



MEETING DATE: 5/5/2008

ITEM NO:

3

COUNCIL AGENDA REPORT

DATE: APRIL 28, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

SUBJECT: ADOPT A RESOLUTION:

- A. OPPOSING PROPOSITION 98, THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT (CPOFPA) ; AND
- B. SUPPORTING PROPOSITION 99, THE HOMEOWNER PROTECTION ACT (HPA)

RECOMMENDATION:

Adopt the attached resolutions:

- a. Resolution opposing Proposition 98, the California Property Owners and Farmland Protection Act (CPOFPA) (Attachment No. 1).
- b. Resolution supporting Proposition 99, the Homeowner Protection Act (HPA) (Attachment No. 2)

BACKGROUND:

Proposition 98, the California Property Owners and Farmland Protection Act (CPOFPA) is a constitutional amendment that would make significant changes to the laws governing the use of property, including the use of eminent domain and land use regulations. CPOFPA is sponsored by the Californians for Property Rights Protection, a coalition of homeowners, family farmers, small business owners, and other property owners led by the Howard Jarvis Taxpayers Association, the California Farm Bureau Federation, and the California Alliance to Protect Private Property Rights. This measure will be on the June 2008 ballot.

In response to Proposition 98, the No on 98/Yes on 99 Coalition, a group of homeowners, businesses, labor, cities, counties, environmental advocates, and civic organizations, such as the League of California Cities developed Proposition 99, the Homeowner Protection Act (HPA) to provide constitutional protection for homeowners from the use of eminent domain to acquire single-family homes for transfer to private developers. Proposition 99 is sponsored by the League of California Cities and California Redevelopment Association. The League of

PREPARED BY:

JENNY HARUYAMA

Administrative Programs Manager

N:\MGR\Haruyama\Staff Reports\Proposition 98 Staff Report.doc

Reviewed by: PSJ Assistant Town Manager OK Town Attorney Finance CDD

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT A RESOLUTION:

- A. OPPOSING PROPOSITION 98, THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT (CPOFPA) ; AND
- B. SUPPORTING PROPOSITION 99, THE HOMEOWNER PROTECTION ACT (HPA)

April 28, 2008

California Cities has requested that member agencies adopt a resolution in opposition to Proposition 98 and consider supporting Proposition 99. This measure will be on the June 2008 ballot.

DISCUSSION:

The following section provides an overview of Proposition 98 and 99 and summary of ballot measure arguments.

Ballot Measure Overview

Proposition 98

Under current law, public entities can acquire real property by eminent domain for a public use if they have complied with legal prerequisites, including the payment of just compensation. Proposition 98, a constitutional amendment seeks to change existing law to accomplish three primary goals:

1. Prohibit public agencies from taking or damaging private property unless it is for a stated public use, where public use is re-defined narrowly.
2. Broaden the definition of a "take" of private property.
3. Eliminate rent control and mandatory affordable housing regulations. (Note: The Town currently controls rent increases in apartments and its one mobile home park.)

Proposition 99

This constitutional amendment limits state and local government's use of eminent domain in certain circumstances. Specifically, the measure prohibits government from using eminent domain to take a single-family home (including a condominium) for the purpose of transferring it to another private party (such as a person, business, or association). This prohibition, however, would not apply if government was taking the home to:

- Protect public health and safety.
- Prevent serious, repeated criminal activity.
- Respond to an emergency.
- Remedy environmental contamination that poses a threat to public health and safety.
- Use the property for a public work, such as a toll road or airport operated by a private party.

Additionally, the prohibition would not apply if the property owner did not live in the home or had lived there for less than a year.

PAGE 3

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT A RESOLUTION:

- A. OPPOSING PROPOSITION 98, THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT (CPOFPA) ; AND
- B. SUPPORTING PROPOSITION 99, THE HOMEOWNER PROTECTION ACT (HPA)

April 28, 2008

The full text of Proposition 98 and 99 is included in this report. (Attachment No. 3 and 4).

