

**IMPARTIAL ANALYSIS BY CITY ATTORNEY
MEASURE W**

This Measure, if approved, will amend the City Charter to prohibit the City of Newport Beach and/or any City-Affiliated Agency from exercising the power of eminent domain to acquire real property, without the owner's consent, for the sole purpose of transferring the property from one person to another in order to further private economic development. The "Owner" of the property is defined as the owner of the fee title interest in the property. A "City-Affiliated Agency" is defined as any 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 Newport Beach.

State law currently imposes restrictions upon the use of eminent domain by requiring that eminent domain may only be used to take property if it is necessary for a "public" use and just compensation is awarded. In a widely reported decision last year, the United States Supreme Court upheld a Connecticut law that allows local governmental entities to exercise the power of eminent domain for so-called "economic development" purposes. Such use of the condemnation power is designed to put property in the hands of private parties who will put it to what the local governmental entities consider to be more economically beneficial uses. *Kelo v. City of New London* 125 S.Ct. 2655 (2005).

The proposed measure would ensure that the City and City-Affiliated Agencies would not exercise the power of eminent domain for the sole purpose of transferring the property from one person to another in order to further private economic development.

s/ Robin L. Clauson,
City Attorney

The above statement is an impartial analysis of Measure W. If you desire a copy of the measure, please call the City Clerk's office at 949-644-3005 and a copy will be mailed at no cost to you. The information is also available on the City's website: <http://www.city.newport-beach.ca.us>.

ARGUMENT IN FAVOR OF MEASURE W

Measure W guarantees that future Newport Beach city councils will never seize your property in order to benefit a private developer.

Americans were outraged by the 2005 Supreme Court decision *Kelo vs. New London*, in which the court allowed governments to take private property by eminent domain for purposes of private economic development. Examples of this abuse of power exist here in Orange County where nearby cities have attempted to take church property for big box retailers or low income housing developments. In San Diego, private businesses were closed and now stand vacant as the proposed "economic developments" never occurred. Newport Beach residents are justifiably concerned about the erosion of private property rights by government intrusion. This measure ensures eminent domain abuse will not happen in Newport Beach.

The Newport Beach City Council took a strong stand for private property rights by enacting an ordinance prohibiting the use of eminent domain for private economic development. This charter amendment ensures that future city councils cannot reduce this protection.

Eminent domain is appropriate for legitimate public projects like roads, schools, public facilities, utility rights of way and the like. This measure does not limit legitimate eminent domain. But government should not take one person's property for another's economic gain. Join us in standing up for private property rights!

s/ Keith D. Curry
Councilmember, District 7

s/ Leslie Daigle
Councilmember, District 4

s/ Michael F. Henn
Newport Beach Planning Commissioner

s/ Steven B. Frates
Senior Fellow, Rose Institute of State and Local Government

s/ Don Regan
Past President, Newport Beach Taxpayers Association

No argument against this measure was submitted