

**FULL TEXT OF MEASURE S
CITY OF DANA POINT**

ORDINANCE NO. 06-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, RELATING TO THE LIMITATION OF THE USE OF EMINENT DOMAIN

The people of the City of Dana Point, California, do ordain as follows:

Section 1. Title. This Ordinance shall be known as the "City of Dana Point Eminent Domain Limitation Ordinance."

Section 2. Effective Date. This Ordinance shall go into effect ten (10) days after the date on which the election results are declared by the City Council.

Section 3. Purpose. This Ordinance is adopted to achieve the following purposes, among other purposes, and the people hereby direct that the provisions of this Ordinance be interpreted in order to accomplish these purposes:

- A. The people find and declare that the arbitrary use of eminent domain by local government agencies for the benefit of other private property owners hampers economic development;
- B. The people find and declare that adopting a clear policy concerning the City's use of eminent domain will provide certainty for City property owners and encourage economic investment;
- C. The people desire to remove impediments to vibrant economic growth within the City and to also remove the threat of eminent domain occurring in arbitrary circumstances where private parties are the beneficiaries of the City's use of eminent domain;
- D. The people find and declare that the arbitrary use of eminent domain by cities and local agencies for the purpose of transferring private property for the benefit of other private property owners is not in the spirit of the United States Constitution;
- E. The people find and declare that the above-mentioned purposes and the protection of private property in Dana Point will be best served by having this Ordinance approved by the voters so that the City or the City Council is prohibited from repealing or amending Dana Point Municipal Code Chapter 4.30 without having to submit such repeal or amendment to the voters for their approval.

Section 4. Chapter 4.30 of the Dana Point Municipal Code is hereby reenacted as follows:

Chapter 4.30 EMINENT DOMAIN

Section 4.30.010 Limitations on the Use of Eminent Domain.

Neither the City of Dana Point nor any City-Affiliated Agency may exercise the power of eminent domain to acquire any property from any private owner thereof, without such owner's consent, where the purpose of the acquisition at the time of acquisition is the intended conveyance of the property so acquired to any other private party, for the conduct of any for-profit commercial activity.

As used in this Section, the following terms shall have the following ascribed meanings:

"Owner" means the owner of the fee title interest in the property to be acquired, as shown on the last equalized assessment roll, or other more current proof of vesting the City may have.

"Property" shall mean any interest in real or personal property otherwise subject to acquisition through the use of eminent domain.

"City-Affiliated Agency" shall mean the City of Dana Point and/or any other entity possessing the power of eminent domain, the governing board of which is solely composed of, or is solely appointed by, the members of the City Council of the City of Dana Point.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The people hereby declare that they would have approved this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. Competition Measures.

A. In the event that another ballot measure (hereafter, "competing initiative") appears on the same ballot as this Ordinance which competing initiative seeks to adopt or impose any Municipal Code provisions that differ in any regard to, or supplement, those contained in this Ordinance, the voters hereby express and declare their intent that if both the competing initiative and this Ordinance receive a majority of votes cast, and if this Ordinance receives a greater number of votes than the competing initiative, then this Ordinance shall prevail in its entirety over the competing initiative without regard to whether specific provisions of each measure directly conflict with each other. Under these circumstances, the competing initiative shall have no force or effect and shall be void.

B. In the event that both the competing initiative and this Ordinance receive a majority of votes cast, and the competing initiative receives a greater number of votes than this Ordinance, then this Ordinance shall be deemed to be complementary to the competing initiative. To this end, and to the maximum extent permitted by law, the provisions of this Ordinance shall be fully adopted except to the extent the specific provisions contained in each measure are deemed to be in direct conflict with each other on a "provision by provision" basis pursuant to *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978.

Section 7. Repeal, Alteration, Modification, Amendment Requires Voter Approval. All amendment or proposed repeals of the provisions contained in this Ordinance shall only become effective when approved by the voters.

Section 8. Codification. Upon the Effective Date of this Ordinance provided in Section 2, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this Ordinance in the City's Municipal Code.

**IMPARTIAL ANALYSIS BY CITY ATTORNEY
MEASURE S**

Dana Point Municipal Code Chapter 4.30 (entitled "Eminent Domain") prohibits the City and any "City Affiliated Agency" from exercising the power of eminent domain to acquire property from any private owner, without the owner's consent, where the purpose of such eminent domain acquisition at the time of the acquisition is the intended conveyance of the property to any other private party, for the conduct of any commercial for-profit activity. As used in Chapter 4.30, a "City Affiliated Agency" means the City of Dana Point and/or any other entity possessing the power of eminent domain, the governing board of which is composed of or is solely appointed by the members of the City Council of the City of Dana Point. Chapter 4.30 was added to the Dana Point Municipal Code on October 12, 2005 by City Council Ordinance No. 05-07.

If this measure is adopted, then Chapter 4.30 of the Dana Point Municipal Code would be reenacted by the voters. This measure does not alter the substantive provisions of Chapter 4.30. This measure states that it may be amended or repealed only by a vote of the people; as a result, if this measure is adopted then the City Council would be required to obtain voter approval to amend or repeal Chapter 4.30. If this measure is not adopted, the City Council would not be required to obtain voter approval to amend or repeal Chapter 4.30.

This measure states that it will take precedence over any competing ballot measures. This measure further provides that if this measure and another competing measure each receive a majority of votes cast, but this measure receives more votes than the competing measure, the voters intend that this measure will prevail in its entirety. In contrast, if both receive a majority of votes cast, but the competing measure receives more votes, then this measure will be adopted except for any provisions in direct conflict with the competing measure.

ARGUMENT IN FAVOR OF MEASURE S

Last year, the Dana Point City Council passed an Ordinance that would restore homeowners' rights threatened by the U.S. Supreme Court's decision in the infamous *Kelo* case. That decision allows cities to use their power of "eminent domain" to take real property from rightful owners and turn it over to private developers. But under Dana Point's new Ordinance, this outrageous practice is banned. Other cities, such as Anaheim, have adopted similar laws.

Without the victory of this Ballot Measure, a future Dana Point Council could change the Ordinance, lift the ban, and under the *Kelo* decision, use eminent domain to take private real property away from owners and turn it over to developers simply to get more tax revenue for the City.

We don't want to see that happen in Dana Point! Government power should not be used to trample on property rights. By voting for Measure S, the City's ban on abuse of eminent domain for private-to-private transfers will be greatly strengthened, and can only be overturned by a vote of the people themselves.

Measure S stops eminent domain abuse! Please vote Yes on Measure S!

s/ Jim Lacy
Councilmember

s/ Lara Anderson
Mayor

s/ Russell S. Chilton
Mayor Pro Tem

s/ Diane L. Harkey
Councilmember

s/ Wayne Rayfield
Councilmember

No argument against this measure was submitted