Ballot Measure Arguments

Yes on 98/No on 99

Supporters of Proposition 98 overlap with opponents of Proposition 99 who argue that the current laws governing eminent domain infringe on private property rights. Proposition 98 is supported by the Californians for Property Rights Protection, led by the Howard Jarvis Taxpayers Association, California Farm Bureau Federation, the California Alliance to Protect Private Property Rights Committee, and the California Republican Party. Other supporters include the California Hispanic Chambers of Commerce (CHCC), Federation of Independent Business, Small Business and Entrepreneurship Council, and Institute for Justice.

Proponents of the measure believe that more stringent restrictions should be placed on eminent domain seizures and summarize the key provisions of the initiative as follows:

- Private property may not be taken by eminent domain for private use under any circumstances (i.e. to build a shopping center, auto mall or industrial park).
- Property may be taken by eminent domain only for public use (i.e. freeway construction, parks, schools).
- Property may not be taken by government and then used for the same purpose that it was used for prior to seizure. For example, if residential housing is taken, the government cannot then use it for residential housing.
- Family farms and open space are protected from seizures by government for the purpose of selling the natural resources.
- If a public agency takes property under false pretenses, or abandons its plans, the property must be offered for sale to the original owner at the original price and the property tax would be assessed at the value of the property when it was originally condemned.
- If farmers or business owners are evicted by eminent domain, they would be entitled to compensation for temporary business losses, relocation expenses, business reestablishment costs and other reasonable expenses.
- Government may not set the price at which property owners sell or lease their property.

Opponents of Proposition 99 argue that constitutional rights should not be based on the type of property that is taken by eminent domain. Advocates have expressed that there is “no justification for protecting owner-occupied properties, but not rentals and investment properties, and small businesses, but not large businesses.” Opponents argue that Proposition 99 diminishes constitutional rights depending on the use of the property and sets an unfavorable precedent for other types of government intrusion on individual rights, most notably in the area of property taxation.

PAGE 4

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT A RESOLUTION:

- A. OPPOSING PROPOSITION 98, THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT (CPOFPA) ; AND
- B. SUPPORTING PROPOSITION 99, THE HOMEOWNER PROTECTION ACT (HPA)

April 28, 2008

No on 98/Yes on 99

Opponents of Proposition 98 overlap with supporters of Proposition 99, the Homeowners Protection Act (HPA), which was developed in response to Proposition 98 and provides constitutional protection for homeowners from the use of eminent domain to acquire single-family homes for transfer to private developers. The No on 98/Yes on 99 Coalition includes the League of California Cities, the National Wildlife Federation, California League of Conservation Voters, American Association of Retired Persons (AARP), the California Teachers Association, Service Employees International Union (SEIU), and California Chamber of Commerce. Other opponents of Proposition 98 include the Western Center on Law and Poverty, League of California Homeowners, Consumer Federation of California, California Black Chamber of Commerce, Silicon Valley Leadership Group, San Francisco Tenants Union, and National Multi-Housing Council. According to the opponents of Proposition 98, the measure would:

- Redefine eminent domain for private development
- Eliminate rent control and tenant protection laws
- Invalidate inclusionary housing requirements
- Limit the enforcement of environmental protections and land use regulations
- Prohibit the use of eminent domain to acquire land and water for public water projects
- Change the balance of power between judiciary and legislative branches of government

The attached matrix provided by the No on 98/Yes on 99 Coalition compares the two ballot measures and outlines their impact on existing law (Attachment No. 5).

CONCLUSION:

It is recommended that Council consider adopting the attached two resolutions opposing Proposition 98 and supporting Proposition 99, respectively.

