

SUBJECT: STATE BALLOT INITIATIVE 933 (I-933) : COMPENSATION FOR GOVERNMENT REGULATION DAMAGING THE USE OR VALUE OF PRIVATE PROPERTY

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POLICY ISSUE: City Council review of potential impacts to Bellevue should I-933 receive voter approval.

DIRECTION NEEDED FROM COUNCIL:

- Action
- Discussion
- Information

This is a briefing providing information about Initiative 933 (I-933) and its potential impacts to the City of Bellevue. This is offered for informational purposes only. It is not intended as an expression of support or opposition to the Initiative. Council may consider taking a position on the Initiative at a future meeting, provided the provisions of RCW 42.17.130(1) requiring notice and opportunity for equal expression of opposing views are satisfied.

Staff seeks direction on whether Council has interest in considering taking a formal position on the Initiative.

BACKGROUND

Initiative 933 (sponsored by the Washington Farm Bureau) and designated as the "Property Fairness Act" has been certified by the Secretary of State to appear on the November 2006 general election ballot. The official ballot title of I-933 reads:

This measure would require compensation when government regulation damages the use or value of private property, would forbid regulations that prohibit existing legal uses of private property, and would provide exceptions or payments. Should this measure be enacted into law? Yes [] No []

If I-933 passes, it would become law 30 days later on December 7, 2006. The full text of Initiative 933 is provided under Attachment 1.

Section by Section Overview

The following represents an overview of the Initiative, organized by section. Following the section-by-section overview, staff has included an analysis of how the Initiative may impact the City of Bellevue, if adopted by the voters.

- ▶ Section 1 (Purpose and Findings) is a broad statement of purpose to protect the use and value of private property from governmental actions, and recognizing the inherent ability of property owners to appropriately use and manage their property. While this section does not contain any operative language, it may be used to help determine the appropriate interpretation of other portions of the Initiative in the event of litigation over its meaning.

- ▶ Section 2 (Pre-adoption Impact Analysis and General Definitions)
 - Subsection (1) of this section establishes a process requiring agencies to consider and document impacts to private property, “prior to enacting or adopting any ordinance, regulation or rule which may damage the use or value of private property.” The review must include documenting the governmental purpose of the proposed action, the connection between the purpose and the action, the potential impacts of the proposed action on the uses of private property, less restrictive alternatives, and the estimated compensation that may need to be paid under the Initiative.
 - Subsection (2) defines key terms used through the act:
 - “Private property”, which is defined broadly as all real and personal property (both tangible and intangible) protected under the 5th Amendment to the United States Constitution or Article I, Section 16 of the state Constitution, including, but not limited to: interest in land, buildings, crops, livestock and mineral and water rights.
 - “Damaging the use or value”, defined as “prohibit or restrict the use of private property to obtain benefit to the public which in all fairness and justice should be borne by the public as a whole.” A list of examples includes, but is not limited to:
 - Prohibiting or restricting the “use, size, scope or intensity of any use legally existing or permitted as of January 1, 1996;”
 - “Prohibiting actions of a property owner to prevent or mitigate harm from fire, flooding, erosion or other natural disasters or conditions that would impair the use or value of the property;”
 - “Requiring a portion of property to be left in its natural state or without beneficial use to its owner, unless necessary to prevent immediate harm to human health and safety;”
 - “Prohibiting maintenance or removal of trees or vegetation.”
 - Certain exemptions to the definition of “damaging use or value” are included in Subsection (2) (c) , and are applicable to restrictions that apply equally to all property subject to the agency’s jurisdiction. This list of exemptions is to be construed narrowly.
 - “Compensation” is defined as payment “equal to the amount the fair market value of the affected property has been decreased by the application or enforcement of the ordinance, regulation or rule.” This includes the value of any portion of property required to be left in natural state or without beneficial use to the property owner. Compensation also includes any costs and attorneys fees incurred by the property owner in seeking to enforce the Act.¹

- ▶ Section 3 (Compensation or Waiver): This section, referred to as the “pay or waive” provision, would require that any governmental agency seeking to enforce or apply a regulation that would result in “damaging the use or value” of private property must pay compensation for that damage in advance. As an alternative, the state or local governmental agency may simply refrain from taking such action and thereby avoid liability and compensation costs. The Initiative does not exclude federal or state mandated requirements that are administered on the local level.

