

CITY OF KIRKLAND

123 FIFTH AVENUE

KIRKLAND, WASHINGTON 98033-6189

(425) 587-3030

CITY ATTORNEY'S OFFICE
MEMORANDUM

To: David Ramsay, City Manager
From: Robin S. Jenkinson, City Attorney
Date: September 1, 2006
Subject: Resolution Opposing Initiative 933

RECOMMENDATION:

That the Council consider the attached resolution following a public hearing.

BACKGROUND DISCUSSION:

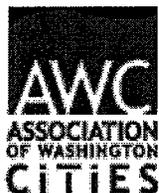
Initiative 933 (I-933) will be presented to the voters of the State of Washington at the general election on November 7, 2006. As described in the attached Advisory issued by the Association of Washington Cities (AWC), I-933, known as the "Property Fairness Initiative," reflects the "basic idea that government should not restrict the use of private property without paying for the decline in value of property resulting from governmental restrictions. ..."

The AWC Initiative 933 Advisory is attached for your reference along with the AWC I-933 Fiscal Impact Estimates. You were previously provided, and for ease of reference a copy of the information developed at the request of AWC, about the estimated fiscal impacts of I-933 upon the City of Kirkland, is also attached.

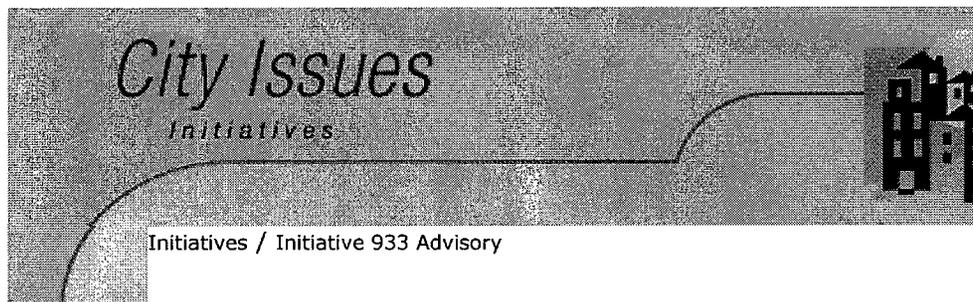
The attached resolution expresses the Council's opposition to I-933. Under RCW 42.17.130, the Council may vote on a resolution to support or oppose a ballot proposition "so long as (a) any required notice of the meeting includes the title and number of the ballot proposition; and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of any opposing view..."

The City Clerk published notice of the public hearing and included the ballot title and proposition number in the notice.

Attachments: AWC Initiative 933 Advisory
AWC I-933 Fiscal Impact Estimates
Estimated Fiscal Impacts of Initiative 933 Requested by the Association of Washington Cities


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Initiatives / Initiative 933 Advisory

Initiatives Home Page
 Initiative 933 Advisory
 AWC I-933 Fiscal Impact
 Estimates
 PDC & AGO Resources

INITIATIVE 933 ADVISORY

On February 8 of this year, the Washington State Farm Bureau filed final language with the Secretary of State's office for their so-called "Property Fairness

Initiative." (<http://www.secstate.wa.gov/elections/initiatives/text/i93>)

The Initiative Title As It Would Appear On the Ballot:

"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."

Proponents (<http://www.propertyfairness.com/>) are currently collecting signatures and are speaking and providing information to various groups and media outlets about what is contained within I-933 and what is driving them to promote it.

Opposition (<http://www.protectcommunities.org/>) has also formed and member interests are speaking and providing information to various groups and media outlets about why I-933 would be detrimental for communities, businesses and citizens.

This advisory was prepared to:

- Assist city and town officials in better understanding the possible interpretations of I-933; and
- Alert you to the need to begin considering how your city or town would comply if it qualifies for the ballot and became law.

What Does Initiative 933 Mean?

There is much disagreement about what it means, although the basic idea is that government should not restrict the use of private property without paying for the decline in value of property resulting from governmental restrictions, no matter how small that decline in value might be. Proponents and opponents have already begun to portray its scope and impacts differently. Because of what

many consider to be vague and ambiguous language, it is likely that, should the initiative become law, its scope will be defined by the courts. What seems to be clear, however, is that the initiative, if passed, will have a fundamental impact on how the state and cities, towns and counties regulate land use.

The following is intended to present possible interpretations of the initiative, with the understanding that additional interpretations are likely to emerge over the coming months.

Overview of Initiative 933

- **Section 1 (Purpose and Findings)** is a statement of intent. It should have no operative effect, but it may be used to assist in interpreting the remaining provisions in the initiative.
- **Section 2 (Consideration of Impact and Definitions)**
 - **Subsection (1)** of this section establishes a process requiring agencies, "prior to enacting or adopting any ordinance, regulation or rule which may damage the use or value of private property," to consider and document many issues, including the governmental purpose of the proposed action, the connection between the purpose and the action, the potential impacts of the proposed action on the uses of private property, less restrictive alternatives, and the estimated compensation that may need to be paid.
 - **Subsection (2)** defines key terms: "private property," which is defined broadly as all real and personal property; "damaging the use or value"; and "compensation."
- **Section 3 (Compensation or Waiver):** This section would require that any governmental agency seeking to enforce or apply a regulation of private property that would result in "damaging the use or value" of such property must pay compensation for that damage in advance. In the alternative, the state or local governmental agency may, where it already has authority to do so, simply refrain from taking such action and thereby avoid liability.
- **Section 4 (No Fee for Seeking Waiver):** State or local governmental agencies are not permitted to charge any fee for considering whether to waive or grant a variance from a regulation to avoid liability for compensation.
- **Section 5 (GMA Amendments):** Development regulations adopted under provisions of the Growth Management Act (GMA) can't prohibit uses legally existing prior to their

adoption.

