

JCAR
Private Property Rights Policy

As the preamble to the Code of Ethics states, “under all is the land.” The ownership of private property is the foundation of our economic and social systems. Balancing the needs of communities to obtain private property for government uses, to revitalize blighted areas and to regulate the use of property through zoning codes with the constitutional protections of private property rights is a difficult and often contentious process. It is in the best interest of our communities, state and nation to protect and maintain a strong base of widespread private property ownership and to have clear policies that address how government acquires property for societal purposes.

We acknowledge that it is appropriate for governments to acquire private property for a variety of uses, including government facilities, parks, open space and community revitalization. Because of the importance of private property and the constitutional protections, we believe governments must exercise extreme caution in the exercise of this power and have systems in place to protect private property owners from capricious actions. We believe the following protections are necessary:

1. Eminent domain should be a tool of last resort, used only after reasonable efforts to reach a negotiated settlement have failed.
2. Just compensation must include not only the value of the property condemned but also all other reasonable and necessary costs generated by the condemnation action including, but not limited to, appraisal fees, legal costs, the expense of obtaining temporary housing, lost business revenue, relocation costs and severance damages.
3. Government should not take more land than is necessary for a specific project.
4. Properties should not be taken for revitalization or urban renewal purposes if private market forces are attracting reinvestment.
5. Properties should not be taken for revitalization or urban renewal purposes unless the property is blighted.

"Blighted area" means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

- (a) Slum, deteriorated, or deteriorating structures;
- (b) Predominance of defective or inadequate street layout;

- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
 - (d) Unsanitary or unsafe conditions;
 - (e) Deterioration of site or other improvements;
 - (f) Unusual topography or inadequate public improvements or utilities;
 - (g) Defective or unusual conditions of title rendering the title nonmarketable;
 - (h) The existence of conditions that endanger life or property by fire or other causes;
 - (i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
 - (j) Environmental contamination of buildings or property;
 - (k) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements; or
 - (l) The fact that an owner of an interest in property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.*
6. Governments must have policies that clearly define blight in physical terms.
 7. Determinations of blight must be made on a parcel-by-parcel basis.
 8. When government desires to develop an area larger than a specific area of blighted properties, the government must find that each parcel is blighted. Non-blighted parcels must be determined to be necessary to constitute an "adequate unit of development." To justify the additional condemnation the legislative body must first determine that the blighted parcels do not constitute an adequate unit of development based on findings of fact. Non-blighted parcels may be included only if the blighted parcels are a substantial portion of the redevelopment.
 9. The decision to take private property should be made by an elected legislative body on a parcel-by-parcel basis, following notice and a hearing on each parcel. Eminent domain should not be used on a specific parcel until after an adequate time period has been allowed for voluntary acquisition.

10. The decision to take a property by eminent domain must be administrative or quasi-judicial which requires a record containing findings of facts and conclusions. This also triggers judicial review of the decision.
11. Property owners must have expeditious access to administrative and judicial systems at all levels – local, state and federal – to pursue Fifth Amendment takings claims or relief from other property rights violations.
12. When a government entity exercises its eminent domain authority, it should do so only when necessary to materially advance a real public purpose. The government should provide persuasive, objective evidence through appropriate due diligence that the project, and the resulting public benefit, will in fact be realized within a reasonable timeframe.

* Definition from Colorado Revised Statutes.

May 5, 2008