



AGENDA REPORT

Meeting Date: April 15, 2008
Item Number: F-15
To: Honorable Mayor & City Council
From: Cheryl Friedling, Deputy City Manager
Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS EXPRESSING OPPOSITION TO PROPOSITION 98 AND SUPPORT FOR PROPOSITION 99
Attachments:

1. Resolution
2. "Proposition 98 – A Planning and Zoning Nightmare"
3. "No on Prop. 98 – The Hidden Agendas Scheme that Threatens Our Ability to Build Traditional Public Works Such as Schools, Roads and Highways, and Airports"
4. "Yes on the Homeowners Protection Acts – No on the Hidden Agendas Scheme that Threatens Public Safety"
5. Comparison of Prop 98 & Prop 99

INTRODUCTION

Two constitutional amendments will appear on the June electoral ballot: Proposition 98 and Proposition 99. Proposition 98 is billed as 'The Rent Control Rollback;' Proposition 99 is the counter-initiative billed as 'The Homeowner Protection Act.'

DISCUSSION

While billed as rent control and eminent domain reform, Proposition 98 – if passed – would threaten the ability of local governments to effectively implement local land use planning, to keep communities safe and to protect the environment.

More specifically, the Proposition 98 initiative prohibits a public agency from regulating the use of private property if the regulation 'transfers an economic benefit' from the regulated property owner to another private owner. Nearly all traditional land use regulations economically benefit some properties while burdening others. As such, this provision could make unconstitutional all

regulation of land use, and could severely impact vital public works projects – including schools, roads, and transit projects.

A variety of broad-based organizations have mobilized in opposition to Proposition 98 and in support of Proposition 99. These organizations include the League of California Cities as well as several organizations representing seniors, homeowners, educators, business, labor, environmentalists and public safety organizations. These organizations have formed the ‘No 98/Yes 99’ campaign.

FISCAL IMPACT

The financial impacts associated with the passage of Proposition 98 are massive. While it is difficult to evaluate the initiative’s broad fiscal consequences, it is clear that it would result in increased costs to taxpayers, municipalities and other public agencies if passed by the voters. Costs would increase due to more expensive property acquisitions, additional litigation and jury awards, and delays in public works projects, among others.

RECOMMENDATION

Staff recommends that the City Council express opposition to Proposition 98 and that the City Council express support for Proposition 99, and that the use of the City’s name be authorized for use by the ‘No 98/Yes 99’ campaign.

Cheryl Friedling
Approved By



Attachment 1

Resolution

RESOLUTION NO. 08-R-

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS
EXPRESSING OPPOSITION TO PROPOSITION 98 AND SUPPORT FOR
PROPOSITION 99

WHEREAS, two constitutional amendment ballot measures, Proposition 98 and Proposition 99, 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 will threaten public safety, stymie local land use planning and impair our ability to protect the environment; and

WHEREAS, language in the initiative will also prohibit the passage of regulations, ordinances, land use and other zoning laws that enable local government to plan and protect communities; 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, and economy with a reliable and safe supply of water; 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 and Yes on Proposition 99 campaigns are represented by 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 who oppose Proposition 98.

Now, therefore, the Council of the City of Beverly Hills hereby resolves as follows:

Section 1. The City of Beverly Hills opposes Proposition 98 on the June 2008 ballot.

Section 2. The City of Beverly Hills supports Proposition 99 on the June 2008 ballot.

Section 3. The City of Beverly Hills authorizes the use of the City's name by the "No on Proposition 98" campaign in opposition to Proposition 98.

Section 4. The City of Beverly Hills authorizes the use of the City's name by the "Yes on Proposition 99" campaign in support of Proposition 99.