- **The remaining provisions (Sections 6 through 10)** are miscellaneous provisions concerning interpretation and effect.

Answers or potential answers to some of the questions being raised about I-933's impacts on cities and towns. Such answers are based upon discussions with a variety of technical and legal experts and a review of a number of I-933 analyses available to AWC staff by early May 2006.

Section 2: Consideration of Impact and Definitions

Q1: How does I-933 affect critical areas regulations that all cities and towns were required by the GMA to adopt and implement? (For how it impacts zoning and other regulations, please see Q 3-4.)

A: I-933 appears to affect adoption of critical areas regulations in two ways. First, by defining "damaging the use or value" to specifically include "[p]rohibiting or restricting any use, or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996" – cities and counties will not be able to apply or enforce critical area provisions adopted or amended since 1/1/96 that impose greater restrictions on the use of property without *first* compensating property owners for *any* decline in property value.

Second, it defines "damaging the use or value" to include "[r]equiring *a portion of property* to be left in its natural state or without beneficial use to its owner, unless necessary to prevent immediate harm to human health and safety." (Emphasis added.) Many critical areas regulations prohibit development in certain environmentally sensitive areas, such as steep slopes or wetlands or in buffer areas around streams. Consequently, local governments will be required to compensate property owners before applying or enforcing such regulations, *regardless of when they were adopted*, or they would have to waive such regulations (if they have the authority to do so). While these types of regulations, required by the GMA, are based on long-term public health and safety concerns such as preventing landslides or protecting the critical ecological functions of wetlands and streams, it is unlikely that they would be considered "necessary to prevent *immediate* harm to human health and safety."

Q2: All cities and towns are required by the GMA to review and update, if necessary, their required GMA plans and regulations every 7 years. Does revisiting them trigger new obligations under I-933?

A: At least for the GMA review process, that is not likely. Section 2 (1) requires an agency to consider and document a series of listed factors "prior to enacting or adopting" an ordinance or regulation that may damage the use or value of private property. That section does not require a city or town to engage in that process prior to "reviewing" or "considering" whether to amend a plan or regulation. A city or town should be free, under this language, to review whether comprehensive plan or development regulation amendments are needed, without engaging in I-933's study requirements.

Also, since a comprehensive plan, unlike the development regulations that implement it, does not itself regulate the use of property, actions to review and amend a plan would not trigger I-933 requirements.

However, if a city or town decides to proceed with amending its development regulations in response to its GMA-mandated review, then it would need to follow the "consider and document" requirements in section 2(1).

Q3: What impacts will I-933 have on basic land use regulations in cities, either adopted prior to or since 1/1/96?

A: Those regulations that prohibit or restrict "any use or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996" may be applied and enforced *only* with compensation to affected property owners for any reduction in property value. So, I-933 will affect not only how cities might regulate land use in the future, it will also directly affect how and to what extent they will enforce land use laws they have already adopted.

Other specified types of land use restrictions that may require compensation are not subject to the January 1, 1996 limitation, such as requiring any portion of property to be left in its natural state and prohibiting the maintenance or removal of trees or vegetation.

The scope of other land use restrictions subject to the pay or waive requirement is less clear. For example, a local government cannot, without compensation, prohibit "actions by a private property owner reasonably necessary to prevent or mitigate harm from fire, flooding, erosion, or other natural disasters or conditions that would impair the use or value of private property." See Section 2 (b)(iv). How will it be determined what actions are "reasonably necessary" to prevent or mitigate those disasters or conditions?

Q4: Is there agreement on what land use actions by local governments are exempt from the compensation or waive requirements?

A: No, there is much room for interpretation as to what is exempt under Section 2(2)(c), and the exemptions raise additional questions as to the initiative's scope. This exemption section states that "damaging the use or value" of property does not include "restrictions that apply equally to all property subject to the agency's jurisdiction." However, that section then includes specific examples of restrictions that are exempt, even though cities might *not* apply them equally to all property within a jurisdiction. For example, the exemptions include those that limit "the location or operation of sex offender housing or adult entertainment." Cities that regulate adult entertainment generally limit them to certain zones, so it would appear that those restrictions don't "apply equally" to all property within those cities.

So, this raises the issue of what is meant by "apply equally." Building height restrictions aren't normally the same in residentially and commercially zoned areas and may vary within each. Do they have to be the same everywhere in a city to avoid compensation for greater restrictions enacted after 1/1/96? It would appear so.

The initiative exempts regulations that restrict the use of property "when necessary to prevent an immediate threat to human health and safety," yet it does not define what is meant by "immediate." Does this mean that cities cannot regulate common nuisances such as junk vehicles, which may not present such an "immediate" threat to public health and safety, without compensation?