¹ The combined impact of the definition of “damage” and of “compensation” is to ensure that Initiative 933 is more than a mere statutory statement of existing Constitutional requirements for regulations or actions that impact Constitutionally-protected property. Under general constitutional analysis, regulations that impact the use and value of real property are generally allowed without requiring compensation except where they go so far as to eliminate all use and value of the property. I-933, on the other hand, requires compensation for any impact on fair market value, however modest, and however small a portion of the property is impacted.

- ▶ Section 4 (No fee for seeking waiver): State or local governmental agencies are not permitted to charge any fee for considering whether to waive or grant a variance from a regulation to avoid liability or compensation.
- ▶ Section 5 (GMA Amendments): Development regulations adopted under provisions of the Growth Management Act (GMA) can't prohibit uses legally existing prior to their adoption.

The remaining provisions (Sections 6 through 10) are miscellaneous provisions concerning interpretation and effect.

Questions Raised by the Initiative Language

While some governmental regulations/actions clearly fall within the definitions of “damage” provided by the Initiative, (thus triggering compensation or waiving of the regulations), in many cases it is likely that the determination of whether a regulation is covered by the Initiative will be made through legal challenges initiated by local governments and/or property owners seeking to apply the Initiative if it is adopted.

Some broad questions about the Initiative’s interpretation and application have been raised as part of the public review and discussion of the proposal, including:

1. What property rights are implicated by the Initiative? Unlike Oregon Measure 33, this Initiative includes damage to any property interest protected by the state or federal constitutions. A wide variety of property has been granted protection under state and federal constitutions beyond real property, including, for example, contractual rights, interest in financial instruments (like promissory notes, stocks, etc.), tangible items like household goods, cars, boats, and commercial or industrial equipment. While the plain language in the definitions section would seem to implicate this broad meaning of “property,” other portions of the Initiative seem more applicable to the real property context. For example, the definition of damage includes a public benefit component. It is hard to imagine a regulation of personal property like promissory notes or other financial interests that is intended to convey a public benefit. In addition, tying the amount of compensation due to a diminution in fair market value may make it more difficult to pursue damage claims for intangible personal property.
2. What local regulations are exempt from the requirements of the Initiative? As described in the Section by Section overview above, the definition of an action that damages the use or value of property includes a non-exhaustive list of examples. One such example is a regulation that has the effect of “prohibiting or restricting any use, size, scope or intensity of any use legally existing or permitted as of January 1, 1996.” The use of the date in this example is not carried through to other examples in the list, and creates some uncertainty about whether the 1996 has significance for any other kind of regulation affected by I-933. There are several possible interpretations of this section, and it appears to overlap with other examples as well, so the impact of the date restriction is uncertain.²

One further ambiguity related to the date limitation arises from the codification of this section within an existing chapter of state law. The Initiative embeds many of its operative sections, including Section 2 and its definitions, and Section 3 with its “pay or waive” requirements, within an existing chapter of the Revised Code of Washington (RCW), chapter 64.40 “Property Rights – Damages from Governmental Action.” An existing section of chapter 64.40, which is not amended by I-933, appears to offer

² For example, the date restriction could be read to apply only to the “use” against which the prohibition or restriction applies – that is, if a use was allowed on the site by the zoning regulations as of January 1, 1996, then any prohibition or regulation (like a height limit or property line setback) that impacts that use causes damage within the meaning of the act, regardless of when the particular prohibition or regulation was itself adopted. Alternatively, it could mean that the prohibition or regulation does not cause damage if in place prior to January 1, 1996, but even then some uncertainty exists. For example, critical area setbacks (some of which have been in place in Bellevue since 1987) could be considered both a regulation that restricts the use or intensity of use on property, and a regulation “requiring a portion of property to be left in its natural state or without beneficial use to its owner . . .” In the event a regulation falls within both categories, does the fact that it has been in place since 1996 protect the local government from having to pay compensation?

protection to local governments where they are seeking to apply a regulation or requirement “mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit.” RCW 64.40.010. How this apparent defense to liability for certain actions is intended to apply to the damages required under I-933 will likely be the subject of litigation.

