

RESOLUTION 10-04-05

DIGEST

Urban Renewal: Redefines Economic Blight

Amends Health and Safety Code sections 33031, 33037, 33071, 33339, 33340, 33342, 33368, 33381, 33391 and 33394 to limit the definition of "economic blight" to high crime rates that constitute a serious threat to the public.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends the California Health and Safety Code to limit the definition of "economic blight" to high crime rates that constitute a serious threat to the public. This resolution should be disapproved because it eviscerates the Community Redevelopment Law and leaves communities unable to redevelop areas blighted by any factor other than a high crime rate.

The Community Redevelopment Law (Health and Saf. Code 33000, et seq.) was enacted in 1963 and substantially revised in 1993. It allows cities and counties to declare an area "blighted" and redevelop the land by eminent domain if it can prove both physical and economic blight. (*Graber v. City of Upland* (2002) 99 Cal. App.4th 424, 439.) To have blight, an area must suffer from conditions that can only be cured with government assistance. (*Emeryville Redevelopment v. Harcos Pigments* (2002) 101 Cal. App.4th 1083, 1105-1106.) Physical blight means buildings that are unsafe or unhealthy for persons to live or work. (*Beach-Courchesne v. City of Diamond Bar* (2000) 80 Cal. App.4th 388, 398.) Economic blight is defined by five factors: (a) depreciated or stagnant property, (b) abnormally high business vacancies, (c) lack of commercial facilities, (d) residential overcrowding and (e) a high crime rate. (Health & Saf. Code, §33031, subd. (b).)

In the current Legislative session, there are two bills of note. AB 957 would establish a new state assistance program, the "California New Markets Venture Capital Programs Act of 2005," to assist in funding venture capital investments in low or moderate-income geographic areas. SB521 would amend section 33031 to establish "village transit plans" in specified areas.

Agency approval of a redevelopment area is subject to judicial review under the substantial evidence standard. (*Fosselman's v. Alhambra* (1986) 178 Cal. App.3d 806, 810.) The courts have not been hesitant to overturn agency decisions. (See, 4 Witkin, *Summary of Cal. Law* (9th ed. 1987 & 2005 supp.) "Real Property" §55, p. 277-278.) This resolution proposes to only allow one physical condition, a high crime rate, to define blight. That leaves communities with too little discretion to redevelop the city to overcome both physical and economic blight. If a city council abuses its discretion in creating a redevelopment zone, the solution is not to get rid of the law. It is to vote out the city council.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Health & Safety Code sections 33031, 33037, 33071, 33339, 33340, 33342, 33368, 33381, 33391, and 33394 to read as follows:

- 1 § 33031
- 2 (a) This subdivision describes the physical condition that causes blight:
- 3 ~~(1)~~ Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions
- 4 can be caused by serious building code violations, dilapidation and deterioration, defective design or

5 physical construction, faulty or inadequate utilities, or other similar factors.

6 ~~(2) Factors that prevent or substantially hinder the economically viable use or capacity of~~
7 ~~buildings or lots. This condition can be caused by a substandard design, inadequate size given~~
8 ~~present standards and market conditions, lack of parking, or other similar factors.~~

9 ~~(3) Adjacent or nearby uses that are incompatible with each other and which prevent the~~
10 ~~economic development of these parcels or other portions of the project area.~~

11 ~~(4) The existence of subdivided lots of irregular form and shape and inadequate size for~~
12 ~~proper usefulness and development that are in multiple ownership.~~

13 (b) This subdivision describes the economic condition that causes blight:

14 ~~(1) Depreciated or stagnant property values or impaired investments, including, but not~~
15 ~~necessarily limited to, those properties containing hazardous wastes that require the use of agency~~
16 ~~authority as specified in Article 12.5 (commencing with Section 33459).~~

17 ~~(2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates,~~
18 ~~abandoned buildings, or excessive vacant lots within an area developed for urban use and served by~~
19 ~~utilities.~~

20 ~~(3) A lack of necessary commercial facilities that are normally found in neighborhoods,~~
21 ~~including grocery stores, drug stores, and banks and other lending institutions.~~

22 ~~(4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that~~
23 ~~cater exclusively to adults, that has led to problems of public safety and welfare.~~

24 ~~(5) A high crime-rate that constitutes a serious threat to the public safety and welfare.~~

25
26 § 33037

27 For these reasons, it is declared to be the policy of the State:

28 (a) To protect and promote the sound development and redevelopment of blighted areas and
29 the general welfare of the inhabitants of the communities in which they exist by remedying such
30 injurious conditions through the employment of all appropriate means.