FISCAL IMPACT:

There is no fiscal impact associated with taking action on this resolution. A summary of the fiscal impact of Proposition 98 and 99 from the State of California Legislative Analyst's Office (LAO) is below:

Proposition 98

The (LAO) reports that "the measure's fiscal effect is subject to considerable uncertainty and would depend on (1) how the courts interpret its provisions and (2) future actions by governments to modify existing policies, enact new ones, and buy property...Because government (if the proposition passed) would have an increased incentive to acquire property

- A. OPPOSING PROPOSITION 98, THE CALIFORNIA PROPERTY OWNERS AND FARMLAND PROTECTION ACT (CPOFPA) ; AND
- B. SUPPORTING PROPOSITION 99, THE HOMEOWNER PROTECTION ACT (HPA)

April 28, 2008

from willing sellers, property owners might charge government more for their properties and/or government might buy less property than otherwise would be the case." The LAO also states that another ambiguous financial aspect of the measure is what might happen if a local government responded to the measure's elimination of rent control by "creating publicly funded programs to subsidize affordable housing." This could impose a new burden on taxpayers, but since the burden would be freely chosen, it is not a foregone conclusion mandated by Proposition 98. With these uncertainties and ambiguities described in the final analysis, the LAO determined that many governments would probably have a "net increased cost" but that these costs "would not be significant."

Proposition 99

According to the LAO, under current law and practice, government seldom uses eminent domain to take single-family homes. When the government does acquire property via eminent domain, the acquisition often is for a purpose that is permitted under the measure such as the construction of a road or school. The LAO reports that Proposition 99 would not significantly change current government land acquisition practices. However, in a very limited number of cases, the LAO determined that the measure may result in government:

- Savings—because government could not acquire a home that the owner did not wish to sell.
- Costs—because government might pay more to buy a home than would have been the case if it could have taken the home using eminent domain.

The net fiscal effect of Proposition 99 is reported to not be significant.

Attachments:

- Attachment No. 1: Resolution opposing Proposition 98, the Property Owners and Farmland Protection Act
- Attachment No. 2: Resolution supporting Proposition 99, the Homeowner Protection Act
- Attachment No. 3: Proposition 98: California Property Owners and the Farmland Protection Act
- Attachment No. 4: Proposition 99: Homeowner Protection Act
- Attachment No. 5: Comparison Matrix by No on 98/Yes on 99 Coalition

**RESOLUTION NO.
RESOLUTION OF THE TOWN OF LOS GATOS OPPOSING PROPOSITION 98**

WHEREAS, Proposition 98, the California Property Owners and Farmland Protection Act (CPOFPA), a constitutional amendment ballot measure will appear on California's June 2008 ballot; and

WHEREAS, Proposition 98 would eliminate rent control and other renter protections, threaten development of public water projects, stymie local land use planning, and impair our ability to protect the environment; and

WHEREAS, provisions in the initiative would also preclude the use of eminent domain to acquire land or water to develop public water projects that are needed to provide our residents, businesses, farmers and economy with a reliable and safe supply of water; and

WHEREAS, Proposition 98 is opposed by the Association of California Water Agencies and the Western Growers Association who warn that the initiative would impair water projects to protect water quality and supply; and

WHEREAS, language in the initiative would prohibit the passage of regulations, ordinances, land use and other zoning laws that enable local governments to plan and protect communities; and

WHEREAS, the California Police Chiefs Association opposes the measure because it would threaten their ability to keep communities and the public safe; and

WHEREAS, leading environmental groups state that the provisions in the measure would impair the ability of local governments to enact environmental protections such as laws that control greenhouse gas emissions, preserve open space, protect coastal areas, and regulate development; and

WHEREAS, the No on Proposition 98 campaign is represented by the League of California Cities, California State Association of Counties, League of California Homeowners, California League of Conservation Voters, California Alliance for Retired Americans and other leading state and local associations.

NOW, THEREFORE, BE IT RESOLVED that the Los Gatos Town Council does hereby oppose Proposition 98 on the June 2008 ballot and authorizes the use of the Town's name in campaign materials by the No on Proposition 98 Coalition in opposition to Proposition 98.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 5th day of May, 2008 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTEST:

**CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTACHMENT 1

**RESOLUTION NO.
RESOLUTION OF THE TOWN OF LOS GATOS SUPPORTING PROPOSITION 99**

WHEREAS, in June of 2005, the US Supreme Court ruled in *Kelo v. New London* that government could take a home through eminent domain to give to a private developer; and

WHEREAS, since that decision more than 40 states have reformed their eminent domain laws; and

WHEREAS, California has not yet placed a prohibition on the use of eminent domain to take homes for private development; and

