of the CPOFPA to pay just compensation whenever a land use regulation impacts the economic value of property will make the City liable for possible claims for monetary compensation from property owners whenever the City applies its zoning regulations or land use laws to restrict the development or use of property. This could have a severe fiscal impact on the City.
- Finally, other changes in the eminent domain law made by CPOFPA will make it more expensive, complicated, and time consuming for the City to use eminent domain for public projects such as street improvements, park projects, etc.

The CPOFPA is sponsored by the Howard Jarvis Taxpayers Association and the California Farm Bureau Federation and supported by a coalition of property rights organizations, apartment owners associations, taxpayer organizations, agricultural interests and others.

Summary of HPPPA

The HPPPA is far less restrictive in its approach. It prohibits the use of eminent domain to acquire owner-occupied single family homes to private parties, but would permit eminent domain for public works or improvements and for nuisance abatement, protection of public health and safety, prevention of serious and repeated criminal activity, remediation of hazardous materials and responses to emergencies. HPPPA would not make any changes to the definition of a taking and therefore would not limit or prohibit governmental regulations and policies such as rent control and inclusionary housing.

The HPPPA also includes a provision that specifies that if both measures pass, the one with the highest number of votes shall prevail.

The HPPPA would limit the authority that the Redevelopment Agency now has to acquire owner occupied, single-family housing for redevelopment projects, although as a practical matter this would have limited impact on the work of the Agency, since, as noted previously, the Agency has not used eminent domain to acquire such properties in several decades.

The HPPPA is sponsored by the League of California Cities and is supported by a coalition of homeowners associations, environmental organizations, renters rights and affordable housing advocates, governmental associations, the State Building and Construction Trades Council, public interest advocates and others.

SUSTAINABLE OPPORTUNITIES

Economic

Passage of CPOFPA could limit the ability of the Redevelopment Agency to carry out projects that would remove blight and promote more economic activity, including job generation and expansion of the retail sales base. CPOFPA's definition of most forms of land use regulation as governmental takings could make it more difficult to pursue economic development strategies.

Because HPPPA limits its scope to condemnation of owner-occupied single family homes, it would have a negligible impact on economic development activity in Oakland, particularly since the Redevelopment Agency hasn't used eminent domain on such properties in several decades.

Environmental

As discussed above, CPOFPA would limit the ability of public agencies to use eminent domain to acquire privately owned land for conservation and open space easements and to acquire land

for new drinking water sources. To the extent that environmental regulations limit the value of private property, those actions could also be limited by CPOFPA, which would require that owners be compensated for any loss in value caused by those regulations.

Because of its more limited scope, HPPPA would not result in any of these impacts.

Social Equity

The City's Rent Adjustment Program, which limits rent increases for existing tenants, is an important City policy for ensuring social equity for lower income households, who make up the vast majority of all renter households. CPOFPA would explicitly define rent control as a form of governmental taking. While existing tenants would be protected so long as they remain in their current units, once those units are vacated CPOFPA would prohibit rent controls for any future tenants. Similarly, CPOFPA would eliminate the possibility of adopting an inclusionary housing ordinance by defining such programs as governmental takings.

Because of its more limited scope, HPPPA would not result in any of these impacts.

DISABILITY AND SENIOR CITIZEN ACCESS

No specific impacts have been identified.

RECOMMENDATION(S) AND RATIONALE

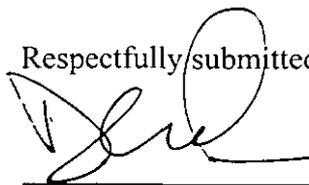
Staff recommends that the Council take a position in opposition to the CPOFPA. If this measure had already been in effect, the City would not have been able to proceed with the Evans Housewives Market project, the Bermuda Building redevelopment, or the FC Uptown project, since all of those involved the use of eminent domain for private development. Moreover, the CPOFPA goes beyond redevelopment agency eminent domain, and would hamstring the City's use of eminent domain for public projects, eliminate rent control, prohibit inclusionary and density bonus housing, constrain zoning and land use powers, etc.

Staff also recommends that the Council take a position in support of the HPPPA. This measure provides a reasonable balance between protecting owner-occupied homes from condemnation for private projects while preserving the ability to use eminent domain in other circumstances when warranted. Moreover, the HPPPA would not limit the City's ability to adopt or implement rent control, inclusionary housing and other legitimate land user regulations and environmental protection measures, and would not place limits on the ability of public agencies to acquire property through eminent domain for purposes such as open space conservation and acquisition of new drinking water sources.