A third uncertainty arising from the exemptions allowed under the Initiative is its exemption for regulations that restrict the use of property in order to “prevent an immediate threat to human health and safety.” Initiative, Section 2 at (2)(c). What constitutes a regulation preventing an “immediate” threat is unclear.

Finally, the Initiative exempts certain kinds of restrictions that “apply equally to all property subject to the agency’s jurisdiction. . .” Initiative, Section 2 at (2)(c). Requiring that the restriction apply equally to all property makes it unclear how the exemption would apply to land use restrictions, which routinely include categorizing property and treating property differently, based on its categorization. For example, the Initiative lists as one kind of exempt restriction, so long as it applies equally, restrictions that limit the location or operation of sex offender housing or adult entertainment. In Bellevue, we have specifically limited sex offender housing and adult entertainment uses to particular land use districts, with distance limitations to ensure that certain uses, like schools and daycares, are not located in close proximity. Because such uses are allowed in some places and not others, would our existing restrictions be considered to “apply equally” throughout the city?

3. Do local governments have authority to waive federal or state regulations (i.e. Clean Water Act (which the City administers at least in part through application of our stormwater requirements for new and redevelopment), Clean Air Act, Endangered Species Act, federal flood insurance program, Shoreline Management Act)? Section 3 of the Initiative requires local governments to compensate property owners for damage caused by application of rules and regulations, or to essentially waive those requirements. Generally, local governments don’t have broad authority to waive regulations under separate state and federal statutes, and the Initiative does not explicitly grant this authority, except possibly as to development regulations adopted under the Growth Management Act.³ A state initiative attempting to modify the application of federal law may raise preemption issues. It is difficult to predict how this uncertainty will be resolved. In addition, some federal statutes/programs are delegated to state agencies for implementation, further complicating the ability of local governments to respond. One possible resolution may include determining that under I-933, where local governments administer federal programs that diminish the value of property, the local jurisdiction has the choice of compensating the property owner or ceasing its administration of the federal program. Federal agencies may then be required to step in to administer the programs in connection with local projects. For state mandates, like the GMA and Shoreline Management Act, if it is determined that the Initiative does not create waiver authority, then local governments appear to be faced with a mandatory requirement to compensate property owners.
4. Does Section 5 of Initiative 933 prevent the City from eliminating uses from a land use district entirely? As drafted, it is unclear whether Section 5 of the Initiative actually prevents the City from adopting an ordinance that eliminates a specific use, whenever that use is legally existing somewhere in the area impacted by the amendment, or merely requires that nonconforming uses be required to continue. If the later interpretation prevails, Section 5 would have little impact in Bellevue, because of the City’s current treatment of nonconforming uses. Generally, the City allows nonconforming uses to continue

³ Section 3 of the Initiative states that “This section shall not be construed to *limit* agencies’ ability to waive, or issue variances from, other legal requirements. Any agency that chooses not to take action which will damage the use or value of private property is not liable for paying remuneration under this section.” (emphasis added) Therefore, the Initiative addresses waiver authority where it already exists, but is silent as to state regulations that local jurisdictions must administer which do not include waiver authority. The Initiative does include some attempt to address local jurisdictions’ requirements under GMA, in Section 5: “Nothing in this chapter [RCW 36.70A] shall be construed to authorize an interference with the duties in chapter 64.40.” The use of the phrase “interference with the duties . . .,” however, is not a clear grant of authority to waive the requirements of GMA, because the Initiative’s “duties” could be construed as an affirmative obligation to pay compensation where waiver is not possible.

in perpetuity, so long as they are not abandoned. This approach contrasts with the approach used by many other local jurisdictions, which seek to phase such uses out over time.

Possible Impacts to City of Bellevue

- ▶ **Administrative Requirements:** I-933 would require the City to conduct an analysis of any proposed resolution, ordinance or other regulation that could affect the value of private property. This analysis is required to consider and document the following:
 - The private property that would be affected by the proposed action;
 - The existence and extent of the governmental purpose for the action;
 - The existence and extent of any nexus between the governmental interest and the proposed action;
 - The extent to which the proposed action's restrictions are proportional to any impact of a particular property in light of other properties;
 - The extent to which the proposed action deprives property owners of economically viable uses of property;
 - The extent to which the action takes away or derogates property ownership;
 - The extent to which the proposed action enhances or creates a publicly owned right in property;
 - Estimated compensation that may need to be paid under I-933; and
 - Alternative means which are less restrictive on private property that may accomplish the same purpose.

