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City Club of Portland Board of Governors Resolution Opposition to Ballot Measure 37

City Club of Portland (Portland, Or.)

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City Club of Portland Board of Governors Resolution Opposition to Ballot Measure 37

City Club's Research Board and Board of Governors have prepared the following resolution opposing Ballot Measure 37 on the November 2004 ballot. This resolution is based on the Club's positions taken in all earlier related study.

(As adopted by the Board of Governors on August 23, 2004.)

PREAMBLE

In November 2000, Oregon voters approved Ballot Measure 7, which required payment of compensation to owners of private property for reductions in their property's "fair value" attributable to government regulations, with limited exceptions. Beginning in January 2001, after passage of Measure 7, a City Club committee ("Measure 7 Study Committee") extensively studied Measure 7, including the apparent catalysts for its passage and the problems and issues with its implementation. The Measure 7 Study Committee's work culminated with the preparation of a report identifying the following 15 principles that should guide any debate over compensation for property owners for restrictions on the use of their property:

1. Real property is a finite resource that is subject to increasing pressures due to population growth. Society has a strong interest in protecting and regulating the use of this resource.
2. Although Oregon's current land use system may not be perfect, it is a legitimate and successful tool for accomplishing many goals that are in the public's interest.
3. The current constitutional and statutory framework of land use planning in some cases puts unfair burdens on certain landowners, and those burdens should be compensated. Government regulations can cause a loss in the value

**Proposed by Initiative Petition
State of Oregon Ballot Measure 37
GOVERNMENTS MUST PAY OWNERS, OR
FORGO ENFORCEMENT, WHEN CERTAIN LAND
USE RESTRICTIONS REDUCE PROPERTY VALUE**

RESULT OF "YES" VOTE: "Yes" vote requires that governments pay owners, or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce owners' property value.

RESULT OF "NO" VOTE: "No" vote rejects requiring that governments pay owners or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce property value.

of private property that, in some cases, should be compensated.

4. The definition of a "takings" needs to be refined to set definite parameters on the scope of compensable takings caused by land use regulations.
5. Compensation should not be paid for alleged reductions in value resulting from regulations abating nuisances. The definition of a "nuisance" needs to be clarified and updated periodically to reflect evolving scientific knowledge, the cumulative impact of individual land use decisions, and community values.
6. Any compensation system should be codified in statutes rather than the Oregon Constitution and should emphasize certainty and stability.
7. If the government is required to pay compensation to a property owner, the government should acquire an enforceable property-related right. The government's right should be transferable. Subsequent property owners should take ownership of the land subject to the government's acquired right to restrict use of the property without further compensation.
8. The government should have options in terms of the form of compensation (such as tax abatements and property swaps, among others). These should include the option to sell back the right to engage in the restricted use at a later date.
9. Only losses of value above a certain threshold should be eligible for compensation.
10. The government should not guarantee unreasonable expectations of profit. Expectations are more likely to be reasonable if they involve continuation of a historic use or a use that was expressly permitted (e.g., under zoning laws) at the time the owner acquired the property. Speculation (e.g., of the assumed right to build a subdivision on farmland) should not be compensated.
11. The compensation scheme should set a date that establishes the baseline or regulations or restrictions that will not be compensable.
12. There should be a statute of limitations on submitting claims.
13. If an alternative to Measure 7 is presented to voters, it should include not only the compensation scheme, but also the corresponding funding mechanism.
14. Compensation for losses by regulatory takings should be funded, to the extent practicable, by revenue generated from property owners who benefit from changes in land use regulation. This inverse corollary to takings compensation should be assessed upon the property owners' realization of profits.

15. In reviewing specific proposed land use regulations, regulators should be required to take into account the burden on private landowners (such as in a fiscal impact statement) versus the benefits to the public from the regulations and the amount of likely regulatory takings claim that will result.

Based on analysis of Measure 7 in the context of the 15 principles, the Measure 7 Study Committee recommended that the provisions of Measure 7 should be removed from the Oregon Constitution. The City Club membership approved the Measure 7 Study Committee's report on April 5, 2002, including the principles and recommendations.

On October 4, 2002, the Oregon Supreme Court held that Measure 7 violated the Oregon Constitution's "single subject" requirement for constitutional amendments referred to voters and, therefore, invalidated Measure 7. In response to the Oregon Supreme Court's invalidation of Measure 7, Measure 37 was drafted to impose requirements similar to Measure 7, but as a matter of Oregon statute rather than the Oregon Constitution.

Measure 37 addresses some of the weaknesses of Measure 7, as identified by the Measure 7 Study Committee, including:

- ✓ Measure 37 would not require compensation where property value is reduced by restrictions or prohibitions to protect the public health and safety, such as fire and building codes, health and sanitation regulations, soil or hazardous waste regulations, and pollution control regulations.
- ✓ Measure 37 would not require compensation for land use regulations "enacted" prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner. In other words, the principle appears to be that property owners are charged with knowing the regulations that apply to their property at the time they acquire it and are not eligible for compensation for pre-existing regulations. (However, the scope of this exclusion is unclear because it appears to be in partial conflict with Section (1) of Measure 37, which provides for compensation when a public entity "enforces a land use restriction," regardless of when it was "enacted")
- ✓ Measure 37 contains a statute of limitations.
- ✓ Measure 37 describes a process by which claims for compensation are to be submitted.
- ✓ Measure 37 revises Oregon statutes and does not amend the Oregon Constitution.

Notwithstanding these provisions, Measure 37 violates, or fails to address, a substantial number of the principles that the Measure 7 Study Committee

report identified, and the City Club membership endorsed, as critical to development of a system to compensate property owners for government-imposed restrictions on the use of their property, including:

1. Measure 37 fails to clarify the meaning of a "public nuisance" or to recognize that the definition of a "nuisance" cannot be static and must evolve based on scientific knowledge, the cumulative impact of land use decisions, and community values;
2. Measure 37 does not specify what property right, if any, the governmental entity obtains if it decides to pay compensation to a landowner, or what happens if the governmental entity decides not to enforce the restriction but the landowner elects not to put the land to the restricted use;
3. Measure 37 requires the government to "pay" compensation and therefore does not appear to allow alternative forms of compensation, such as tax abatements or property swaps, unless the property owner agrees;
4. Measure 37 does not set a minimum threshold of reduction in value before compensation would be payable;
5. Measure 37 could have the effect of "insuring" expectations of profit that are unreasonable because they are not based on continuation of a historic use or a use specifically permitted at the time the property was purchased;
6. Measure 37 does not set a baseline date for regulations or restrictions that would not be compensable; and
7. Measure 37 does not establish a funding source for payment of compensation.

RESOLUTION

WHEREAS, the City Club of Portland conducted prior research on Ballot Measure 7 [2000] and adopted a study report on April 15, 2002 analyzing Measure 7 and adopting 15 principles by which similar measures should be judged; and

WHEREAS, Measure 37 (2004) is substantially similar to Measure 7 (2000); and

WHEREAS, the violation of, or failure to address, a substantial number of the principles adopted by the City Club makes Measure 37 objectionable for most of the same reasons that caused the City Club of Portland to recommend elimination of Measure 7.

NOW, THEREFORE, IT IS RESOLVED, that the Board of Governors shall publicly express City Club's opposition to Measure 37.