ACTION REQUESTED OF THE CITY COUNCIL

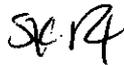
Staff requests that the City Council adopt both resolutions -- one to support the Homeowners and Private Property Protection Act, and the other to oppose the California Property Owners and Farmland Protection Act. The resolutions would authorize and direct the City Administrator to convey the City's position to the appropriate campaigns and have the City's position listed in public materials.

Respectfully submitted,



DAN LINDHEIM

Director, Community and Economic
Development Agency

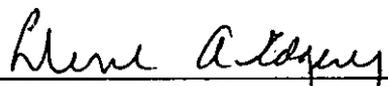
Reviewed by: 
Sean Rogan,
Director of Housing and Community
Development

Prepared by:
Jeffrey P. Levin,
Housing Policy and Programs Coordinator
Housing & Community Development Division

Attachments:

Attachment A: Description and Text of CPOFPA
Attachment B: Description and Text of HPPPA

APPROVED AND FORWARDED TO THE
RULES AND LEGISLATION COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

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Attachment A

**Summary and Text of California Property Owners and Farmland Protection Act
and List of Supporters**

Summary of California Property Owners and Farmland Protection Act

The Howard Jarvis Taxpayers Association, the California Farm Bureau Federation and the California Alliance to Protect Private Property are sponsoring Proposition 98 on the June 2008 ballot, which would make major changes to laws governing use of property, including use of eminent domain and regulation of land use. The initiative would make the following changes to existing law:

Governmental Regulations Affecting Price

The initiative would define a regulation of property that limits the price a private owner may charge another person to purchase, occupy or use his or her real property as a prohibited taking for a private use. This would prohibit rent control ordinances¹ and make unconstitutional inclusionary housing ordinances adopted in many California communities which require new housing development to include units affordable by low- and moderate-income buyers or renters. The effect of this provision on the inclusionary housing provisions of the Community Redevelopment Law is difficult to predict. Redevelopment agencies might still be able to bargain for the provision of affordable units as a condition of agency assistance, but they would not be able to impose such requirements as a matter of law.

Limitation on Use of Eminent Domain for Consumption of Natural Resources

In one of its provisions, the initiative would prohibit the use of eminent domain to “transfer the ownership, occupancy or use of private property...to a public agency for the consumption of natural resources...” This provision can be read, for example, to prohibit the use of eminent domain by a city to acquire new drinking water resources. The initiative would also prohibit the use of eminent domain if the public agency would use the property for “the same or substantially similar use as that made by the private owner.” This provision would likely eliminate eminent domain as a tool to acquire conservation and open space easements.

Regulation of Land Use

The initiative requires a public agency to pay “just compensation” when it regulates the use of land if the regulation transfers an economic benefit from the person who owns the land to another person. Under existing law, public agencies use their police power to enact regulations governing the use of privately owned real property. These regulations range from traditional zoning to nuisance regulations and include conditions imposed on the new development of property. Nearly all of these regulations have an economic impact. Some properties are benefited while others are burdened. Read literally, this provision would make unconstitutional virtually all regulation of land use unless just compensation is paid.

Restrictions on the Use of Eminent Domain

1. Property may not be taken and then transferred to a private party. For over 50 years, State and Federal Courts have held that the use of eminent domain by redevelopment agencies to eliminate conditions of blight is a public use. The initiative’s definitions of “taken” and “private use” reverse those cases and prohibit the use of eminent domain where the ownership, occupancy or use of the property acquired is transferred to a private person or entity. This would end the use of eminent domain by redevelopment agencies except for

¹ Rent controlled units as of January 1, 2007, would be grandfathered, but only for so long as at least one of the tenants continues to live in the unit as their principal place of residence.

public works projects. It would also prevent the use of eminent domain by other public agencies in public/private partnerships for facilities such as toll roads and privately-run prisons.

