



# Memorandum

**TO:** RULES COMMITTEE

**FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** September 21, 2006

Approved

*Deanne Fabre*

Date

*9/22/06*

**SUBJECT: APPROVE CITY POSITIONS ON THE NOVEMBER 2006 STATEWIDE GENERAL ELECTION BALLOT -- PROPOSITIONS 83 THROUGH 90**

## RECOMMENDATION

Approve the recommended City positions for Propositions 83 through 90 on the November 2006 Statewide General election ballot. Individual ballot proposition summaries, text, and analyses from the Legislative Analyst's Office can be reviewed on the Secretary of State's website at [www.ss.ca.gov](http://www.ss.ca.gov) or can be reviewed at the City Clerk's Office. Please note that the City Council voted to support Propositions 1A through 1E, the infrastructure, housing and school construction bond measures at their August 29, 2006 meeting. A one-week turnaround to the City Council is requested so that the information can be made available in a timely manner.

### Proposition

### Recommended City Position

- |                                                                                                    |             |
|----------------------------------------------------------------------------------------------------|-------------|
| 83 Sex Offenders. Sexually Violent Predators. Punishment. Residence Restrictions and Monitoring.   | Support     |
| 84 Water Quality. Safety and Supply. Flood Control Natural Resource Protection. Park Improvements. | Support     |
| 85 Waiting Period and Parental Notification Before Termination of Minor's Pregnancy.               | Oppose      |
| 86 Tax on Cigarettes.                                                                              | Support     |
| 87 Alternative Energy. Research. Production., Incentives. Tax on California Oil Producers.         | No Position |
| 88 Education Funding. Real Property Parcel Tax.                                                    | No Position |

RULES COMMITTEE

09-21-06

Subject: Approve City Positions on the November 2006 Statewide General Election Ballot –  
Propositions 83-90

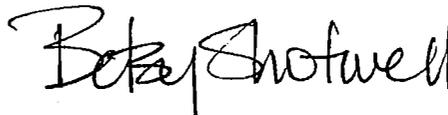
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89 Political Campaigns. Public Financing. Corporate Support  
Tax Increase. Campaign Contribution and Expenditure  
Limits.

90 Government Acquisition, Regulation of Private Oppose  
Property.

**COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the Budget Office, Environmental Services Department, the Housing Department, Parks, Recreation and Neighborhood Services, Planning, Building and Code Enforcement, the Police Department, Public Works, the Redevelopment Agency, the Transportation Department, and the City's Legislative Representative in Sacramento.



BETSY SHOTWELL

Director, Intergovernmental Relations

For more information contact: Betsy Shotwell, Director of Intergovernmental Relations at (408) 535-8270.

## Proposition 83 - Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions And Monitoring. Initiative Statute.

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*What's the issue the proposition is trying to resolve?*

Current California law bars parolees convicted of specified sex offenses against a child from residing within one-quarter (1,320 feet) of a public or private K-12 school. If the parolee is identified as *high-risk* by the California Department of Corrections and Rehabilitation (CDCR), then they can not be housed within one-half mile (2,640 feet) of a K-12 school.

In response to the alleged molestation and murder of nine-year-old Jessica Lunsford of Florida by a sex offender in 2005, Proposition 83 has been placed on the California November general election ballot. The Proposition proposes to increase penalties for sex offenders and prohibit residence near public or private schools and or parks.

*How would this proposition resolve the issue?*

Proposition 83 proposes to broaden the definition of certain sex offenses, provide longer penalties for specified sex offenses, and limit registered sex offenders from living within 2,000 feet (about two-fifths of a mile) of any school or park. In addition it would require Global Positioning System (GPS) monitoring of individuals who are convicted of a felony sex offense (that requires registration) while they are on parole and for the remainder of their lives.

*How would the passage of this proposition affect San José?*

Although Proposition 83 has many good provisions, such as enhancing penalties for violent and habitual sex offenders, it also has serious drawbacks and raises concern for local law enforcement as explained in the analysis below. These areas of concern will have significant impacts on police personnel deployment and its budget. The following highlights the concerns identified by the City Administration.

### Restricting Where Parolees Can Live

Current law bars parolees convicted of specified sex offenses against a child from residing within one-quarter or one-half mile (1,320 or 2,640 feet, respectively) of a school. The longer distance is for those parolees identified as high risk to re-offend by the California Department of Corrections and Rehabilitation (CDCR).

