PRIORITY

FOCUS

Analysis, Commentary and Updates on Legislative and Policy Issues that Affect California Cities

July 7, 2006
Issue #27-2006

WORK CONTINUES ON CABLE FRANCHISING LEGISLATION

The League is continuing to work on cable franchising measures in Congress and the state Legislature, even as both bodies are currently on summer recess. *For more, see Page 6.*

UPDATE ON REDEVELOPMENT BILLS

The League has been tracking several bills throughout the legislative session that would undermine the ability of redevelopment agencies to carry out their role of correcting blighted conditions and restoring economic vitality to California communities. These bills were introduced in the aftermath of last year's U.S. Supreme Court *Kelo* decision to address what some perceived as the inequity of local governments' ability to take and transfer property from one private party to another for economic development purposes.
For more, see Page 7.

FEDERAL AGENCIES SEEK COMMENT ON IMPLEMENTATION GUIDELINES FOR UPDATED ENVIRONMENTAL REVIEW PROCESS UNDER SAFETEA-LU

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) are asking for comment on the new proposed implementation guidelines of the latest environmental review procedures for transportation projects enacted in the Safe, Accountable, Flexible and Efficient Transportation Equity Act for the 21st Century (SAFETEA-LU).
For more, see Page 5.

WANT MORE DETAILS ON BILLS?

Visit the League of California Cities website at www.cacities.org/billsearch.

IN THIS ISSUE:

MAYORS AND COUNCIL MEMBERS DEPARTMENT SEEKING APPLICANTS FOR LEADERSHIP POSITIONS

The Mayors and Council Members Department of the League of California Cities is seeking enthusiastic, committed elected officials who are interested in becoming second vice president of the department.

Due to a vacancy, two second vice president positions are currently open, with one to be filled at the department's business meeting at the Mayors and Council Members Executive Forum in Monterey this month. The second vacancy will be filled at the Annual Conference in San Diego in September.

Both positions have a one-year tenure, and the League is asking for all applications for both positions to be in by July 14.

The second vice president acts in the place during the president's and first vice president's absence or inability to act. The second vice president is responsible for overseeing the Mayors and Council Members' Academy (MCA) and for performing any other duties assigned by the President.

If you are interested in these leadership roles within the League's Mayors and Council Members Department, or for more information, please visit the Department's webpage (www.cacities.org/mc). For an application form, visit the webpage or contact Robb Korinke at rkorinke@cacities.org or (916) 658-8258.

Again, the deadline for both positions is **July 14 at 5 p.m.**

For more information on this and other League issues, visit www.cacities.org.

SSO WASTE DISCHARGE REQUIREMENT COLLECTION SYSTEM TRAINING

In the May 5 edition of *Priority Focus*, we reported on the adoption of regulations regarding monitoring and data collection for Sanitary Sewer Overflows (SSOs) by the State Water Resources Control Board (SWRCB). Last week, as a follow-up to that adoption, SWRCB and the California Water Environment Association (CWEA) entered into a memorandum of agreement (MOA) for collection system agencies training.

The training concerns the recently adopted general waste discharge requirements for publicly-owned sanitary sewer collection systems. With the MOA in place, compliance with the newly adopted reporting requirements will be phased in by region over a 16-month timeframe.

Regions 4, 8, 9
Enrollment
November 2, 2006
Electronic Reporting Compliance
January 3, 2007

Regions 1, 2, 3
Enrollment
November 2, 2006
Electronic Reporting Compliance
May 3, 2007

Regions 5, 6, 7
Enrollment
November 2, 2006
Electronic Reporting Compliance
September 3, 2007

CWEA is working on putting together training on the new electronic reporting. The training will also include an introduction to the sewer system management plan requirements. The League and the California Association of Sanitation Agencies (CASA) are working closely with CWEA and will get more information out about the training as it becomes available.

A copy of CASA's letter announcing the agreement is available on the League's website at www.cacities.org/eq.

UNHAPPY WITH YOUR CABLE PROVIDER'S SUPPORT OF AB 2987? TELL THEM!

City Manager David Jinkens (South Lake Tahoe) recently took his lobbying efforts against AB 2987 one step further. In addition to contacting his legislators, Jinkens wrote to his local cable provider, Charter Communications, regarding the cable industry's sudden switch in position on the bill from "oppose" to "support," based on recent amendments that allow cable companies to "opt out" of a local franchise agreement if a new provider obtains a state franchise allowing them to enter the market.