2. New definition of “just compensation.” Existing law requires the payment of just compensation to the owner of property taken by eminent domain. “Just compensation” is defined in the Eminent Domain Law (a statute) as “fair market value.” A body of well-established law interpreting the meaning of “just compensation” allows both public agencies and property owners to be reasonably certain about the value of property to be acquired. In large part because the value of the property is predictable, an acquisition usually does not require the use of eminent domain and rarely will an eminent domain case actually go to trial. The initiative would add a constitutional definition of “just compensation” that would prevail over this settled body of law. This will probably result in the need to have more frequent recourse to the courts to settle disputes over the meaning of “just compensation.” Among the other changes that the initiative would make are the following:
 - a. Just compensation would include an award of the property owner's attorney's fees if the jury awards one dollar more than the amount offered by the public agency. It is unclear which offer to purchase this provision refers to.
 - b. Just compensation would include elements not currently recognized such as temporary business losses. Relocation and other business re-establishment costs would also be elevated to constitutional status, thereby perhaps abrogating existing statutes which place limits on the type and amount of such expenses for which compensation must be paid.
3. Acquiring “immediate possession” of property made more complicated. Under existing law, after depositing with the court the estimated just compensation, a public agency can obtain possession of property prior to a final judgment based on a showing of an overriding need for the condemnor to take possession prior to final judgment. If the property owner withdraws the deposit, he or she waives their right to contest whether the taking is for a public use but may still contest the amount of just compensation. The initiative would change this approach to prejudgment possession by permitting the property owner to contest both public use and just compensation after withdrawing the deposit. This would make the use of prejudgment possession more problematic for public agencies since they would still be at risk of being prohibited from taking the property (if they lose the right to take issue) rather than simply paying more for it.
4. Balance of power shifts. Under existing law, when a public agency makes findings in connection with the taking of property by eminent domain, those findings are entitled to strong presumptions of validity. Courts will overturn those findings only where the property owner is able to demonstrate a gross abuse of discretion, such as bribery or fraud. Courts are also limited to reviewing the administrative record before the public agency. These rules are rooted in concepts of separation of powers—the respect that co-equal branches of government have for the other's proceedings. The initiative would provide that a court must exercise its independent judgment and give no deference to the findings of the public agency. The court's inquiry would also not be limited to the administrative record, and so the property owner could introduce evidence of value and other matters not before the condemning agency at the time the decision to condemn was made.

SECTION 1. STATEMENT OF FINDINGS

(a) Our state Constitution, while granting government the power of eminent domain, also provides that the people have an inalienable right to own, possess, and protect private property. It further provides that no person may be deprived of property without due process of law, and that private property may not be taken or damaged by eminent domain except for public use and only after just compensation has been paid to the property owner.

(b) Notwithstanding these clear constitutional guarantees, the courts have not protected the people's rights from being violated by state and local governments through the exercise of their power of eminent domain.

(c) For example, the U.S. Supreme Court, in *Kelo v. City of New London*, held that the government may use eminent domain to take property from its owner for the purpose of transferring it to a private developer. In other cases, the courts have allowed the government to set the price an owner can charge to sell or rent his or her property, and have allowed the government to take property for the purpose of seizing the income or business assets of the property.

(d) Farmland is especially vulnerable to these types of eminent domain abuses.

SECTION 2. STATEMENT OF PURPOSE

(a) State and local governments may use eminent domain to take private property only for public uses, such as roads, parks, and public facilities.

(b) State and local governments may not use their power to take or damage property for the benefit of any private person or entity.

(c) State and local governments may not take private property by eminent domain to put it to the same use as that made by the private owner.

(d) When state or local governments use eminent domain to take or damage private property for public uses, the owner shall receive just compensation for what has been taken or damaged.

(e) Therefore, the people of the state of California hereby enact the "California Property Owners and Farmland Protection Act."

SECTION 3. AMENDMENT TO CALIFORNIA CONSTITUTION

Section 19 of Article I of the California Constitution is amended to read:

SEC. 19(a) Private property may be taken or damaged only for a stated public use and when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation. Private property may not be taken or damaged for private use.

(b) For purposes of this section:

(1) “Taken” includes transferring the ownership, occupancy, or use of property from a private owner to a public agency or to any person or entity other than a public agency, or limiting the price a private owner may charge another person to purchase, occupy or use his or her real property.

(2) “Public use” means use and ownership by a public agency or a regulated public utility for the public use stated at the time of the taking, including public facilities, public transportation, and public utilities, except that nothing herein prohibits leasing limited space for private uses incidental to the stated public use; nor is the exercise of eminent domain prohibited to restore utilities or access to a public road for any private property which is cut off from utilities or access to a public road as a result of a taking for public use as otherwise defined herein.

