

Yes on Eminent Domain Reform

Protect Our Homes and Small Businesses!

Following the 2005 U.S. Supreme Court decision in *Kelo vs. the City of New London*, much attention has been focused on abuses of eminent domain. In that case, the Supreme Court permitted a city to use eminent domain to take the home of a Connecticut woman for the sole purpose of economic development. To provide California homeowners and small businesses with additional protections from eminent domain abuse, a broad-based coalition of homeowners, small businesses, taxpayer, local government, environmental and public safety leaders is supporting a responsible package of eminent domain reforms.

Solution: The Eminent Domain Reform Act of 2007/2008

This package includes a constitutional amendment that would be placed on the ballot in 2008, and accompanying statutory legislation that would:

✓ Protect Homeowners from Eminent Domain by:

- Prohibiting the State or local governments from using eminent domain to acquire an owner-occupied home for transfer to another private party. This provision would prohibit taking a home through eminent domain to make way for a private development.
(Constitutional Amendment)

✓ Protect Small Businesses from Eminent Domain by:

- Prohibiting the State and local governments from using eminent domain to acquire property where a small business is located to transfer to another private party, except as part of a comprehensive plan to eliminate blight and only after the small business owner is first given the opportunity to participate in the revitalization plan. (Const. and Statutory)
- If the small business does not participate in the revitalization plan it can choose between relocating or receiving the value of the business. If the small business relocates, it will receive:
 - Fair market value of the real property (if owned by the small business).
 - All reasonable moving expenses.
 - Expenses to reestablish the business at a new location, up to \$50,000.
 - Compensation for the increased cost of rent or mortgage payments for up to 3 years.
(Statutory Measure)
- If the small business does not elect to relocate it will receive:
 - Fair market value of the real property (if owned by the small business).
 - 125% of the value of the business if the business could not have been relocated and remain economically viable.
(Statutory Measure)

✓ Owner's Right to Repurchase Acquired Property.

- A home or small business acquired by eminent domain must be offered for resale to the original owner if the government does not use the property for a public use. The state or local government shall use reasonable diligence to locate the property owner.
(Constitutional Amendment)

Eminent Domain Reform – Constitutional Amendments

Amendments to Article I, Section 19 of the California Constitution Legislative Proposal

SECTION 1. Section 19 of Article I of the California Constitution is amended to read:

Sec. 19. (a) (1) 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.

(2) Prior to the commencement of eminent domain proceedings, the public use for which the private property is taken must be stated in writing.

(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) The State and local governments are prohibited from acquiring by eminent domain real property on which a small business is operated for the purpose of conveying it to a private person.

(d) Notwithstanding subdivision (c), real property which is within the area included in a comprehensive plan to eliminate blight and on which a small business is operated may be acquired by eminent domain for the purpose of conveying it to a private person only if the small business owner is first provided a reasonable opportunity to participate in the plan. If the small business owner does not participate in the plan, the owner shall be paid reasonable relocation expenses or an amount not less than the fair market value of the small business, at the option of the small business owner.

(e) Subdivisions (b) and (c) of this Section do not apply when the stated public use is a Public work or improvement; provided, if an owner-occupied residence or property on which a small business is located is acquired by eminent domain for a Public work or improvement, the owner from whom it was acquired shall have a reasonable opportunity to repurchase the property, in accordance with subdivision (g), before its conveyance for a use other than a Public work or improvement.

(f) When any private property was acquired by eminent domain for public use, and the State or local government determines that such property is no longer required for public use, the owner from whom the property was acquired shall have a reasonable opportunity to repurchase the property in accordance with subdivision (g), before its conveyance by the State or a local government for other than a public use.

- (g) *The opportunity to repurchase shall be subject to all of the following:*
- (1) *The State or local government shall use reasonable diligence to locate the former owner.*
 - (2) *The opportunity to repurchase shall be at the then current fair market value; provided that if the property acquired by eminent domain was an owner-occupied residence, then the opportunity to repurchase shall be at a price equal to the assessed value to be enrolled for the property under subdivision (3), increased by the fair market value of any improvements, fixtures, or appurtenances added by the State or local government.*
 - (3) *Upon reacquisition by the property owner from whom the property was acquired, the assessed value of the property shall be the value in the year of acquisition by the State or local government, adjusted as authorized by subdivision (b) of Section 2 of Article XIII A. If the property is reacquired by the property owner, then neither the acquisition by the State or local government, nor the reacquisition by the property owner shall constitute a "change of ownership" for purposes of subdivision (a) of Section 2 of Article XIII A.*
 - (4) *The opportunity to repurchase applies only to the property owner from whom the property was acquired, and does not apply to any heirs or successors of the owner; or, if the owner was not a natural person, to an entity which ceases to legally exist. The opportunity to repurchase may be waived in writing.*
 - (5) *The Legislature may provide a procedure that constitutes a reasonable opportunity to repurchase, and may specify the contents of written notice of the opportunity to repurchase.*
- (h) *For 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) *"Small business" means a business employing no more than the equivalent of twenty-five full-time employees but does not include the owner of the real property that is acquired if the primary business of that owner is to lease the real property acquired to others.*