Section 5. The City Clerk shall certify to the adoption of the Resolution and shall cause the Resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

Adopted:

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



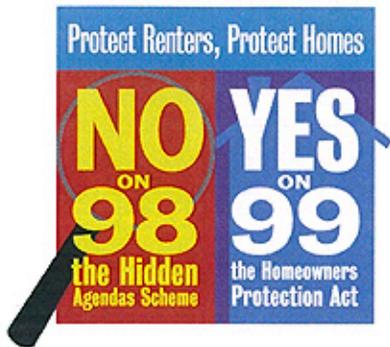
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

Attachment 2

"Proposition 98 – A Planning and
Zoning Nightmare"



PROPOSITION 98 ***A Planning and Zoning Nightmare***

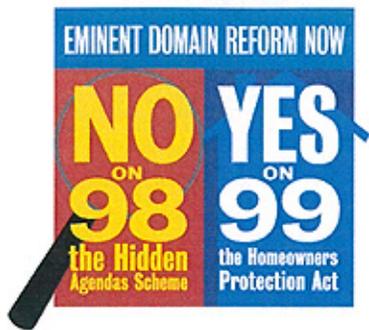
Buried in the definitions of Proposition 98 is a provision that will wreak havoc with local government planning and zoning decisions. Section 19(c)(3)(iii) of the measure prohibits laws and regulations that “*transfer an economic benefit to one or more private persons at the expense of the private owner.*” This broad language contains no exceptions for decisions to protect health and safety. Nor does it protect currently existing programs from attack.

Here are just a few examples.

- **Downtowns.** A local government decision to encourage development of its downtown could be attacked as creating an economic transfer to the downtown store owners at the expense of big box outlets that may want to open at the city’s periphery. ***But,*** a decision to permit the opening of a big box outlet could also be attacked by the downtown merchants as creating an economic transfer to the big box outlet at their expense.
- **Liquor Stores.** A local government decision to disallow liquor stores in certain residential areas could be attacked by the liquor stores as increasing residential property values at their expense. ***But,*** a decision to allow a liquor store could be attacked by the neighbors as transferring an economic benefit to the liquor store at the expense of their property values.
- **New Subdivision.** A decision to approve a new subdivision that will increase traffic significantly could be attacked by local neighbors as transferring an economic benefit to the developer as the expense of their property values. ***But,*** denial of the new subdivision could also be attacked by the developer as a transfer of economic benefit from it to the neighboring property owners.
- **Hillside Protection.** A local government decision to restrict development on steep hillsides could be attacked by the developer as an economic transfer from the hillside property to protect the views and values of the properties at the top of the hill. ***But,*** a decision to allow development on the hillside could also be attacked by the neighbors as an economic transfer to the developer that causes a reduction in their property values.

Attachment 3

**"No on Prop. 98 – The Hidden
Agendas Scheme that Threatens Our
Ability to Build Traditional Public
Works Such as Schools, Roads and
Highways, and Airports"**



No on Prop. 98 – the Hidden Agendas Scheme that Threatens Our Ability to Build Traditional Public Works Such as Schools, Roads and Highways, and Airports

Prop. 98 Makes ALL Property Acquisitions More Complicated and Costly.

Prop. 98 would make major changes to laws governing use of property, including use of eminent domain and regulation of land use. And, despite proponents claims to the contrary, **Prop. 98 would significantly impact ALL eminent domain acquisitions, even if the property acquired is not transferred to a private party. That means that countless public works projects – including school, roads, and airports could be impacted.** Here's how:

All property acquisitions will be more expensive. Prop. 98 changes the definition of just compensation to include the property owner's attorneys fees if the jury awards even \$1 more than the public agency's offer. It also includes elements not currently recognized such as temporary business losses in the calculation of "just compensation." Additionally, Prop. 98 "constitutionalizes" relocation expenses, thereby abrogating current statutory limitations on the type and amount of relocation costs which must be paid. The new definition would override hundreds of cases decided over the years defining just compensation and make it necessary to have more frequent recourse to the courts to interpret the meaning of the new constitutional provision. This means fewer settled cases, more trials and lengthier process.

