



PACIFIC LEGAL FOUNDATION

January 5, 2012

To Whom It May Concern:

I am an attorney with Pacific Legal Foundation (PLF), a nonprofit, tax exempt corporation organized under the laws of the State of California for the purpose of monitoring and litigating matters affecting the public interest. Since its founding in 1973, PLF has been a leading voice for property rights, and has participated in numerous property rights cases before California courts, federal district and appellate courts, and the United States Supreme Court. *Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc.*, 41 Cal. 4th 954 (2007); *Mt. San Jacinto Cmty. Coll. Dist. v. Superior Court*, 40 Cal. 4th 648 (2007); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725 (1997). PLF attorneys represented the plaintiffs in the landmark case of *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987), wherein the United States Supreme Court banned land use agencies from imposing permit conditions having no connection to the impact of an applicant's proposed project.

A group of concerned California citizens has requested a letter opining as to whether California law permits the creation of a Property Rights Council within local government. The council would be comprised of qualified volunteers appointed from the local community to study the property rights concerns of citizens, and to review, research, and make recommendations to the jurisdiction's legislative body (i.e., its city council or board of supervisors), about proposed laws or amendments to existing laws having the potential to interfere with property rights. The council would have no legislative authority or power; it would serve as a kind of ombudsman to the public on property rights issues, and also assist city council members or county supervisors in rendering informed decisions that implicate property rights.

Our research indicates that California permits local governments to institute a Property Rights Council. We are not aware of any California law that prohibits, or substantively limits, the ability of a city or county to do so. Quite the contrary. Given the recognition and protection that the California Constitution affords property rights, the establishment of a Property Rights Council would only help to ensure that local decisions do not unconstitutionally infringe upon those rights.

The right to use and enjoy private property is a fundamental right in California. The Constitution enshrines the protection of property rights in its very first section, which reads: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending

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~~life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.~~ Cal. Const. art. I, § 1. The Constitution goes on to say that “[a] person may not be deprived of . . . property without due process of law,” and that private property cannot be “taken or damaged for a public use” unless “just compensation” is paid. *Id.* §§ 7(a), 19. Municipalities are bound by these constitutional protections. *Gould v. Grubb*, 14 Cal. 3d 663 (1975) (State and local government action “remains subject to constitutional limitations.”).

On the other hand, the California Constitution grants local governments—especially charter cities and counties—substantial flexibility in fulfilling their municipal functions and responsibilities, including their responsibility to respect property rights. *See, e.g.*, Cal. Const. art. XI, § 7 (“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”); *id.* §§ 5(a), 6(b) (The California Constitution provides that a city, or city and county, may adopt a charter giving it the power to “make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.”). Unless otherwise provided by *local law*,¹ a municipality may lawfully use such flexibility to institute a council, like the Property Rights Council, to protect its citizens’ property rights.

Sincerely,

A handwritten signature in black ink, appearing to read "PAUL J. BEARD II". The signature is stylized and somewhat cursive, with a horizontal line extending to the right from the end of the name.

PAUL J. BEARD II
Principal Attorney

¹We are unaware of any general law at the state level that prohibits the creation of advisory councils like the Property Rights Council. If yours is a charter city or county, reference to the charter will be necessary to determine whether such a prohibition exists.