Proposition 83 would prohibit any person required to register as a sex offender from living within 2,000 feet (about two-fifths of a mile) of any school or park. The longer current law restriction of one-half mile (2,640 feet) for specified high-risk sex offenders on parole would remain in effect. In addition, the measure authorizes local governments to further expand these residency restrictions.

**Impact:** Research from the Iowa County Attorneys Association (ICAA) shows that there is no correlation between residency restrictions and reducing sex offenses against children or improving the safety of children. As also noted in the ICAA statement, 80-90 percent of sex



crimes against children are committed by a relative or acquaintance who has a prior relationship with the child.

The Police Department is concerned that the proposition's permanent restriction on where registered sex offenders can live will force more sex offenders to either register as transient because registrants will not be able to find a place of residence that complies with the 2,000 foot residence restriction in urban settings like San Jose, or fail to register at all in order to avoid the effect of the restriction. An analysis by the City of San José showed that the placement of sex offenders would be severely limited due to the residence restrictions. Police will no longer be able to conduct compliance checks (location unknown) on sex offenders who register as transient if they comply with their 30 day registration requirement. In addition, the residence restriction may well provide further incentives for nonregistration and may well increase the number of registrants residing in more rural areas where law enforcement agency resources are more limited. Finally, since sex offender registration in California is a lifetime requirement, there are many registrants who may be displaced from family environments that provide social support and stability even though they have complied and have not re-offended for many years.

#### Require GPS Devices for Registered Sex Offenders

Persons convicted of a felony sex offense that requires registration and have been sent to prison would be monitored by GPS devices while on parole, and also for the rest of their natural lives.

**Impact:** The Legislative Analyst's Office (LAO) analysis on Proposition 83 notes that this proposition would result in additional costs for the GPS equipment, as well as for supervision staff to track offenders in the community. Additionally, according to the LAO, "because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from parole supervision, it is unclear whether local governments would bear some of the long term costs."

If the courts or the Legislature determines that local law enforcement agencies are responsible for administering GPS tracking for all felony sex offenders after they complete parole, the administrative burden on local governments will be severe. Currently, there are approximately 2,300 registrants in the City of San José. Although all sex offenders would not qualify for GPS monitoring, this provision could potentially amount to a large drain on personnel. Additionally, it is unknown if the State would pay for the needed equipment and administrative costs.

#### *Staff's Recommended position:*

Staff recommends support of Proposition 83 because it increases penalties for sex offenders, but has concerns about the cost and administrative burden that the lifetime residency restrictions and GPS tracking requirements will place on local governments.

In addition to Proposition 83, the City supports SB1128 (Alquist), the "Sex Offender Punishment, Control and Containment Act of 2006". Among its' many provisions, SB 1128 seeks to increase the prison term of child rape to 25 years, expand the Megan's Law database, toughen penalties for child pornography and Internet predators, ensures police use on-line decoys to catch Internet predators, discourage prosecutors from offering plea bargains in sex offense cases, gives state and local officials a new system to monitor dangerous parolees, keep sex offenders away from parks, schools and other places where vulnerable populations congregate. Another bill, sponsored by Senator Speier, SB 1178, requires all registered sex offenders to

undergo a risk-assessment, and if, assessed as a high risk for re-offending, to be electronically monitored while on probation or parole. Both SB 1128 and SB 1178 were signed into law by the Governor on September 20, 2006.

The League of California Cities notes in a staff report that, “while Proposition 83 would trump similar provisions in the legislative measures, it has been speculated that if both the legislative measures and Proposition 83 pass, there may be some chaptering issues and it may ultimately be up to the courts, or the Legislature, to decide which provisions of each become law<sup>1</sup>.”

*Who are the proposition’s supporters and opponents?*

Supporters include Governor Arnold Schwarzenegger, Gubernatorial Candidate Phil Angelides, Senator George Runner, Assemblywoman Sharon Runner, the California District Attorneys Association, the California State Sheriffs Association, the California Police Chief’s Association and the League of California Cities. Proposition 83 is opposed by the California Attorneys for Criminal Justice (CACJ). California Attorneys for Criminal Justice has stated that it is concerned that the Proposition will waste limited resources by creating an expensive tracking system for all registered sex offenders and pushing more serious offenders underground.