Jinkens' letter explained that not only is the cable company's support of the new contract abrogation provisions potentially damaging to his city, but also a show of bad faith and an expression of the company's unwillingness in the future to comply with terms and conditions of its existing franchise agreement with South Lake Tahoe.

Jinkens further informed Charter that South Lake Tahoe and other communities would explore avenues of response to Charter's bad faith performance under its existing franchise agreement.

Demonstrate your unhappiness with your cable provider's support of AB 2987! Contact Comcast, Cox, Charter and other providers serving California cities that have endorsed AB 2987 with a similar message against the bill and how the cable industry's support of it will hurt your city and its residents.

CANDIDATE'S GUIDE TO ETHICS LAWS NOW AVAILABLE ONLINE

The Institute for Local Government (ILG), the League of California's non-profit research arm, has recently published *Success in Public Service: What You Need to Know Before You Are Appointed or Elected* - a pamphlet designed to give information on public service ethics laws *before* those seeking public office are elected or appointed.

The pamphlet provides answers to three questions:

- What are the basic principles of public service ethics laws?
- How can I determine the impact of these laws on me?
- Where can I get additional help and support if I still have questions?

Success in Public Service: What You Need to Know Before You Are Appointed or Elected is the brainchild of Andrew Massey, a student from Hastings College School of Law working with ILG. An updated electronic version of the guide is now available at www.ca-ilg.org/candidateslawpamphlet.

Due to the overwhelming positive response to the publication, ILG is working on making a professionally-designed version in hardcopy form that will be available for purchase for future elections.

ILG thanks the firm of Best, Best and Krieger for their support of the *Success in Public Service: What You Need to Know Before You Are Appointed or Elected* pamphlet.

JULY ISSUE OF *FOCUS ON HOUSING* NOW AVAILABLE

The July edition of ***Focus on Housing***, the League of California Cities' monthly newsletter covering affordable housing issues statewide, is now available at www.imakenews.com/focusonhousing.

This month, ***Focus on Housing*** features part one of a two-part story that discusses regional collaborative efforts in affordable housing, two affordable housing success stories, recent affordable housing news and a listing of upcoming events/workshops in California.

In August the newsletter will contain the second part of the regional collaborative efforts article, along with an additional feature on preserving affordable housing stocks in the state. If you have an idea for a future article, or have an affordable housing success story to contribute, please contact League Communications Specialist Brian Heaton at bheaton@cacities.org.

PHOENIX OFFICIALS WIN APPROVAL FOR SMALL HIGH SCHOOL BUILDING BOND

(Reprinted with permission from the National League of Cities' Nation's Cities' Weekly.)

By Lucinda M. Dugger and Audrey M. Hutchinson

Following a concerted campaign by city leaders, Phoenix, [Ariz.] recently won approval by voters of a $6.8 million bond that will provide seed money to support the construction of four or five small high schools across the city.

A team of city and school officials from Phoenix has participated for the past two years in a National League of Cities (NLC) technical assistance initiative to expand options and promote innovation at the high school level. By taking a leadership role in passage of a bond issue to support the construction of small high schools, the city has established itself as a national leader and set an exciting precedent for other cities.

Through a competitive process, the city now will solicit proposed plans for small schools from its nine school districts that currently have high schools within the city limits. Each new high school is expected to have an enrollment of 300 to 500 students and reflect the city's growing population of Hispanic youth and families in poverty.

In addition, the new schools are expected to target workers of highly needed occupations such as nursing, medical technology, engineering and teaching.

Mayoral Leadership

At a recent meeting with city officials and staff, school district leaders, local businesses and NLC representatives, Phoenix Mayor Phil Gordon stressed the importance of education for his family as well as for the vitality of the city.

He discussed how a city's quality of education affects public safety, economic development, workplace skills and the overall health and well-being of a community.

"I believe that we're going to fail if we don't give our kids the best education and the ability and desire to keep learning," said Gordon.

In order to create better public schools, Gordon recognizes that no single entity will be successful if it acts on its own.

"It takes many resources," he said. "Whether fiscal or human, we must work together with what is available to provide a variety of options for our students."

Deborah Dillon, director of youth and education programs for the city of Phoenix, said that conversations are just beginning on how best to allocate the money as well as the criteria that will be used in selecting sites for the new high schools. Finalized guidelines will be approved by the mayor and city council.

"We're not doing to schools, but we're working with schools," Dillon said. "It is important that we talk to schools before decisions are made on how to move forward."

Small Is Not Just About Size

Experts say small high schools tend to be successful with more students who attend these smaller institutions — especially low-income and minority students — passing core classes and going on to college.