(7) *"State" means the State of California and any of its agencies or departments.*

(i) Subdivisions (b) and (c) of this Section do 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.

(j) No payment made pursuant to subdivision (d) shall duplicate any other payment to which the small business may be entitled for the same purpose under law.

SECTION 2. 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 January 1, 2008, and a resolution of necessity to acquire the real property by eminent domain was adopted on or before December 31, 2008.

SECTION 3. The words and phrases used in the amendments to Section 19, Article 1 of the California Constitution made by this initiative which are not defined in subdivision (h), 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 thereafter.

SECTION 4. The provisions of this measure shall be liberally construed in furtherance of its intent to provide homeowners and small businesses with protection against exercises of eminent domain in which property is subsequently conveyed to a private person.

SECTION 5. 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.

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Eminent Domain Reform – Statutory Measure

Amendments to California Redevelopment Law

SECTION 1. *Section 33391.5 is hereby added to the Health and Safety Code to read as follows:*

33391.5. Prior to adopting a resolution to acquire property by eminent domain pursuant to Code of Civil Procedure Section 1245.210 et seq., on or after January 1, 2008, an agency shall comply with the provisions of Section 33431.5, if applicable.

SECTION 2. *Section 33431.5 is hereby added to the Health and Safety Code to read as follows:*

33431.5 (a) An agency shall mail by first class mail to the owner and tenant of each parcel of real property within the area that may be subject to acquisition by the agency the notice described in subdivision (b) at least 45 days prior to taking any of the following actions:

(1) A solicitation for the redevelopment of any portion of the project area through a request for proposals, request for qualifications or other similar method.

(2) The approval of an agreement to negotiate exclusively or other agreement having the effect of limiting the negotiation for the sale or lease of specified real property to an identified party or parties where the agency has not previously notified property owners and tenants pursuant to subparagraph (1).

(3) The approval of a disposition and development agreement, owner participation agreement or other agreement having the effect of obligating the agency to acquire or consider the acquisition of real property for conveyance to a private person or entity where the agency has not previously notified property owners and tenants pursuant to subparagraph (1) or (2).

(b) The notice required by subdivision (a) shall:

(1) describe the proposed action;

(2) explain the agency's obligation to:

(i) provide reasonable opportunities for participation in the redevelopment of property in the project area by the owners of all or part of such property if the owners agree to participate in the redevelopment in conformity with the redevelopment plan, and

(ii) extend reasonable preferences to persons who are engaged in business in the project area to reenter business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan;

(3) invite the owner and tenant to submit to the agency:

(i) a proposal to redevelop their real property and/or other real property within the project area in conformity with the redevelopment plan, including any design for development, design guidelines or other development criteria adopted by the agency pursuant to the redevelopment plan, together with a description of the owner's development experience, qualifications and financial resources, and/or

(ii) a proposal to reenter business within the redeveloped area.

(4) Notify any small business owner of the agency's obligation to pay certain attorneys fees, as prescribed in subdivision (g).

The agency shall provide the owner and tenant with a minimum of thirty (30) days from the date of the written notification to respond.

(c) The notice required by subdivision (a) shall be mailed to property owners and tenants as shown on the records of the county assessor and to such other tenants as have requested such notice in writing. If the agency has acted in good faith to comply with the notice requirements of this section, the failure of the agency to provide the required notice to owners or tenants unknown to the agency shall not invalidate any subsequent action of the agency.