31 (b) ~~That whenever the redevelopment of blighted areas cannot be accomplished by private~~
32 ~~enterprise alone, without public participation and assistance in the acquisition of land, in planning and~~
33 ~~in the financing of land assembly, in the work of clearance, and in the making of improvements~~
34 ~~necessary therefor, it is in the public interest to employ the power of eminent domain, to advance or~~
35 ~~expend public funds for these purposes, and to provide a means by which blighted areas may be~~
36 ~~redeveloped or rehabilitated. That the power of eminent domain may only be invoked under this~~
37 ~~section when there has been a clear and convincing showing that blight, as it is defined by section~~
38 ~~33031, exists. This showing must be made on a property by property basis and may not be~~
39 ~~presumed for an entire project area.~~

40 ~~(c) That the redevelopment of blighted areas and the provisions for appropriate continuing~~
41 ~~land use and construction policies in them constitute public uses and purposes for which public~~
42 ~~money may be advanced or expended and private property acquired, and are governmental functions~~
43 ~~of state concern in the interest of health, safety, and welfare of the people of the State and of the~~
44 ~~communities in which the areas exist.~~

45 ~~(d) That the necessity in the public interest for the provisions of this part is declared to be a~~
46 ~~matter of legislative determination.~~

47
48 § 33071

49 The Legislature further finds and declares that a fundamental purpose of redevelopment is to
50 ~~protect the physical health and safety of all citizens. expand the supply of low- and moderate-income~~
51 ~~housing, to expand employment opportunities for jobless, underemployed, and low-income persons,~~
52 ~~and to provide an environment for the social, economic, and psychological growth and well-being of~~
53 ~~all citizens.~~

54
55 § 33339

56 Every redevelopment plan shall provide for participation in the redevelopment of property in
57 the project area by the owners of all or part of such property if the owners agree to participate in the
58 redevelopment in conformity with the redevelopment plan adopted by the legislative body for the

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area.
Unless a property owner within a project area has and is maintaining the property in a blighted condition, as that term is defined by section 33031, the power of eminent domain may not be used to acquire that property for transfer to a private party.

§ 33340

Every redevelopment plan which contemplates property owner participation in the redevelopment project area shall contain alternative provisions for redevelopment of the property if the owners of blighted property fail to participate in the redevelopment ~~as agreed~~ after entering into a written agreement to redevelop the property.

§ 33342

Redevelopment plans may provide for the agency to acquire by gift, purchase, lease, or condemnation all or part of the real property in the project area. Notwithstanding, a property may only be acquired by condemnation under this section where there has been a clear and convincing showing of blight, as that term is defined by Section 33031, which showing must be made on a property by property basis.

§ 33368

~~The decision of the legislative body shall be final and conclusive, and it shall thereafter be conclusively presumed that the project area is a blighted area as defined by Section 33031 and that all prior proceedings have been duly and regularly taken.~~

~~This section shall not apply in any action questioning the validity of any redevelopment plan, or the adoption or approval of a redevelopment plan, or any of the findings or determinations of the agency or the legislative body in connection with a redevelopment plan brought pursuant to Section 33501 within the time limits prescribed by Section 33500.~~

§ 33381

~~If the redevelopment plan adopted provides for participation in the redevelopment of property in the area by the owners of such property, and the owners fail or refuse to enter into a binding agreement for participation in accordance with the rules adopted by the agency pursuant to Section 33339, the alternative provisions provided for in Section 33340 become effective as the official redevelopment plan of the project area.~~

§ 33391

Within the survey area or for purposes of redevelopment an agency may:

(a) Purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it, including repurchase of developed property previously owned by the agency.

