

Cities in California push own measure on eminent Domain

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SACRAMENTO – Fearing tighter controls, California cities have offered to sponsor a statewide ballot measure that would strip away most of their power to seize homes standing in the way of new commercial development.

The draft proposal circulating in the Capitol also seeks to add another layer of protection for small businesses by making it more expensive for local governments to shutter mom-and-pop shops and replace them with bigger tax-generators: malls, hotels or big-box retailers.

The proposed constitutional amendment has been endorsed by leading environmentalists and has the qualified support of a powerful conservative homeowners' advocate as well as the Republican leader of the state Senate.

Democratic leaders have not yet signed on, but they agree with city officials that the Legislature should shape a measure and place it on the ballot rather than leaving it to an initiative driven by special interests.

Local governments and their allies spent about \$14.2 million last year to defeat a far-reaching ballot proposition that could have severely curtailed eminent domain authority.

Worried that the close call did not put an end to voter anger over some high-profile, controversial land grabs, cities were determined to offer voters a palatable deal on the next ballot.

“We take the issue of eminent domain abuse seriously,” said Chris McKenzie, executive director of the League of California Cities. “During last year's campaign, we promised voters we would do this.”

The league also has filed a separate proposed constitutional amendment that would limit local governments' use of eminent domain, or condemnation. McKenzie said the initiative, which would need nearly 700,000 signatures of registered voters, is an insurance policy in case talks collapse in the Legislature. A more restrictive constitutional amendment has been submitted by the California Farm Bureau Federation and Howard Jarvis Taxpayers Association.

Key figures, including some politicians who are absolutists when it comes to protecting private property, aren't impressed with the cities' move.

“There's been no change in the battle lines,” said Sen. Tom McClintock, a Thousand Oaks Republican who is carrying his own constitutional amendment, SCA 1.

McClintock demands equal protections for business. “It really doesn't matter whether they take the roof over your head or the shop that pays for the roof over your head,” he said.

City officials say their draft compromise includes safeguards from overzealous redevelopment agencies, cities and counties. For example, the proposal would erect a significant financial barrier by requiring cities to pay at least 125 percent of the fair market value to small businesses, classified as employing no more than 25 people.

“It should be cumbersome for locals to engage business in eminent domain,” said supporter Ken Willis, an Upland city councilman and president of the League of California Homeowners.

However, Willis said local governments need to preserve some condemnation power to tackle drug-infested, run-down neighborhoods.

“You can leave it to grow or you can cure it,” Willis said of the dilemma before cities as they try to rejuvenate dilapidated blocks.

The cities' proposal spells out that owner-occupied homes cannot be condemned and the property put to business use, but it still leaves rentals vulnerable.

Local governments could still condemn homes or private land for public benefit, such as roads, schools, fire stations and hospitals, under all of the pending proposals.

Concern over eminent domain burst into public consciousness in 2005 when a sharply divided U.S. Supreme Court upheld a Connecticut city's right to evict middle-class homeowners to make way for a waterfront project. *Kelo v. City of New London* became a rallying cry in a nationwide campaign to rein in eminent domain.

In California, the Legislature failed to reach a compromise after months of wrangling. That left an opening for Howard Rich, a wealthy New York real estate broker who bankrolled Proposition 90 on the November 2006 ballot.

While protecting homeowners and businesses, the initiative also was a frontal assault on land-use policy affecting anything from apartments to landfills, opponents said. Opponents of Proposition 90 outspent supporters, \$14 million to \$4 million.

Although the measure was defeated 53 percent to 47 percent, it convinced local governments that voter backlash was real.

Some environmental groups helped finance the opposition campaign to Proposition 90 and are supportive of the new city-backed proposal.

One key area for negotiation: two types of property – farms and churches – have yet to be offered protections under the cities' plan.

“Public agencies should not take productive farmland for private use,” said John Gamper, a farm bureau lobbyist.

Gamper said he is not impressed with the cities' proposal. Homes are not frequent targets and cities eyeing more tax revenues are not likely to balk at paying more to condemn businesses.

“It's going to be a feel-good bill that doesn't do much,” Gamper said.

Some supporters say local governments already have a hard time condemning farms because it's hard to conclude that fields and orchards are “blight” – a key stipulation before land can be condemned. The last high-profile case cited by the farm bureau was in 1993.

Churches are a touchy issue given the separation of church and state, tax status and other issues. Supporters of the ballot measure are looking for legislative guidance before writing in protections for church property.

Gov. Arnold Schwarzenegger has not taken a position on the new proposal, but he opposed Proposition 90. The Republican governor's signature is not required to place a constitutional amendment on the ballot. However, two-thirds of the Legislature must approve.

In presenting their case for tighter controls, McClintock and others come armed with a long list of small-business owners shut down by cities only to have their property handed to powerful developers.

In San Diego's historic Gaslamp Quarter, a cigar shop was forced out in favor of a hotel. In Oakland, city officials booted out a tire shop. In Cypress, a church was forced to negotiate a land swap because it owned property coveted by a major retailer.

Attorney Tim Sandefur, a leading defender of property rights, is not swayed by the offer to protect owner-occupied homes.

“Homes are rarely condemned. Usually it's small businesses,” Sandefur said. “It's hypocritical. It recognizes that these takings (of businesses) are unfair and yet it still tries to get away with it.”

Jon Coupal, president of the Howard Jarvis Taxpayers Association, sees the proposal as a positive move. Coupal is not officially part of the coalition, but he has been consulted.

“If there were ironclad constitutional protection for homeowners, that would be something we would support,” Coupal said.

Some Republican lawmakers have expressed interest in tougher restrictions, but at least one GOP leader gave a positive review to the cities' proposal.

“Nobody's got it in concrete yet,” said Senate Republican leader Dick Ackerman of Tustin. “But the direction they're going is good.”