

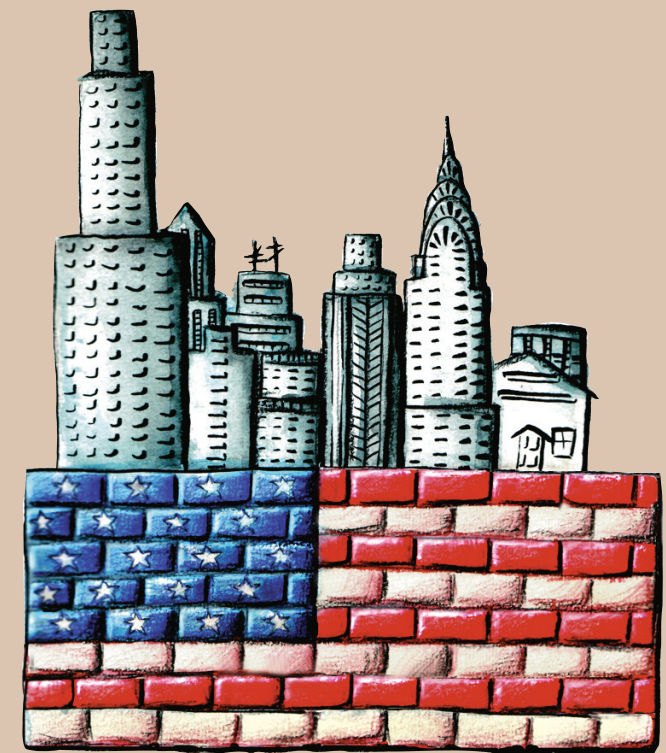
P E R S P E C T I V E S
on Eminent Domain Abuse

Volume
2

Development Without Eminent Domain

*Foundation of Freedom
Inspires Urban Growth*

by Curt Pringle
Mayor of the City of Anaheim



*Perspectives on Eminent
Domain Abuse* is a series
of independently authored
reports published by the
Institute for Justice



Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

www.ij.org

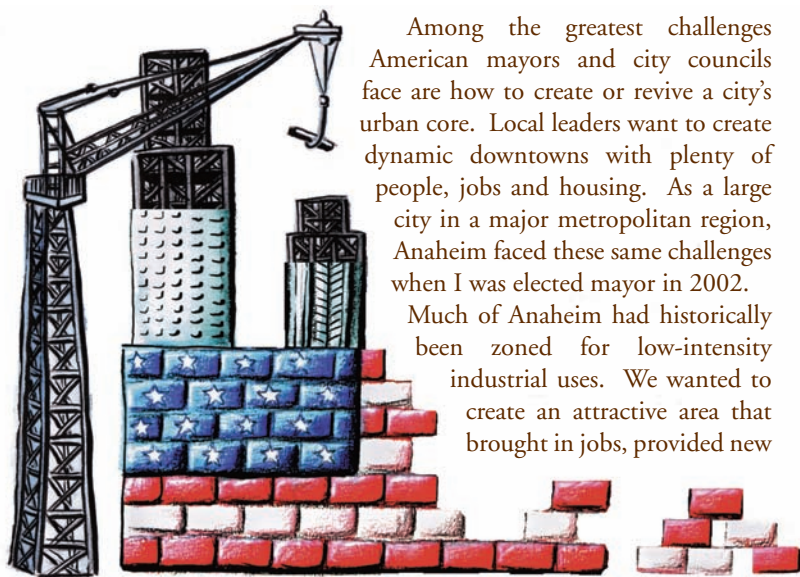
p 703.682.9320
f 703.682.9321

June 2007

Development Without Eminent Domain

*Foundation of Freedom
Inspires Urban Growth*

by Curt Pringle
Mayor of the City of Anaheim



Among the greatest challenges American mayors and city councils face are how to create or revive a city's urban core. Local leaders want to create dynamic downtowns with plenty of people, jobs and housing. As a large city in a major metropolitan region, Anaheim faced these same challenges when I was elected mayor in 2002.

Much of Anaheim had historically been zoned for low-intensity industrial uses. We wanted to create an attractive area that brought in jobs, provided new

housing for residents of different economic levels, and gave our tourists yet another reason to spend more time in our city. As we looked around the city, we saw an area around Anaheim's Angel Stadium that could be turned into a new, vibrant neighborhood with housing, retail shops and restaurants that would both benefit from and support the stadium and the Arrowhead Pond of Anaheim, where the National Hockey League's Anaheim Ducks play. We wanted to turn this area into a new destination: the "Platinum Triangle."

When faced with a major redevelopment project, many local governments use eminent domain—government's legal power to seize private property for a purportedly public purpose, even over the objections of the property owner. The Anaheim City Council made an early decision not to use eminent domain in

The Anaheim City Council made an early decision not to use eminent domain in our efforts to revitalize the stadium neighborhood.

our efforts to revitalize the stadium neighborhood.

This paper describes how Anaheim's leadership brought economic vibrancy to this area without resorting to any takings of private property. It also explores the successes and failures of other cities around the nation in economic redevelopment.

Economic Development in Today's American City

Very often, as city leaders think about ways to develop or revive their urban core, the debate quickly turns to questions about the government's authority to take property, zone land or otherwise define land use. Some urban infill advocates question if development can really occur without the government taking property through its eminent domain powers. Without eminent domain, they ask, can first-ring suburbs compete with outlying suburbs?