(d) Prior to authorizing the execution of an agreement to negotiate exclusively, disposition and development agreement, owner participation agreement or similar agreement, an agency shall consider in good faith and either accept or reject a proposal submitted by an owner or tenant in response to the notification required by subdivision (a) based upon objective criteria, which may include, without limitation: (1) the extent to which the proposal would further the purposes or objectives of the agency as set forth in the redevelopment plan or in any design for development, design guidelines or other design or development criteria adopted by the agency pursuant to the redevelopment plan, (2) conformity of the proposal with the agency's adopted owner participation rules and (3) the owner's or tenant's experience, qualifications and financial resources. The agency may consider the need to assemble multiple parcels into sites large enough to accommodate modern development patterns, the conversion of property from private to public use and other factors which have the effect of reducing the number of, or limiting the type of, owner participation or business reentry opportunities.

(e) An agency may adopt developer selection guidelines that establish reasonable preferences for non-profit developers of residential and mixed-use

developments that include housing affordable to persons and families of low- and moderate-income.

(f) This section shall not apply where the property to be acquired will be used for a Public work or improvement and private uses incidental to, or necessary for, the Public work or improvement.

(g) A small business to which an agency is required to give notice pursuant to subdivision (a) shall receive from the agency its reasonable attorneys' fees actually incurred, not to exceed five thousand dollars (\$5,000), for advising the small business owner or tenant concerning: (1) the preference extended to businesses to reenter into business within the redeveloped area; (2) the opportunity afforded owners and tenants to participate in the redevelopment of the project area in accordance with the redevelopment plan; and (3) the proposed action described in the notice. An agency shall make payment to the small business upon receipt of an itemized statement describing the services performed and fees charged by the attorney. For the purposes of this section, "small business" means a business employing no more than the equivalent of twenty-five (25) full-time employees.

SECTION 3. Section 33415.5 is hereby added to the Health and Safety Code to read as follows:

33415.5. (a) Whenever an agency acquires real property for conveyance to a private person or entity that will result in the displacement of a small business, and the small business does not participate in the project, the following rules shall apply:

(1) If a small business relocates, the small business shall be paid:

(i) its actual and reasonable expenses necessary to reestablish the small business, but not to exceed fifty thousand dollars (\$50,000); plus

(ii) an amount which will compensate a displaced small business tenant for the increased cost of renting a comparable replacement business location for a period not to exceed three (3) years; or

(iii) an amount which will compensate a displaced small business property owner for any increased interest costs which the owner is required to pay for financing the acquisition of a comparable replacement business location for a period not to exceed three (3) years.

(2) If the small business does not relocate, the owner of the small business may elect to be paid either:

(i) an in-lieu payment equivalent in amount to that authorized by subdivision (c) of Section 7262 of the Government Code;

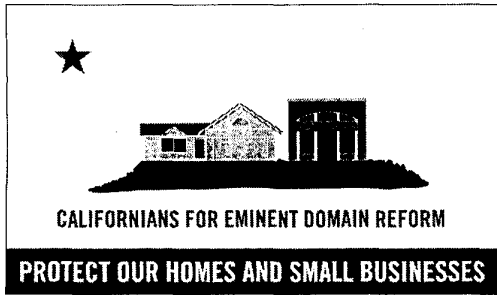
(ii) an amount equal to the fair market value of the small business; or

(iii) an amount equal to one hundred twenty-five percent (125%) of the fair market value of the business, if the small business demonstrates to the satisfaction of the agency that it cannot be relocated and remain economically viable.

(iv) the payment received pursuant to this subsection (a)(2) shall be in lieu of a payment under subsection (a)(1).

(b) For the purposes of this section, "small business" shall mean a business having twenty-five (25) or fewer full-time equivalent employees. "Small business" does not include the owner of the real property that is acquired by the agency, the primary business of which is to lease the real property acquired to others.

(c) No payment required by this section shall duplicate any other compensation received by the small business tenant or owner for the same purpose pursuant to Chapter 16 of Division 7 of Title 1 of the Government Code (commencing with Section 7260) or Title 7 of Part 3 (commencing with Section 1230.010) of the Code of Civil Procedure.



Help Protect Our Homes and Small Businesses

- I/we support **Californians for Eminent Domain Reform**, the coalition that has formed to protect property owners from eminent domain abuse and advocate responsible eminent domain reforms. You may list me/ my organization, in formal support of this coalition and the *Eminent Domain Reform Act of 2007/2008* in your coalition materials.

Please select a category:

- Organization
 Company
 Individual

Please complete the following information:

 Organization/Company (if applicable) Date

 Authorized Signature Name Title

 Street Address

 City State Zip

 Phone FAX

 E-Mail Address

**Please complete this form and return it to
 Californians for Eminent Domain Reform:**

If faxing: (916) 442-3510

If e-mailing: mcallahan@bickerassociates.com

For more information, please call (916) 443-0872