

CLERK'S OFFICE  
**AMENDED AND APPROVED**  
Date: 7-12-05

**Submitted by:** Assemblymembers  
**TESCHE, SHAMBERG**, Birch, Coffey, Jennings,  
Stout, Sullivan, Train, Bauer  
**Prepared by:** Department of Assembly  
**For reading:** June 28, 2005

**ANCHORAGE, ALASKA**  
**No. AO 2005-86**

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING**  
2 **ANCHORAGE MUNICIPAL CODE CHAPTER 25.20, REAL PROPERTY**  
3 **ACQUISITION AND ENACTING A NEW SECTION AMC 25.20.027, LIMITING**  
4 **EXERCISE OF THE POWER OF EMINENT DOMAIN.**  
5

6  
7 THE ANCHORAGE ASSEMBLY ORDAINS:  
8

9 **Section 1:** That Anchorage Municipal Code Chapter 25.20 is amended by  
10 enactment of a new section 25.20.127 to read:  
11

12 **25.20.027 Exercise of the power of eminent domain: limitation.**  
13

14 Exercise of the power of eminent domain by the municipality, its agencies and  
15 authorities, is prohibited unless the property acquired thereby is actually used by  
16 the municipality or the public. **Eminent domain is not to be used to further**  
17 **private economic development.**  
18

19 **Section 2:** That this ordinance shall become effective immediately upon its  
20 passage and approval by the Assembly.  
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22 PASSED AND APPROVED by the Anchorage Assembly this 12<sup>th</sup> day of  
23 July, 2005.  
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26  
27 Anna S. Fairclough  
28 Chair  
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30 ATTEST:  
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33 Barbara S. Puente  
34 Municipal Clerk  
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**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**  
**NO. AM 448-2005**

**Meeting Date:** June 28, 2005

**From:** Assemblymembers Tesche and Shamberg

**Subject: AO 2005-86 LIMITING EXERCISE OF THE POWER OF EMINENT DOMAIN (CONDEMNATION) BY THE MUNICIPALITY OF ANCHORAGE**

The U. S. Supreme Court ruled last week that local governments can use eminent domain (condemnation) to acquire private property for other private development when officials determine that the new private development would benefit the public. *Kelo v. City of New London*, 545 U.S. \_\_\_\_ (2005). To many Alaskans, including four dissenting justices, the Court's latest interpretation of the Constitution's Takings Clause, private property:

. . . may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. (Justice Thomas dissent)

The Fifth Amendment to the Constitution, made applicable to the States by the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." By expanding its interpretation of the term "use" in the Fifth Amendment, however, the *Kelo* court effectively allows local governments to take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public—such as increased tax revenue, more jobs, maybe even aesthetic pleasure.

While we agree with the Court that "promoting economic development is a traditional and long accepted function of government," we also agree with Justice Thomas that government should be allowed to take private property "only if the government owns, or the public has a legal right to use, the property, as opposed to taking it for any public purpose or necessity whatsoever." In our view, the Constitution should authorize the taking of property only if the public has a right to employ it, not if the public realizes any conceivable benefit from the taking. For this reason, enactment of AO 2005-86 would limit exercise of the power of eminent domain by the Municipality to those traditional and accepted purposes.

Enactment of AO 2005-86 is recommended.

Respectfully submitted: Allan Tesche, Assemblymember  
Janice Shamberg, Assemblymember