



County of Los Angeles
CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

May 23, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

Board of Supervisors
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JUNE 3, 2008 STATEWIDE DIRECT PRIMARY ELECTION BALLOT MEASURES

This is to provide you with information about the two Statewide propositions on the June 3, 2008 Statewide Direct Primary Election Ballot. Both measures relate to eminent domain: Proposition 98, The California Property Owners and Farmland Protection Act and Proposition 99, The Homeowners and Private Property Protection Act. The proposition receiving the most votes would take effect. No County position has been taken on either proposition.

- Proposition 98: Eminent Domain. Limits on Government Authority. Initiative Constitutional Amendment. – **No Position**

Proposition 98 would amend the State Constitution to 1) constrain State and local governments' authority to take private property and 2) phase out rent control. It also could constrain government's authority to implement certain other programs and laws, such as mandatory inclusionary housing programs and tenant relocation benefits. The measure's provisions apply to all governmental agencies.

County Departments have identified a number of potential negative consequences on their programs and projects. The Department of Public Works (DPW) has determined that the measure would hinder the County's ability to exercise eminent domain in a cost-effective and timely manner and would make it illegal to use eminent domain to develop public water projects or for the purpose of consumption of natural resources such as water. The Department of Regional

Planning (DRP) indicates that Proposition 98 would hinder its ability to promote local affordable housing initiatives. The Community Development Commission (CDC) is concerned that the initiative would reduce its ability to address severe blighted conditions in certain redevelopment project areas.

- Proposition 99: Eminent Domain. Limits on Government Acquisition of Owner-Occupied Residence. Initiative Constitutional Amendment. – **No Position**

Proposition 99 would limit State and local government's use of 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 would not apply if government was taking the home to: protect public health and safety, prevent serious criminal activity, respond to an emergency, remedy environmental contamination that posed 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. The prohibition also would not apply if the property owner did not live in the home or had lived there for less than a year.

DPW indicates that Proposition 99 would have little or no impact on the County's ability to acquire property through eminent domain as the use of eminent domain for public works projects and improvements is exempt under the proposed measure. DRP and CDC note that Proposition would have little or no impact on them.

Attachment I includes a brief summary of each proposition and comments from affected County Departments. Attachment II provides the ballot statement language for all local jurisdiction measures which have qualified for the June ballot.

Please contact me or your staff may contact Max Schmidl of the Chief Executive Office at (213) 893-2164 or via e-mail at mschmidl@ceo.laccounty.gov if you have any questions.

WTF:GK
MAL:MS:hg

Attachments

c: Executive Officer, Board of Supervisors
County Counsel
Affected Departments

SUMMARY OF PROPOSITIONS AND COMMENTS OF AFFECTED DEPARTMENTS

PROPOSITION 98: EMINENT DOMAIN. LIMITS ON GOVERNMENT AUTHORITY. Initiative Constitutional Amendment. – COUNTY POSITION: NONE

Proposition 98, the California Property Owners and Farmland Protection Act, would amend the State Constitution to 1) limit state and local governments' authority to take private property and 2) phase out rent control. The measure also may constrain government's authority to implement certain other programs and laws, such as mandatory inclusionary housing programs and tenant relocation benefits. Proposition 98 would apply to all California governmental agencies.

Proposition 98 would prohibit government from using eminent domain to take ownership of private property to transfer it to another private party, such as a person, business, or nonprofit organization, even if the transfer would further some broader public purpose such as elimination of blight. In addition, government could not take property for 1) a purpose substantially similar to how the private owner used it (such as public operation of a water or electricity delivery system formerly owned by a private company) or 2) the purpose of consuming its natural resources (such as oil or minerals). These restrictions also would apply to cases when government does not assume ownership and instead, transfers the right to use or occupy the property. None of these restrictions would apply, however, if government was addressing a public nuisance or criminal activity or as part of a state of emergency declared by the Governor.

Proposition 98 generally prohibits government from limiting the price property owners may charge others to purchase, occupy, or use their land or buildings. This provision would affect local rent control measures. Specifically, government could not enact new rent control measures, and any rent control measure enacted after January 1, 2007 would end. Other rent control measures (those enacted before January 1, 2007) would be phased out on a unit-by-unit basis after an apartment unit or mobile home park space is vacated. Once a tenant left an apartment or mobile home space, property owners could charge market rate rents, and that apartment unit or mobile home space would not be subject to rent control again.

Legislative Analyst's Office Report

Eminent Domain Changes. According to the LAO, much of the property state and local government acquires is bought from willing sellers or is taken by eminent domain for purposes that would still be allowed under the measure. Government could continue to acquire these properties, but it might need to pay somewhat more because Proposition 98 increases the amount of compensation on properties taken by eminent domain and willing sellers are likely to demand similar increased amounts. In some cases, the measure would prevent government from taking property by eminent domain. This

reduced ability to take property could affect many government plans for redevelopment, affordable housing, and public ownership of water or electric utility services. Overall, the LAO estimates that many governments would have increased costs to acquire property, but that the net statewide fiscal effect probably would not be significant.