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<sup>1</sup> LOCC staff report for the Board and policy Committee meetings 9/6 and 9/8/06)

**Proposition 84 – Water Quality, Safety and Supply. Flood Control. Natural Resource Protection. Park Improvements. Bonds Initiative Statute.**

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*What issue is the proposition trying to address?*

Proposition 84, the Water Quality, Safety and Supply; Flood Control. Natural Resource Protection. Park Improvements. Bonds Initiative Statute, will appear on the November 2006 ballot and would authorize a \$5.4 billion bond to fund natural resource protection, water supply, quality, flood programs and parks and open space projects. This proposition complements the other bond measure on the November ballot, Proposition 1E, the Disaster Preparedness and Flood Prevention Act of 2006 that the City Council supported at its' August 29 Council meeting.

*How would this proposition resolve the issue?*

Proposition 84 provides funding for storm water cleanup, parks, coastal water and beaches as well as bays. Funding categories include:

- \$1.525 billion for water quality;
- \$928 million for protection of rivers, lakes and streams;
- \$800 million for flood control;
- \$580 million for sustainable communities and climate change reduction,
- \$540 million for protection of beaches, bays, and coastal waters including \$108 million for San Francisco Bay; and \$400 million for the State Parks Department for competitive grants to local and regional parks;
- \$500 million for parks and natural education facilities;
- \$450 million for forest and wildlife conservation;
- \$65 million for statewide water planning.

*How would the passage of this proposition affect San Jose and our region?*

Potential benefits to the City's Parks, Recreation and Neighborhoods Services Department (PRNS). As noted above, Proposition 84 makes \$400 million available to the State Department of Parks and Recreation for competitive grants to local and regional parks improvements including nature education facilities. In recent years, PRNS has benefited from past statewide propositions for local parkland funding including those grants from Proposition 12, Proposition 40 and Proposition 13, the Safe Water Grant Programs. The City has received a total of approximately \$22.5 million from various State Parks Grant programs which have supported 32 individual park, open space, trail, community center, ball-field, historic home renovation, and other community recreation facility projects. Proposition 84 would offer opportunities for continued local park funding from the State.

The Santa Clara Valley Water District (SCVWD) has expressed specific interest in a number of provisions in Proposition 84 including:

- \$ 1 billion for an integrated regional water management program, of which \$138 million would be reserved for projects in the San Francisco Bay hydrologic region and \$53 million would be reserved for projects in the Central Coast hydrologic region;
- \$180 million for the Flood Control Subventions Program;
- \$270 million to reduce the potential for Delta levee failures;
- \$130 million for projects to improve Delta water quality;
- \$60 million for projects to prevent or clean up groundwater pollution.

*Staff's recommended position:*

The City of San Jose has recommended support most recently for the complement measure to Proposition 84 -- Proposition 1E, The Disaster Preparedness and Flood Prevention Bond Act of 2006 on the November 2006 ballot. In keeping with that support, the City's Environmental Services Department and the Parks Recreational and Neighborhood Services Department recommend support for Proposition 84. Proposition 84 supports the City's legislative priorities to expand efforts to promote water efficient, sustainable practices ensuring a clean affordable water supply and support for legislation that provides funds for urban parks and open spaces.

*Who are the proposition's supporters and opponents?*

Support for Proposition 84 includes the Santa Clara Valley Water District, the League of California Cities, the California Chamber of Commerce, Association of California Water Agencies (consists of nearly 450 public agency members), California Water Association, the California League of Women Voters, the Nature Conservancy, Clean Water Action, Baykeeper, East Bay Municipal Utility District, the Metropolitan Water District of Southern California, and The Ocean Conservancy. Opponents include the National Tax Limitation Committee and Americans for Tax Reform.

## **Proposition 85 – Waiting Period and Parental Notification Before Termination Of Minor’s Pregnancy. Initiative Constitutional Amendment.**

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*What does the proposition attempt to do?*

Proposition 85 would amend the California Constitution to prohibit abortion for unemancipated minors until 48 hours after a physician notifies minor’s parent/guardian, except in a medical emergency or with a parental waiver. The measure would mandate various reporting requirements; and authorize monetary damages against physicians for violation.

*The history of this issue and previous proposals:*

According to the Legislative Analyst’s Office, state law was enacted in 1953 that allowed minors to receive without parental consent or notification, the same types of medical care for pregnancy that are available to an adult. Based on this law and later legal developments related to abortion, minors in the State currently were able to obtain abortions without parental consent or notification. In 1987, the Legislature amended this law to require minors to either obtain the consent of a parent or a court before obtaining an abortion. However, due to legal challenges, the law was never implemented, and the California Supreme Court ultimately struck it down in 1997. Consequently, minors in the state currently receive abortion services to the same extent as adults.