Meeting this requirement could require staff to perform an analytical effort for every possible legislative action. The analysis may be straightforward where the impacted property interest is easily identifiable and tangible enough to perform an estimate of impacts to value, or may be quite complex if the nature of the impacted property interest is less easily valued or identified.

Some uncertainty surrounds the extent of and enforceability of local governments' obligations under this section. First, it is unclear how precisely the local government must identify impacted property. May the property interest be identified by a general description of the category of the interest, or must specific interests be identified by owner name and property description? Second, it is unclear who, if anyone, would have the ability to challenge a local government's analysis under this section. The Initiative embeds many of its operative sections within an existing chapter of the Revised Code of Washington (RCW), chapter 64.40 "Property Rights – Damages from Governmental Action." In a section of that existing RCW, which is not amended by this Initiative, standing to challenge government action is given to "Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law . . ." RCW 64.40.020(1). It would appear that the mere legislative act of adopting a resolution, ordinance or other regulation would not create a cause of action under existing provisions of RCW 64.40.

- ▶ **"Pay or Waive" Provisions of I-933:** At a minimum, under I-933, any land use or development regulations that prohibit or restrict "any use or size, scope or intensity of any use legally existing or permitted as of January 1, 1996" or that require "a portion of property to be left in its natural state" can only be applied and enforced by governments if the property owners are compensated for any reduction in the property value. In other words, the City would need to pay the "damages" or not enforce the regulations. The extent of actions that may be affected within this land use realm include:
 - Zoning controls governing the types of uses allowed within a particular land use district and regulations governing the scale of development, such as lot sizes, lot coverage or floor area ratio (FAR) limits, residential densities, building heights and setbacks;

- Development regulations adopted to comply with GMA, including critical areas regulations and concurrency requirements. As discussed above, the City may be unable to waive application of these requirements and thus faces mandatory compensation;
- Rezoning may subject an area to restrictions not previously in place, with respect to allowed uses or intensity of development. Future planning efforts that involve changing the character of an area may be significantly impacted by I-933;
- Development conditions requiring contributions towards infrastructure development, including transportation street frontage requirements, transportation and school district impact fees, utility stormwater and other utility requirements, and other conditions imposed through State Environmental Policy Act (SEPA) or other authority based on impacts to infrastructure.

Past actions: I-933 allows property owners to seek compensation for “damages” based on existing regulations at the time the local jurisdiction seeks to apply those regulations, in most cases regardless of when the regulations were originally adopted.

Future actions: Similarly, future land use or development regulations will need to be evaluated for potential impact to the use or value of property prior to being changed. If impacts are identified, the City would be required to pay the damages or waive the regulation if enacted. Some examples of potential future actions impacted by I-933 include:

- Implementation of the Shoreline Management Act updates – required by 2003 guidelines (City may not be able to waive);
- Recalibration of the Floor Area Ratio (FAR) Amenity Incentives Chart in LUC 20.25A.030 (allowing a building to exceed the floor area ratio permitted for development if certain amenities are provided - i.e. landscaped or recreation areas, public space, underground parking, artwork);
- Amendment of the Land Use Code to address property maintenance issues affecting neighborhood livability.

► **Other Regulations/Actions:** While I-933 is widely described as affecting primarily land use and development regulations, as discussed in more detail above it is drafted to capture a wide array of regulations impacting property. As a result, other types of City actions that could affect the use or value of real or personal property may be affected and thus could require the City to waive the regulation or compensate a property owner seeking damages. These may include:

- Nuisance regulations;
- Noise regulations;
- Annexations, to the extent property within the annexed area is subjected to use or development restrictions that impact its value;
- Regulations impacting the ability to use or enjoy personal property (like automobiles or boats);
- Actions to limit access or change traffic flow necessary for traffic operations.