The exemptions also include matters that do not affect the use of private property, such as "worker health and safety laws" and "wage and hour laws," and regulations adopted by the federal government, such as "chemical use restrictions that have been adopted by the United States environmental protection agency." Such exemptions suggest a very broad scope to the initiative.

In short, the exemptions identified in Section 2(2)(c) raise many questions as to what regulation I-933 applies to.

Q5: What local ordinances, regulations or rules may damage the use or value of private property?

A: It appears that the list of regulations, beyond those specifically identified, that "may" damage the use or value of private property would be very broad. Because the specific list of laws identified in

section 2(2)(b) as "damaging the use or value" is not exclusive, property owners clearly may claim that regulations in addition to those specifically listed require compensation (or waiver) if such regulations fit this narrative definition. Since the definition of "damaging the use or value" includes subjective language such as "the cost of which in all fairness and justice should be borne by the public as a whole," it is difficult to identify specific examples of regulations that may meet this definition.

Q6: Eight new cities have incorporated in Washington since 1/1/96 – Edgewood, Lakewood, Maple Valley, Covington, Kenmore, Sammamish, Liberty Lake, and Spokane Valley. Does I-933 impact planning and zoning in new cities any differently from other cities?

A: Cities that incorporated after January 1, 1996 will be impacted differently than other cities by section 2(2)(b)(i), because that provision exempts regulations that prohibit or restrict "any use, or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996." All of these eight cities' land use regulations were enacted after that date, so, to the extent that those cities' regulations are more restrictive than their counties' regulations that were in effect on that date, they cannot be enforced or applied without compensation

Q7: In addition to cities, towns and counties, what other "agencies" would be required to consider and document various factors before "enacting or adopting any ordinance, regulation or rule which may damage the use or value of private property" within cities and towns? For instance, is the state legislature included? Individual state agencies?

A: Most certainly, individual state agencies that adopt regulations or rules impacting private property would be required to adhere to these requirements.

As with many of the questions raised by I-933, arguments could be made on both sides of the issue on whether it applies to certain actions of the Legislature. The answer likely depends on whether a court determines (1) that the legislature is an "agency," and (2) that the legislature adopts "ordinances, regulations, or rules."

Q8: How does I-933 affect a city or town's obligations to adopt and enforce Shorelines Management Act (SMA) plans and regulations as mandated by state law?

A: A local government cannot, without compensation, enforce an SMA regulation that falls within the "damage" definition of section 2(2)(b)(ii). This definition specifically includes matters within the

purview of SMA regulations – "[p]rohibiting the continued operation, maintenance, replacement, or repair of existing tidegates, bulkheads, revetments, or other infrastructure reasonably necessary for the protection of the use or value of private property." This appears to apply regardless of how long ago prohibitions were enacted. Other matters within SMA jurisdiction, beyond those specifically identified, may also require compensation to enforce.

However, absent court interpretation or legislative clarification, it isn't clear whether a local government would have the option to waive enforcement of state-mandated and approved regulations like those adopted under the SMA.

Q9: Would I-933 affect the authority of local governments to impose temporary moratoria ("time outs") on land use actions?

A: I-933 is unclear on this point. Section 5 prohibits a local government from adopting GMA regulations that "prohibit uses legally existing on any parcel prior to their adoption." While a moratorium does not strictly prohibit any uses, it may prevent property owners for a period of time from applying for a permitted use. A property may claim that the effect is the same, albeit temporary, and that a moratorium may not be adopted.

With respect to moratoria adopted under laws other than the GMA, I-933's compensation provisions do not specify that the prohibitions must be permanent. As such, courts might determine that temporary moratoria are allowed, but would likely have to specify under what circumstances.

Q10: Section 2(2)(c)(i) includes in the list of regulations that are exempt from the compensation requirement regulations "[r]estricting the use of property when necessary to prevent an immediate threat to human health and safety." What is an "immediate" threat?

A: The answer is not clear. If a court were to use the dictionary definition, then this exemption would only narrowly apply to regulations necessary to prevent a threat to human health and safety that was occurring or was about to occur in the very near future. Regulations to prevent a direct discharge of contamination into a drinking water source, for example, would probably qualify. But whether regulations concerning longer-term threats, such as regulations for septic systems or the siting and operation of a landfill, would be exempt is unclear.

Q11: Section 2(2)(c)(ii) exempts regulations "[r]equiring

compliance with structural standards for buildings in building or fire codes to prevent harm from earthquakes, flooding, fire, or other natural disasters." Does this mean that any building code regulation that does not have to do with preventing "harm from earthquakes, flooding, fire, or other natural disasters" and that was not in place on January 1, 1996, cannot be enforced unless a city pays to do so?

A: The answer to this question will depend on how the courts interpret the "apply equally" criterion, as discussed in **Q4** above. If section 2(2)(c) is interpreted to exempt from the compensation requirements *all* regulations that "apply equally to all property subject to the agency's jurisdiction," not just the ones listed; and if "apply equally" is interpreted to mean treating similarly-situated property equally, then cities and town may still be able to apply equally post-1996 structural standards in building or fire codes that are not designed to prevent harm from natural disasters. Of course, since the state building code *requires* cities to enforce these codes, they may have no choice but to enforce them.