Proposition 85 is almost identical to Proposition 73 that was on the November 2005 special statewide election ballot with two differences: Proposition 73 would have defined abortion as causing the “death of an unborn child, a child conceived but not yet born.” Proposition 73 required statistical information on the number of notification waivers requested, refused or granted by reported on a judge-by-judge basis and Proposition 85 requires that they are reported on a county-by-county basis.

*Staff’s recommendation:*

Staff recommends that the City oppose Proposition 85. The San Jose City Council previously opposed almost an identical measure indicated above, Proposition 73 in 2005. Santa Clara County medical and legal staff have posed many concerns in both their analyses of Propositions 73 and 85, including concern that the parental noticing requirements will deter minors from seeking appropriate, early pre-natal care and /or counseling regarding termination options.

In addition, Santa Clara County has invested staff time and resources over the past two years in developing a Safe Surrender Baby public education campaign which is strongly supported by the City of San Jose. According to the County, it is “believed that many of the women targeted by this campaign are isolated and hiding their pregnancies for a variety of reasons. Proposition 85 may increase the number of minors who hide their

pregnancies and choose to abandon their child if they lack the resources, support, or ability to care for the infant.”

*Who are proposition's supporters and opponents?*

Supporters for Proposition 85 include the Traditional Values Coalition and Professor Teresa S. Collett of the National Authority on Parental Notification and Involvement Laws. Opponents include the American Medical Association, Society for Adolescent Medicine, American Public Health Association, American College of Obstetricians and Gynecologists, California Academy of Family Physicians and the League of Women Voters.

## Proposition 86 – Tax on Cigarettes. Initiative Constitutional Amendment and Statute.

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*What issue is the proposition trying to address?*

According to the proposition's sponsor, "the Children's Partnership (TCP), as a member of the Yes on Proposition 86 Campaign, filed a statewide ballot initiative to achieve several important public health goals, including expanding access to affordable, comprehensive health insurance to all children in California." There are an estimated more than one million children under age 19 uninsured in the State. To reach the goal of making health insurance available to all children in the state, many of the proposition's backers sponsored previous state legislation, AB 772 (Chan) "The Healthy Kids Insurance Program" and AB 1199 (Frommer/Chan) "The California Healthy Kids Fund" that if both passed would have implemented a policy to cover all children. The City Council was in official support of AB 772 in 2005. Proposition 86 also addresses funding needs for: hospital emergency services, nursing education, various new and existing health and education activities, curb tobacco use and regulate tobacco sales.

*How would this proposition resolve these issues?*

Proposition 86 would impose an additional 13 cent tax on every cigarette distributed (\$2.60 a pack). Currently, the excise taxes total 87 cents per pack. This would raise the overall cost of a pack of cigarettes to \$6.60. The tax would raise an estimated \$2.1 billion annually. The funding would be allocated for various specified purposes including:

- **The backfill of Proposition 10 programs** for early childhood development for a loss of funding that would result from the enactment of the new tax measure. The loss of funding is likely due to the reduction in sales of tobacco products;
- **Health Treatment and Services Account** for hospital uncompensated emergency room funding and improve or expand emergency services, nursing education programs, and support for non-profit community clinics;
- **Health Maintenance and Disease Prevention Account** towards expansion of children's health coverage. The program would expand eligibility for the Healthy Families Program children up to 300% of federal poverty level and to children who are undocumented immigrants or legal immigrants not currently eligible for the Healthy Families Program. This expansion would essentially provide health care coverage for children currently in the County's Children's Health Initiative and remove the County's General Fund costs for this program;
- **Health and Disease Research Account** designed to support medical research related to cancer and tobacco-related diseases.

*How would the passage of this measure affect San Jose and our region?*

As stated above, the measure would assist in providing health care to those children currently not covered. According to the Children's Health Initiative (CHI) website, estimates for the number of uninsured children in Santa Clara County are 71,000. Of that

number, approximately 2/3 qualify for either the Medi-Cal and Healthy Families programs. That means there are between 14,000 and 18,000 children in Santa Clara County who are uninsured and would be eligible for this funding. There are unknown numbers of lives that would be saved from smoking related deaths and unknown numbers of youth that would be educated on the risks of smoking. Unknown benefits for emergency care services, emergency physicians and community clinics. The LAO estimates that with the various preventive health care programs in place and to the extent they are effective, "the magnitude of state and local savings from these factors is unknown, but would likely be significant.