(3) “Private use” means:

(i) transfer of ownership, occupancy or use of private property or associated property rights to any person or entity other than a public agency or a regulated public utility;

(ii) transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner; or

(iii) regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer an economic benefit to one or more private persons at the expense of the property owner.

(4) "Public agency" means the state, special district, county, city, city and county, including a charter city or county, and any other local or regional governmental entity, municipal corporation, public agency-owned utility or utility district, or the electorate of any public agency.

(5) "Just compensation" means:

(i) for property or associated property rights taken, its fair market value;

(ii) for property or associated property rights damaged, the value fixed by a jury, or by the court if a jury is waived;

(iii) an award of reasonable costs and attorney fees from the public agency if the property owner obtains a judgment for more than the amount offered by a public agency as defined herein; and

(iv) any additional actual and necessary amounts to compensate the property owner for temporary business losses, relocation expenses, business reestablishment costs, other actual and reasonable expenses incurred and other expenses deemed compensable by the Legislature.

(6) "Prompt release" means that the property owner can have immediate possession of the money deposited by the condemnor without prejudicing his or her right to challenge the determination of fair market value or his or her right to challenge the taking as being for a private use.

(7) "Owner" includes a lessee whose property rights are taken or damaged.

(8) "Regulated public utility" means any public utility as described in Article XII, section 3 that is regulated by the California Public Utilities Commission and is not owned or operated by a public agency. Regulated public utilities are private property owners for purposes of this article.

(c) In any action by a property owner challenging a taking or damaging of his or her property, the court shall consider all relevant evidence and exercise its independent judgment, not limited to the administrative record and without deference to the findings of the public agency. The property owner shall be entitled to an award of reasonable costs and attorney fees from the public agency if the court finds that the agency's actions are not in compliance with this section. In addition to other legal and equitable remedies that may be available, an owner whose property is taken or damaged for private use may bring an action for an injunction, a writ of mandate, or a declaration invalidating the action of the public agency.

(d) Nothing in this section prohibits a public agency or regulated public utility from entering into an agreement with a private property owner for the voluntary sale of property not subject to eminent domain, or a stipulation regarding the payment of just compensation.

(e) If property is acquired by a public agency through eminent domain, then before the agency may put the property to a use substantially different from the stated public use, or convey the property to another person or unaffiliated agency, the condemning agency must make a good faith effort to locate the private owner from whom the property was taken, and make a written offer to sell the property to him at the price which the agency paid for the property, increased only by the fair market value of any improvements, fixtures, or appurtenances added by the public agency, and reduced by the value attributable to any removal, destruction or waste of improvements, fixtures or appurtenances that had been acquired with the property. If property is repurchased by the former owner under this subdivision, it shall be taxed based on its pre-condemnation enrolled value, increased or decreased only as allowed herein, plus any inflationary adjustments authorized by subdivision (b) of Section 2 of Article XIII A. The right to repurchase shall apply only to the owner from which the property was taken, and does not apply to heirs or successors of the owner or, if the owner was not a natural person, to an entity which ceases to legally exist.

(f) Nothing in this section prohibits a public agency from exercising its power of eminent domain to abate public nuisances or criminal activity;

(g) Nothing in this section shall be construed to prohibit or impair voluntary agreements between a property owner and a public agency to develop or rehabilitate affordable housing.

(h) Nothing in this section prohibits the California Public Utilities Commission from regulating public utility rates.

(i) Nothing in this section shall restrict the powers of the Governor to take or damage private property in connection with his or her powers under a declared state of emergency.

SECTION 4. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing. The Legislature may adopt laws to further the purposes of this section and aid in its implementation. No amendment to this section may be made except by a vote of the people pursuant to Article II or Article XVIII.

SECTION 5. SEVERABILITY

The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 6. EFFECTIVE DATE

The provisions of this Act shall become effective on the day following the election ("effective date"); except that any statute, charter provision, ordinance, or regulation by a public agency enacted prior to January 1, 2007, that limits the price a rental property owner may charge a tenant to occupy a residential rental unit ("unit") or mobile home space ("space") may remain in effect as to such unit or space after the effective date for so long as, but only so long as, at least one of the tenants of such unit or space as of the effective date ("qualified tenant") continues to live in such unit or space as his or her principal place of residence. At such time as a unit or space no longer is used by any qualified tenant as his or her principal place of residence because, as to such unit or space, he or she has: (a) voluntarily vacated; (b) assigned, sublet, sold or transferred his or her tenancy rights either voluntarily or by court order; (c) abandoned; (d) died; or he or she has (e) been evicted pursuant to paragraph (2), (3), (4) or (5) of Section 1161 of the Code of Civil Procedure or Section 798.56 of the Civil Code as in effect on January 1, 2007; then, and in such event, the provisions of this Act shall be effective immediately as to such unit or space.