In Anaheim, my City Council colleagues and I decided that we would not agree to any development plan that proposed the use of eminent domain. We believed strongly that any economic development needed to happen without the government violating the private property rights of our residents and business owners.

However, for some city leaders and urban planners, urban renewal seems inseparable from the use of eminent domain.

For example, when the *Kelo v. City of New London* decision came down from the U.S. Supreme Court in June 2005, Bart Peterson, the mayor of Indianapolis (who serves as president of the National League of Cities) said:

"I think the rebirth of American cities over the last several decades is due to these kinds of urban revitalization efforts that really would be brought to a halt if eminent domain couldn't go forward."¹

The big question many planners ask is: How can a major city achieve the goals I describe without taking private property?

The answer is two-fold. First, local officials need to make a commitment to honor private property rights and acknowledge the destructive power of eminent domain. It is amazing how acceptable, almost honorable, government takings can be made to sound.

For instance, David A. Smith, founder of the non-profit Affordable Housing Institute, describes eminent domain on his web log in this way:

"[T]he benefits we secure through collective action *benefit largely the same individuals whose property rights we may have trimmed*. In other words, this isn't so much about redistribution—rob from the poor to give to the rich—but rather about maximizing aggregate value. It's not altruism, it's synergy: the positive-sum-game arising from a well-diversified community."²

"Synergy" might be a nice, new age way to describe the violation of another party's private property rights, but it doesn't make the decision to forcibly acquire private property the right thing to do. Many local governments are abusing their eminent domain powers, but property shouldn't be seized for any reason, including for good or honorable ones like affordable housing.

John Revelli, owner of Revelli Tires in Oakland, no doubt thought that his 56-year-old auto business

contributed to the city's economy, but local leaders thought otherwise. A week after the *Kelo* case was decided, a team of contractors hired by Oakland packed up Revelli's shop and evicted him from his property. Oakland seized the tire store and another neighboring auto business to make way for a city-subsidized development that will include apartments, condominiums and an expansion of the nearby Sears department store—which will include a tire shop. City officials defended their action by saying that they had offered “fair compensation” for the property and that the development was “good for all of Oakland.”³

The fact is, however, that eminent domain is the easy path to redevelopment. If local officials put more effort and thought into how to accomplish their planning goals without relying on this “tool,” they'd find that urban development could occur *without* eminent domain.

Some may ask: If eminent domain isn't the answer, what tool should cities use to stimulate economic development? The answer is simple: market forces. If local officials regularly made zoning requirements more flexible and acknowledged market principles, new projects could move forward without taking away rights from existing landowners.

Anaheim's Platinum Triangle: Urban Infill Without Eminent Domain

The Platinum Triangle, the new urban district around Angel Stadium, was developed to respond to market demand for higher density housing. Given this area's proximity to Anaheim's sports and entertainment, and the region's Metrolink commuter rail line, we

Some may ask: If eminent domain isn't the answer, what tool should cities use to stimulate economic development? The answer is simple: market forces.

thought that this area could become a downtown for all of Orange County.

Although this section of the city was considered underutilized in terms of density and function, it was not a neighborhood that our City Council would declare to be blighted. However, because of its



A-Town, a 40.6-acre mixed-use development of urban towers, flats and townhouses.

haphazard layout and less-than-chic industrial use, other local governments might have attempted to have this area labeled as blighted under California law and condemned the land within the area's boundaries. Our city's commitment to creating new economic development without using eminent domain kept the area from being designated as blighted.

Early on in the process, city leaders determined that the city and the property owners could benefit if the area was considered for mixed-use development due to its proximity to Angel Stadium of Anaheim, Arrowhead Pond of Anaheim, the Anaheim Convention Center, the nearby Disneyland Resort, and area jobs, freeways and mass transit. So we conceived a plan that would allow the city to change the character of the district without infringing on the property rights of the existing landowners.

To begin, we wanted to address issues that affected everyone in Anaheim, such as providing more housing and employment opportunities in the city, responding to market demand for higher density housing and, capitalizing on the assets, we had to create an exceptional urban neighborhood within the city limits.

The City Council identified a few criteria for the plan:

- First, private property owners should drive development within the Platinum Triangle. There would be no subsidies or other public incentives to achieve development goals.
- Second, new mixed-use developments could not turn existing properties into non-conforming uses or buildings. Property owners would still retain the rights to develop and use property pursuant to existing zoning.
- Third, recognizing that the area was composed of dozens of individually owned parcels, the private sector would have to assemble parcels if larger sites were to be developed. The city would not use eminent domain to acquire property.

Many cities are building sports venues within an urban area. But in the Platinum Triangle, we wanted to encourage development of an urban center around existing sports and entertainment venues. City officials “set the table” for development by creating an overlay zone when amending the state-required General Plan, as well as adopting a standard development agreement and providing environmental clearance for development.