*Staff's recommended position:*

Staff recommends that the City of San Jose support Proposition 86 which is consistent with past support of those measures that support health insurance for uninsured or under insured children and programs that support health, public education programs and tobacco related programs.

*Who are the propositions supporters and proponents?*

Supporters for Proposition 86 include the American Cancer Society, American Heart Association, American Lung Association, California Hospital Association, Children Now, PICO California, the Children's Partnership, and the League of California Cities. Opponents include the California Chamber of Commerce, Americans for Tax Reform, Howard Jarvis Taxpayers Association, and various public safety associations that have concerns over potential for an increase in cigarette smuggling if the measure passes.

**Proposition 87 – Alternative Energy. Research, Production, Incentives. Tax on Oil Producers. Initiative Constitutional Amendment and Statute.**

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*What issue is the proposition trying to address?*

The proposition is an attempt to reduce oil and gasoline usage by 25% with research and production incentives for alternatives for alternative energy, alternative energy vehicles, energy efficient technologies and for education and training.

*How would this proposition resolve this issue?*

If passed, Proposition 87 would tax gross oil revenue from oil pumped in California at a rate of between 1.5% to 6.0% on a sliding scale based on the gross value of oil per barrel. Currently oil producers pay a 5.3% flat tax on oil produced in California. This revenue would be used to secure bonds and allocated by the Authority created by the proposition to fund alternative fuel, and energy infrastructure, vehicles and research within California. The Legislative Analyst's Office (LAO) has estimated that the tax would raise between \$200 million and \$380 million in new state revenues. The revenue received through the tax levied by Proposition 87 would not be subject to transfer to other state funds such as the general fund or public education. Proposition 87 allows for the Authority to spend up to \$4 billion over the first ten years of operation in tax and bond revenues with the state goal of reducing the rate of petroleum consumption in California by 25% within 10 years.

Proposition 87, if passed, would reorganize an existing body in state government, the California Alternative and Advanced Transportation Financing Authority, into a new California Energy Alternatives Program Authority ("Authority"). This reorganized Authority would be governed by a board made up of nine members, including the Secretary of the Environmental Protection Agency, the Chair of the California Energy Commission, the Treasurer, and six members of the public who a specific program expertise.

This proposal is not necessarily the process that the City's Environmental Services Department would have recommended for providing funding for alternative energy and fuels development and research. It would have been better if Proposition 87 allocated existing state funding infrastructure as opposed to creating a new agency, and focused more on meeting California's overall energy needs instead of focusing mostly on alternative fuel for vehicles. While the process could be improved, the proposition is considerably better than any currently available funding.

The measure if passed, would authorize the Authority to spend \$4 billion over its first ten years of operation on the following:

- **Gasoline and Diesel Use Reduction Account** for market-based incentives (consumer loans, grants, and subsidies) for the purchase of alternative fuel vehicles, incentives for producers to supply alternative fuels, incentives for the production of alternative fuel infrastructure both by government and private entities.
- **Research and Innovation Acceleration Account** for grants to California universities to improve the economic viability and accelerate the commercialization of renewable energy technologies and energy efficiency technologies such as solar, geothermal, etc.
- **Commercialization Acceleration Account** for incentives to fund the start-up costs and accelerate the production of petroleum reduction, renewable energy, energy efficiency, and alternative fuel technologies.
- **Public Education and Administration Account** for public education campaigns, oil market monitoring and general administration.
- **Vocational Training Account** for job training at community colleges to train students to work with new alternative energy.

*How would the passage of Proposition 87 affect San Jose?*

Some of the major barriers to the purchase of alternative fuel vehicles are the costs of these vehicles and the lack of supporting infrastructure. Proposition 87 would make the purchase of alternative fuel vehicles by the City a more viable option by reducing the costs of these vehicles and stimulating the development of needed infrastructure by both the government and private entities. With regards to vocational training, San Jose and the South Bay have several community colleges that would benefit from such a program.