Rent Control and Other Changes. The LAO indicates that in response to Proposition 98's phase out of rent control and limitation on other programs that transfer economic benefits from property owners to private parties, governments might repeal rent control ordinances and not enact land-use regulations that encourage the construction of lower-cost housing. Conversely, a government could respond to the elimination of rent control by creating publicly funded programs to subsidize affordable housing. Given the uncertainty regarding some of the measure's provisions, some governments might be unaware that their policies conflicted with the measure's provisions and be required to pay damages to property owners. The fiscal effect on state and local governments associated with these changes in rent control and other policies is not possible to determine, but there probably would be increased costs to many governments. The net statewide fiscal effect, however, probably would not be significant.

Affected Departments

County departments including the Department of Public Works (DPW), Department of Regional Planning (DRP), and the Community Development Commission (CDC), have identified potential consequences of Proposition 98 in relation to specific programs and projects. DPW has determined that it would hinder the County's ability to exercise eminent domain in a cost-effective and timely manner and would make it illegal to use eminent domain to develop public water projects or for the purpose of consumption of natural resources such as water.

DRP notes that under Proposition 98, private property may not be taken or damaged for private use where private use is defined as 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. In DRP's view, Proposition 98 would affect the County's General Plan policies which encourage affordable housing and preserve environmental resources in site development. In particular, Proposition 98 would impede the County's future efforts to promote local affordable housing initiatives.

According to CDC, Proposition 98 would reduce its ability to address severe blighted conditions in the Whiteside redevelopment project area which include major contamination issues and under-utilization of parcels. CDC currently has two redevelopment project areas with eminent domain authority, Whiteside and West Altadena. West Altadena's eminent domain authority is due to expire in 2010, and Whiteside in 2018. In addition, Whiteside's eminent domain authority is limited to non-residential parcels.

CDC indicates that it has always been reluctant to use eminent domain authority for redevelopment and has always preferred to reach negotiated sales agreements with property owners when property acquisition has been necessary for projects. However,

the loss of this tool would reduce the negotiating leverage of the CDC when attempting to assemble larger areas of land for redevelopment projects. In addition, property owners who sell property to the CDC could lose the potential tax benefits of having their property sold under 'threat' of potential condemnation.

County Counsel advises that the language of the initiative is ambiguous and could be interpreted to preclude all of the activities described above.

Support and Opposition

Support. Proposition 98 is supported by property rights groups, taxpayer groups including the Howard Jarvis Taxpayers Association, agricultural associations including the California Farm Bureau, business groups such as the National Federation of Independent Business, property owners groups including the Apartment Owners Association of California, and many Republican State Senators and Assembly Members, and local elected officials.

Opposition. It is opposed by former Governor Pete Wilson who indicated that Proposition 98 could "be used to obstruct for years the development of critically and urgently needed water resources to California." Similarly, Senator Dianne Feinstein announced her opposition to Proposition 98 noting that it "will seriously undermine the State and local government's ability to protect our environment, increase our water supply, and improve our crumbling infrastructure." Governor Schwarzenegger said he was opposing Proposition 98 in part because it might block the building of water projects crucial to farmers and residential users.

In addition, it is opposed by various homeowner associations, seniors groups, the California Police Chiefs and the California Fire Chiefs associations, environmental groups such as the Sierra Club, and the California League of Conservation Voters, business, consumer, renter advocates and housing providers, labor organizations including the SEIU California State Council and the American Federation of State, County and Municipal Employees and the League of California Cities, California State Association of Counties, California Special Districts Association, and the California Redevelopment Association, and the press including the Los Angeles Times, San Diego Union Tribune, San Francisco Chronicle, Fresno Bee, Riverside Press Enterprise, Pasadena Star News, San Gabriel Valley Tribune, and Whittier Daily News.

PROPOSITION 99: EMINENT DOMAIN. LIMITS ON GOVERNMENT ACQUISITION OF OWNER-OCCUPIED RESIDENCE. Initiative Constitutional Amendment. – COUNTY POSITION: NONE

Proposition 99 would limit State and local government's use of eminent domain in certain circumstances. Specifically, it would prohibit 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 posed a threat to public health

and safety, or to use the property for public work, such as a toll road or airport operated by a private party. In addition, the prohibition would not apply if the property owner did not live in the home or had lived there for less than a year.

Legislative Analyst's Office Report

Under current law and practice, government seldom uses eminent domain to take single-family homes. Even when it does so, the acquisition often is for a purpose that is permitted under the measure (such as construction of a road or school). Accordingly, this measure would not significantly change current government land acquisition practices. In a very limited number of cases, however, this measure might result in savings because government could not acquire a home that the owner did not wish to sell. In other cases, government might pay more to buy a home than would have been the case if it could have taken the home using eminent domain. According to the LAO, the net fiscal effect of such actions would not be significant.

Affected Departments

DPW indicates that the initiative would have little to no impact on the department's ability to acquire property through eminent domain as the use of eminent for public works projects and improvements is exempt under the proposed measure. Proposition 99 would have no significant impact on DPWs' flood protection and water conservation facilities or projects since the State Constitution already addresses "taking" and "damage" to properties from Public Works' activities.