Section 3 – Compensation and Waiver

Q1: When does the compensation requirement in section 3 apply? What does it mean for a city or town to "decide to enforce or apply" a regulation?

A: Compensation is required under section 3 of I-933 if an agency "decides to enforce or apply" a regulation that would result in damaging the use or value of private property. If the agency "chooses not to take action," it is not liable for compensation. This language appears to give agencies the option to "waive," or not apply, the offending regulation and thereby avoid compensation. However, unlike Oregon's Measure 37, which clearly provides agencies with authority to waive laws (no compensation has been paid in Oregon on any claim to date), I-933 is ambiguous as to whether it provides waiver authority or whether it simply acknowledges that an agency may already have waiver authority in the laws it administers.

Q2: Would compensation be required under section 3 whether or not a development permit is being sought for a specific piece of property?

A: Yes, if the city or town is affirmatively choosing to "enforce or apply" the law. Section 3's compensation requirement is triggered if an agency "decides to enforce or apply" an offending regulation. If a property owner does not apply for a permit, and the agency does not seek to enforce the law, the compensation requirement is

not triggered.

Q3: When would the state or other agencies be liable for compensation for regulations applicable in cities?

A: If the regulation is purely local, that is, it is not adopted pursuant to state statute or regulation, the state or state agencies would likely not be liable for compensation. What is not clear, however, is whether the state bears some responsibility for compensation if the local law is adopted pursuant to a state law requirement.

For example, many cities and towns are required to adopt and enforce plans and regulations under the Shorelines Management Act (SMA). Those plans and regulations must be reviewed and approved by the Department of Ecology prior to local implementation. GMA plans and regulations are required at the local level, but aren't reviewed and approved by the state. Whether those differences are significant enough to make a case for a finding of an agency relationship is unknown.

Q4: What liability might a city incur if it decides to waive (not enforce) a regulation mandated by the state or federal governments in order to avoid compensation?

A: Good question! Again, we are not sure.

Q5: What liability might a city incur if it waives a regulation and the activity resulting from that waiver damages adjoining property?

A: This gets into areas of law dealing with negligence. It isn't clear how this would sort out and it likely depends on how courts ultimately interpret the so-called "pay or waive" provisions of I-933, should it be enacted.

Q6: If needed, how is the amount of compensation determined?

Section 2(2)(d) of I-993 defines "compensation" as "remuneration equal to the amount the fair market value of the affected property has been decreased by the application or enforcement of the ordinance, regulation, or rule." Therefore, governments will have to pay for the decrease in fair market value caused by the regulation. It also includes attorneys' fees reasonably incurred by the property owner in seeking to enforce I-933. How one determines whether, and to what extent, a land use regulation decreases fair market value is a complex matter.

Further, section 2(2)(d) states that to the extent any *portion* of the

property is required to be left in its natural state or without beneficial use by its owner, the amount of compensation due would be the fair market value of the portion of property required to be left in its natural state.

Section 5 - GMA AMENDMENTS

Q1: Section 5 is the only part of I-933 that specifically amends the Growth Management Act. What does this section mean and how does it differ from section 2(2)(b)(i) (requiring compensation for post-January 1, 1996 regulations)?

A: Section 5 of I-933 prohibits the adoption of any *new* GMA development regulations that prohibit uses that legally existed prior to the adoption of the regulation. Section 5 differs from section 2(2)(b)(i) in that it does not allow a local government to adopt such a regulation and then pay to apply it. Rather, it prohibits the adoption of any new regulation that prohibits an existing, legal use.

Q2: Does section 5 prohibit GMA cities or towns from making a use nonconforming—allowing its continuation but subjecting it to nonconforming use rules? If not, are legally existing uses then legal in perpetuity?

A: I-933 appears to prevent the creation of nonconforming uses. It prohibits changes to GMA regulations that would prohibit existing, legal uses. Since a nonconforming use is only created by virtue of regulations that otherwise prohibit that use, section 5 seems to limit a GMA city or town from creating any new nonconforming uses. Current legal uses would be legal in perpetuity.

General Questions

Q: Does I-933 affect a city's eminent domain authority?

No. Although Section 1, the purpose and intent section, discusses the power of eminent domain, the operative sections do not mention eminent domain authority. Curiously and despite this fact, the proponent's web site identifies three eminent domain actions (one by the state, one by a city, and one by the Seattle Monorail Authority) as the first three examples of "excessive regulations" that have damaged property.

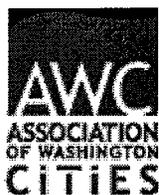
Note that the Washington State Constitution does not authorize condemnation of private property for economic development, as was determined by the U.S. Supreme Court in *Kelo v. New London* to be authorized in certain circumstances under the federal constitution. The *Kelo* decision has been widely criticized by property rights organizations.

In closing...

