Council Meeting: May 6, 2008

SUBJECT: Positions on State and Local Ballot Measures for the June 2008 Election

REPORT IN BRIEF

This report provides an opportunity for the Sunnyvale City Council to take positions on state and local measures on the June 3, 2008 Ballot. This report summarizes the measures which are considered City business, provides the City's adopted policy on the issues (if any), the position of the League of California Cities (LCC) when appropriate, and a staff recommendation. **Consistent with other ballot measures, no public funds have been or will be used to campaign for or against these measures.**

Staff recommends the following positions on the ballot measures discussed in this report:

State Ballot Measures:
Proposition 98: Eminent Domain. Limits on Government Authority. Initiative Constitutional Amendment: **OPPOSE**
Proposition 99: Eminent Domain. Limits on Government Acquisition of Owner-Occupied Residence. Initiative Constitutional Amendment: **SUPPORT**

Local Ballot Measures:
None

BACKGROUND

Staff is providing this report to afford the Sunnyvale City Council an opportunity to take a public stand on state and local measures on the June 3, 2008 ballot. Staff's recommendations are generally based on existing City policies from documents such as the General Plan and the Legislative Advocacy Positions, and impact on City operations. Past positions of the Council also guide staff recommendations. New positions taken by the Council will become official policies of the City.

EXISTING POLICY

Goal 7.3C: Participate in intergovernmental activities, including national, state and regional groups, as a means to represent the City's interests, influence policy and legislation, and enhance awareness.

7.3C.1: Represent City policy in intergovernmental activities in accordance with adopted policy guidelines.

Council Policy 7.3.2 *Legislative Advocacy Positions* defines "City business" as all matters directly related to service delivery, or otherwise contributing to the City's operational success.

DISCUSSION

A brief analysis of each measure affecting City business follows, including a measure summary, staff analysis by the appropriate department regarding impact on City operations, fiscal impact, relevant City policy and staff recommendation. The Office of the City Attorney prepared an impartial analysis pursuant to Elections Code section 9280, and as directed by the City Council.

State Ballot Measures:

Proposition 98: Eminent Domain. Limits on Government Authority. Initiative Constitutional Amendment.

Staff Recommendation: **OPPOSE**

Measure Summary:

- Bars state and local governments from taking or damaging private property for private uses.
- Prohibits rent control and similar measures.
- Prohibits deference to government in property rights cases.
- Defines "just compensation."
- Requires an award of attorney fees and costs if a property owner obtains a judgment for more than the amount offered by the government.
- Requires government to offer to original owner of condemned property the right to repurchase property at condemned price when property is put to substantially different use than was publicly stated.

Analysis by the California Legislative Analyst:

This measure amends the State Constitution to (1) constrain state and local governments' authority to take private property and (2) phase out rent control. The measure also might 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.

The measure prohibits government from taking ownership of property to transfer it to a private party—such as a person, business, or nonprofit organization. In addition, government could not take property to use it 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 its oil or minerals). These restrictions on government's authority to take property also would apply to cases when government transfers the right to use or occupy property (but does not take ownership of it). 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.

Under the measure, government could continue to take property for facilities that it would own and use, such as new schools, roads, parks, and public facilities. Government could not take property for one purpose, however, and then use it for a different purpose unless it offered to sell the property back to its previous owner.

The measure 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.

The measure appears to limit government's authority to impose restrictions on the "ownership, occupancy, or use of property" if the restrictions were imposed "in order to transfer an economic benefit" from one property owner to other private persons. The range of government laws and programs that would be affected by these provisions is not clear and would be determined by the courts. Given the wording of the measure, however, programs such as mandatory inclusionary housing and condominium conversion relocation benefits might be prohibited.

<u>Summary of California Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:</u>
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. In these cases, government could continue to acquire these properties, but might need to pay somewhat more for them. This is because the measure increases the amount of compensation provided for 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 apply to many government plans for redevelopment, affordable housing, and public ownership of water or electric utility services. As a result of this reduced authority to take property, government might (1) buy fewer properties and have lower costs or (2) offer property owners more to purchase their properties and thus have higher costs.

The net fiscal effect of these potential changes in the number and price of properties acquired cannot be determined. Overall, staff estimate that many governments would have net increased costs to acquire property, but that the net statewide fiscal effect probably would not be significant.

It is difficult to estimate the fiscal impact of the measure's phase out of rent control and limitation of other programs that transfer economic benefits from property owners to private parties. In response to these provisions, governments might choose to change their policies in ways that do not increase their costs. For example, a government might repeal a mandatory inclusionary housing ordinance and not enact a replacement policy, or repeal the ordinance and enact land-use regulations that encourage the construction of lower-cost housing.

In other cases, conforming to the measure's provisions could result in new costs. For example, 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.

<u>City of Sunnyvale Staff Analysis:</u>
The measure contains provisions that could stop future water projects, destroy local land-use planning and erode environmental protections.

Proposition 98 could prohibit the acquisition of land and water through eminent domain to develop public water projects.