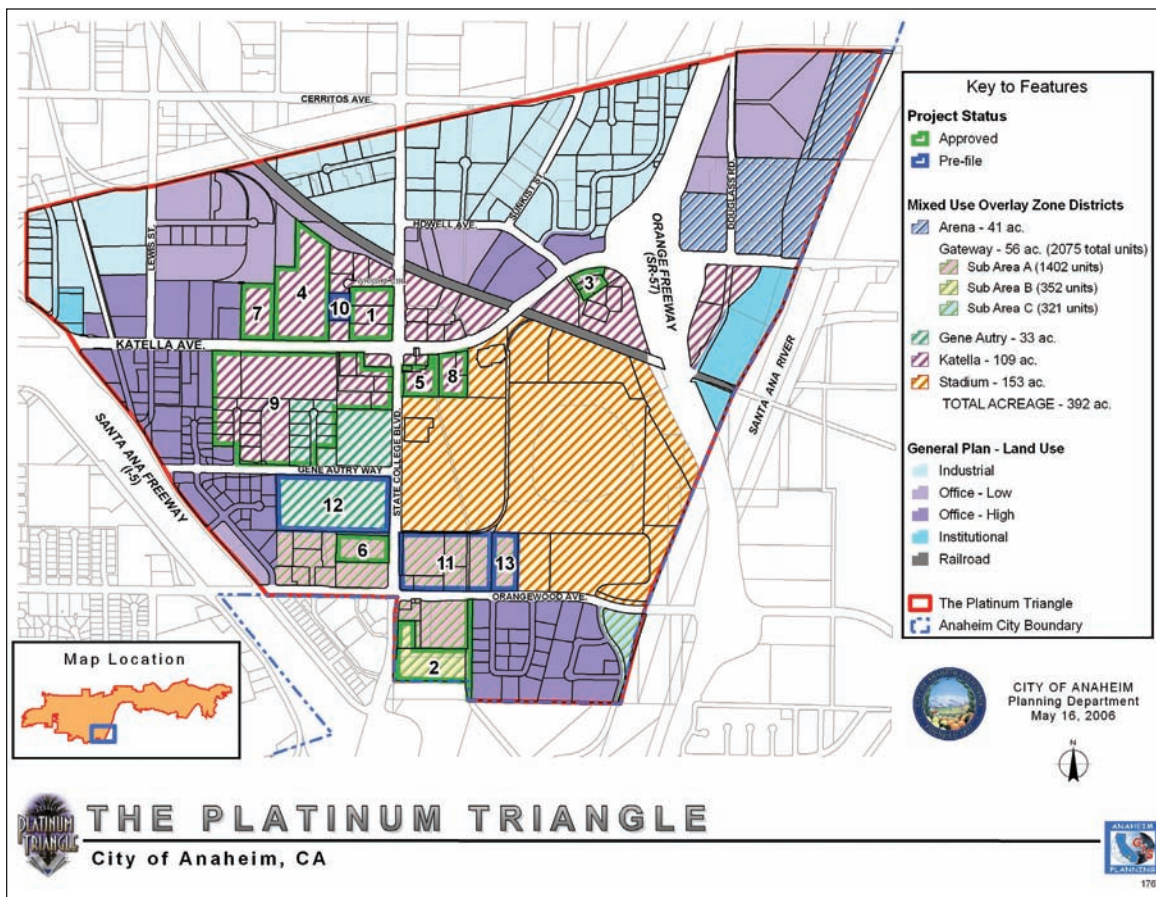


The 2100 at Platinum Triangle development contains a combination of residential, restaurant and retail features.

Overlay Zone

We knew what we wanted to accomplish in the area we were targeting, but we did not want to force any existing property owners out. As a result, when the city's General Plan was updated, we decided to create an overlay zone in this specific area of our community. Previously, this area was zoned light industrial, which meant that only industrial uses were permitted. The city decided to add a second layer of allowable land use, called an "overlay zone," so that the existing property owners could pursue residential and commercial uses on their parcels while protecting their underlying land use designation.

With the new plan, we created a situation that allowed existing light industrial property owners to exist as before. But if any developer wanted to take advantage of the new development opportunities, they would need to adhere to the new standards set by the overlay zone. So, in Anaheim's case, our light industrial property owners were free to continue their business activities, even if they chose to expand their business or its operation. But if they or future owners wanted to develop retail or high density housing on the site, then they were bound to new zoning requirements, which we called an "opportunity zone."



Overview of Platinum Triangle development area.

Easier Permitting

We streamlined the permitting process for the entire area—including environmental impact requirements—while protecting property rights for the existing landowners. For example, the city created a development agreement that detailed particular points of agreement between the city and each developer regarding land use infrastructure: who pays for what in terms of street improvements, fees, traffic signals, etc. This agreement greatly assisted the applicant in streamlining an often-cumbersome process with the planning department.