*Staff's recommended position:*

Staff recommends that the City take no position on Proposition 87. Several local government agencies could, or will be negatively impacted by this proposition if passed by the voters, including a number of oil producing counties, cities within those counties and school districts. Locally, this proposition should have no net negative fiscal impact on the City of San Jose and would result in a net environmentally positive impact by lowering fuel usage, and reducing air pollution over time. The League of California Cities has taken "no position" on Proposition 87. While its goals are laudable, League staff write, "the potential loss of property tax revenue for some local agencies due to the imposition of the oil surcharge is a troubling direct negative impact on those few local governments." For those reasons, staff recommends that the City take no position on Proposition. In the future the City could consider supporting this proposal if not at the

detriment of local governments income as the proposal is consistent with the City's Legislative priorities.

*Who are the proposition's supporters and opponents?*

Supporters for Proposition 87 include the American Lung Association of California, Natural Resources Defense Council, Planning and Conservation League, Sierra Club, California, Consumer Action and the Silicon Valley Leadership Group. Opponents include the California Chamber of Commerce, the City of Bakersfield, the County Board of Supervisors of Butte, Colusa, Inyo, Kern, Madera, and Merced counties and numerous elected city officials in those counties.

**Proposition 88 – Education Funding. Real Property Parcel Tax. Initiative Constitutional Amendment and Statute.**

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*What issue is the Proposition trying to address?*

This measure is an attempt to raise funding to reduce class size in grades K-3, purchase instructional materials for K-12, fund school safety programs, and provide facility-related grants to those school districts and charter schools that have not yet received any state general obligation bond monies for school facilities.

*How would this proposition resolve this issue?*

Proposition 88 would add a new statewide \$50 property tax and collect the new tax from each of the more than 10 million homeowners and other property owners in California. Seniors 65 years of age or older and permanently disabled homeowners would be exempt. The Legislative Analyst's Office (LAO) estimates that this would raise \$450 million annually and the new property tax would never expire. According to the LAO analysis, "most of the revenue generated by the statewide parcel tax would be transferred to a new state special fund... The bulk of funding (amounts for K-12 class size reduction, instructional materials, and school safety) would be allocated to school districts, public charter schools, and county offices of education using a new per student formula to be created by the Legislature."

*Staff's recommended position:*

Staff recommends that the City take no position on Proposition 88. As the League of California Cities (LOCC) staff conclude, "this measure has no direct, compelling city impact. However, some observe that enactment of a statewide parcel tax to fund education might indirectly impact the ability of local school districts (or cities) to enact parcel taxes for specific local needs." The LOCC Board of Directors voted to take no position on the measure.

*Who are the proposition's supporters and opponents?*

Support for Proposition 88 includes Jack O'Connell, the State Superintendent of Public Education, and Past President of the State Board of Education, Reed Hastings. Opponents include the California State PTA, California Federation of Teachers, California Democratic and Republican Parties, Howard Jarvis Taxpayers Association, California School Boards Association, and the League of Women Voters.

**Proposition 89 – Political Campaigns. Public Financing. Corporate Tax Increase. Campaign Contribution and Expenditure Limits. Initiative Statute.**

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*What issue is the proposition trying to resolve?*

A poll conducted by the Public Policy Institute of California (PPIC) last November found 64% of likely voters believe that campaign contributions have had a negative effect on the public policy decisions being made in Sacramento.

*How would this proposition resolve the issue?*

This measure would make significant changes to the financing of campaigns for elected state office by:

1. Establishing public financing for candidates meeting certain conditions;
2. Increasing income tax rate on corporations and financial institutions by 0.2 percent which would raise an estimated \$ 200 million annually to fund the public financing of political campaigns for state elected officials.
3. Limiting certain contributions and expenditures by individuals, corporations and unions into the political system;
4. Imposing new limits on campaign contributions to state-office candidates and campaign committees, and new restrictions on contributions by lobbyists and state contractors.

The measure generally applies to primary and general elections for statewide officers and members of the Legislature and the Board of Equalization. Proposition 89 would also prohibit corporations from making contributions/expenditures to state ballot measure campaigns in excess of \$10,000. It would restrict contributions by corporations, unions, and individuals to \$500 for candidates for the Legislature and \$1,000 to candidates for statewide office. It includes an exemption for non-profits.

*Staff's recommended position:*

The San Jose City Council voted on May 23, 2006, to support AB 583 (Hancock), the California Clean Money and Fair Elections Act which was conceptually similar to Proposition 89. AB 583 passed the Assembly, but died in the Senate Elections, Reapportionment and Constitutional Amendments Committee. For those reasons the Council supported AB 583, staff recommends support for Proposition 89 which would require candidates to adhere to strict spending limits and reject special interest contributions in order to qualify for public financing.