SUPPORTERS OF THE CPOFPA

Californians for Property Rights Protection is a coalition of homeowners, family farmers, small business owners, and other property owners (small and large) led by the Howard Jarvis Taxpayers Association, California Farm Bureau Federation, and The California Alliance to Protect Private Property Rights.

SUPPORTERS (*partial list*)

Property Rights Organizations

California Alliance to Protect Private Property Rights
Californians United for Redevelopment Education,
Orange County
Grantville Action Group
Property Owners Association of Riverside County
Property Rights Alliance
Sonoma County Land Rights Coalition

Taxpayer Groups

California Republican Taxpayers Association
California Taxpayer Protection Committee
Central Solano Citizen/Taxpayer Group
Contra Costa Taxpayers Association
Howard Jarvis Taxpayers Association
Inland Empire Taxpayers Association
League of Placer County Taxpayers
National Tax Limitation Committee
National Taxpayers Union
Sacramento County Taxpayers League
San Diego Tax Fighters
Shasta County Taxpayers Association
Silicon Valley Taxpayers Association
Sonoma County Taxpayers Association
United Organizations of Taxpayers, Inc.
United Taxpayers of Imperial County
Ventura County Taxpayers Association
Yolo County Taxpayers Association

Agriculture

California Canning Peach Association
California Dairies, Inc.
California Farm Bureau Federation
Fresno Cooperative Raisin Growers, Inc.
Kern County Farm Bureau
Al Montna, Montna Farms
Nevada County Farm Bureau
Sacramento County Farm Bureau
San Diego County Farm Bureau

Faith Based

Capitol Resource Family Impact
Victory Chapel, San Bernardino

Business

California Black Chamber of Commerce
California Hispanic Chambers of Commerce
National Federation of Independent Business

Port Hueneme Chamber of Commerce
Small Business & Entrepreneurship Council

Housing Providers

Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
(AAGLA)
Apartment Owner Association of California (AOA)
Berkeley Property Owners Association
California Housing Providers Coalition
California Mobilehome Parkowners Alliance
Manufactured Housing Educational Trust
Manufactured Housing Institute
Orange County Apartment Association
Western Manufactured Housing Communities
Association

Political

California Federation of Republican Women
California Republican Party
Riverside County Libertarian Party

Cities

City of Rancho Santa Margarita
City of Westminster

Elected Officials - Statewide

Senator Jim Battin
Senator Dave Cox
Senator Jeff Denham
Senator Tom Harman
Senator Dennis Hollingsworth
Senator Tom McClintock
Senator George Runner
Assemblymember Joel Anderson
Assemblymember John J. Benoit
Assemblymember Chuck DeVore
Assemblymember Ted Gaines
Assemblymember Bob Huff
Assemblymember Doug La Malfa
Assemblymember Bill Maze
Assemblymember Sharon Runner
Assemblymember Jim Silva
Assemblymember Audra Strickland
Assemblymember Van Tran
Assemblymember Mimi Walters
Bill Leonard, Board of Equalization

Elected Officials - Local

Stephen Atchley, Pomona City Council
Bill Crawford, South Lake Tahoe City Council
Jack Fuller, Oceanside City Council
Kevin Hanley, Auburn City Council
Calvin Hinton, Pacifica City Council
Sue Horne, Nevada County Board of Supervisors
Bruce Kranz, Placer County Board of Supervisors
Dan Logue, Yuba County Board of Supervisors
Jack Lynch, Angels Camp City Council
Jeff Miller, Corona City Council
John Nicoletti, Yuba County Board of Supervisors
Chris Norby, Orange County Board of Supervisors
Gail Reavis, Mission Viejo City Council
Leo Trujillo, Santa Maria City Council
Robert Twist, San Marino City Council
Kurt Vander Weide, Turlock City Council
Kim Dolbow Vann, Colusa County Board of Supervisors
Larry Wahl, Chico City Council
Marie Waldron, Escondido City Council
Eric Ziedrich, Healdsburg City Council