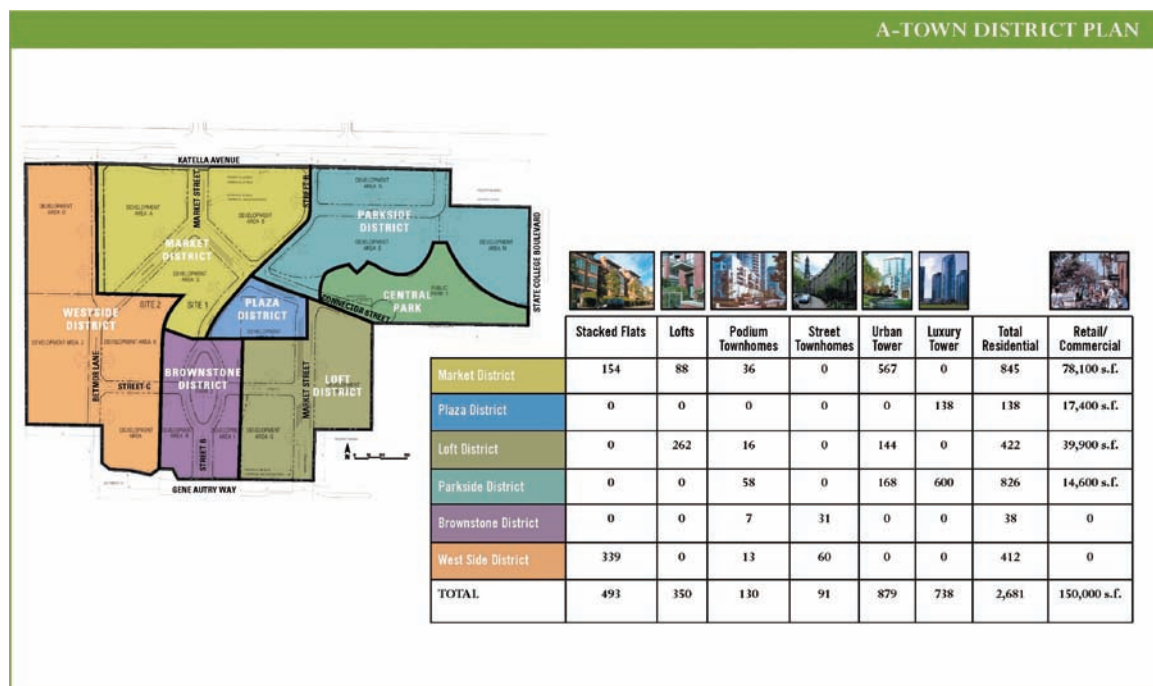
The goal was to create incentives for development without using the heavy hand of government to dictate what the result would be.

First-Come, First-Served Permits

In creating the overlay zone, the city established the maximum density that the Platinum Triangle could support. Limited by existing infrastructure, like sewer and road capacity, the city determined the area could support 9,500 housing units, 2.2 million square feet of new commercial uses, and 5 million square feet of new office development.

We wanted to create as much housing as we could, so through zoning, we created five mixed-use development districts where housing could be built, abandoning the traditional zoning model where each parcel has a defined maximum density. Within each of these districts, housing permits were provided en masse, not parcel-by-parcel.

So for example, the Gene Autry district, an area of approximately 33 acres, was allotted 1,000 housing



units. These units were then available to a developer on a first-come, first-served basis. As these units were used, no additional housing units could be built in the area.

Broad-based EIR

In creating this overlay zone as part of our General Plan update, the city then took the responsibility of processing the environmental impact report on the revised plan. Under state law in California, an Environmental Impact Report (EIR) is required to be prepared for each individual development, outlining the impacts a particular project would have on its existing surroundings. Often, EIRs can both tremendously slow the pace of a development, as well as increase the costs. Under Anaheim's approach, a broad-based EIR was reviewed and approved, saving future developments from having to prepare parcel-by-parcel EIRs.

Reduced Building Requirements

We looked for ways to reduce regulations and government requirements throughout the development process. The goal was to create incentives for development without using the heavy hand of government to dictate what the result would be.

For example, the city lowered the minimum number of parking spaces for residential development in this area, compared to other developments within the city. In addition, developers of mixed-use projects are permitted to submit a parking study to justify further reductions in parking and/or request the use of on-street parking, shared parking, valet parking or tandem parking.

Furthermore, the city did not dictate the balance between commercial and housing development within the project. Instead, the plan targeted a few areas where ground floor commercial uses are required; however, commercial uses are permitted anywhere



The 2100 at Platinum Triangle development includes 251 residential units.

within the mixed-use overlay area. For instance, an important place-making element of the Platinum Triangle is “Market Street,” a pedestrian-friendly mixed-use shopping district where ground floor uses are required along a tree-lined street scaled to provide a comfortable environment for strolling, shopping and outdoor dining.

Also, there are no inclusionary zoning or other low-income housing requirements included in the development plans.

Resulting Economic Development

As a result of this streamlined process and these market-driven incentives, the area became even more attractive to developers. In some cases, property values

more than quadrupled within 18 months after the new zoning was in place (in other words, the city rezoned in order to meet market demands).

Within the overlay zone, which was passed by the Anaheim City Council in August 2004, development

The Mayor and GM promised the new plant would create more than 6,000 jobs, but by 1988, the plant employed only 2,500 people. Analyst Ilya Somin estimates that the destruction of the neighborhood probably resulted in a net job *loss*.

plans by private firms were in place for nearly three-fourths of the 9,500 available units within 15 months. Eleven separate developers sought and received city approval, purchased land from private property owners, and commenced their planning and development of



The 2100 at Platinum Triangle development is built on a 3.5-acre footprint.

the area within the first year after the approval of the Platinum Triangle overlay zone.

The developer with the largest presence in the Platinum Triangle is Lennar Communities. They are

While many owners decided to redevelop or sell their properties, other small businesses have decided to stay where they are, which is exactly what our plan allows them to do—keep their businesses without the threat of eminent domain.

moving forward with two separate projects in this area. One project, known as A-Town, has more than 2,600 residential units and 229,000 square feet of commercial/retail space. All this activity will take place in a variety of building types, but this project alone may include more than ten 20-story residential towers.

Prior to the creation of the overlay zone, Lennar owned no property in the area. Upon the establishment of the zone, they purchased approximately 30 properties (over 50 acres), all from private property owners, at market price, without government involvement.

With the flexibility the city provided, the area is blossoming with more economic activity than ever imagined. And today, as housing and commercial uses move forward, there has been an increased demand for more intense high-end office space.