Acquiring immediate possession of property made more complicated. Under existing law, a public agency may deposit the estimated just compensation and gain immediate possession of the property. Once the deposit is withdrawn, the property owner is limited to challenging what constitutes "just compensation." But under Prop. 98, the property owner will also be able to challenge whether the public agency has a right to take the property. This means that it would be possible for a public agency to take immediate possession of the property and for a court to subsequently rule that the public agency had no underlying right to acquire the property at all, and order the return of the property and damages caused by any demolition or construction that occurred. **The inability or unwillingness of public agencies to risk proceeding on the basis of an order of prejudgment possession will mean that public projects will take longer to complete and cost more as costs will rise during the delay.**

Balance of power shifted to courts in trials. When a public agency makes findings explaining the need to exercise eminent domain, those findings are entitled to a strong presumption of validity when challenged in court. In addition, the court is limited to reviewing the administrative record that was before the public agency. Prop. 98 changes this balance of power between the legislative and judicial branches of government by removing the presumption of validity and allowing the property owner to introduce evidence to the court that was not previously a part of the administrative record before the public agency at the time the decision to acquire the property was made. These changes will make eminent domain trials more complex, longer, more expensive and more risky for the condemning agency.

Increases Liability Over Public Works Construction and Expansion Projects

Unrelated to eminent domain, the initiative prohibits a public agency from regulating the use of private property if the regulation "transfers an economic benefit" from the regulated property owner to another private property owner. Nearly all traditional land use regulations economically benefit some properties while burdening others. Read literally, this provision would make unconstitutional virtually all regulation of land use. So, neighbors who didn't want to have a train station built near their homes could sue saying that because of noise, traffic, etc., the train station would transfer an economic benefit from them (by lowering property values) to the neighbors of the site that wasn't picked.

Attachment 4

**"Yes on the Homeowners Protection
Act – No on the Hidden Agendas
Scheme that Threatens Public Safety"**



YES on the Homeowners Protection Act

NO On the Hidden Agendas Scheme That Threatens Public Safety

NO on the Hidden Agendas Scheme that Threatens Public Safety

There is another, dangerous measure headed for the June 2008 Ballot that would threaten the ability of local police and sheriffs' departments to address public safety issues in local communities. Dubbed the "Hidden Agendas Scheme", this measure would prohibit government from taking over crime-infested properties (such as drug labs). It also would prohibit the adoption of laws and regulations that "transfer an economic benefit to one or more private persons at the expense of the private owner." Since the courts have ruled that virtually all land-use regulations are likely to impose costs on the affected party, while transferring economic benefits to another private party, this prohibition would negatively impact the police powers of government. **Shockingly, this measure contains NO exemption for actions intended to protect the public's health and safety!**

Many times, local police and sheriffs' departments work with local governments to address public health and safety problems through regulations before a more serious issue arises. This initiative would prevent those regulations from being enacted. Local and state governments would have no power to regulate or take over properties that have become blighted and crime infested.

The Hidden Agendas Scheme would prevent the enactment of laws and regulations intended to protect the public's health, safety and welfare, including:

- × Regulations to limit the operating hours of liquor stores, or bars and nightclubs in residential areas, even if the bar or nightclub had a history of noise, litter, and loitering.
- × Regulations on the number or the types of businesses that are permitted near homes or schools. For example, a local jurisdiction may want to limit the concentration of liquor stores in an area because of problems with crime.
- × Regulations or actions intended to eliminate the conditions that contribute to crime, such as revitalizing areas rife with blight, absentee landlords and slums, and acquiring properties that have a history of criminal activity.