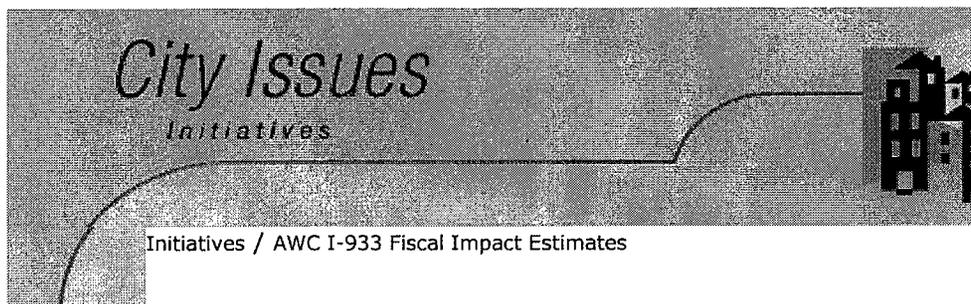
As more information becomes available about I-933 – including how individual cities or others are interpreting its provisions, AWC will provide updates to cities and towns through our regularly scheduled publications and on our website.

If you have questions or comments on this topic, please feel free to contact AWC's Dave Williams at either (360) 753-4137 ext. 142 or (e-mail) davew@awcnet.org.

8/18/06


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Initiative 933 Advisory

AWC I-933 Fiscal Impact Estimates

PDC & AGO Resources

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AWC I-933 FISCAL IMPACT ESTIMATES

Background

A state law passed in 2004 requires the Office of Financial Management (OFM) to provide citizens with a fiscal analysis of the potential state and local government revenue and expenditure implications of Initiatives on the ballot. The analysis is to be summarized in the Voter's Pamphlet and posted on the Secretary of State's website.

On July 20, 2006, OFM asked AWC for city and town fiscal impact estimates for the additional requirements and compensation that could be required to implement Initiative 933. We were asked to provide estimates by August 1st and nearly met that tight timeline (pegged to Voter Pamphlet printing deadlines).

The estimate provided to OFM by AWC is a statewide estimate. AWC does not have estimates for individual cities. We encourage cities to conduct their own impact estimates to help prepare their city and community in the event it passes and to help educate citizens about potential impacts. Cities should determine whether or not to use a similar methodology as is provided below.

Statewide Estimates of Impacts on Cities

AWC provided to OFM a **Compensation** (pdf, 7 kb) estimate of between \$3.5 and \$4.5 billion, and an **Administrative Costs** (pdf, 7 kb) estimate of between \$60 and \$76 million per year. These are statewide estimates – AWC does not have estimates for individual cities.

We encourage individual cities and towns to consider the potential fiscal impacts of I-933 on their own budgets. If the Initiative passes, it becomes law on December 7, 2006 – 30 days after the election. We can provide more information to interested cities and towns about the methodology we used to calculate our estimates, as well as sample methodologies used by some of those

who responded to our survey. Contact Dave Williams at davew@awcnet.org or Tim Gugerty at timg@awcnet.org.

How Did We Estimate Impacts?

We sent surveys to a number of cities that reflected diversity of geographic region and population size.

The survey asked cities to estimate the impact of I-933 in four possible categories:

- **Compensation** resulting from actions/conditions impacting land in cities between 1996 and 2006;
- **Costs to analyze claims** under current, previous or proposed regulations;
- **Potential appraisal costs** (for determining compensation values); and
- **Potential additional litigation costs** for claims and appeals.

The information request AWC sent to cities did not include direction on how to calculate impacts. At the direction of and in consultation with OFM, AWC did ask cities to consider the following assumptions: assume current state requirements and regulations would remain in place, reflect costs for past city regulatory actions, and assume cities may only "waive" regulations if expressly authorized to do so in statute.

City responses reflected a variety of methods for arriving at an impact estimate, including consideration of developed and undeveloped parcels, building permit activity levels, valuation of land under critical areas or shorelines regulations, and calculations of assessed values.

AWC projected a statewide estimate by determining population growth rates in cities over the last 10 years, grouping them into five impact categories by growth rates and applying a different average assessed value impact factor to each grouping for an estimated compensation liability for regulations in place between 1996 and the present.

What Did We Find?

Our Compensation estimate for all cities and towns is between \$3.5 and \$4.5 billion. This estimate is expressed in a range because responding cities identified a wide array of potential impacts. Our Compensation estimate may be conservative in that it only totals approximately 1% of overall statewide city assessed value and does not take into account such factors as:

- The estimate is provided for current liability since 1996 only.

- This estimate is based on current city regulations and state mandates and current levels of population growth.
- The estimate does not reflect potential claims resulting from impacts to value of land for property adjacent to parcels on which reduced enforcement of regulations may be deemed to damage the rights or values of such parcels.
- The estimate is not adjusted for inflation.

Our Administrative Costs estimate for all cities and towns is between \$60 and \$76 million per year. This takes into account the estimated costs to analyze current and future land use plans and regulations to evaluate impacts from I-933 compensation claims, the costs to conduct appraisals based on OFM's estimate of appraisal costs, and the costs for associated litigation.

Unlike the Compensation estimate, which is a cumulative total for years 1996-2006, the estimated Administrative Costs are projected annually into the future beginning after December 2006.

Now What?

OFM will determine how they will include and characterize our estimates in what they submit to the Secretary of State. They will also submit an estimate for state and county fiscal impacts.

We have heard that an independent fiscal analysis is being developed, but have not had contact with those conducting it. Clearly, that analysis won't be included in anything provided in the Voter's Pamphlet but is likely to be available during public consideration and debate about I-933 prior to the November 7th election.

Again, we encourage cities and towns to conduct their own impact estimates to be better prepared if Initiative 933 passes, and to help educate citizens about potential impacts.