(b) Acquire real property by eminent domain. Notwithstanding, a property may only be acquired by eminent domain under this section where there has been a clear and convincing showing of blight, as that term is defined by Section 33031, which showing must be made on a property by property basis.

§ 33394

Without the consent of an owner, an agency shall not acquire any real property on which an existing building is to be continued on its present site and in its present form and use. ~~unless such building requires structural alteration, improvement, modernization or rehabilitation, or the site or lot on which the building is situated requires modification in size, shape or use or it is necessary to impose upon such property any of the standards, restrictions and controls of the plan and the owner fails or refuses to agree to participate in the redevelopment plan pursuant to Sections 33339, 33345, 33380 and 33384.~~

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: San Diego County Bar Association/Lawyers Club of San Diego

STATEMENT OF REASONS:

Existing Law: Under existing law, a municipality may condemn property, no matter how productively it is being used, simply because the municipality wishes to change the look of the area or to increase the tax base. The properties are then given to another private party to use for profit. Property owners are generally not included, or even notified, until the process is well underway. The broad nature of the current law allows a developer to side-step the free market and threaten property owners with eminent domain in order to acquire the property for less than its value.

Resolution: This resolution strengthens individual property rights by (1) eliminating the aesthetic and economic definitions of "blight" in favor of actual physical danger to residents, (2) eliminating the power to make a blanket declaration that an entire community is "blighted," and (3) affirming the individual property owner's right to use his or her property however he or she sees fit without risk of condemnation so long as the property does not cause physical danger to other residents.

The Problem: The Fifth Amendment of the Constitution states in pertinent part, "nor shall private property be taken **for public use**, without just compensation." (Emphasis added.) "[O]ne person's property may not be taken **for the benefit of another private person** without a public purpose, even though compensation be paid." Thompson v. Consolidated Gas Utilities Corp., 300 U.S. 55, 80 (1937)(emphasis added). A taking of private property for non-public use is unlawful. Cottonwood Christian Center v. Cypress Redevelopment Agency, 218 F. Supp. 2d 1203, 1229 (C.D. Cal. 2002); see also . 99 Cents Only Stores v. Lancaster Redevelopment Agency, 237 F. Supp. 2d 1123, 1129 (C.D. Cal. 2001). Current California law lends itself to abuse of redevelopment in that few property owners can afford to fight city hall and wealthy land developers. Redevelopment abuse must be stopped.

Other states have awakened to the danger inherent in this power and, either through the legislature or through the courts, taken steps to stop it. Recently, the Michigan Supreme Court, in County of Wayne v. Hathcock, 471 Mich. 445 (2004), overruled Poletown Neighborhood Council v. Detroit, 410 Mich. 616, a 1981 case that had opened the door for an unlawfully broad definition of "public use" to support private use condemnations.

The current law is seriously flawed. Most property owners accept the fact that their property can be condemned to make way for a new highway or a school. What those owners cannot, and should not, accept, is that their property can currently be condemned so that another private party can profit from the use of that land.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

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COUNTER-ARGUMENT

ORANGE COUNTY BAR ASSOCIATION

In 1994, the California Legislature revised the definition of blight, Calif. Health & Safety Code Sec. 33031, effective Jan.1, 1995 to list in subsection (a) four (4) physical conditions that cause blight and in subsection (b) five (5) economic conditions that cause blight. Together these two subsections define

blight.

The result of a finding of blight by a public entity gives rise to its power of eminent domain, which has been created to promote the general welfare of the neighborhood where the property is located by remedying the existing blight by appropriate means. The public entity then acquires the blighted property and awards its owner "just compensation."

A finding of blight under any one or more of the nine (9) conditions may be challenged in law.

This resolution proposes to delete all but ONE physical condition and all but ONE economic condition. In effect, it would prevent local government from repairing deteriorating infrastructure and redeveloping run down neighborhoods.

The Orange Co. Bar Association opposes this drastic proposed revision of H&S Sec. 33031.