

Eminent domain concerns residents

By Paul Eakins, Staff Writer

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LONG BEACH -- When the City Council discussed a 12-year extension of eminent domain powers for redevelopment in North Long Beach last month, residents who were afraid they would lose their homes went to the council meeting seeking answers.

City officials assured them that their homes are safe under new the property protections of Proposition 99, which voters approved in June.

But opponents of Prop. 99 say the council's eventual approval this month to extend the North Long Beach Redevelopment Plan for another 12 years was the first evidence of a city taking advantage of what they call "loopholes" in the proposition, which is further exacerbated by overly broad definitions of urban blight.

"It just reaffirms our long-standing belief that Prop. 99 was a sham," said Marko Mlikotin of the California Alliance to Protect Private Property Rights. "Any government agency that wishes to seize a home can do so, and that's not what voters were told."

Chief Assistant City Attorney Heather Mahood said Prop. 99 protects all owner-occupied residential properties, including those in Long

Beach, from being taken for private development.

"There's really no loophole. We have to follow (Prop. 99)," Mahood said. "It's in the (state) Constitution."

The North Long Beach Redevelopment Plan was established 12 years ago to eliminate blight and improve commercial corridors in North Long Beach. While the city's Redevelopment Agency has had the right to use eminent domain to take both businesses and homes in the redevelopment area, city officials have highlighted the fact that they haven't used the power on a single residence.

After Prop. 99's passage, they no longer have that right anyway, in most cases.

But there are exceptions, and this is when Prop. 99 opponents begin talking about loopholes.

Under the proposition, only homes that are occupied by the owner - not rentals, for example - are protected. And then, only if the owner has lived in the residence for at least a year.

If the home is a public nuisance or health hazard, Prop. 99 allows for the city to take it as well.

Prop. 99 protections only apply to homes being taken for private development, not traditional eminent domain uses for public projects such as roads or schools.

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Long Beach's ordinance actually goes further to help homeowners, creating an avenue for residents with less than a year in their home to get protection from eminent domain.

But those requirements are also what has sparked criticism.

The ordinance allows these short-term homeowners to get a certificate of conformance guaranteeing them eminent domain protections, but they must allow city officials to inspect their home for health and safety code violations.

Mlikotin said the requirements outlined by Long Beach are too intrusive and stringent.

Among the requirements - such as meeting fire safety codes; that yards must be free of overgrown weeds; and that walls and fences must not need paint, nor have broken parts or holes - Mlikotin criticized one in particular.

That requirement says "garages may not be so full of belongings that a car cannot fit inside," according to city documents.

In addition to use of this strict caveat to deny a certificate of conformance, Mlikotin said he is concerned it could be used to justify other homes as being blight so they could be taken.

"It seems ridiculous that government can seize any home that it wants because it has an untidy garage," Mlikotin said.

Dana Berliner, an attorney with the Institute for

Justice near Washington, D.C., who took the high-profile Kelo vs. City of New London case - pitting property owners' rights against the ability of cities to use eminent domain for private development - to the U.S. [Supreme Court](#) in 2005, said Long Beach's certificate of conformance requirements are "bizarre and offensive."

"What I've certainly never heard of any city doing is requiring people to allow interior inspections of their home in order to avoid having it taken by private development," Berliner said.

Craig Beck, Long Beach's director of development services, confirmed the city could use eminent domain to take run-down properties that aren't up to code anywhere in the redevelopment area.

"Those blighted properties aren't protected by Prop. 99," Beck said.

But that would be a rare case, and one the city doesn't want to see, he said. Eminent domain usually isn't the answer, he said.

"We've used this tool very occasionally, and it's really addressing blighting conditions along the corridors," Beck said. "It's not our intent to go after residential property."

paul.eakins@presstelegram.com , 562-499-1278

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