



# CHARTER COMMITTEE AGENDA REPORT

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MEETING DATE: FEBRUARY 26, 2014

ITEM NUMBER: 8C-1

**SUBJECT:** CITY'S POWERS OF EMINENT DOMAIN

**DATE:** FEBRUARY 26, 2014

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## BACKGROUND

The following is a discussion of general law and charter cities authority governing eminent domain.

## DISCUSSION

Typically, the City will acquire property via negotiated purchase with the property owner. Additionally, under Article 1 Section 19 of the California Constitution, the City can acquire property via eminent domain if it serves a *public purpose* and the property owner is paid *just compensation*. The application of eminent domain proceedings is an involved process. As with any real property purchase, the city performs a title search and appraisal. The city then makes a pre-condemnation offer to the property owner to purchase the property. If the city and property owner fail to reach an agreement, the city prepares a 15-day notice of proposed eminent domain. The city must hold a hearing on proposed adoption of resolution of necessity and must make specific findings. If the resolution of necessity is approved by a 2/3rds majority of the city council, the city may initiate proceedings to obtain the property via eminent domain.

When considering what constitutes a public purpose, one typically thinks of roads, schools or other public facilities. However, eminent domain received a considerable amount of attention several years back with the U.S. Supreme Court's decision in *Kelo v City of New London* (2005) 545 US 469, 125 S Ct 2655. In *Kelo*, the Court held that the City of New London could acquire property via eminent domain in what was widely viewed as a private development. The project did involve a private development, however, the city argued the public purpose consisted of economic development for a distressed city that was projected to create in excess of 1,000 jobs.

In response, federal, state and local governments responded with the enactment of a number of bills limiting the powers of eminent domain for private development. In California, voters approved an amendment to the California Constitution entitled the

Homeowners and Private Property Protection Act that prohibited a local government from using eminent domain to acquire a single-family home (including a condominium) and transfer to a private person or business, unless:

- The property owner does not live in the home, or has lived there for less than 1 year;
- The property is being acquired for a public work or improvement; or
- The property is being acquired to abate a nuisance; protect public health and safety; prevent serious criminal activity; respond to an emergency; or remedy environmental contamination that poses a threat to public health and safety.

In terms of a charter city's ability to regulate eminent domain, California courts have long held that the exercise of the power of eminent domain is a matter of statewide concern. *Wilson v. Beville*, (1957) 47 Cal. 2d 852. In other words, charter cities do not have the authority to regulate the use of eminent domain. However, in the wake of the *Kelo* opinion, a number of cities adopted charter provisions limiting a city's use of eminent domain for private development. A charter city's ability to regulate the use of eminent domain for private economic development has yet to be tested and is distinguishable from the longstanding rule that it is a matter of statewide concern following *Kelo*. Thus, the Charter Committee may consider adopting regulations governing the use of eminent domain that is narrowly tailored to address private development. If, in the future, a California court makes a contrary finding, such provision may be repealed.

## **CONCLUSION**

Eminent domain is a matter of statewide concern, however, following the U.S. Supreme Court's *Kelo* decision; federal, State of California and local regulations were adopted that limit a public entities ability to use eminent domain for private development. In particular California voters approved the Homeowners and Private Property Protection Act and some cities have adopted similar provisions. A charter city's ability to regulate the use of eminent domain for private economic development has yet to be tested. The Charter Committee may consider adopting regulations governing the use of eminent domain that is narrowly tailored to address private development. If, in the future, a California court makes a contrary finding, such provision may be repealed.