WHEREAS, Proposition 99 would prohibit government from using eminent domain to take an owner-occupied home to transfer to another private party; and

WHEREAS, Proposition 99 directly addresses the issues in the *Kelo* decision and does not contain any unrelated provisions that will result in unintended, harmful consequences for California; and

WHEREAS, the League of California Homeowners supports this measure because it will provide ironclad protections for California homeowners; and

WHEREAS, the Yes on Proposition 99 campaign is represented by a broad-based coalition, including the League of California Cities, California States Association of Counties, League of California Homeowners, California League of Conservation Voters, California Alliance for Retired Americans and other leading state and local associations who support Proposition 99.

NOW, THEREFORE, BE IT RESOLVED that the Los Gatos Town Council does hereby support Proposition 99 on the June 2008 ballot and authorizes the use of the Town's name in campaign materials by the Yes on Proposition 99 Coalition in support of Proposition 99.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 5th day of May, 2008 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTEST:

**CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

PROPOSITION 98

(California Property Owners and Farmland Protection Act)

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.

PROPOSITION 99
(Homeowner Protection Act)

0 7 - 0 0 1 8

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.

COMPARISON OF PROP. 98 (Rent Control Rollback) & PROP. 99 (Homeowner Protection Act)

PROVISIONS	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
EMINENT DOMAIN FOR PRIVATE DEVELOPMENT	<ul style="list-style-type: none"> ▪ Redefines “public use” to prohibit taking any property to convey to private party, including homes and commercial properties. 	<ul style="list-style-type: none"> ▪ Constitutional prohibition on taking owner-occupied homes for conveyance to private party.
RENT CONTROL	<ul style="list-style-type: none"> ▪ Prop. 98 would abolish rent control laws in California. ▪ More than 85% of funding to qualify Prop. 98 comes from mobile home and apartment owners and associations that represent them. 	<ul style="list-style-type: none"> ▪ No changes to state or local rent control laws or ordinances.
IMPACT ON AFFORDABLE HOUSING AND TENANT PROTECTION LAWS	<ul style="list-style-type: none"> ▪ According to Western Center on Law and Poverty, Prop. 98 will invalidate inclusionary housing requirements that require a certain number of units to be affordable to low-income families. ▪ According to Western Center on Law and Poverty, Prop. 98 will likely eliminate tenant protection laws, including: <ul style="list-style-type: none"> ○ Laws governing return of rental deposits. ○ Tenant notice periods, such as 60-day notice requirement prior to forcing renters out of unit. ○ Protections regarding terminations of tenancy. 	<ul style="list-style-type: none"> ▪ No changes to laws dealing with tenant protections and or affordable housing requirements
EMINENT DOMAIN FOR TRADITIONAL PUBLIC WORKS PROJECTS	<ul style="list-style-type: none"> ▪ Prop. 98 includes provisions that will increase taxpayer costs and cause delays for traditional public works projects like schools, roads, bridges and other projects. ▪ Section 19(b)(5) changes constitutional definition of “just compensation”, adding new requirements that will make all property acquisitions vastly more expensive, including required payments for attorneys fees if jury awards even \$1 more than agency offered. 	<ul style="list-style-type: none"> ▪ Does not change or limit acquisitions for traditional public works like schools, roads, bridges and other projects.

PROVISIONS	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
REGULATORY TAKINGS PROVISIONS	<ul style="list-style-type: none"> Contrary to claims by 98 proponents, buried in definitions section of initiative are new constitutional changes that would prohibit certain regulatory actions regulating use of real property. Section 19(b)(3) prohibits <i>“regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer economic benefit to one or more private persons at the expense of the property owner”</i>. According to an analysis conducted by one of the state’s leading environmental law firms, Shute, Mihaly & Weinberger, “nearly all regulation provides an economic benefit to some private person. Accordingly, although the Initiative is ambiguous in several significant areas, a court could interpret it to restrict a host of environmental and land use regulations...” 	<ul style="list-style-type: none"> No changes to laws surrounding regulatory takings.
IMPACT ON ENVIRONMENTAL PROTECTIONS AND LAND-USE REGULATION	<ul style="list-style-type: none"> Prop. 98 changes existing law and would wreak havoc on local land-use planning and environmental protections. According to the Shute, Mihaly & Weinberger analysis, “there is a substantial risk... that (the initiative) would be broadly construed to prevent the enforcement of many existing environmental regulations as well as the adoption of new laws and policies to protect the environment”. SMW legal analysis also warns that Prop. 98 “appears to impair a broader class of environmental protections than did Proposition 90.” Unlike Proposition 90 (which required compensation for regulations that caused economic damages), Proposition 98 outright <i>prohibits</i> such laws and regulations that “transfer economic benefits”. 	<ul style="list-style-type: none"> No changes to environmental laws or regulations.