While many owners decided to redevelop or sell their properties, other small businesses have decided to stay where they are, which is exactly what our plan allows them to do—keep their businesses without the threat of eminent domain. For example, adjacent to the Lennar A-Town development, one low-rise industrial building remains. This business owner, who chose not to sell to Lennar and will remain in the area, will soon have towering 20-story residential buildings nearby. The business owner is in charge of the destiny of his business—keep its doors open and operate as it has in the past, existing peacefully with the new development in the area, or perhaps choose to sell his property down

the road. But it is the business owner's decision—not the city's—whether the business stays in the Platinum Triangle area over the long term or not.

All of this development occurred without the city putting any pressure on any landowners to sell their property. The development of private properties has been completely at the discretion of the individual property owners. Not only did the city not use the formal power of eminent domain to take property, there was no subtle use of the power local governments possess to make business and property ownership difficult. Anaheim put the policies and regulations in place that we thought would help bring new activity to the area, streamlined permitting processes and requirements, and have then excitedly watched as the private sector responded. To date, the private sector has invested billions of dollars in the Platinum Triangle, which includes more than 7,000 homes and a wide variety of restaurants and retail space.

Eminent domain isn't the key to economic development

The U.S. Supreme Court's decision in *Kelo v. City of New London* has emboldened local governments to use eminent domain on behalf of the private sector simply to increase tax revenues and speed up the pace of developments.

Government has a role to play in easing restrictions and streamlining development. But helping a private company obtain property through the use of eminent domain is an inappropriate use of government power.

Any elected official in a city that has any amount of economic activity has likely been approached by a

private sector company that wanted the city to invoke eminent domain just to speed things up or simplify the project's development. How ironic it is then that many of the officials that will agree to use eminent domain for tax revenue purposes are the same ones who clutter up the development process with layers of rules and regulations, fees and approval hurdles.

The common mistake city officials make when they try to create new jobs and revive failing areas of their cities is to try to act as both government and the private sector. While planning has a place in local government today, too many government officials want to dictate how and where development takes place. Sadly many of these grand plans fail.

In the 1980s, the leaders of Anaheim attempted to revitalize the downtown area by assembling parcels and trying to act in place of the private sector. Millions of dollars were spent and eminent domain was used to assemble large super blocks of property. However, the area never blossomed into the economic powerhouse city officials envisioned.

Anaheim isn't the only city to fail at using the power of government to try to dictate development. Mesa, Ariz., condemned 30 acres of land as part of a redevelopment project that began in 1992 and cleared 63 homes (costing the taxpayers \$6 million) only to have the land sit vacant when the developer couldn't line up financing.⁴

Like any private development, projects that rely on the government's use of eminent domain for economic development are not guaranteed to succeed—but if they fail, far more is lost than if the city had not pursued the project through government force. As John Norquist, president of the Congress for the New Urbanism, observed on NewsHour with Jim Lehrer on June 24, 2005:

“...[T]here's empty lots all over urban sites in America where cities have condemned land and then it just sits there idle. Assembling parcels, tearing out the fabric of the city and creating super blocks has been a strategy for economic failure.”

For example, in 1973, Chicago city officials determined that the vibrant “Block 37” needed to be

redeveloped, so it condemned and cleared the largely profitable block of neighborhood businesses. It took five mayoral administrations for the city to sell the land to private developers, for only 33 cents on the dollar.⁵ In California, Costa Mesa's Triangle Square Mall was built over a decade ago with a loan from the city and the use of eminent domain to clear out existing businesses. The mall brought in \$200,000 for the city in 2004—far less than the \$1 million they anticipated.⁶ The retail center

Like any private development, projects that rely on the government's use of eminent domain for economic development are not guaranteed to succeed—but if they fail, far more is lost than if the city had not pursued the project through government force.

now sits largely vacant, and many of the anchor tenants have left. Former Mayor Sandra Genis said, “If the market was there, it would have happened on its own.”⁷

Most famously, in 1981 the Michigan Supreme Court authorized the city of Detroit to seize and bulldoze Poletown, a historic and racially diverse neighborhood, so General Motors could build an auto plant. GM paid \$8 million for the property, while the city paid more than \$200 million for acquisitions and preparation. The mayor and GM promised the new plant would create more than 6,000 jobs, but by 1988, the plant employed only 2,500 people. Analyst Ilya Somin estimates that the destruction of the neighborhood probably resulted in a net job loss.⁸

One of the most common abuses of eminent domain at the hands of local officials is designating areas as “blighted” when they do not meet the criteria necessary for such a designation. Not only does the “blight” label reduce property values, but many times the area is not blighted at all—officials simply want to use some of the many tools given to them by state and federal laws and regulations when a neighborhood is designated as blighted.



Ahmed Mesdaq's "blighted" business is now destroyed.

By 2003, Mesdaq had invested millions and established a thriving neighborhood business that supported his entire family. But the city claimed it was in a blighted area, so in April 2004, it voted to condemn Mesdaq's building for a Marriott hotel The land is now being used as nothing more than a parking lot.

