RESOLUTION R-3963

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND OPPOSING REFERENDUM 48 (INITIATIVE 164) TO BE PLACED BEFORE THE VOTERS OF THE STATE OF WASHINGTON AT THE GENERAL ELECTION TO BE HELD TUESDAY, NOVEMBER 7, 1995, HAVING A BALLOT TITLE OF: "The Washington State Legislature has passed a law that restricts land-use regulations and expands governments' liability to pay for reduced property values of land or improvements thereon caused by certain regulations for public benefit. Should this law be APPROVED or REJECTED?"

Whereas, the Kirkland City Council has reviewed the potential application of Referendum 48 (Initiative 164) to the overall operation of the Kirkland city government, its citizens and property owners; and

Whereas, this resolution has come before the Kirkland City Council at its regular meeting of October 17, 1995, with notice thereof given in the manner required by RCW 42.17.130 (1)(a); and

Whereas, at said meeting members of the City Council and members of the public in attendance were afforded an approximately equal opportunity for the expression of opposing views,

Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. For the reasons given hereinbelow, the City Council of the City of Kirkland takes a position opposing the passage of Referendum 48 (Initiative 164), and urges the voters at the general election to be held on November 7, 1995, to vote against the passage of Referendum 48 (Initiative 164).

Section 2. The actual meaning or interpretation of many of the provisions of Referendum 48 (Initiative 164) can only be determined by litigation which will be time-consuming and expensive to both the City, its taxpayers and its property owners.

A. There is so much ambiguity and vagueness in the initiative that its meaning and effect cannot be predicated with confidence and will have to be determined by expensive and time-consuming litigation. One of the obvious examples of such uncertainty is created by Section 4 which creates a statutory "takings" standard different from the constitutional standard. This section appears to say that all regulations and permits are takings, since as exercises of the police power all such regulations are for "public benefit". If Section 4 is not intended to have such a broad reach, then where is the line to be drawn

between regulations that are and are not "for public benefit" within the meaning of this section. Exception for regulations or restraints that prevent public nuisances will be of little consequence, since most building, land use and environmental regulations do not prevent public nuisances as they been traditionally defined. The concept of "public nuisance" is an ancient creation of the common law, and the statutory embodiments of the doctrine date from the turn of the century before modern building, zoning and environmental regulations. Although the concept still has occasional vitality, and although there would be vigorous attempts to expand the concept during the course of the litigation that would follow enactment of this referendum, it is not a tool that can be relied upon to protect the interests of landowners today.

B. If the purpose of Section 4 is to make government pay for all building, zoning and environmental regulations because they all are "for public benefit", then that needs to be said clearly so that the economic consequences of such a policy can be known when the state, counties and cities consider their budgets and regulatory legislation. If it is not the purpose of Section 4 to make government pay whenever it regulates but only some of the time, then government and landowners alike need to be provided with meaningful standards for determining which actions "for public benefit" must be paid for. We believe that such fundamental and far-reaching issues need to be resolved within the legislation before it is enacted, not left to the courts to resolve without legislative guidance. They are not resolved within the language of Referendum 48 (Initiative 164).

C. The referendum if adopted would make regulation more inefficient and expensive than it is today. Section 3 of the referendum sets forth procedures that will have to be followed by the City before it can take even the simplest regulatory action. This is because "restraint of land use" is defined in Section 6 as "Any action, requirement or restriction by a governmental entity, other than actions to prevent or abate public nuisances, that limits the use or development of private property". If this language is read literally, then merely requiring someone to apply for a permit before they use or develop their property may well be a "restraint of land use" that invokes Section 3 of the initiative. Section 3 requires the city to prepare a "full analysis of the total economic impact on private property of such proposed restraint", and to make it "available to the public at least 30 days prior to issuing every permit". No exception is provided for permits for small or simple projects or ones that clearly comply with applicable regulations. The referendum gives no guidance as to what constitutes a "full analysis of the total economic impact on private property" of such proposed restraint or regulation except to require that it include reasonable alternatives to the proposed regulation, and then to require the city to adopt that alternative which least restrains land use. How does the city choose which is the least restrictive alternative when the full economic impact analysis

discloses different impacts on different parcels of property? What constitutes a full analysis of the total economic impact? Is this more complex than the scope of an environmental impact statement? None of these questions are resolved, nor is there much guidance toward resolving them within the language of Referendum 48 (Initiative 164). They will, however, have to be resolved if the referendum becomes law, and that can only be done at the primary expense of the city and its taxpayers. There will also be additional time delays and litigation over the preparation and determination of what constitutes a full analysis of the total economic impact. To some degree this additional time and money expense will fall upon landowners and developers, as well as government.

D. The initiative is incompatible with existing law. Many existing state laws require the City of Kirkland to limit the use or development of private property in order to further public interest. RCW Section 19.27.031, for example, requires cities to have in effect the State Uniform Building Code covering not only building but mechanical fire and plumbing codes. The Growth Management Act requires the City of Kirkland to have a comprehensive plan zoning code and environmental regulations, and Chapter 90.58 RCW, the Shoreline Management Act, requires Kirkland to impose substantial limits on what can be done on private property within the shoreline area, because of the strong public interest in such areas. Many of these state-mandated regulations constitute, or in the minds of many property owners, constitute "restraints of land use".

E. Conclusion. The Kirkland City Council believes that if the policy choice is to be made by either the legislature or the voters under the initiative and referendum process, that government should no longer regulate "for public benefit", or should do so in a more limited way than it does today, then that policy choice should be reflected in the repeal and/or amendment of the laws that require such regulation, not in the enactment of a referendum such as Referendum 48 (Initiative 164), that leaves in place those existing laws but makes it impossibly expensive, slow and inefficient for the local government or the state to follow them.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 19th day of October, 1995.

Signed in authentication thereof this 19th day of October, 1995.

Dave Russell
MAYOR

Attest:

City Clerk
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