YES on Proposition 99 - The Homeowners Protection Act

Also on the June 2008 ballot is a real eminent domain reform measure that will constitutionally protect homeowners, without the hidden agendas and adverse consequences of Prop. 98:

- ✓ **Proposition 99 – The Homeowners Protection Act – will prohibit the government from using eminent domain to take a home to transfer to a private developer.**

Prop. 99 is supported by a broad collation of homeowners, business, labor, cities, counties and environmentalists who want straightforward eminent domain reform that gets right to the heart of the infamous *Kelo* decision.

Attachment 5

Comparison of Prop 98 & 99

COMPARISON OF PROP. 98 (Rent Control Rollback) & PROP. 99 (Homeowner Protection Act)

PROVISIONS	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
EMINENT DOMAIN FOR PRIVATE DEVELOPMENT	<ul style="list-style-type: none"> ▪ Redefines “public use” to prohibit taking any property to convey to private party, including homes and commercial properties. 	<ul style="list-style-type: none"> ▪ Constitutional prohibition on taking owner-occupied homes for conveyance to private party.
RENT CONTROL	<ul style="list-style-type: none"> ▪ Prop. 98 would abolish rent control laws in California. ▪ More than 85% of funding to qualify Prop. 98 comes from mobile home and apartment owners and associations that represent them. 	<ul style="list-style-type: none"> ▪ No changes to state or local rent control laws or ordinances.
IMPACT ON AFFORDABLE HOUSING AND TENANT PROTECTION LAWS	<ul style="list-style-type: none"> ▪ According to Western Center on Law and Poverty, Prop. 98 will invalidate inclusionary housing requirements that require a certain number of units to be affordable to low-income families. ▪ According to Western Center on Law and Poverty, Prop. 98 will likely eliminate tenant protection laws, including: <ul style="list-style-type: none"> ○ Laws governing return of rental deposits. ○ Tenant notice periods, such as 60-day notice requirement prior to forcing renters out of unit. ○ Protections regarding terminations of tenancy. 	<ul style="list-style-type: none"> ▪ No changes to laws dealing with tenant protections and or affordable housing requirements
EMINENT DOMAIN FOR TRADITIONAL PUBLIC WORKS PROJECTS	<ul style="list-style-type: none"> ▪ Prop. 98 includes provisions that will increase taxpayer costs and cause delays for traditional public works projects like schools, roads, bridges and other projects. ▪ Section 19(b)(5) changes constitutional definition of “just compensation”, adding new requirements that will make all property acquisitions vastly more expensive, including required payments for attorneys fees if jury awards even \$1 more than agency offered. 	<ul style="list-style-type: none"> ▪ Does not change or limit acquisitions for traditional public works like schools, roads, bridges and other projects.

<p>PROVISIONS</p>	<p>Prop. 98 (Rent Control Rollback)</p> <ul style="list-style-type: none"> ▪ Contrary to claims by opponents, buried in definitions section of initiative are new constitutional changes that would prohibit certain regulatory actions regulating use of real property. ▪ Section 19(b)(3) prohibits <i>“regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer economic benefit to one or more private persons at the expense of the property owner.”</i> ▪ According to an analysis conducted by one of the state’s leading environmental law firms, Shute, Mihaly & Weinberger, “nearly all regulation provides an economic benefit to some private person. Accordingly, although the Initiative is ambiguous in several significant areas, a court could interpret it to restrict a host of environmental and land use regulations...” 	<p>Prop. 99 (Homeowner Protection Act)</p> <ul style="list-style-type: none"> ▪ No changes to laws surrounding regulatory takings.
<p>REGULATORY TAKINGS PROVISIONS</p>	<ul style="list-style-type: none"> ▪ Prop. 98 changes existing law and would wreak havoc on local land-use planning and environmental protections. ▪ According to the Shute, Mihaly & Weinberger analysis, “there is a substantial risk... that (the initiative) would be broadly construed to prevent the enforcement of many existing environmental regulations as well as the adoption of new laws and policies to protect the environment”. ▪ SMW legal analysis also warns that Prop. 98 “appears to impair a broader class of environmental protections than did Proposition 90.” ▪ Unlike Proposition 90 (which required compensation for regulations that caused economic damages), Proposition 98 outright <i>prohibits</i> such laws and regulations that “transfer economic benefits”. 	<ul style="list-style-type: none"> ▪ No changes to environmental laws or regulations.
<p>IMPACT ON ENVIRONMENTAL PROTECTIONS AND LAND-USE REGULATION</p>		