However, Larry Rosenstock, CEO of High Tech High, a nonprofit organization that develops small public schools in communities across California, said that the success of small schools also depends on factors other than the total number of students.

He emphasized three key elements that make successful schools: personalization, adult world connection and common intellectual mission.

These design elements ensure the needs of students are met on a variety of levels through home visits, peer learning and exchange, a one on one connection with an adult and one agenda for all students.

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How City Officials Can Help

Research by NLC's Institute for Youth, Education, and Families shows that mayors and council members can be engaged in local efforts to improve public high schools by:

- Promoting a portfolio of options available for young people, including small schools, and being willing to allocate funding or facility resources to support these efforts;

- Highlighting dropout and graduation rates and engaging the public on potential solutions through focused community conversations;

- Using their leadership roles to recognize successful schools and students in their cities;

- Partnering with school leaders to promote best practices and models that have proven successful; and

- Convening school, college and university leaders to develop strategies that bridge high school and college and ease the transition for students entering postsecondary education.

Leaders Expand Options

Phoenix is one of five cities engaged in the "Helping Municipal Leaders Expand Options and Alternatives for High School" technical assistance initiative, sponsored by NLC's Institute for Youth, Education, and Families with funding from the Bill & Melinda Gates Foundation.

Other cities participating in the initiative include: Corpus Christi, Texas; Hartford, Conn.; San Antonio; and San Jose, Calif.

Details: For more information, contact Audrey M. Hutchinson at (202) 626-3053 or hutchinson@nlc.org or contact Lucinda Dugger at (202) 626-3052 or dugger@nlc.org.

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Released on June 29, the document provides an overview of the review process and offers guidance in process management. It also features five appendices, including the text of the statutory provision, sample invitation letters for participating or cooperating agencies, interagency guidance on transportation funding, guidance on integration of planning and NEPA processes, and guidance on issuing statute of limitations notices.

FHWA is seeking comments on the issues of: flexibility in requirements, adequacy of guidance, lead agency responsibilities, project analysis methodologies and coordination of participating agencies.

FTA is also asking for input on whether it should require a development schedule for all FTA projects that require an environmental impact statement, and whether the FTA should continue allowing New Starts Alternatives Analysis to be developed as a non federal planning document or be merged with the NEPA document.

The agencies will issue a Federal Register notice announcing the issuance of the final guidance, complete with changes made based on the comments received. The comment period will end July 31, until which time the agencies will interpret the law as set forth in the proposal.

To access the guidance language, visit www.fta.dot.gov/Section6002.doc.

Comments (which must be identified by the docket number FTA-2006-24905) may be submitted by any of the following methods:

- Online: Visit http://dms.dot.gov and follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: Fax comments to (202) 493-2251.
- U.S. Mail: Mail comments to:

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As we reported last week in *Priority Focus*, the state Legislature's Senate Energy, Utilities and Commerce Committee held two hearings on AB 2987 (Núñez/Levine), focusing most of its time and attention on discussion of further amendments needed to clarify the "build-out" requirements. While the addition of these requirements represents an improvement in the bill, they will do nothing to address the serious digital divide issues that will, in all likelihood, persist in rural areas of the state, and in communities outside of telephone or cable companies' self-selected service areas. Local agencies will lose the ability they currently have with a cable franchise to require build-out into all areas of a community.

The astounding adoption of amendments that will allow cable companies to "opt out" of their franchise agreements with local agencies received little discussion. The amendments provide that a cable company can unilaterally abrogate a local franchise agreement when a competitor announces that they have obtained a state franchise to offer competitive service in the cable companies' service territory. The cable company can then apply for a state franchise to serve the same territory. The League's strong opposition to this amendment essentially fell on deaf ears during the committee hearing. (See also "Unhappy with Your Cable Provider's Support of AB 2987? Tell Them!", p.3).

The question remains as to how expansive the abrogation of contractual agreements will be, and what will happen to a cable company's support for existing "PEG" (public, education and government) channels and I-Net services. More discussion on this issue will occur with the Senate E, U & C staff and members over the July recess, as specific language regarding abrogation is fleshed out.

Other Key Issues: PEG, I-Net and Local Issuance of State Franchise

The League also will continue discussions on several other issues of key importance to cities. These include support for PEG and I-Net services under the new state franchise and pressing for local agency issuance of a state franchise. We believe this approach would solve many technical issues that would inevitably arise when a state agency is given the responsibility of issuing a franchise that is implemented locally.