The definition of "private use" is a provision that would cripple land-use planning and environmental protections. This provision prohibits laws and regulations that "transfer an economic benefit to one or more private persons at the expense of the property owner." Since the courts have ruled that almost all land use decisions transfer economic benefit at the expense of some

property owner, the definition is limitless and would prohibit countless laws that protect our land, air, water, as well as laws that protect our neighborhoods and home values.

The measure would also remove renter protection laws, such as laws requiring the fair return of rental deposits and laws requiring 60-day notice before forcing tenants out of their housing.

Impact to City Services:

- Construction of state and local water projects will be precluded.
- Land use regulations and zoning decisions that preserve the environment and protect the public interest are at risk.
- New project approvals will be paralyzed or subject to endless lawsuits.
- Regulations intended to protect the environment will be eliminated.
- The enforcement of regulations intended to protect the public's health, safety and welfare are threatened.
- Cities would be financially at risk for most land use decisions.
- The measure would impact a wide-variety of tenant protection laws.
- The range of government laws and programs that would be affected by these provisions is not clear and would be determined by the courts; the measure could lead to the elimination of affordable housing ordinances such as inclusionary zoning, and could potentially affect housing impact fees, which help fund affordable housing.
- The measure will transfer to taxpayers the development costs of new roads, streets and parks.
- The measure imposes severe restrictions on urban revitalization projects.

Fiscal Impact:

Passage of Proposition 98 could have potentially devastating fiscal effects on Sunnyvale and its residents; many land use decisions could be legally challenged by either those promoting new development projects or those opposing new economic or housing developments. For example, a similar but less restrictive measure which passed in Oregon in 2004 (Proposition 37) has resulted in over *8,000* lawsuits statewide.

Another troubling aspect of Proposition 98 is that it could require local governments to pay for costs of public improvements necessitated by private development such as roads, streets, curbs and gutters, sewers, flood control improvements, traffic signals, street lights, parks, etc. (The local government would have to pay the developer to acquire such private land for public purpose due to the way Proposition 98 defines the transfer of private property to a public agency).

Elimination of the City's Inclusionary Housing Policies would create affordability barriers to households with very-low, low and moderate income, forcing those who work in Sunnyvale to reside in other cities with more affordable rental/ownership opportunities. Without affordable housing programs, the City may be required to provide sufficient housing opportunities for the very low, low and moderate income population by using City Funds instead of a developer's dedication of affordable units through the Below Market Rate Program.

League of California Cities Position: Oppose

Proposition 99: Eminent Domain. Limits on Government Acquisition of Owner-Occupied Residence. Initiative Constitutional Amendment.

Staff Recommendation: **SUPPORT**

Measure Summary:

- Bars state and local governments from using eminent domain to acquire an owner-occupied residence, as defined, for conveyance to a private person or business entity.
- Creates exceptions for public work or improvement, public health and safety protection, and crime prevention.

Analysis by the California Legislative Analyst:
This constitutional amendment limits state and local government's use of eminent domain in certain circumstances. Specifically, the measure prohibits 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.
- Use the property for a 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.

Summary of California Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

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 change significantly current government land acquisition practices.
In a very limited number of cases, however, this measure might result in government:

- Savings—because government could not acquire a home that the owner did not wish to sell.
- Costs—because government might pay more to buy a home than would have been the case if it could have taken the home using eminent domain.

The net fiscal effect of such actions would not be significant.

City of Sunnyvale Staff Analysis:
Proposition 99 prohibits government from taking homes to transfer to a private developer.

The prohibition would not apply if the acquisition is for a public work or improvement. The initiative would also not apply if the acquisition was to abate a nuisance, protect public health and safety from building, zoning or other code violations, prevent serious, repeated criminal activity, respond to an emergency, or remediate hazardous materials.

Sunnyvale's redevelopment agency eminent domain authority excludes residential property.

Impact to City Services:

- Will create a constitutional prohibition against the City taking owner-occupied homes for conveyance to a private party.

Fiscal Impact:
Proposition 99 contains none of the onerous provisions contained in Proposition 98 and should have no significant fiscal effects.

League of California Cities Position: Support

Local Ballot Measures:

None

FISCAL IMPACT

There is no fiscal impact to this report.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Adopt the following positions on the ballot measures:

   State Ballot Measures:
   Proposition 98: Eminent Domain. Limits on Government Authority. Initiative Constitutional Amendment: **OPPOSE**
   Proposition 99: Eminent Domain. Limits on Government Acquisition of Owner-Occupied Residence. Initiative Constitutional Amendment: **SUPPORT**

2. Adopt alternative positions on the ballot measures.
3. Take no action at this time.
4. Other action as directed by Council.

RECOMMENDATION

For the reasons stated in the staff analysis section of this report, staff recommends Alternative 1:

Alternative 1: Adopt the following positions on the ballot measures:
State Ballot Measures:
Proposition 98: Eminent Domain. Limits on Government Authority. Initiative Constitutional Amendment: **OPPOSE**
Proposition 99: Eminent Domain. Limits on Government Acquisition of Owner-Occupied Residence. Initiative Constitutional Amendment: **SUPPORT**

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