

Half Moon Bay measures win initial approval

By Stefanie Hoffman--Half Moon Bay Review

Half Moon Bay voters could have a voice in controversial eminent domain decisions as well as the future of recycled water here after the City Council tentatively approved two advisory questions proposed by councilmen Mike Ferreira and David Gorn.

In order to place the items on the November ballot, the council will need to adopt resolutions that include the exact form of the questions that will be filed with the county no later than Aug. 12.

Specific legal wording of both questions will be reviewed by the City Attorney and brought back to the council at the August meeting for final action.

Placing both measures on the ballot would cost taxpayers an estimated \$24,390.

Both ballot measures are advisory questions to determine voter opinion, but would not legally bind the council to any course of action.

However, council members say that advisory measures often have weight when governmental agencies are determining policy or applying for grants.

"Advisories are not binding but you don't see many governments go against them," said Ferreira, who proposed putting the question of eminent domain on the ballot.

"The judges take them seriously," he said.

Ferreira's question takes aim at a specific sliver of eminent domain law which could potentially allow taking private homes for purely private economic development projects.

Ferreira said that his proposal was in response to a recent U.S. Supreme Court ruling, *Kelo vs. city of New London, Conn.* The court ruled that local governments can justify taking property under the "takings clause" of the Fifth Amendment to the Constitution as long as the action ended in some economic revitalization for the local government.

Specifically the decision upheld the town's ability to exercise eminent domain power to acquire private property and then subsequently turn it over to a private developer for economic development.

Now many lawmakers fear that a precedent will be set.

"I could see all kinds of scenarios across the U.S. where this could be a problem," said Ferreira. "I thought 'what can we do to give the local citizenry the power to protect themselves against what is too much power?'"

Currently, under California law, municipalities can use eminent domain for public benefit if they pay the property owner fair market value.

More often eminent domain is used for public works projects such as a new street or expansion of a public utility.

A city can also condemn a property for purposes of eliminating blight.

Until the high-court decision, it has been less clear whether a city had the ability to use its power of eminent domain solely for the purpose of economic revitalization.

According to the California Government Code, local municipalities have the authority to condemn any property necessary to carry out any of its "powers or functions."

A 1959 California Supreme Court ruling determined that "public use and necessity are to be construed liberally in favor of the condemnor."

But what exactly that means for individual communities is often the subject of interpretation.

Ferreira hopes the ballot measure shows public outrage over the expanded use of eminent domain that would be used solely to generate revenue for the city.

"Half Moon Bay has always been leery of eminent domain," said Ferreira. "I think it's a good strong message for City Hall and future governments if they wanted to do something different they should go to the people."

At the same meeting, the City Council also approved an advisory question regarding the use of tertiary water.

The question, proposed by Gorn, asks voters if the city should encourage development of recycled water to provide year-round, low-cost water for large-scale water users in order to restore damaged creeks.

Gorn, who sits on the Sewer Authority Mid-coastside board, worried that water prices will go up significantly for area farmers, the floriculture industry and the local golf course.

Many farmers currently use well water for their crops, a practice which drains and damages area creeks.

Gorn said that if farmers were required to get off well water for any reason, they would be forced to pay the \$1,700 an acre foot for potable water.

"It would kill them," said Gorn. "It would shut them down."

Recycled water provides a long-term solution, he said, in that it would provide low-cost, year-round water that would not be threatened by drought or dry season.

"It's a golden opportunity, it really is," he said. "This is a legacy type of project. This is something that could help maintain the character of the Coastside and help farmers for decades."

One of the biggest hurdles is cost, both for conversion and maintenance.

The cost of conversion would be an estimated \$5.1 million, which Gorn said could be acquired through state and federal grants.

Maintenance costs would likely be passed on to the farmers and is estimated at \$340 per acre-foot, said

Gorn.

The advisory measure could determine public opinion and the future of the project.

"We can take that public will and I think it will help us in the process of getting those state and federal grants," said Gorn.

That is, if the community supports the project.

"That (recycled) water is an opportunity for the farmers and the floriculture industry here, but maybe other people have a different opinion," he said.

- **BALLOT MEASURES**

Two advisory questions were proposed to the City Council at the July 19 meeting. The preliminary text is as follows:

EMINENT DOMAIN

Shall it be the policy of the city of Half Moon Bay to observe the rules and standards for the eminent domain process as those rules and standards were widely perceived prior to the Kelo decision; namely, that the mere prospect of increased municipal revenue shall not be held, on its own, sufficient as to constitute a public purpose?

TERTIARY WATER USE:

Shall the city pursue a policy of encouraging and supporting development of tertiary (recycled) water - provided the funding for such a project is not borne by rate-payers - primarily to supply a low-cost, year-round source of water to farmers and large-scale water users in Half Moon Bay and, when the use of recycled water helps take those users' wells off-line, that the city should pursue a policy of letting that well-water stay in Half Moon Bay creeks, to help restore those damaged creeks?