<p>PROVISIONS</p>	<p>Prop. 98 (Rent Control Rollback)</p> <ul style="list-style-type: none"> ■ Prop. 98 would prohibit the use of eminent domain to acquire land and water to develop <u>public</u> water projects. ■ The Association of California Water Agencies warns Prop. 98 could “<i>derail efforts to build the infrastructure and other water projects we need to ensure an adequate supply of safe, clean drinking water.</i>” ■ The Western Growers Association warns Prop. 98 could “<i>block future development of surface water storage and conveyance.</i>” ■ That’s because Prop. 98’s proposed amendment to Section 19(a) of the constitution prohibits the taking of private property for “private use.” Proposed section 19(b)(3)(ii) defines “private use” as including: <i>transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner; (Emphasis added.)</i> ■ Since virtually all elements of a public water project involve the “consumption of natural resources”, Prop. 98 would prohibit property acquisitions for public water projects. 	<p>Prop. 99 (Homeowner Protection Act)</p> <ul style="list-style-type: none"> ■ No change and no impact on public water projects or any other traditional public works project.
<p>PUBLIC HEALTH AND SAFETY EXEMPTIONS</p>	<ul style="list-style-type: none"> ■ Changes to Section 19(b)(3) contain <u>no exceptions for actions taken to protect health and safety</u>. ■ Land-use decisions (such as restrictions on building in unsafe areas, or zoning decisions to protect residents from undesirable or unsafe businesses) could be ruled prohibited under Proposition 98. 	<ul style="list-style-type: none"> ■ Measure preserves ability to protect public health and safety. ■ Prop. 99 contains specific public health and safety exemptions to eminent domain restrictions. Language permits the use of eminent domain to protect public health and safety; preventing serious and repeated criminal activity; response to an emergency; and to remedy environmental contamination. <i>Proposed Sec 19(i).</i>

PROVISIONS	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
CHANGES TO BALANCE OF POWER BETWEEN JUDICIARY AND LEGISLATIVE BRANCHES OF GOVERNMENT	<ul style="list-style-type: none"> ▪ Prop. 98 would shift power from locally elected legislative bodies to the courts by: (a) mandating that courts essentially ignore the local governments' legislative deliberations in all eminent domain proceedings when cases are challenged in court, and (b) permitting the introduction of new evidence in court cases that was never presented to the public agency. 	<ul style="list-style-type: none"> ▪ No changes to balance of power.
PROVISIONS DEALING WITH OTHER MEASURE ON SAME BALLOT	<ul style="list-style-type: none"> ▪ NONE 	<ul style="list-style-type: none"> ▪ Should Prop. 99 pass with more votes than Prop. 98, Proposition 98 would be nullified.
TIMING OF APPLICATION	<ul style="list-style-type: none"> ▪ Regulatory takings provisions in Prop 98 could apply to EXISTING laws and regulations, as well as future laws. ▪ Provisions abolishing rent control apply to future rent control laws and rent control protections abolished when unit is vacated. 	<ul style="list-style-type: none"> ▪ Applies to future eminent domain actions.

Paid for by No 98/Yes 99, Californians to Stop the Prop 98 Attack on Renters and in Support of Prop 99, the Homeowners Protection Act. A committee of seniors, homeowners, taxpayers, renters, educators, business, labor, environmentalists, local government and public safety, League of California Cities (Non-Public Funds) and Californians for Neighborhood Protection: Yes on Prop 99, No on Prop 98, a sponsored committee of conservationists and labor
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