

Vote: Cox, Ewing, O'Neil, Menard, Metiva & Straub in favor

**CITY OF WASILLA
ORDINANCE SERIAL NO. 05-78**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WASILLA MUNICIPAL CODE 1.08.030, EMINENT DOMAIN.

* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

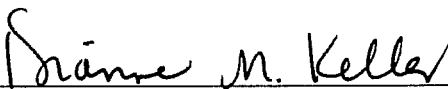
* **Section 2. Amendment of section.** WMC 1.08.030, is amended to read as follows:

1.08.030 Eminent domain.

The city may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power of function of the city [MUNICIPALITY], in accordance with AS 09.55.240-09.55.460; provided that the city may exercise the powers of eminent domain or declaration of taking to acquire property only if the city will own, or if the public will have the legal right to use, the property, and the city may not exercise the powers of eminent domain or declaration of taking to provide property for private economic development. The exercise of the power of eminent domain or declaration of taking shall be by resolution of the council.

* **Section 3. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

ADOPTED by the Wasilla City Council on October 24, 2005.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]

Bold and underline added. [CAPS AND BRACKETS, DELETED.]



**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RE: 05-78 Amendment of Wasilla Municipal Code to prohibit use of eminent domain for private economic development purposes.

Agenda of: October 10, 2005
Originator: Planning

Date: September 28, 2005

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
X	Public Works Planning	<i>S. Daley</i>
X	Finance *signature required	<i>[Signature]</i>
X	Clerk	<i>K. Smith</i>
X	City Attorney	<i>[Signature]</i>

REVIEWED BY MAYOR DIANNE M. KELLER:

Dianne M. Keller

FISCAL IMPACT: yes or no Funds Available yes no

Account name/number:

Attachments: Proposed Ordinance Serial Number 05-78;
WPC Resolution No. 05-18;
Staff Report

SUMMARY STATEMENT:

The proposed code amendment will limit the use of the City's powers of eminent domain to the acquisition of property only for traditional public uses such as roads, parks and other public facilities.

BACKGROUND:

In June 2005, the U.S. Supreme Court by a 5 to 4 decision ruled in *Kelo vs. City of New London* that local governments can use eminent domain (condemnation) to acquire private property for private development when local officials determine that the new private development would benefit the public. 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 the interpretation of the term "use" in the Fifth Amendment in *Kelo vs. City of New London*, the U.S. Supreme Court effectively would allow the City to take a parcel of private property through eminent domain for the benefit of some other private party for

the development of a commercial use, so long as the new use is predicted to generate some secondary benefit for the public – such as increased tax revenue or new jobs.

Local property owners, as well as those throughout Alaska, and the United States, are concerned that the Court's new broader interpretation of the Constitution's Fifth Amendment (*the Takings Clause*) raises the possibility that their property could be taken under the City's power of eminent domain only to end up as a new privately owned development.

RECOMMENDATION:

Staff respectfully recommends that the City of Wasilla limit its exercise of the power of eminent domain to traditional public purposes and authorize the taking of private property only if the public has a direct public purpose for it, not if the public only realizes some secondary or indirect benefit from the taking.