► **Fiscal:** The Association of Washington Cities (AWC) provided assistance to the Office of Financial Management to estimate the potential fiscal impact of I-933 to cities. A sampling of cities (Bellevue not included) were asked to look at four possible fiscal impact areas:

- Compensation resulting from actions/conditions impacting land in cities between 1996 and 2006⁴:

⁴ Compensation is to be determined under the Initiative based on fair market value of the property based on an appraisal. It is anticipated there will be complications in agreeing on the amount with property owners (i.e. condemnation statutes have established rules and process for determining the property and litigation value. I-933 does not provide guidance about this very complex part of the question).

- Costs to analyze claims under current, previous or proposed regulations;
- Potential appraisal costs (for determining compensation values); and
- Potential additional litigation costs for claims and appeals.

Extrapolating from information the AWC obtained from the sample cities, the statewide estimate of annual impact to cities for damage compensation is between \$3.5 and \$4.5 billion, and the estimate of administrative costs is between \$60 and \$76 million per year.

The Office of Financial Management will be collecting similar information regarding county and state fiscal impacts for the official voters pamphlet. This information is not yet available.

Process for Taking a Position on a Ballot Measure

As you may recall, in order for Council to adopt a Resolution in support of or in opposition to a ballot measure, the following special requirements must be met:

1. The notice of the meeting must include the title and number of the ballot proposition. This may be accomplished by including the number and title of the ballot proposition on the agenda for a regularly-scheduled Council meeting.
2. The Council must afford an approximately equal opportunity for Councilmembers or the public to express opposing points of view. A public hearing is not expressly required as the vehicle for taking that public comment, and Council in the past has sometimes chosen to take public comment in other ways.

Most recently, Council has chosen to suspend your rules for taking public comment when the matter is taken up on the agenda at Other Ordinances, Resolutions and Motions. Thirty minutes has been set aside to take comment from supporters and opponents. Draft Resolutions have been provided in case Council determines to take a position on a state-wide initiative. Attachment 2 describes the process used when Council considered taking a position previously on Initiative 912.

Should Council wish to consider taking a position on I-933, staff will provide the required public notice and schedule this item for the September 25 or October 9 agendas.

ALTERNATIVES:

- 1) If Council wishes to take a position on the Initiative, provide direction to staff to prepare a Resolution for consideration at a future meeting, following the requirements of RCW 42.17.130.
- 2) Do not consider a position on the Initiative.

RECOMMENDATIONS: N/A

ATTACHMENTS:

- 1) Text of State Ballot Initiative 933
- 2) Sample process for taking public comment on a state-wide initiative

INITIATIVE 933

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 933 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to providing fairness in government regulation of
2 property; adding new sections to chapter 64.40 RCW; adding a new
3 section to chapter 36.70A RCW; and creating new sections.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 INTENT TO REQUIRE FAIRNESS WHEN GOVERNMENT
6 REGULATES PRIVATE PROPERTY

7 NEW SECTION. Sec. 1. This act is intended to protect the use and
8 value of private property while providing for a healthy environment and
9 ensuring that government agencies do not damage the use or value of
10 private property, except if necessary to prevent threats to human
11 health and safety. The people also intend to recognize and promote the
12 unique interests, knowledge, and abilities private property owners have
13 to protect the environment and land. To this end, government agencies
14 must consider whether voluntary cooperation of property owners will
15 meet the legitimate interests of the government instead of inflexible
16 regulation of property.

17 The people find that over the last decade governmental restrictions
18 on the use of property have increased substantially, creating hardships

1 for many, and destroying reasonable expectations of being able to make
2 reasonable beneficial use of property. Article I, section 16 of the
3 state Constitution requires that government not take or damage property
4 without first paying just compensation to the property owner. The
5 people find that government entities should provide compensation for
6 damage to property as provided in this act, but should also first
7 evaluate whether the government's decision that causes damage is
8 necessary and in the public interest.

9 The people find that eminent domain is an extraordinary power in
10 the hands of government and potentially subject to misuse. When
11 government threatens to take or takes private property under eminent
12 domain, it should not take property which is unnecessary for public use
13 or is primarily for private use, nor should it take property for a
14 longer period of time than is necessary.