DRP notes that Proposition 99 is very limited in scope, and addresses only the end-use in a taking of property under eminent domain, in that it cannot be transferred to another private development, except for abatement purposes, and the property taken must be used for some type of public project. Therefore, it will have no impact on the Department because it does not deal with property acquisition.

CDC currently has the power of eminent domain which is applicable to a very small number of single family homes in the West Altadena Redevelopment Project Area. Proposition 99 would prohibit the use of eminent domain to take any of these homes. It is important to note that this power has never been used directly in West Altadena and is due to expire in 2010. The CDC's eminent domain authority in other redevelopment project areas either has expired or its use is prohibited to take residences. Therefore, not taking any future redevelopment project areas into account, it is anticipated that Proposition 99 would not have an impact on CDC.

County Counsel had no comment on Proposition 99.

Support and Opposition

Support. Proposition 99 is endorsed by Senators Feinstein and Boxer and Speaker Nancy Pelosi. It is also supported by various homeowner associations, seniors groups, the California Police Chiefs and the California Fire Chiefs associations, environmental groups such as the Sierra Club, and the California League of Conservation Voters,

business, consumer, renter advocates and housing providers, labor organizations including the SEIU California State Council and the American Federation of State, County and Municipal Employees and the League of California Cities, California State Association of Counties, California Special Districts Association, California Redevelopment Association, the League of Women Voters of California, and the press including the Los Angeles Times, San Francisco Chronicle, Fresno Bee, Pasadena Star News, San Gabriel Valley Tribune, and Whittier Daily News. The proponents of Proposition 99 are generally the same groups and associations that oppose Proposition 98. Neither former Governor Wilson nor Governor Schwarzenegger has taken a position on Proposition 99.

Opposition. Opposition to Proposition 99 is drawn primarily from the list of supporters of Proposition 98 including property rights groups, taxpayer groups including the Howard Jarvis Taxpayers Association, agricultural associations including the California Farm Bureau, business groups such as the National Federation of Independent Business, property owners groups including the Apartment Owners Association of California, and many Republican State Senators and Assembly Members, and local elected officials.

**BALLOT LANGUAGE – LOCAL JURISDICTION MEASURES APPEARING ON
PRIMARY ELECTION BALLOT – JUNE 3, 2008**

MEASURE

CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT

- A To attract and retain qualified teachers; reduce class size; maintain libraries; upgrade computer and science labs; improve academics including music, arts, math, science, English, and other courses students need to qualify for college admission; and improve school safety/security; shall the Centinela Valley Union High School District levy an education parcel tax at \$.04 per square foot for nine years, exempting seniors, with no money used for administrative costs and an independent citizen's oversight committee to audit use of funds?

COVINA CITY

- C Shall the City of Covina extend for only 10 years its existing 6% Utility Users Tax, with no rate increase, requiring annual financial audits, and ensuring all funds collected remain in Covina, to continue funding vital city services including: police, fire and paramedic services; street and lighting maintenance; and services for senior citizens, the library, and parks and recreation programs?

HAWTHORNE SCHOOL DISTRICT

- H Shall the Hawthorne School District be authorized to issue \$20,000,000 in bonds at legal interest rates to acquire, construct, and improve local schools, including security improvements throughout the District to reduce vandalism, additional classrooms and athletic fields at the charter high school, and gymnasiums for student and community use, with a citizens' oversight committee, annual audits, and NO money for salaries, administration, and overhead?

HERMOSA BEACH CITY SCHOOL DISTRICT

- E **Improving Educational Opportunities.** To maintain high quality education for Hermosa's schools, support classroom instruction, maintain and create small class sizes, and preserve educational programs, shall Hermosa Beach City School District levy a parcel tax for Two Hundred Fifty-Seven Dollars (\$257) per assessor parcel per year, not to exceed a 5% annual increase, for five (5) years, with exemptions available for seniors and disabled persons, a citizens' oversight committee, accountability measures and all funds being used locally?

LOS NIETOS SCHOOL DISTRICT

- M To acquire, construct and modernize school facilities, shall the Los Nietos School District be authorized to upgrade classrooms and security, improve student safety and school sites, renovate outdated restrooms, and replace roofs by issuing up to \$31,140,000 in bonds at legal interest rates, with annual audits, a citizens' oversight and no money for overhead or administrator salaries?

SOUTH GATE CITY

- P **The South Gate Vital City Services Measure.** To preserve public safety and prevent significant cuts to City services, by funding general City services such as hiring additional police officers, maintaining youth anti-gang and anti-drug programs, after-school parks and recreation services, graffiti removal, maintaining neighborhood parks, fixing potholes and City streets, and other essential City services, shall the City sales tax be increased by one cent with guaranteed independent annual financial audits, expenditure reports, and citizens' financial oversight?

TORRANCE CITY

- T Shall an ordinance be adopted to ratify and update Torrance's existing telephone utility users' tax, to continue to maintain such essential city services as police, fire, street repair, parks, libraries, recreation programs and other services that are presently paid for from the city's general fund; provided that the present tax rate will not change; low-income seniors and disabled persons will remain exempt; and independent annual audits will be required?