Federal Legislation

Discussions on federal legislation also continue. A telephone company-sponsored measure (H.R. 5252) has passed out of the House of Representatives; a Senate measure (formerly S. 2686, now re-numbered to H.R. 5252) passed out of the Senate Committee on June 28, and now awaits action on the Senate floor. Both bills establish a federal franchise system. Neither contains specific requirements on build-out of services, but the Senate-passed measure does include language on PEG, I-Net and other issues supported by the League and other local government organizations.

Notably for efforts on AB 2987, at this point, **both federal measures would pre-empt state legislation.**

A key criticism of both measures is that they undermine "net neutrality." The measures do this by allowing Internet providers to establish priorities for Internet content, based upon fees paid by content providers. While the battle on this issue appears over in the House, in the Senate these provisions may prevent passage of federal legislation this year.

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Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, SW., PL-401
Washington, DC 20590

• Hand Delivery: Deliver to Room PL-401 on the plaza level of the Nassif Building at 400 Seventh Street, SW., Washington, DC 20590, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

The bills, however, go far beyond the issues raised in the *Kelo* case, and if enacted, will significantly impair the abilty of redevelopment agencies to carry out their role of cleaning up blighted conditions and restoring economic activity in California cities.

The following provides an update on the status of these measures.

SB 1206 (Kehoe) would revise definitions relating to blighted areas and the conditions that apply to redevelopment plans. The League opposes this measure because of the constraints it would put on the ability of redevelopment agencies to carry out their responsibilities.

SB 1206 (Kehoe) passed out of the Assembly Housing & Community Development Committee during the last week of June, but the author was forced to take several amendments which remove several provisions that were opposed by the California Redevelopment Association (CRA) and its members. The bill was also approved by the Assembly Judiciary Committee. It now goes to the Assembly Appropriations Committee.

If this bill is passed by that committee and then approved by the full Assembly, it will go to a conference committee between the two houses. We can assume that the author will make every effort in the conference committee to restore those provisions deleted from the bill last week.

The following are the major amendments to the bill:

(1) Sections 2 and 4 of the bill were deleted. Section 2 contained objectionable changes to Health & Safety Code Section 33031 which defines "blight." Section 4 would have repealed the provisions of SB 211 (Statutes of 2001) which allow agencies to eliminate time limits on establishing indebtedness for pre-1994 plans. (Note: Section 4 of the bill was added on June 19 to replace another objectionable provision in the bill, Section 16, which required agencies to make new findings of blight in order to issue new indebtedness.)

(2) Eliminated the "dire inner-city slum" language as a requirement for blight findings. However, the amendment left in the requirement that conditions in the project area be worse than conditions in the community as a whole. (Note: We have previously pointed out that this disadvantages the communities that most need help and will greatly increase the cost of plan adoptions for all agencies by requiring a survey of conditions in the entire community [not just the project area] in order to make a meaningful comparison.)

(3) Replaced "clear and convincing evidence" language as a requirement for blight findings with "clearly articulated and documented evidence" language. (Note: CRA supports this change, but thinks the language should be in the section of current law that deals with the contents of the agency's report to the governing body [Section 33352] rather than the section describing the contents of the ordinance approving the plan.)

Although these are significant and necessary changes to the bill, the League and CRA maintain oppose positions because of the particularly problematic provision that each blight condition must be shown to be significantly worse within the proposed project area than in the rest of the community, a concept not now in the definition of blight.

As stated above, this requirement will present a hardship to those communities most in need of redevelopment and increase the expense to taxpayers for conducting blight findings. In addition, we oppose the extension of the Attorney General's authority to intervene in challenges to redevelopment agency actions.

AB 2922 (Jones). This bill would expand the definition of those who can bring about enforcement of affordability covenants placed on projects by redevelopment agencies to include "a person or family of low or moderate income who is eligible to reside in the property." The bill also includes a requirement for recording a notice of re-sale or transfer on property encumbered by affordability restrictions.

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The recent amendments return the ability of agencies to aggregate the housing set-aside among project areas and remove the burdensome time-keeping requirements regarding housing fund administrative costs.

AB 2922 was not heard in the Senate Judiciary Committee during the last week of June, as expected, and has been reset for a hearing on August 8. (Note: It was granted a rule waiver making that possible since the bill will miss the legislative deadline for being heard in its policy committee.)

In the meantime, the League and CRA have worked with Assemblymember Dave Jones and the bill's sponsors to achieve a compromise on AB 2922 that addresses affordable housing without weakening redevelopment. As a result, CRA has removed its opposition to the bill.

