April 8, 2008

THE HONORABLE CITY COUNCIL
Palo Alto, California

RE: Summary of State Propositions 98 and 99 Pertaining to Eminent Domain and Regulatory Takings

Dear Members of the Council:

This memorandum summarizes Propositions 98 and 99, two competing initiatives that have qualified for the June 3, 2008 State election. Both initiatives relate to local governments' eminent domain power and restrict how government can take private property in California.

Both initiatives are responses to the United States Supreme Court's 2005 ruling in *Kelo v. City of New London*. In that case, the city's redevelopment agency condemned fifteen single family homes in order to convey the land to a private developer for purposes of economic redevelopment. The Court ruled that such taking did not violate the Fifth Amendment of the United States Constitution. In response to *Kelo*, many states have faced legislative and voter initiated efforts to restrict local government's ability to use eminent domain power for economic redevelopment. In 2006, Proposition 90 (known as the "Anderson Initiative") appeared on the California state ballot, but did not receive enough votes to pass.

**Proposition 98**

The Howard Jarvis Taxpayers Association, California Farm Bureau and the California Alliance to Protect Private Property Rights are sponsoring Proposition 98 known as the California Property Owners and Farmland Protection Act (CPOFPA). CPOFPA would amend the California Constitution to provide that private property may only be taken or damaged for a "stated public purpose" and that "private property may not be taken or damaged for private use." The initiative contains a series of broadly worded and ambiguous definitions and exceptions that encroach on local government's eminent domain and land use authority. In fact, many of the concerns raised by local governments in connection with the defeated Anderson Initiative have also been voiced in connection with Proposition 98.

There are at least three ways in which the CPOFPA might make substantial changes that go beyond placing limits on economic redevelopment.
NOT YET APPROVED

RESOLUTION NO. _____
RESOLUTION OF THE COUNCIL OF THE CITY OF
PALO ALTO OPPOSING PROPOSITION 98

WHEREAS, a constitutional amendment ballot measure, Proposition 98, will appear on California's June 2008 ballot; and

WHEREAS, Proposition 98 proponents want voters to believe the initiative is about eminent domain, but in fact the measure contains other provisions and legally flawed language which will threaten development of public water projects, inhibit local land use planning and impair the City's ability to protect the environment; and

WHEREAS, the majority of the funding to qualify this measure comes from apartment and mobile home park owners who are using Proposition 98 as a subterfuge to convince voters into abolishing rent control and other renter protections; 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 the initiative will impair water projects to protect water quality and supply; and

WHEREAS, language in the initiative will also 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 threatens their ability to keep communities and the public safe; and

WHEREAS, leading environmental groups warn provisions in the measure would impair our ability 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 members include 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.
NOT YET APPROVED

NOW, THEREFORE, the Council of the City of Palo Alto does resolve as follows:

SECTION 1. The Council by adopting this resolution does hereby oppose Proposition 98 on the June 2008 ballot.

SECTION 2. The Council hereby authorizes the use of its name by the "No on Proposition 98" campaign in opposition to Proposition 98. Staff is hereby directed to fax a copy of this adopted resolution to 916.442.3510 and to distribute it to local media.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST: ____________________________

City Clerk

APPROVED: ____________________________

Mayor

APPROVED AS TO FORM:

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City Attorney

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City Manager

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Director of Administrative Services
NOT YET APPROVED

RESOLUTION NO. _____
RESOLUTION OF THE COUNCIL OF THE CITY OF
PALO ALTO SUPPORTING PROPOSITION 99

WHEREAS, in June of 2005 the U.S. 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 failed to place a prohibition on the use of eminent domain
to take homes for private development; and

WHEREAS, Proposition 99, which will be on the June 2008 ballot, will prohibit
government from using eminent domain to take an owner-occupied home to transfer to another
private party; and

WHEREAS, the protections in Proposition 99 directly address the issues in the *Kelo*
decision and the measure 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.
NOT YET APPROVED

NOW, THEREFORE, the Council of the City of Palo Alto does resolve as follows:

SECTION 1. The Council by adopting this resolution does hereby support Proposition 99 on the June 2008 ballot.

SECTION 2. The Council hereby authorizes the use of its name by the “Yes on Proposition 99” campaign. Staff is hereby directed to fax a copy of this adopted resolution to 916.442.3510 and to distribute it to local media.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:                  APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

City Manager

Director of Administrative Services