PROVISIONS	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
IMPACT ON WATER PROJECTS	<ul style="list-style-type: none"> Prop. 98 would prohibit the use of eminent domain to acquire land and water to develop <u>public</u> water projects. The Association of California Water Agencies warns Prop. 98 could <i>"derail efforts to build the infrastructure and other water projects we need to ensure an adequate supply of safe, clean drinking water."</i> The Western Growers Association warns Prop. 98 could <i>"block future development of surface water storage and conveyance."</i> That's because Prop. 98's proposed amendment to Section 19(a) of the constitution prohibits the taking of private property for "private use." Proposed section 19(b)(3)(ii) defines "private use" as including: <i>transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources</i> or for the same or a substantially similar use as that made by the private owner; (Emphasis added.) Since virtually all elements of a public water project involve the "consumption of natural resources", Prop. 98 would prohibit property acquisitions for public water projects. 	<ul style="list-style-type: none"> No change and no impact on public water projects or any other traditional public works project.
PUBLIC HEALTH AND SAFETY EXEMPTIONS	<ul style="list-style-type: none"> Changes to Section 19(b)(3) contain <u>no exceptions for actions taken to protect health and safety</u>. Land-use decisions (such as restrictions on building in unsafe areas, or zoning decisions to protect residents from undesirable or unsafe businesses) could be ruled prohibited under Proposition 98. 	<ul style="list-style-type: none"> Measure preserves ability to protect public health and safety. Prop. 99 contains specific public health and safety exemptions to eminent domain restrictions. Language permits the use of eminent domain to protect public health and safety; preventing serious and repeated criminal activity; response to an emergency; and to remedy environmental contamination. <i>Proposed Sec 19(i)</i>.

PROVISIONS	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
CHANGES TO BALANCE OF POWER BETWEEN JUDICIARY AND LEGISLATIVE BRANCHES OF GOVERNMENT	<ul style="list-style-type: none"> Prop. 98 would shift power from locally elected legislative bodies to the courts by: (a) mandating that courts essentially ignore the local governments' legislative deliberations in all eminent domain proceedings when cases are challenged in court, and (b) permitting the introduction of new evidence in court cases that was never presented to the public agency. 	<ul style="list-style-type: none"> No changes to balance of power.
PROVISIONS DEALING WITH OTHER MEASURE ON SAME BALLOT	<ul style="list-style-type: none"> NONE 	<ul style="list-style-type: none"> Should Prop. 99 pass with more votes than Prop. 98, Proposition 98 would be nullified.
TIMING OF APPLICATION	<ul style="list-style-type: none"> Regulatory takings provisions in Prop 98 could apply to EXISTING laws and regulations, as well as future laws. Provisions abolishing rent control apply to future rent control laws and rent control protections abolished when unit is vacated. 	<ul style="list-style-type: none"> Applies to future eminent domain actions.

Paid for by No 98/Yes 99, Californians to Stop the Prop 98 Attack on Renters and in Support of Prop 99, the Homeowners Protection Act. A committee of seniors, homeowners, taxpayers, renters, educators, business, labor, environmentalists, local government and public safety, League of California Cities (Non-Public Funds) and Californians for Neighborhood Protection: Yes on Prop 99, No on Prop 98, a sponsored committee of conservationists and labor
1121 L. Street, Suite 803 – Sacramento, CA 95814 – 916.443.0872
www.EminentDomainReform.com