*Who are the proposition's supporters and opponents?*

Supporters for Proposition 89 include the California Nurses Association, the League of Women Voters of California, California Common Cause, SEIU California State Council, and the Foundation for Taxpayer and Consumer Rights. Opponents include the Howard Jarvis Taxpayers Association, California Chamber of Commerce, California Taxpayers Association, the California Teachers Association, and the California Small Business Roundtable.

## Proposition 90 – Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.

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*What issue is the proposition trying to address?*

Proposition 90 seeks to severely limit the application and use of condemnation by government entities for public and private purposes. The Proposition was placed on the ballot after a court case in 2005 when the US Supreme Court ruled in *Kelo v. City of New London* that acquiring property by eminent domain for the purpose of economic development qualifies as a “public use” and was therefore constitutional. This court case had little or no affect in California, which has higher standards than Connecticut with regard to eminent domain cases involving economic development. However, the *Kelo* case has set off much of the current controversy over the use of eminent domain throughout the nation.

*How would this proposition seek to resolve the issue?*

Proposition 90 would make several changes to the State’s Constitution. It is a part of a nationwide effort by the Fund for Democracy, the U.S. Term Limits and the Chairman of the Americans for Limited Government to change the eminent domain regulations in a campaign being financed state-by-state. These changes would limit the circumstances under which government agencies can use eminent domain to obtain property and would likely increase the amount required to purchase property by eminent domain even where permitted. These changes would also increase the situations in which governments are required to pay property owners for reduction in property value if changes are made in laws, rules, or regulations, which are deemed to substantially diminish the value of the property.

Specifically, the proposition would do the following if passed:

- Allow eminent domain only for a “stated public use” and states that this provision is intended to exclude transactions that might serve a “public purpose.” This means that eminent domain could not be used to acquire property that would be transferred to private owners for “economic development or tax revenue enhancement grounds.”
- Prohibit a public agency from acquiring privately-owned property for private use. Public agencies would be allowed to lease acquired property to a private entity only “to perform a public use project” or to a utility. Public agencies would be allowed to use eminent domain to obtain property that is then used by a private contractor to provide services that are traditionally performed by government (i.e. private toll roads or privately-owned prison facilities).
- Require public agencies using eminent domain to pay property owners the “highest price that the sale of the property would bring on the open market” plus the cost of any legal fees and other expenses incurred by the property owner.
- Give the former landowner the first right to repurchase the property at fair market value if a public agency ceases to use property that is acquired through eminent domain.
- State that unpublished court rulings addressing the issue of eminent domain shall be null and void.
- Allow a property owner to request a jury trial to determine whether the acquisition or damage of property through eminent domain is truly for a public use.

- Apply immediately to any eminent domain proceeding by a public agency that has not reached a final decision.

*How would the passage of this proposition affect San José?*

The Administration is concerned that Proposition 90, if approved, will adversely impact a large portion of the City's work, by raising the price of public construction projects and hindering the ability to carry out development based on our community's need. It is unclear the full extent and cost this proposition poses to the City of San José, but it is anticipated to be large given that nearly every project, service, or decision could have a larger price tag. Proposition 90 could significantly increase the cost and amount of litigation related to many of the City's land use decisions and public purpose projects like transportation, affordable housing, school construction, parks, community centers, and other like projects.

One of the most far-reaching provisions in Proposition 90 is the requirement that local governments or the State compensate property owners when changes in laws, rules, or regulations may result in an economic loss to a property owner. This could potentially include down-zoning, elimination of access to property, limits on the use of air space, or even potentially on the approval of affordable housing projects. These actions might open the City up to claims for "damage" in the form of real or perceived loss in property values any time a law or regulation is passed to protect our neighborhoods, to protect our air and water quality, protect natural resources like wildlife and habitat, ensure adequate water supplies, or regulate development. It could lead to lawsuits that will cost the taxpayers of California and residents of San José millions of dollars. Following the adoption of a similar law in Oregon, there were more than 2,200 claims were filed, seeking over \$5 billion in payments that taxpayers of that state could ultimately have to pay.

Proposition 90 also changes the way public agencies administer eminent domain and increases the cost of development. First, Proposition 90 would require that public agencies use property acquired through eminent domain for a "stated public use" and could not be transferred to a non-governmental entity even if the intended use may serve a public purpose. Furthermore, the restriction against a future transfer does not contain a termination period.

