OFFICE OF MAYOR JERRY SANDERS
City of San Diego

M E M O R A N D U M

DATE: March 27, 2008

TO: Honorable Members of the City Council
Independent Budget Analyst

FROM: Job Nelson, Director Intergovernmental Relations

SUBJECT: June Ballot Propositions

The Chair of Rules, Open Government and Intergovernmental Relations Committee has requested Intergovernmental Relations (IRD) to provide a report on state ballot propositions that will be appearing on the June Primary Ballot and that might impact the City of San Diego.

The June election will be a light ballot for statewide ballot propositions with only Proposition 98 and Proposition 99 appearing on the ballot. Both propositions seek to change state law in regards to eminent domain.

Proposition 98:
Proposition 98 was sponsored by the Howard Jarvis Taxpayers Association. The proposition would prohibit state and local governments from condemning or damaging private property for private uses. The law also bars rent control and similar measures. It would also "prohibit deference to government in property rights cases." The proposition would trigger additional fiscal impacts on government by requiring an award of attorney's fees and costs if a property owner obtains a judgment for more than the amount offered by the government. Lastly the proposition requires government to offer the original owner of condemned property the right to repurchase the property at the condemned price when that property is put to substantially different use than was publicly stated.

Proposition 98 would potentially generate a number of problems.

Renter Protection- The measure would gut renter protection laws, such as laws requiring the fair return of rental deposits and laws requiring 60-day notice before forcing tenants out of their housing. While San Diego does not have rent control on regular units, it would roll back rent restrictions on mobile home units which could negatively impact seniors and other mobile home owners throughout the City and County.

Costs to Taxpayers- Under current law cities can make developers responsible for infrastructure that has benefits only to their project such as roads. Proposition 98's language would define that as a "taking" and local governments and ultimately taxpayers would be responsible for those infrastructure costs.

Water Projects- Drafting errors in Proposition 98 would be locked into the Constitution and could prohibit the acquisition of land and water through eminent domain to develop *public* water projects. The Association of California Water Agencies says Proposition 98 "*could derail needed groundwater and surface water storage projects around the state*" and calls this flaw in the measure "*cause for alarm.*"

Impacted projects might include:

- Right-of-way for pipelines (underground and above ground) and canals to deliver water to new homes and businesses
- Acquisition of new well-water sources
- Projects to conserve and protect the quality of our water resources and the species that rely on these water systems
- Water rights needed to convey water to farms and agriculture
- Acquisition of land for pumping sites
- Right-of-way for new canal around the Delta
- Acquisition of water rights
- Acquisition of land for reservoirs

Additional Legal Implications- In the definitions section is a clause that would prohibit laws and regulations that *"transfer economic benefit to one or more private persons at the expense of the private owner."* Because the courts have ruled that virtually all land-use decisions and environmental laws transfer economic benefit from one party to another, Proposition 98 could result in a very lengthy and acrimonious legal process for years to come.

For the above reasons the Mayor and IRD recommend opposition to Proposition 98

Proposition 99:

Proposition 99 was sponsored by the California League of Cities as responsible eminent domain reform. The proposition would prevent state and local governments from using eminent domain to acquire an owner-occupied residence for conveyance to a private person or business entity. The law would create exceptions for public works projects, public health and safety protection, and crime prevention. The Legislative Analyst's

Office (LAO) and the Director of Finance estimate that the measure would likely not have a significant fiscal impact on state or local governments.

Key Components of Proposition 99

- Eminent Domain for Private Development - Constitutional prohibition on taking owner-occupied homes for conveyance to private party.
- Rent Control - No changes to state or local rent control laws or ordinances.
- Affordable Housing and Tenant Protections – No changes to laws dealing with tenant protections and or affordable housing requirements
- Eminent Domain for Public Works Projects – Does not change or limit acquisitions for traditional public works like schools, roads, bridges and other projects.
- Impact on Environmental Protections and Land Use Regulation – No changes to environmental laws or regulations.
- Impact on Water Projects – No change and no impact on public water projects or any other traditional public works project.
- Public Health and Safety Exemptions - permits the use of eminent domain to protect public health and safety; preventing serious and repeated criminal activity; response to an emergency; and to remedy environmental contamination.

The Mayor and IRD recommend support of this initiative as a measured way to protect the property rights of homeowners without triggering the consequences of Proposition 98.