Summary of the Homeowners and Private Property Protection Act

The Homeowners and Private Property Protection Act is an initiative constitutional amendment supported by substantially the same coalition of local government, environmental and business interests that opposed Proposition 90 in 2006. It will appear on the June 2008 ballot as Proposition 99. The initiative would make the following changes to existing law:

Restrictions on the Use of Eminent Domain

Under existing law, redevelopment agencies may acquire privately owned real property, including single-family homes, located in adopted redevelopment project areas found to be blighted under definitions found in the Community Redevelopment Law. Property thus acquired may be resold to private developers for redevelopment in order to eliminate blight. The ability of units of local government in California, other than a redevelopment agency, to use eminent domain to acquire property for resale to private parties is untested and unknown. In California, the only existing, explicit statutory delegation of the power of eminent domain to acquire property for resale to private parties is found in the Community Redevelopment Law. This distinguishes California from a state such as Connecticut--where the recent case of *Kelo vs. the City of New London* was decided--that has specific statutory authorization enabling units of local government to use eminent domain for economic development purposes regardless of blight findings. California has no comparable enabling statute.

The measure would amend the California Constitution to prohibit the use of eminent domain by the State or a local government to acquire an owner-occupied, single-family residence for transfer to a private person. "Owner-occupied residence" is defined as real property improved with a single family residence (including a condominium or townhouse) that is the owner's principal place of residence for at least one year prior to the State or local government's initial written offer to purchase the property. This restriction would apply to the State and all units of local government, including redevelopment agencies.

Exceptions

The prohibition on the use of eminent domain to acquire single family, owner-occupied homes for resale to private parties would not apply to acquisitions for a public work or improvement. A public work or improvement is defined to include what have been traditionally viewed as public facilities that may be constructed or operated as public/private partnerships (e.g., toll roads). The limitations of the initiative would also be inapplicable when the State or local government exercises the power of eminent domain to abate a nuisance, protect public health and safety from building, zoning or other code violations, prevent serious, repeated criminal activity, respond to an emergency, or remediate hazardous materials.

Effective Date

If passed, the measure would take effect the day following the election. Property acquisitions where both: (1) the initial written offer to purchase the property is made on or before January 1, 2008, and (2) a resolution of necessity to acquire the property by eminent domain is adopted on or before December 31, 2008, could be completed.

Construction with Other Measures

The initiative contains a provision that if it appears on the same ballot with another initiative measure dealing with the same or similar subject and both measures pass, this measure will prevail

over the other if it receives more votes than the other measure. In such event, the provisions of the other measure will be null and void.

TITLE: This measure shall be known as the "Homeowners and Private Property Protection Act."

SECTION 1: PURPOSE AND INTENT

By enacting this measure, the people of California hereby express their intent to:

- A. Protect their homes from eminent domain abuse.
- B. Prohibit government agencies from using eminent domain to take an owner-occupied home to transfer it to another private owner or developer.
- C. Amend the California Constitution to respond specifically to the facts and the decision of the U.S. Supreme Court in *Kelo v. City of New London*, in which the Court held that it was permissible for a city to use eminent domain to take the home of a Connecticut woman for the purpose of economic development.
- D. Respect the decision of the voters to reject Proposition 90 in November 2006, a measure that included eminent domain reform but also included unrelated provisions that would have subjected taxpayers to enormous financial liability from a wide variety of traditional legislative and administrative actions to protect the public welfare.
- E. Provide additional protection for property owners without including provisions, such as those in Proposition 90, which subjected taxpayers to liability for the enactment of traditional legislative and administrative actions to protect the public welfare.
- F. Maintain the distinction in the California Constitution between Section 19, Article I, which establishes the law for eminent domain, and Section 7, Article XI, which establishes the law for legislative and administrative action to protect the public health, safety and welfare.
- G. Provide a comprehensive and exclusive basis in the California Constitution to compensate property owners when property is taken or damaged by state or local governments, without affecting legislative and administrative actions taken to protect the public health, safety and welfare.

SECTION 2: AMENDMENT TO THE CALIFORNIA CONSTITUTION

Section 19 of Article I of the California Constitution is hereby amended to read:

Sec. 19. (a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(b) *The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person.*

(c) Subdivision (b) of this Section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.