Just south of Anaheim, in San Diego, the City Council voted to condemn Ahmad Mesdaq's popular and successful Gran Havana Cigar Factory for a hotel chain. Mesdaq opened the elegant cigar and coffee lounge in 1994, and in 2002 purchased and renovated an 8,000-square-foot building on the corner of Fifth Avenue and J Street. By 2003, Mesdaq had invested millions and established a thriving neighborhood business that supported his entire family. But the city claimed it was in a blighted area, so in April 2004, it voted to condemn Mesdaq's building for a Marriott hotel. The courts upheld the condemnation and ordered him to vacate in June 2005. The building was demolished, but the land is now being used as nothing more than a parking lot.⁹

In northern California, the city of Hercules invoked the power of eminent domain to stop Wal-Mart from developing a store there. While the giant retailer had complied with city design requests (cutting a proposed 142,000 square foot store to a 99,000 square foot and making aesthetic changes) the city nevertheless commissioned a study to fight the development. The study showed that the store would attract lower-income people than those living in Hercules. As the city's vice mayor told the *San Francisco Chronicle*, "The city of Hercules is very unique. People from the outside have to understand that."¹⁰

The area Wal-Mart wants to develop could not reasonably be described as blighted. The action by the city council clearly abused the city's eminent domain

powers and will be challenged in court by Wal-Mart. As the *Contra Costa Times* pointed out in an editorial criticizing the city's move, "If Hercules does not want a huge retail outlet such as Wal-Mart at the future Bayside Marketplace, it need not have one. City officials can easily deny a permit for a store larger than 64,000 square feet."¹¹

Although Wal-Mart was the victim in Hercules, there are times when Wal-Mart and other large retailers do ask local governments to use their eminent domain powers to benefit their company's expansion plans.

Cities that Did It Right

Amidst all of the horror stories about cities abusing their takings power, a few cities join Anaheim as examples of how economic development can be accomplished without eminent domain.

One well-known example is the revitalization of a portion of downtown Seattle in the early 1990s. The public and private sectors joined forces to rehabilitate the area, creating a one million-square-foot retail center, Pacific Place, that has generated a 15.8 percent increase in taxable sales and a 4.4 percent increase in retail jobs.¹² According to the amicus brief filed by the Goldwater Institute in the *Kelo* case, the developers involved in the Seattle redevelopment project acknowledged that the deal was more complicated because they did not rely on the government's use of eminent domain:

"One of the private developers acknowledged that acquiring the property for the three-block redevelopment effort was difficult without being able to call on the power of eminent domain. However, developers instead used techniques such as land swaps, individual and corporate investments, and commitments from current property owners to make the economic redevelopment occur."¹³



Gateway Centre Condominiums (top) and Archstone Gateway Apartments (bottom) cover nearly 25 acres in the cities of Anaheim and Orange.

In Gilbert, Ariz., the city adopted a policy of purchasing land from voluntary sellers instead of using eminent domain. In one instance, the city spent \$1.4 million to purchase and demolish a downtown apartment complex.¹⁴ (This example is not made to support government entities using taxpayer dollars to purchase private property as a way to bring about economic redevelopment; rather it is simply to point out that such redevelopment was accomplished without eminent domain.)

In 2005, the Mormon Church and a Mormon developer quietly purchased 23 homes in the area around the original town square in Mesa, Ariz. City leaders had been discussing redeveloping the area, but developer Dennis T. Barney beat them to it. He purchased 21 of the homes and refurbished them. The city's Mormon Temple is located nearby and there are plans to create a "gateway to the temple" with some of the land purchased, according to the *Arizona Republic*.¹⁵ According to a local resident, prostitutes, drug houses and homeless people had plagued the area. Mesa Mayor Keno Hawker told the newspaper, "It's a model of how development can and is taking place in Mesa."

There is no doubt that the absence or removal of a threat of condemnation encourages economic development, chiefly because property owners and developers feel secure in their investment. Since lifting its blight designation over the city's West End in 2003,

Lakewood, Ohio, has seen more than \$224 million in economic development projects and improvements.¹⁶ After Scottsdale, Ariz., lifted its second redevelopment designation, the city reported \$2 billion in private investment.¹⁷ According to the *Arizona Republic*, “The Downtown Redevelopment Area ... was intended to provide incentives for investment. But downtown business interests say property owners held off on improvements, fearing the city would condemn and take their property.”¹⁸

Instead of condemning blighted homes and businesses, many cities work with owners to improve

Helping a private company obtain property through the use of eminent domain is an inappropriate use of government power.

the appearance of their properties. In Bonita Springs, Fla., the city’s building inspector has worked with qualifying property owners to restore the exteriors of their homes through a project called “Beautify Bonita.” Homes that benefit from simple improvements whose owners are elderly, disabled or impoverished qualify for the program. Once a building is named for aid under this project, the city recruits volunteers to do the repairs. Community members and organizations are encouraged to make tax-deductible donations to Beautify Bonita.¹⁹ Cities nationwide, including Bonita Springs, participate in a related program called “Paint Your Heart Out.”



Stadium Towers retail center (top) and Stadium Lofts (bottom) mixed-use development.

In the Wake of *Kelo*, State and Local Governments Need to Protect Property Rights

While the high court ruled in favor of aggressive land takings for the benefit of tax revenues in the *Kelo* decision, the majority opinion left the door wide open for states to step in and grant the property rights protections the court had just abandoned.

“We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose ‘public use’ requirements that are stricter than the federal baseline.”²⁰

According to a new report issued by the Institute for Justice, 40 states approved measures to curb abuse of eminent domain in the wake of *Kelo*.²¹ This is a significant measure of the public outrage over *Kelo* because, as Carla Main observed in *Policy Review*, “The lobbies against such bills are many and highly organized: state and local governments, real estate developers, sports franchises in search of arenas, the hotel industry, big-box retailers, and many others with an interest in seeing urban and even rural development in convenient locations through the use of economic development takings.”²² Nicole Gelinis noted in “They’re Taking Away Your Property for *What?*” (*City Journal*, Summer 2005):

“Americans are serious about the sanctity of private property because they understand that it is not only inseparable from liberty but also the foundation of prosperity.”