15 Responsible fiscal management and fundamental principles of good
16 government require that government decision makers evaluate carefully
17 the effect of their administrative, regulatory, and legislative actions
18 on constitutionally protected rights in property. Agencies should
19 review their actions carefully to prevent unnecessary taking or
20 damaging of private property. The purpose of this act is to assist
21 governmental agencies in undertaking such reviews and in proposing,
22 planning, and implementing actions with due regard for the
23 constitutional protections of property and to reduce the risk of
24 inadvertent burdens on the public in creating liability for the
25 government or undue burdens on private parties.

26 **FAIRNESS WHEN GOVERNMENT REGULATES PRIVATE**
27 **PROPERTY BY REQUIRING CONSIDERATION**
28 **OF IMPACTS BEFORE TAKING ACTION**

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.40 RCW
30 to read as follows:

31 (1) To avoid damaging the use or value of private property, prior
32 to enacting or adopting any ordinance, regulation, or rule which may
33 damage the use or value of private property, an agency must consider
34 and document:

- 35 (a) The private property that will be affected by the action;
36 (b) The existence and extent of any legitimate governmental purpose
37 for the action;

1 (c) The existence and extent of any nexus or link between any
2 legitimate government interest and the action;

3 (d) The extent to which the regulation's restrictions are
4 proportional to any impact of a particular property on any legitimate
5 government interest, in light of the impact of other properties on the
6 same governmental interests;

7 (e) The extent to which the action deprives property owners of
8 economically viable uses of the property;

9 (f) The extent to which the action derogates or takes away a
10 fundamental attribute of property ownership, including, but not limited
11 to, the right to exclude others, to possess, to beneficial use, to
12 enjoyment, or to dispose of property;

13 (g) The extent to which the action enhances or creates a publicly
14 owned right in property;

15 (h) Estimated compensation that may need to be paid under this act;
16 and

17 (i) Alternative means which are less restrictive on private
18 property and which may accomplish the legitimate governmental purpose
19 for the regulation, including, but not limited to, voluntary
20 conservation or cooperative programs with willing property owners, or
21 other nonregulatory actions.

22 (2) For purposes of this act, the following definitions apply:

23 (a) "Private property" includes all real and personal property
24 interests protected by the fifth amendment to the United States
25 Constitution or Article I, section 16 of the state Constitution owned
26 by a nongovernmental entity, including, but not limited to, any
27 interest in land, buildings, crops, livestock, and mineral and water
28 rights.

29 (b) "Damaging the use or value" means to prohibit or restrict the
30 use of private property to obtain benefit to the public the cost of
31 which in all fairness and justice should be borne by the public as a
32 whole, and includes, but is not limited to:

33 (i) Prohibiting or restricting any use or size, scope, or intensity
34 of any use legally existing or permitted as of January 1, 1996;

35 (ii) Prohibiting the continued operation, maintenance, replacement,
36 or repair of existing tidegates, bulkheads, revetments, or other
37 infrastructure reasonably necessary for the protection of the use or
38 value of private property;

1 (iii) Prohibiting or restricting operations and maintenance of
2 structures necessary for the operation of irrigation facilities,
3 including, but not limited to, diversions, operation structures,
4 canals, drainage ditches, flumes, or delivery systems;

5 (iv) Prohibiting actions by a private property owner reasonably
6 necessary to prevent or mitigate harm from fire, flooding, erosion, or
7 other natural disasters or conditions that would impair the use or
8 value of private property;

9 (v) Requiring a portion of property to be left in its natural state
10 or without beneficial use to its owner, unless necessary to prevent
11 immediate harm to human health and safety; or

12 (vi) Prohibiting maintenance or removal of trees or vegetation.

13 (c) "Damaging the use or value" does not include restrictions that
14 apply equally to all property subject to the agency's jurisdiction,
15 including:

16 (i) Restricting the use of property when necessary to prevent an
17 immediate threat to human health and safety;

18 (ii) Requiring compliance with structural standards for buildings
19 in building or fire codes to prevent harm from earthquakes, flooding,
20 fire, or other natural disasters;

21 (iii) Limiting the location or operation of sex offender housing or
22 adult entertainment;

23 (iv) Requiring adherence to chemical use restrictions that have
24 been adopted by the United States environmental protection agency;

25 (v) Requiring compliance with worker health and safety laws or
26 regulations;

27 (vi) Requiring compliance with wage and hour laws;

28 (vii) Requiring compliance with dairy nutrient management
29 restrictions or regulations in chapter 90.64 RCW; or

30 (viii) Requiring compliance with local ordinances establishing
31 setbacks from property lines, provided the setbacks were established
32 prior to January 1, 1996.