Secondly, the measure redefines "just compensation" as the sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, without considering any otherwise typical and fair offsets to the value of the property. This new definition would increase the cost of development by requiring public agencies, under certain circumstances, to pay more than the fair market value of a piece of property. The measure would also allow for an increase in the purchase price based on the government's future use of the property (which under current law is disregarded) and would not consider any future dedication requirement that would otherwise reduce the fair market value of the property. Not only is there likely to be additional litigation over compensation, but litigation challenging the methods of appraisal are more likely. These provisions will drive up the cost of infrastructure projects, cause delays, or even halt work on much-needed community projects. Taxpayers will pay more for its congestion relief, road repairs, schools, utility services and other essential infrastructure projects.

As an example, developers, through the planning entitlement process, are sometimes required to acquire property (beyond what they currently own) to meet their permit requirements for “off-site improvements.” These improvements could be storm drain, sewer, road widening, or signal modifications required by CEQA. If the developer is unable to acquire the necessary property for right-of-way, they can deposit funds with the City and the City will acquire on their behalf. In almost all cases the developer has already offered at least fair-market value, thus when the City acquires it is almost always through condemnation.

In terms of transportation projects, Proposition 90 may also influence the development and construction of several high priority transportation infrastructure projects that have been supported by the City Council. The additional cost and requirements set forth in the measure could severely delay and impact highway and road projects, rail projects and other important traffic congestion relief projects. Many of these projects have been backed by voters in this county and throughout the state through the support of local sales tax measures and the continued support that Proposition 42 receives. This may be precluded should the Proposition pass and, furthermore, does not contain a termination period for this restriction.

*Staff's Recommended Position:*

Staff recommends that the City of San José oppose Proposition 90.

*Who are the proposition's supporters and opponents<sup>1</sup>?*

Proposition 90 was sponsored by California resident Anita Anderson with significant financial backing from the New York-based Fund for Democracy, led by the founder of the US Term Limits and Chairman of Americans for Limited Government Howard Rich. The measure is also supported by the California “Protect Our Homes” Coalition, the National Federation of Independent Businesses, Long Beach Press Telegram, Orange County Register, California Congress of Republicans, California Taxpayer Protection Committee, California Republican Assembly, California Republican Party, Capitol Resource Institute, Contra Costa Taxpayers Association, Fullerton Association of Concerned Taxpayers, National Federation of Independent Businesses, National Tax Limitation Committee, United Communities of Fontana, and the Values Advocacy Council.

The measure is opposed by the California Professional Firefighters, California Police Chiefs Association, California Fire Chiefs Association, California State Sheriffs' Association, California State Firefighters' Association, California Peace Officers' Association, Fire Districts Association of California, League of California Cities, City of Los Angeles, California Association of Sanitation Agencies, California Municipal Utilities Association, California Teachers Association, California School Boards Association, Association of California School Administrators, California Labor Federation, AFL-CIO, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME), California State Council of Laborers, State Building & Construction Trades Council of California, California Teamsters Public Affairs Council, California Small Business Association, California Chamber of Commerce, California

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<sup>1</sup> The following list was derived from [www.noprop90.com](http://www.noprop90.com) and [www.90yes.com](http://www.90yes.com) and only includes organizations and not individuals.

Association of Realtors, California Business Roundtable, Associated General Contractors of California, California Building Industry Association, Sempra Energy, Bay Area Council, Santa Clara Chamber of Commerce, California Tax Reform Association, Valley Taxpayers Coalition, Inc., California Transportation Commission, Transportation and Land Use Coalition, NAACP, National Coalition of Hispanic Organizations, Gray Panthers California, California Legislative Council for Older Americans, California Nurses Association, California Farm Bureau Federation, Agricultural Council of California, American Farmland Trust, League of California Homeowners, Golden State Manufactured-Home Owners League, Home Owners Acting Together, Resident Owned Parks, Inc., League of Women Voters of California, Western Center on Law & Poverty, Consumers First, Poverty Matters, Lutheran Office of Public Policy – California, The Nature Conservancy, California League of Conservation Voters, Audubon California, The Ocean Conservancy, National Wildlife Federation, Natural Resources Defense Council, Sierra Club California, Center for Environmental Health, California State Parks Foundation, Defenders of Wildlife, Planning and Conservation League, Greenbelt Alliance, Trust for Public Land, Bay Area Alliance for Sustainable Communities, Bay Area Open Space Council, Housing California, California Housing Consortium, and the California Association of Local Housing Finance Agencies.