While local governments can not use public funds to advance or oppose ballot propositions, cities are able to share factual information with their citizens. More information about what cities may or may not do regarding ballot initiatives can be found on [AWC's PDC & AGO resources page](#).

8/18/06



CITY OF KIRKLAND

Department of Finance & Administration

123 Fifth Avenue, Kirkland, WA 98033 425.587.3100

www.ci.kirkland.wa.us

MEMORANDUM

To: City Council

From: Tracey Dunlap, Director of Finance & Administration

Date: August 16, 2006

Subject: Estimated Fiscal Impacts of Initiative 933 Requested by the Association of Washington Cities

BACKGROUND DISCUSSION:

On July 27, 2006, the Association of Washington Cities requested that the City of Kirkland provide estimates of the fiscal impacts of Initiative 933 by August 3. Kirkland was one of several jurisdictions selected because of the City's participation on the AWC Board. The Governor's Budget Office (Office of Financial Management, OFM) had asked AWC and the Washington State Association of Counties to help them collect data on the fiscal impacts of Initiative 933 on cities and counties to assist OFM in preparing fiscal impact statements on the state and local governments for the voters' pamphlet.

As described in the advisory issued by AWC (www.awcnet.org/933advisory), I-933 (known as the "Property Fairness Initiative") reflects the "basic idea that government should not restrict the use of private property without paying for the decline in value of property resulting from governmental restrictions...". The title of the Initiative reads: "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".

The memorandum submitted by the City to AWC is attached for your reference. Given the limited time frame to prepare the estimate, a number of broad assumptions regarding the impact of selected changes in regulations were developed, as documented in the attached materials. The City's GIS system proved to be the critical tool in completing the exercise. The resulting estimates represent only a rough order of magnitude of the potential impacts on the City. If the initiative passes, I am sure that much more in-depth planning, legal, and financial analysis will be required to respond to its requirements.

The information that AWC submitted to OFM is also attached. I want to take this opportunity to acknowledge the contributions of Xiaoning Jiang (GIS Administrator), Eric Shields, and Robin Jenkinson in generating the ideas, assumptions, and the supporting information required to respond to this request and Anja Mullin for her assistance in pulling the summary together.

cc: David Ramsay, City Manager

Attachments:

August 3, 2006 Memorandum to AWC – Estimated Fiscal Impact of Initiative 933 (2 pages)

August 10, 2006 E-mail from AWC – Fiscal Impact Estimates (4 pages)



CITY OF KIRKLAND

Department of Finance & Administration

123 Fifth Avenue, Kirkland, WA 98033 425.587.3100

www.ci.kirkland.wa.us

MEMORANDUM

To: Association of Washington Cities

From: Tracey Dunlap, P.E., Director of Finance & Administration

Date: August 3, 2006

Subject: Estimated Fiscal Impact of Initiative 933

DISCLAIMER:

These estimates were prepared in response to a request from the Office of Financial Management for purposes of completing a fiscal analysis of the impacts of I-933. These estimates are preliminary only. The assumptions used to obtain the estimates may change depending on court or other interpretations of I-933, should it pass. This information is offered for informational purposes only. It is not intended as an expression of support or opposition to the initiative.

BACKGROUND DISCUSSION:

In response to the AWC request on July 27, 2006 for an I-933 Fiscal Impact Analysis, the City of Kirkland has prepared the following broad estimates of potential impacts to the City. Four major areas were identified where "new or amended designations or regulations" may have been enacted during the period 1996-2006. These areas are:

- Increases in Sensitive Area Buffers: The estimated impacts requested are contained in the attached table.
- Change of Use/"Downzoning": There has been little to no significant "downzoning" within the City boundaries during the period, therefore no impacts were estimated.
- Area Specific Regulations: The Houghton Community Council, a community municipal corporation created under Ch. 35.10 RCW, has the ability to disapprove zoning ordinances and other land use controls that would otherwise apply throughout the City. As a result, certain land use controls which are effect elsewhere in the City may not apply within the Houghton Community Council jurisdiction. However, the land use controls within the Houghton Community Council jurisdiction are uniformly applied. Therefore, no impacts were estimated.
- Tree Ordinance: Due to the difficulty in estimating the change in fair market value (FMV), the impact for this regulation could not be estimated.
- Estimates do not reflect changes in regulation that may be considered in the future, such as changes in Floor Area Ratio (FAR) or updates to Shoreline Restrictions, or changes that would apply if the City of Kirkland annexed its Potential Annexation Area (PAA).

The results and major assumptions used in estimating impacts are summarized in the attached table. I can be reached at (425) 587-3101.

cc: David Ramsay, City Manager

**I-933 Fiscal Impact Estimate
City of Kirkland**

8/3/2006 17:23

These estimates were prepared in response to a request from the Office of Financial Management for purposes of completing a fiscal analysis of the impacts of I-933. These estimates are preliminary only. The assumptions used to obtain the estimates may change depending on court or other interpretations of I-933, should it pass. This information is offered for informational purposes only. It is not intended as an expression of support or opposition to the initiative.