SB 1210 (Torlakson). This bill would revise provisions relating to settlement offers when a redevelopment agency is acquiring property as part of a redevelopment plan. The League has been opposed to the measure, although the League board of directors is expected to reconsider its position in light of recent amendments. CRA is no longer opposed (although it is continuing to work on technical problems in the bill).

The bill passed the Assembly Housing & Community Development Committee and the Assembly Judiciary Committee last week. It was amended again on June 15 and currently, its provisions do the following:

- Makes it more time-consuming and difficult for agencies to obtain orders of prejudgment possession. An exception is provided for public utilities which are allowed an accelerated process in the event of an emergency situation. (Note: Discussions continue on broadening this emergency exception to cover more public agencies.)
- Adds a definition for litigation expenses, which are "reasonable attorney's fees and costs, including reasonable expert witness and appraiser fees," which is current practice. (Note: In current law, when a court determines that the public entity's offer was unreasonable and defendant's demand was not, the public entity is responsible for the defendant's costs including litigation expenses.)
- Following a notice of condemnation or an offer to purchase "under a threat of eminent domain," this bill requires the public entity to pay for the independent appraisal of the property by a licensed appraiser. Another proposed amendment will cap the appraisal cost at $5,000.
- Prohibits an officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain from voting on any matter affecting that organization.

A provision in the bill that required an amendment to a redevelopment plan extending the time limitation on exercising the power of eminent domain to include findings of substantial remaining blight was deleted.

SB 53 (Kehoe) (Redevelopment Eminent Domain procedures). The League has a "Watch" position on this bill. CRA's position is "Neutral."

The Assembly Local Government Committee amended SB 53 to codify the finding in the recent "*Blue*" court case, which concluded that agencies must make new findings of blight to extend the use of eminent domain past the initial 12-year authorization in plans.

SB 53 was further amended to restore the 12-year time frame to use eminent domain and to clarify that agencies must have a plan on how they intend to use eminent domain within the project area. CRA has removed its opposition to the bill. It has been referred to Assembly Appropriations Committee.

SB 1650 (Kehoe) (Eminent Domain, Change of use, lease back rights). Both the League and the CRA have a "Watch" position on

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this bill.

SB 1650 (Kehoe) would do three things. First, where property acquired by eminent domain or under threat of eminent domain is proposed to be used for a different purpose than that stated in the resolution of necessity, the condemning public agency would first have to adopt a resolution by a two-thirds vote declaring the new public use.

Second, it would require a public agency that does not use property acquired by eminent domain or under threat of eminent domain within 10 years to either adopt a new resolution declaring the public use, or offer the former owner a right of first refusal to purchase the property at fair market value. If the new resolution is not adopted and the former owner declines the right of first refusal, then the property must be sold as surplus and any financial gain must be paid to the former owner.

Finally, the bill would require an acquiring public agency to enter into a lease-back arrangement with the owner of property acquired by condemnation or under threat of condemnation if the agency is not going to use the property within two years.

Proposed amendments would clarify the situation where the original owner cannot be located or there are multiple owners. SB 1650 has been referred to the Assembly Appropriations Committee.

SB 1809 (Machado) (Real Property Disclosures: Redevelopment). Both the League and CRA currently have a "Watch" position on this bill. The League board of directors will consider a staff recommendation to shift to a "support" position at its July 28-29 meeting.

Current law (Health & Safety Code Section 33373) requires the recordation in the county land records of a notice that redevelopment proceedings have been undertaken following the adoption of a redevelopment plan. SB 1809 would require the notice to describe the contents of the redevelopment plan related to acquisition of property by eminent domain.

For existing projects, a revised statement would have to be recorded prior to December 31, 2007. SB 1809 has been referred to the Assembly Appropriations Committee where it will be heard on August 9.

AB 773 (Mullin). This bill would require all cities and counties meet a 90-day timeline to gather signatures to qualify referenda to challenge the adoption of a redevelopment plan (Health and Safety Code 33378). The requirement currently applies only to cities and counties with a population over 500,000. CRA supports the bill. The League's board of directors will take up a recommendation from the League's Housing, Community and Economic Development policy committee to support the measure when the board meets in late July.

AB 782 (Mullin). Under current law, a local agency can make a finding of blight on the basis of lots being of "irregular form and shape" and "inadequate size for proper usefulness." This provision is commonly referred to as the "antiquated subdivision" exception. This bill repeals this exception to a statutory definition of blighted areas. It also eliminates antiquated subdivisions from the definition of predominantly urbanized areas.

CRA supports the measure. The League's HCED Policy Committee has also recommended a support position, which the League board of directors will consider at its July meeting.

Our Mission

Restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.