33 This subsection (2)(c) shall be construed narrowly to effectuate
34 the purposes of this act.

35 (d) "Compensation" means remuneration equal to the amount the fair
36 market value of the affected property has been decreased by the
37 application or enforcement of the ordinance, regulation, or rule. To
38 the extent any action requires any portion of property to be left in
39 its natural state or without beneficial use by its owner,

1 "compensation" means the fair market value of that portion of property
2 required to be left in its natural state or without beneficial use.
3 "Compensation" also includes any costs and attorneys' fees reasonably
4 incurred by the property owner in seeking to enforce this act.

5 **FAIRNESS WHEN GOVERNMENT DIRECTLY**
6 **REGULATES PRIVATE PROPERTY**

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.40 RCW
8 to read as follows:

9 An agency that decides to enforce or apply any ordinance,
10 regulation, or rule to private property that would result in damaging
11 the use or value of private property shall first pay the property owner
12 compensation as defined in section 2 of this act. This section shall
13 not be construed to limit agencies' ability to waive, or issue
14 variances from, other legal requirements. An agency that chooses not
15 to take action which will damage the use or value of private property
16 is not liable for paying remuneration under this section.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.40 RCW
18 to read as follows:

19 An agency may not charge any fee for considering whether to waive
20 or grant a variance from an ordinance, regulation, or rule in order to
21 avoid responsibility for paying compensation as provided in section 3
22 of this act.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW
24 to read as follows:

25 Development regulations adopted under this chapter shall not
26 prohibit uses legally existing on any parcel prior to their adoption.
27 Nothing in this chapter shall be construed to authorize an interference
28 with the duties in chapter 64.40 RCW.

29 **MISCELLANEOUS**

30 NEW SECTION. **Sec. 6.** The provisions of this act are to be
31 liberally construed to effectuate the intent, policies, and purpose of
32 this act to protect private property owners.

1 NEW SECTION. **Sec. 7.** Nothing in this act shall diminish any other
2 remedy provided under the United States Constitution or state
3 Constitution, or federal or state law, and this act is not intended to
4 modify or replace any such remedy.

5 NEW SECTION. **Sec. 8.** Subheadings used in this act are not any
6 part of the law.

7 NEW SECTION. **Sec. 9.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 10.** This act shall be known as the property
12 fairness act.

--- END ---

Process for Taking Comment from the Public
on Statewide Initiative 912

As provided under RCW 42.17.130, the City Council will hear comments from members of the public who wish to speak either in support of or in opposition to Initiative 912 (I-912) at their Regular Session held on Monday night, October 17, in Bellevue City Hall's Council Chambers.

- The time allotted for this public comment period is thirty minutes, which will be equally divided between those supporting I-912 and those opposing I-912.
- Sign-up sheets for those wishing to speak in support and in opposition will be available at 8:00 p.m. at the rear of the Council Chambers.
- Speakers will be called from the sign-up sheets in the order in which they sign up until the time allotted to members of the public is exhausted. **Note that not all members of the public who sign up are guaranteed an opportunity to speak.**
- At the beginning of the public comment period, the Mayor will announce the number of speakers signed up to speak in support and in opposition to I-912. Speakers either in support or in opposition will collectively have 15 minutes to speak and can, if they choose, select a spokesperson(s). If several persons are signed up to speak, as a courtesy to others speakers are asked to limit their testimony to two minutes.
- Any person interested in testifying either in support or in opposition to I-912 who has not signed up may testify after those who have signed up have been heard **if time permits within the respective 15-minute period for testimony.**
- Speakers are requested to state their concurrence with previous speakers' comments rather than repeating testimony.
- The audience is asked to not clap at the conclusion of a speaker's testimony. If you agree with the previous speaker, please indicate your agreement by raising your hand.
- Despite the differing opinions on this issue, courtesy to one another's points of view is expected.
- The City Clerk will be the timekeeper and public testimony will be recorded.