Assumptions:

Cost per Appraisal	\$	7,500	Source: provided by AWC
Cost for Property Rights Analyses	\$	3,000	Assumes 20 Planning staff hours per claim at fully loaded rate of \$150/hour
Change in FMV/sq. ft. - Subdivide	\$	28	See Note 1
Change in FMV/sq. ft. - Redevelopment		20%	Assumed percentage increase in AV by redevelopment
Claims Litigated		6%	Based on Oregon Measure 37 experience cited by AWC
Legal Cost	\$	20,000	per litigated Claim (pre-Appellate)

Changes 96-06	Potential \$ Impact	# of Potential Claims (Parcels)	Exp. # of Claims Litigated	Prop. Rights Analyses Cost	Appraisal Cost	Legal Cost
Impacts of Increase in Buffer (see Note 2)						
<i>Potential to Subdivide</i>	\$ 18,487,392	40	2	\$ 120,000	\$ 300,000	\$ 40,000
<i>Potential Redevelopment</i>	\$ 36,565,960	243	15	\$ 729,000	\$ 1,822,500	\$ 300,000
Total	\$ 55,053,352	283	17	\$ 849,000	\$ 2,122,500	\$ 340,000

Note 1: Change in FMV is calculated based on assumed average unimproved lot value of \$200,000 for 7,200 sq. ft. lot, or approximately \$28 per square foot.

Note 2: Potential \$ Impact calculated based on GIS parcel information and the following assumptions:

Subdivision Impact	Parcels	Total Sq. Footage	less: Assumed Exist.		Net Sq. Footage	Change in FMV
			Dev. Area @ 7,200 sf			
Impacted Single Family Lots >=14,400 sq. ft.	24	571,896	(172,800)		399,096	\$ 11,174,688
Impacted Vacant parcels	16	261,168	-		261,168	\$ 7,312,704
Total Potential to Subdivide	40	833,064	(172,800)		660,264	\$ 18,487,392

Redevelopment Impact	Parcels	Current		20% Change in FMV
		Assessed Value		
Impacted Single Family Lots <14,400 sq. ft.	189	\$ 80,421,400	\$ 16,084,280	
Impacted Non SF Lots	54	\$ 102,408,400	\$ 20,481,680	
Total Potential to Redevelop	243	\$ 182,829,800	\$ 36,565,960	

Tracey Dunlap

From: Dave Williams [davew@awcnet.org]
Sent: Thursday, August 10, 2006 12:17 PM
To: Rose Feliciano; Mark Madsen; Tracey Dunlap; Fran Harrigan; Steve Worthington; Scott Staples; John Hawley; Ramras, Natasha; Sherman, John; Dave Fonfara; malcolm@cob.org; Douglas A. Merriman; townofharrah@bentonrea.com; Toni Zunker; lwen.Wang@cityoffederalway.com; smukerje@ci.olympia.wa.us; slancaster@ci.tukwila.wa.us; dsmith@libertylakewa.gov; crutchfieldg@ci.pasco.wa.us; chelanmayor@nwi.net; mark.brown@ci.vancouver.wa.us; khaines@ci.lake-forest-park.wa.us; pdugan@ci.lynnwood.wa.us; levy4@msn.com; cathy.rosen@oakharbor.org; dlittle@cob.org; Tracy Burrows; David Ramsay; citymanager@cityofpa.us
Cc: Tim Gugerty; Sheila Gall; Sheri Sawyer; Jim Justin
Subject: fiscal impact estimates
Attachments: Dave Williams.vcf; AWC I-933 Fiscal Impact Estimate_Comp and Admin_080909.doc; AWC I-933 Fiscal Impact Estimate_Avg Annual Additional Cost_080909.doc

A HUGE thank you for taking the time last week to produce estimates of the fiscal impacts of I-933 on your city. The estimates you provided, including your approaches, methodologies and comments, were invaluable in allowing us to sift, sort and ultimately compile a statewide fiscal impact estimates for cities.

Attached, please find a copy of the estimates we provided to the Office of Financial Management.

In summary –

- In our first attached chart, we estimate the CURRENT liability for compensation resulting from actions/conditions impacting land in cities between 1996 and 2006 **totals from \$3.5 to \$4.5 Billion**.
 - We provided a RANGE in recognition of the fact that information provided by cities revealed a wide range of projected impacts.
 - We ended up calculating our statewide estimates by determining population growth rates in cities over the last 10 years, grouping them by growth rates and applying a different average assessed value impact factor to each grouping. The larger and faster growing the city, the higher the impact factor. Our chosen Assessed Value impact factors ranged from a low of 0.13% to a high of 2.6%. PLEASE NOTE that these impact factors are lower than many cities indicated in their estimates so our estimates to OFM may be quite conservative.
 - STATEWIDE, the estimated current liability for compensation represents from 0.9% to 1.1% of the TOTAL AMOUNT OF ASSESSED VALUATION in cities.
- We are not suggesting that the Office of Financial Management include an estimate of FUTURE compensation liability in cities, but if they wanted to include that to coincide with their own future 6-year projection, we offered an idea. As shown in the second attached chart, we calculated the average annual growth in assessed value over the last 10 years in cities grouped by population increase groupings. We then applied this factor to both the low and high estimates for compensation for each of the population growths groups. **This results in a potential FUTURE compensation liability estimate for cities ranging from \$463 - \$590 Million annually.**
- Finally, as shown in our first chart, we estimate a statewide range of ANNUAL costs to administer I-933 that range from \$60 - \$77 Million/year. These estimates take into account the estimated costs to analyze current and future land use plans and regulations to evaluate impacts from I-933 compensation claims, the costs to conduct appraisals based on OFM's estimate of appraisal costs, and costs for associated litigation.