“The threat of eminent domain puts everyone in a holding pattern. We can’t get long-term funding. We don’t know what will happen.”

Here in California, voters narrowly rejected a statewide initiative in November 2006 aimed at stopping eminent domain abuse, largely because of the controversial regulatory takings component that was also included.²³

Local jurisdictions can also take action. The Anaheim City Council voted to restrict the use of eminent domain powers in 2003, well before *Kelo* came before the U.S. Supreme Court. As a result, the city government cannot seize private property and give it to another property owner or entity simply to increase the city’s sales or property tax revenue. Just this November, residents passed a city charter amendment to make this policy permanent. Further, in June 2006, Orange County voters approved a measure similar to the Anaheim city charter amendment.



Stadium Park Apartments and Stadium Club Condominiums (top and center) offer 771 units; Platinum Centre (bottom) offers 265.

One area that needs to be examined is how cities are applying the term “blighted.” In many of the examples of cities overreaching with regards to eminent domain, it is fairly obvious that the areas that are being condemned are not what most people would think of as blighted. According to the Goldwater Institute, Arizona was one of the states that needed to narrow its definition of blight in order to protect property rights:

“Arizona grants its municipalities a breathtakingly vague set of power under its slum clearance and redevelopment statutes. Included among these is eminent domain, which can be used to declare someone’s home a slum if there is an “inadequate” street layout or lots are deemed ‘faulty.’ Narrowing the scope of these definitions assures homeowners that their land will be protected against creative land-grabbing schemes.”²⁴

Voters in that state heeded this advice and overwhelmingly passed a ballot measure changing the statutory definition of “blight” under Arizona law.

California has many examples of redevelopment agencies going “blight-happy” in order to create new economic activity in their communities. In 2002, for example, San Jose declared a third of its area as “blighted” in order to create a huge redevelopment zone. One neighborhood of Victorian and Craftsman single-family homes was deemed blighted because of wet leaves on a tennis court and visible garbage cans sitting on the curb. City residents protested loudly and city officials responded that they weren’t interested in seizing private homes. They said they simply wanted to find a way to “invest in the neighborhoods.” Residents objected, pointing out that they were required to disclose that their home was potentially subject to eminent domain, harming their property values.²⁵

Bob Blue agrees with the concerns raised by the San Jose residents. “The threat of eminent domain puts everyone in a holding pattern. We can’t get long-term funding. We don’t know what will happen.”²⁶

Blue owns Bernard Luggage in Hollywood, California, a business his parents started in 1955. But in March 2006, Blue was notified that his business had been officially classified as blighted by the local

redevelopment agency and the area, which included about 30 other businesses, was condemned. Blue, who owns his business's building at the corner of Hollywood and Vine, was told that he had 90 days to vacate. Not surprisingly, it was discovered that this "blighted" neighborhood would soon be home to a brand-new luxury hotel and a high-end retail and housing development.²⁷ Thankfully, the city recently relented and Blue and his business get to remain where they are. But his story is often repeated—usually with the opposite outcome, like in the cases of Ahmad Mesdaq and John Revelli—across California.

The desire to create new jobs and more economic activity should not come at the expense of private property rights of city residents and business owners. Instead of using government powers to grab people's land, local and state government officials across the United States should find creative ways to encourage new enterprises by working with the homeowners and businesses already located in their community.



The Stadium Lofts project contains condominiums, retail and restaurant space, along with an 850-space garage on 6.3 acres.

Cities Need to Choose Freedom

When I was elected Mayor of Anaheim, I wanted to take a different approach to governing a big city. I wanted to reduce government's reach into people's lives, while at the same time improving municipal services and making it easier for people to interact with their government.

I am very proud of my city's "freedom friendly" approach to governance, but I am most proud that we took steps—well before the *Kelo* case was decided—to avoid using eminent domain in development around the city.

"Freedom" quickly became the motto of my administration. In fact, our local paper, the *Orange County Register*, dubbed Anaheim a "freedom friendly" city. In my first term as mayor, we have given homeowners a "home improvement" fee holiday, businesses a tax holiday and streamlined or eliminated a variety of city codes and regulations. We are also investing in new infrastructure—including welcoming in a private firm to provide a citywide wireless Internet system—to ensure that Anaheim remains one of America's most exciting and modern cities. I am very proud of my city's "freedom friendly" approach to governance, but I am most proud that we took steps—well before the *Kelo* case was decided—to avoid using eminent domain in development around the city.

By putting these principles in place, today Anaheim is flourishing and becoming a place where freedom is not just a phrase, but also a *practice*.