(d) Subdivision (b) of this Section does not apply when State or local government exercises the power of eminent domain for the purpose of acquiring private property for a Public work or improvement.

(e) For the purpose of this Section:

- 1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise, or otherwise.*
- 2. "Local government" means any city, including a charter city, county, city and county, school district, special district, authority, regional entity, redevelopment agency, or any other political subdivision within the State.*
- 3. "Owner-occupied residence" means real property that is improved with a single family residence such as a detached home, condominium, or townhouse and that is the owner or owners' principal place of residence for at least one year prior to the State or local government's initial written offer to purchase the property. Owner-occupied residence also includes a residential dwelling unit attached to or detached from such a single family residence which provides complete independent living facilities for one or more persons.*
- 4. "Person" means any individual or association, or any business entity, including, but not limited to, a partnership, corporation, or limited liability company.*
- 5. "Public work or improvement" means facilities or infrastructure for the delivery of public services such as education, police, fire protection, parks, recreation, emergency medical, public health, libraries, flood protection, streets or highways; public transit, railroad, airports and seaports; utility, common carrier or other similar projects such as energy-related, communication-related, water-related and wastewater-related facilities or infrastructure; projects identified by a State or local government for recovery from natural disasters; and private uses incidental to, or necessary for, the Public work or improvement.*
- 6. "State" means the State of California and any of its agencies or departments.*

SECTION 3. By enacting this measure, the voters do not intend to change the meaning of the terms in subdivision (a) of Section 19, Article I of the California Constitution, including, without limitation, "taken," "damaged," "public use," and "just compensation," and deliberately do not impose any restrictions on the exercise of power pursuant to Section 19, Article I, other than as expressly provided for in this measure.

SECTION 4. The provisions of Section 19, Article I, together with the amendments made by this initiative, constitute the exclusive and comprehensive authority in the California Constitution for the exercise of the power of eminent domain and for the payment of compensation to property owners when private property is taken or damaged by state or local government. Nothing in this initiative shall limit the ability of the Legislature to provide compensation in addition to that which is required by Section 19 of Article I to property owners whose property is taken or damaged by eminent domain.

SECTION 5. The amendments made by this initiative shall not apply to the acquisition of real property if the initial written offer to purchase the property was made on or before the date on which this initiative becomes effective, and a resolution of necessity to acquire the real property by eminent domain was adopted on or before 180 days after that date.

SECTION 6. The words and phrases used in the amendments to Section 19, Article I of the California Constitution made by this initiative which are not defined in subdivision (d), shall be defined and interpreted in a manner that is consistent with the law in effect on January 1, 2007 and as that law may be amended or interpreted thereafter.

SECTION 7. The provisions of this measure shall be liberally construed in furtherance of its intent to provide homeowners with protection against exercises of eminent domain in which an owner-occupied residence is subsequently conveyed to a private person.

SECTION 8. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 9. In the event that this measure appears on the same statewide election ballot as another initiative measure or measures that seek to affect the rights of property owners by directly or indirectly amending Section 19, Article I of the California Constitution, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and each and every provision of the other measure or measures shall be null and void.

SUPPORTERS OF THE HPPPA

SUPPORTS HPPPA and OPPOSES CPOFPA

Homeowners

League of California Homeowners
Golden State Manufactured-Home Owners League, Inc.
(GSMOL)
California Mobile Homes Resource and Action Association
Coalition of Mobile Home Owners- California
Resident Owned Parks, Inc. (ROP)
California Coalition for Rural Housing
Butte County Mobile-Home Owners Association
GSMOL Chapter 1613
GSMOL Chapter 1279
GSMOL Chapter 708
Homeowners Association of Cameron
Mobile Estates
Mobilhome Residents Alliance of Nevada County
Mobile Parks West Homeowners Association
New Frontier Homeowner Association
Neighborhood Friends
Palos Verdes Shores Homeowners Association
Santa Ana Mobile Home Owners Association
Windsor Group

Senior

California Alliance for Retired Americans
Gray Panthers California

Labor

State Building and Construction Trades Council
AFSCME 2712
International Brotherhood of Electrical Workers 433
Marin County Building and Construction Trades Council

Government

League of California Cities
California State Association of Counties
California Special Districts Association
California Chapter of the American
Planning Association
California Redevelopment Association

Environmental

California League of Conservation Voters
Natural Resources Defense Council
Planning and Conservation League
Defenders of Wildlife
Greenbelt Alliance
Healthy Homes Collaborative
Mariposans for the Environment and
Responsible Government
Wild Heritage Planners