If you have any questions, please don't hesitate to contact me at davew@awcnet.org or 1-800-562-8981.

Again, thank your taking the time to complete this challenging task. We were heartened by the number and quality of responses from cities.

Dave Williams
Association of Washington Cities
360-753-4137 ext. 142

AWC I-933 Fiscal Impact Estimates - Compensation & Administration

Compensation

City Groups by % Population Change 1996- 2006	% Assessed Valuation (AV) by Group - Low Range Estimate	% AV by Group -High Range Estimate	Sub Total - Low Range Estimate	Sub Total - High Range Estimate
-37.45 - 0	0.13%	0.17%	\$14,091,075	\$17,993,218
0 - 14.9	0.46%	0.58%	\$1,129,033,093	\$1,441,688,411
15 - 35	0.78%	1.00%	\$880,739,226	\$1,124,636,243
36 - 49	1.30%	1.66%	\$409,626,270	\$523,061,237
50 - 100	2.60%	3.32%	\$1,103,493,321	\$1,409,076,087
Total Compensation Liability for Regulations/Conditions Imposed in Cities 1996-2006			\$3,536,982,985	\$4,516,455,197

**Administrative
Costs -
ANNUAL**

	Analysis	Appraisals	Litigation	Total
Low	\$14,963,000	\$21,772,530	\$23,354,500	\$60,090,030
High	\$19,106,600	\$27,801,846	\$29,821,900	\$76,730,346

AWC I-933 Fiscal Impact Estimates – Estimated Additional Compensation Based on Average Assessed Value Growth

City Groups by % Pop. Change 1996-2006	Avg Annual AV Growth	Low Range 1996-2006 Compensation Liability Estimate	Additional Annual AV Impact Based on Avg AV Growth	High Range 1996-2006 Compensation Liability Estimate	Additional Annual AV Impact Based on Avg AV Growth
"-37.45 - 0"	10%	\$14,091,075	\$ 1,419,521	\$ 17,993,218	\$ 1,812,620
0 - 14.9	11%	\$1,129,033,093	\$ 124,714,179	\$ 1,441,688,411	\$ 159,250,414
15 - 35	10%	\$880,739,226	\$ 91,745,515	\$ 1,124,636,243	\$ 117,151,965
36 - 49	12%	\$409,626,270	\$ 48,261,425	\$ 523,061,237	\$ 61,626,127
50 - 100	18%	\$1,103,493,321	\$ 196,575,820	\$ 1,409,076,087	\$ 251,012,200
Total Compensation		\$3,536,982,985	\$ 462,716,460	\$ 4,516,455,197	\$ 590,853,326
% Total City AV		0.9%	0.1%	1.1%	0.1%

RESOLUTION R-4602

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND STATING THE CITY COUNCIL'S OPPOSITION TO INITIATIVE 933.

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:

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

Concise 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 [];

and

WHEREAS, I-933 would require an agency, including a city government, that "decides" 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, I-933's definition of "damaging the use or value" would dramatically lower the threshold for compensation far below constitutional limits; and

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

WHEREAS, because I-933's definition of "damaging the use or value" or private property includes no minimum threshold for the reduction of use or value, virtually any limitation on the use of private property creates a cause for a compensation claim for "damages" within the meaning of I-933, regardless of the importance of the public protection achieved by such limitation; and

WHEREAS, by its terms, the provisions of I-933 are to be "liberally construed" (Section 6) and its 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 detrimental and incompatible land uses and activities that would seriously degrade the quality of life and property values of such residential neighborhoods; and

WHEREAS, I-933 would deprive local jurisdictions, including the City of Kirkland, of the ability to adopt and enforce reasonable land use development standards to mitigate traffic impacts, assure appropriate building heights, setbacks and lot coverages, provide for the protection and preservation of trees and vegetation, open spaces and environmentally sensitive areas; and other general development regulations necessary to promote the public health, safety and welfare; and

WHEREAS, I-933 erroneously assumes that local jurisdictions have authority to “decide” not to enforce or apply duly enacted ordinances, regulations, and rules, without granting express authority to pay compensation or waive the enforcement or application thereof; and

WHEREAS, the Association of Washington Cities has estimated that the statewide annual administrative costs to cities alone would be between \$60 million and \$76 million, while the statewide annual cost to cities for paying claims is estimated to be between \$3.5 billion and \$4.5 billion; and

WHEREAS, the cost of processing and paying compensation for the enforcement of reasonable development regulations under I-933 would far exceed the requirements of both the federal and state constitutions and cripple the fiscal ability of the City to provided needed public safety, infrastructure and other public services; and

WHEREAS, as provided in RCW 42.17.130, the City Council of the City of Kirkland desires to show its opposition to I-933;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council, after considering testimony at a duly noticed public hearing, hereby opposes Initiative 933.

Section 2. The City Council hereby urges citizens to vote no on Initiative 933 on November 7, 2006.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this ____ day of _____, 2006.

MAYOR

Attest:

City Clerk