

RESOLUTION NO. 689

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, OPPOSING INITIATIVE 933, ENTITLED "AN ACT RELATING TO PROVIDING FAIRNESS IN GOVERNMENT REGULATION OF PROPERTY."

WHEREAS, Initiative 933 (I-933) will be presented to the voters of the State of Washington at the general election on November 7, 2006, with the following official Ballot Title and Description:

Statement of the Subject: Initiative Measure 933 concerns government regulation of private property.

Description: 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 []

WHEREAS, by its terms, the provisions of I-933 are to be "liberally construed" (Section 6) and its exceptions "shall be construed narrowly" (Section (2)(c), and

WHEREAS, I-933 would require agencies such as the City of Gig Harbor to undergo a lengthy and costly pre-enactment process to document potential impacts of new regulations upon the use and value of private property; and

WHEREAS, I-933's definition of "private property" includes virtually all interests in real as well as personal property, and

WHEREAS, I-933 would require the City (if it "decided" to "enforce or apply" any "ordinance, regulation or rule" to private property which would result in "damaging the use or value of private property") to first "pay compensation," as those phrases are defined and used in I-933, and

WHEREAS, because of the breadth of I-933's definition of private property, and because its definition of "damaging the use or value" of private property includes no minimum threshold for the reduction of use or value, I-933 would dramatically lower the threshold for compensation far below constitutional limits because virtually any limitation on the use of any kind of private property could give rise to a claim for compensation for "damages" within the meaning of I-933, regardless of the importance of the public protection achieved by such limitation or the uses or values remaining to the property owner, and

WHEREAS, the length and complexity of the aforementioned and required pre-enactment process would shift resources and staff away from reviewing and processing all other permits, thus forcing the City to concentrate primarily on I-933 claims, pre-enactment analysis and mitigating the City's liability, to the detriment of the City's existing permitting obligations, and

WHEREAS, because the broad definition of "damaging the use or value" includes, but is not limited to, prohibiting or restricting any use or size, scope, or intensity of any use legally including but not limited to development regulations and critical area regulations adopted pursuant to the detailed public participation process required by the Growth Management Act, and

WHEREAS, I-933 would deprive the Gig Harbor City Council of its constitutional authority to adopt and enforce reasonable land use development standards to mitigate traffic impacts, assure appropriate building height and lot coverage restrictions, building size limitations, provide for the preservation of open spaces and protection of environmentally sensitive areas, and other

general development regulations necessary to promote the public health, safety and welfare, thereby supplanting the will of the local community and curtailing the police power authority granted to the City Council by the Washington Constitution (Art. XI, Sec. XI) to adopt and enforce sound land use, zoning, growth management and planning, critical area, water quality and shoreline management and other measures through an open public process, and

WHEREAS, the sweeping and detrimental regulatory and fiscal impacts of I-933 would be borne by citizens who reside in each of the state's 39 counties, and

WHEREAS, the exceptions listed in Section (2)(c) do not list nuisance uses that typically would be precluded from residential neighborhoods, and thus I-933 would authorize claims for payment or waiver for city regulations that prohibit a wide variety of obnoxious land uses and activities that would seriously degrade property values of such residential neighborhoods, and

WHEREAS, the only alternative to payment of compensation provided by I-933 is to issue site specific waivers from regulations, which may give rise to lawsuits and claims for compensation from adjacent property owners, and

WHEREAS, I-933 pretends to authorize governments to waive adoption or enforcement of regulations subject to the initiative if they cannot pay all reduction in value of all real and personal property affected, but waiver of regulations against citizens who object and enforcement against those who do not is patently unfair and unconstitutional, and

WHEREAS, the prohibition of I-933 against passing new laws or enforcing laws adopted since 1996, until after every affected property owner has been paid for any diminution in value of property would not permit adoption or enforcement of any laws (except exempt laws), because Washington tax limitations would preclude any government in Washington from collecting enough to pay the prerequisite amounts, without ceasing virtually all existing services, and

WHEREAS, on September 21, 2006, the State Budget Office estimated that I-933 would cost the state, counties and cities \$7 billion to \$9 billion over the next six years (estimate from the State Office of Financial Management, as reported in the Seattle Times on September 21, 2006, entitled "Initiative 933 could cost state billions, study says"), if governments are required to compensate landowners instead of waiving regulations, and

WHEREAS, I-933 doesn't grant governments any new power to waive any regulations, and the authors of I-933 admit that governments have no authority to waive regulations adopted to comply with state law, such as the Growth Management Act or the Shoreline Management Act (Seattle Times article, September 21, 2006), and

WHEREAS, local governments may not have the legal authority to waive certain regulations on a parcel-by-parcel basis in any event, and

WHEREAS, I-933 will lead to incompatible growth, which would potentially adversely affect the value of adjacent properties and detrimentally affect the City's ability to provide needed infrastructure, public services and public safety which are necessary to promote healthy and prosperous communities, and

WHEREAS, the City supports the benefits of balancing public good and private property rights, and

WHEREAS, I-933 conflicts with the City's and the citizen's core values relating to smart growth and does so in a manner that will benefit only a few; and

WHEREAS, the waive or pay provision would jeopardize the City's ability to fund public services and public infrastructure, and

WHEREAS, the equal application exemption erroneously implies that one size can fit all, and

WHEREAS, agencies seeking a remedy under the equal application exemption provision would need to implement regulations that ignore the unique circumstances warranting different restrictions in different areas, and

WHEREAS, on October 23, 2006, the Gig Harbor City Council considered this Resolution during its regular City Council meeting, in light of RCW 42.17.130(1), which permits a City Council to adopt a resolution in support, or in opposition to a ballot proposition as long as there is notice of the meeting and the public is afforded the opportunity to express opposing views, Now, Therefore,


BE IT HEREBY RESOLVED BY THE GIG HARBOR CITY COUNCIL AS FOLLOWS:

The City Council of the City of Gig Harbor opposes adoption of Initiative Measure 933 and urges voters to consider rejecting I-933 due to the sweeping and detrimental impacts outlined above.

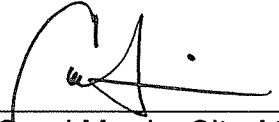
PASSED THIS 23rd day of October, 2006.


MAYOR CHARLES HUNTER

ATTEST:


Molly Towslee, City Clerk

APPROVED AS TO FORM:


Carol Morris, City Attorney