

**IMPARTIAL ANALYSIS BY CITY ATTORNEY
CITY OF YORBA LINDA
MEASURE BB**

California law empowers cities, redevelopment agencies and other public entities to acquire real property by grant, purchase, lease, gift, devise or eminent domain. State law regulates the process for acquiring property by eminent domain. Before property can be acquired by eminent domain the public entity must adopt a resolution specifying the necessity of the acquisition of the private property and conduct a public hearing. Fair market value must be paid for the property and certain relocation and reimbursement benefits are mandated by statutes and regulations.

Property acquired by eminent domain must be used for a public purpose. In April 2005, the United States Supreme Court issued the Kelo v. City of New London decision. The Kelo decision affirmed that, in addition to using property taken by eminent domain for traditional public uses, such as public parks, roads and highways, a public purpose may also be served by the sale of the property to a private party who uses the property to create jobs and economic revitalization in an economically depressed area. Recently California's voters approved Proposition 99 (known as the "Homeowners and Private Property Protection Act"), which amends the California Constitution to prohibit local governments from using eminent domain to acquire an owner-occupied residence for the purpose of conveying it to a private person or business entity, such as a developer. A local government may, however, continue to use eminent domain to acquire residential, tenant-occupied property or an owner-occupied residence for public purposes, such as a public works project, protecting public health and safety or remedying environmental contamination. Proposition 99 also does not prohibit the use of eminent domain to acquire non-residential property.

The proposed City Council-sponsored measure would create Chapter 4.02 of the Yorba Linda Municipal Code to prohibit the use of eminent domain by the City Council or any City-affiliated agency to acquire any real property from a private property owner, without the consent of such owner, for purposes of conveying such property to another private party for any for-profit commercial activity. This measure would not prohibit the City or its affiliated entities, such as the Yorba Linda Redevelopment Agency, from acquiring property by eminent domain for traditional public projects, such as street improvements, public facilities and public utilities.

A Yes vote is for the adoption of the proposed ordinance imposing limitations on eminent domain. If the ordinance is adopted further amendment or repeal may only be accomplished by a vote of the people. A No vote is for the rejection of the proposed ordinance.

s/ Sonia R. Carvalho
Yorba Linda City Attorney

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