Renter Advocates/Housing Providers

Housing California
California Housing Consortium (CHC)
California Rural Legal Assistance Foundation
Coalition for Economic Survival
Eviction Defense Collaborative
Inquilinos Unidos
Just Cause Oakland
San Francisco Tenants Union
Santa Monica's for Renters' Rights

Public Interest/Community

Western Center on Law and Poverty
Community Advocacy Center
Inner City Law Center
Los Angeles Community Action Network
Miracle Mile Action Committee
Our City
Union de Vecinos

Ethnic

Black, Asian, Minority and Ethnic Renaissance CDC

Consumer

Consumer Federation of California

ONLY OPPOSES CPOFPA

Homeowners

Mobile Home Owners Coalition

Agriculture

Western Growers Association

Water

Association of California Water Agencies

Public Safety

California Police Chiefs Association

Education

California School Boards Association

Renter Advocates/Housing Providers

Council of Tenants- Los Angeles

Eviction Defense Network

Lincoln Place Tenants Association

Oakland Tenants Union

Environmental

Environmental Defense

Public Interest/Community

One Stop Immigration Counselor

Los Angeles Community Legal Center and Educational

Faith

St. Anthony Foundation

**ONLY SUPPORTS HOMEOWNERS
PROTECTION ACT**

Labor

Ironworkers Union 433 Los Angeles

SEIU 721

APPROVED AS TO FORM AND LEGALITY:


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION TO SUPPORT THE HOMEOWNERS AND PRIVATE PROPERTY PROTECTION ACT

WHEREAS, a proposed Constitutional amendment known as the Homeowners and Private Property Protection Act (HPPPA) will appear on the June 2008 California ballot; and

WHEREAS, HPPPA would place reasonable limits on the ability of public agencies to use powers of eminent domain to acquire owner-occupied single-family residences for transfer to other private parties; and

WHEREAS, HPPPA would not otherwise interfere with the City's ability to regulate land uses, enact environmental protection measures, enforce the Rent Adjustment Ordinance and other forms of regulation; and

WHEREAS, HPPPA contains provisions that would invalidate the proposed California Property Owners and Farmland Protection Act if HPPPA receives more votes; and

WHEREAS, HPPPA is supported by a broad alliance of governmental, environmental, affordable housing, labor, homeowner, public interest and other organizations; and

WHEREAS, the City Council wishes to declare its support for HPPPA and encourage Oakland voters to vote yes on this proposition; now, therefore be it

RESOLVED: That the City Council of the City of Oakland hereby declares its support for and endorsement of the Homeowners and Private Property Protection Act (HPPPA) and urges local voters to support the measure; and be it

FURTHER RESOLVED: That a copy of this resolution shall be sent to the campaign in support of the HPPPA and the City Council's position shall be publicized to the extent feasible.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

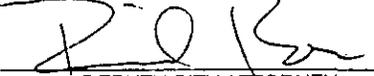
NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION TO OPPOSE THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT

WHEREAS, a proposed Constitutional amendment known as the California Property Owners and Farmland Protection Act (CPOFPA) will appear on the June 2008 California ballot; and

WHEREAS, CPOFPA will make sweeping changes to eminent domain law that could severely hinder the City's and Redevelopment Agency's efforts to eliminate blight, promote economic development, and pursue public development projects in Oakland; and

WHEREAS, by defining as a governmental taking any price limitations on the use of real property, CPOFPA will eliminate the City's ability to enforce the Rent Adjustment Ordinance and the Density Bonus Ordinance and would make it impossible to adopt such measures as inclusionary zoning; and

WHEREAS, by defining as a taking any land use regulations that may have an economic impact on property, CPOFPA will severely limit the City's ability to enforce its zoning, land use and environmental protection regulations; and

WHEREAS, the City Council wishes to declare its opposition to CPOFPA and encourage Oakland voters to vote no on this proposition; now, therefore be it

RESOLVED: That the City Council of the City of Oakland hereby declares its opposition to the California Property Owners and Farmland Protection Act (CPOFPA), and urges local voters to oppose the measure; and be it

FURTHER RESOLVED: That a copy of this resolution shall be sent to the campaign in opposition to the CPOFFPA and the City Council's position shall be publicized to the extent feasible.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California