Endnotes

- 1 “Seizing Property,” *Online NewsHour*, June 24, 2005, at http://www.pbs.org/newshour/bb/law/jan-june05/property_6-24.html (retrieved February 12, 2007).
- 2 “Eminent Domain and Urban Renewal: Fighting the Wrong Fight? (Part 1),” Affordable Housing Institute Weblogs, March 6, 2005, at http://www.affordablehousinginstitute.org/blogs/us/2005/03/eminant_domain.html (retrieved February 12, 2007).
- 3 Jim Herron Zamora, “City Forces Out 2 Downtown Businesses,” *San Francisco Chronicle*, July 2, 2005, B3.
- 4 Robert Robb, “Count on City-driven Projects to Fail,” *Arizona Republic*, September 21, 2001, 9B.
- 5 Ross Miller, “Progress Brings us Back to the Prairie,” *Chicago Tribune*, July 16, 1993, 19.
- 6 Steve Lowery, “A Triangle Square Peg in a Round Hole,” *OC Weekly*, February 11, 2005, 10.
- 7 Daniel Yi, “A Black Eye for City’s Face Lift,” *Los Angeles Times*, January 30, 2005, B1.
- 8 Ilya Somin, “Overcoming Poletown: *County of Wayne v. Hathcock*, Economic Development Takings, and the Future of Public Use,” *Michigan State Law Review*, Winter 2004, p. 1005–1039.
- 9 Miguel San Jose, “A Battle With City Hall: An Imminent Decision Awaits a Local Eminent Domain Case,” *San Diego Lawyer*, November/December 2004, at 38–40; Jonathan Heller, “Council OKs Hotel to Replace Cigar Lounge in Gaslamp Quarter,” *San Diego Union-Tribune*, April 1, 2004, B4. Also see <http://www.granhavana.com/>.
- 10 Patrick Hoge, “Vote Goes Against Wal-Mart; Council OKs Using Eminent Domain to Block Retailer,” *San Francisco Chronicle*, May 24, 2006, B1.
- 11 Editorial, “Misuse of Eminent Domain in Hercules,” *Contra Costa Times*, May 28, 2006.
- 12 Brief of *Amici Curiae* Goldwater Institute, et al., in Support of Petitioners, *Kelo v. City of New London*, 545 U.S. 469 (2005).
- 13 *Ibid.*
- 14 Brian Powell, “Remarks Rile Gilbert Officials,” *East Valley Tribune*, September 26, 2003, A3; Brian Powell, “Gilbert Eyes Area for Redevelopment,” *East Valley Tribune*, March 15, 2003, A3.
- 15 Justin Jouzapavicious, “Mormons Buying Land for Cleanup Near Temple,” *Arizona Republic*, March 11, 2005.
- 16 Michael Scott, “Blight Label is Removed in Lakewood,” *Plain Dealer*, March 3, 2003, B1. Also see the City of Lakewood’s flyer, “Major Economic Development Projects/2005/2006, Street Improvement Projects,” as of June 1, 2006.
- 17 Casey Newton, “Scottsdale Plans to End Redevelopment Designation,” *Arizona Republic*, October 4, 2005.
- 18 Peter Corbett, “Redevelopment Designation Lifted,” *Arizona Republic*, September 10, 2002, 4B.
- 19 Mark Krzos, “Beautification Help Approved,” *News-Press*, December 19, 2002, 1H.
- 20 *Kelo v. City of New London*, 545 U.S. 469, 489, 125 S. Ct. 2655, 2668 (2005).
- 21 For a summary of legislative action, see <http://www.castlecoalition.org/pdf/publications/State-Summary-Publication.pdf>.
- 22 Carla Main, “How Eminent Domain Ran Amok: *Kelo* and the Debate Over Economic Development Takings,” *Policy Review*, Hoover Institution, October–November 2005.
- 23 Korey Clark, “Mixed Results for Ballot Measures,” *State Net Capitol Journal*, November 13, 2006. In the nine states with ballot measures limiting eminent domain by addressing “public use,” all nine passed overwhelmingly. Voters in Arizona passed an initiative that restricts the definitions of “public use” and “blight” that also included regulatory takings language, but other measures that combined the two failed in California and Idaho. A measure dealing exclusively with regulatory takings failed in Washington. For a 2006 election wrap-up, see http://www.castlecoalition.org/media/releases/11_8_06pr.html.
- 24 Benjamin Barr and Tim Keller, “This Land is My Land: Reforming Eminent Domain after *Kelo v. City of New London*,” *Goldwater Institute Policy Brief*, January 17, 2006, No. 06-01.
- 25 Carol Lloyd, “A Blight on Urban Renewal: Are Bay Area Cities Abusing Eminent Domain as a Redevelopment Tool?” *San Francisco Chronicle*, March 4, 2005.
- 26 Karen J. Bannan, “Condemnation: A 2005 Supreme Court Ruling on Eminent Domain Puts Small Businesses Across the Country in Jeopardy,” *MyBusinessMag.com (NFIB Magazine)*, June/July 2006.
- 27 *Ibid.*

About the Author



Curt Pringle has been the mayor of Anaheim, Calif., since 2002. Having previously served four terms in the California State Assembly, including serving as Speaker in 1996, Pringle is regularly sought out at the national, state and local level to speak on policy issues such as affordable housing, transportation, planning and development. He heads Curt Pringle & Associates, a public relations, governmental affairs and consulting firm and also serves as an adjunct faculty member at the University of California, Irvine. He lives in Anaheim.

About the Institute for Justice

The Institute for Justice is a non-profit, public interest law firm that litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government.

About the Castle Coalition

The Castle Coalition, a project of the Institute for Justice, is a nationwide network of citizen activists determined to stop the abuse of eminent domain. The Coalition helps property owners defeat private-to-private transfers of land through the use of eminent domain by providing activists around the country with grassroots tools, strategies and resources. Through its membership network and training workshops, the Castle Coalition provides support to communities endangered by eminent domain for private profit.