

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

**AGENDA TITLE:** Public hearing and Council Action regarding a position on I-933  
**DEPARTMENT:** Planning and Development Services  
**PRESENTED BY:** Joe Tovar, Director  
Rachael Markle, Assistant Director

**PROBLEM / ISSUE STATEMENT:**

Initiative 933 (I-933) will be presented to the voters of the State of Washington at the general election on November 7, 2006. The Shoreline City Council will hold a public hearing and decide whether to take a position on this issue.

**FINANCIAL IMPACT:**

There will be no direct financial impact of the Council's action adopting a resolution regarding I-933.

**ACTION REQUESTED**

Staff requests that the Council accept public testimony and adopt a resolution to urge voters to oppose I-933.

Approved By:

City Manager  City Attorney 

## **BACKGROUND**

Initiative 933 (Exhibit A) will appear on the November General Election ballot. It was filed by the Washington State Farm Bureau who named it "The Property Fairness Initiative." The initiative is supported by the Building Industry Association of Washington. Other organizations supporting I-933, along with alleged examples of regulatory abuses, and arguments in favor of the initiative, appear on the website of the proponents at [www.propertyfairness.com](http://www.propertyfairness.com). See Exhibit B. Organizations opposing I-933 include the Nature Conservancy and the Greater Seattle Chamber of Commerce. Other organizations opposed to I-933, and arguments against the initiative, appear on the website of the Communities Protection Coalition at [www.noon933.org](http://www.noon933.org). See Exhibit C.

Among other things, I-933 would require an agency that "decides" to "enforce or apply any ordinance, regulation or rule to private property" that would result in "damaging the use or value of private property" to "first pay compensation". The initiative would apply to all cities, counties, and state agencies.

The initiative's requirements are retroactive to at least January 1, 1996. However, there is disagreement as to whether other language in I-933 means it also applies to "ordinances, regulations, or rules" that were adopted prior to January 1, 1996. The City of Shoreline incorporated in 1995. As of January 1, 1996, the City was still operating under the prior King County Development regulations. Shoreline did not significantly amend those code provisions until well after January 1, 1996.

Thus, with the exception of the Council's action in 1995 adopting the King County code as Shoreline's first development code, virtually every other City Council action adopting or amending the City's development regulations, building codes, subdivision procedures, critical areas and tree ordinances, would be subject to the provisions of I-933. Because I-933 also names "rules" as claimable actions, also at risk are the standards denoted in the Engineering Development Guide which provides specification for improvements required of new development to maintain levels of service in public facilities.

The initiative would create a new definition in state law of "damaging the use or value" of private property. The definition is extremely broad. For example I-933 effectively defines "damage" as any reduction in "use or value," regardless of the degree or amount of reduced value. The result is that local jurisdictions, including Shoreline, could be deprived of the ability to adopt and enforce reasonable land use regulations, including zoning to ensure the appropriate location of uses, and compatibility among uses located in proximity to each other; sensitive areas regulations necessary to prevent environmental harm; and general development regulations necessary to promote the public health, safety and welfare.

The initiative does list certain exceptions, but states that they are to be "construed narrowly" while all other provisions of the initiative are to be "liberally construed" to "effectuate its intent." Code standards that likely do not fit within the "narrow exceptions" include many that have been the focus of code enforcement actions in recent years.

For example, since 2004, the City has processed 1,418 code enforcement violations, primarily in residential areas. 350 of these were for “work without a permit” which city staff initiated when staff saw development activity underway and upon investigation found that the necessary permits (e.g., grading, building, or electrical permits) had not been applied for. The other 1,068 code violations were initiated by citizen complaints. These latter cases dealt with a variety of subjects: 536 dealt with inappropriate land uses in a zone (e.g., an illegal business in a home); 324 dealt with violations such as encroachments in setbacks or outdoor storage of refuse; 168 dealt with illegal parking of vehicles and junk vehicles; 22 dealt with illegal tree cutting; and 18 dealt with other violations of environmental codes.

A summary of the many other topical areas that could be subject to I-933 claims for payment or waiver appear below in Table 1. The summary shows the applicable Shoreline code section references, the adoption date by the City, and a summary of the changes effectuated by the City’s actions.

<b>Table 1</b>			
<b>Significant changes in city regulations adopted after Jan. 1, 1996</b>			
<b>Topic</b>	<b>SCC Reference</b>	<b>Adoption Date</b>	<b>Change</b>
<i>Signs</i>	20.50	June, 2000	Decrease permitted sign area and height
<i>Minimum lot size in R4/R6 zones</i>	amended 18.12.030A	February, 2000	Minimum lot size changed from 2500 sq. ft. to 7200 sq. ft. Minimum lot width changed from 30 ft to 50 ft
<i>Hazardous Tree Cutting Regulations</i>	20.50.310	July, 2006	Combined with Critical Areas Ordinance, more stringent rules to prevent needless tree cutting
<i>Critical Areas Ordinance</i>	20.80	February, 2006	More stringent regulation than 1996 County Development Code
<i>Adult Entertainment</i>	5.10 & 5.15	October 1997 – July 2003	Restrict activities and creation of new businesses
<i>Gambling</i>		December, 2000	Restrict gambling activities, expansion, and new locations
<i>Storm and Surface Water</i>	Engineering Development Guide		Stricter rules than the 1996 King County regulations.

There are significant additional impacts that are unclear due to the initiative’s ambiguous language. For example, the impact of the initiative would be vastly expanded if its “pay or waive” mandate was applied to all land use restriction and not those enacted after 1995. The initiative is ambiguous since it says damage may result from those land use restriction including, but not limited to those enacted after this date. Even the ballot title does not provide a definitive answer. It states in part: “Compensation would be required when regulations are enforced that damage private

property use or value, including regulations prohibiting uses that were allowed as of January 1, 1996.”

Another example is the prohibition on the City’s enforcement or application of any “ordinance, rule or regulation.” that would damage property without paying. “Regulation” is not defined and might be restricted by the definition in chapter 64.40.RCW which the initiative amends. This definition refers to city regulations adopted pursuant to the authority of state law. If so, the city could waive local enactments mandated by state laws such as the Growth Management Act (RCW 36.70A), the Shoreline Management Act (RCW 90.58), the State Environmental Policy Act (RCW 43.21C), the subdivision statute (RCW 58.17), the State Building Code (RCW 19.27) or any other law.

However, the initiative doesn’t explicitly grant authority to cities to waive the enforcement or application of state-mandated regulations. Under a lay interpretation and liberal construction required by the initiative, “regulation” (under common definitions) means any law of rule including statutes.

If the city has no statutory authority to waive regulations adopted pursuant to the above cited state laws, the only remaining response to a “pay or waive” claim under I-933 would be for the City to pay claimants. The cost of I-933 to taxpayers was the subject of a recent state-wide analysis done by the Association of Washington Cities at the request of the Washington State Office of Financial Management. See Exhibit D.

AWC estimated the state-wide cost of I-933 to cities at between \$3.5 and \$4.5 billion. This figure tracks closely with the experience of the state of Oregon, whose voters passed Measure 37 in 2004. Measure 37 has a similar “pay or waive regulations” mechanism that so far has created about \$4 billion in claims against Oregon cities and counties.

Based on the number of households in Shoreline as a percentage of all households in the cities of the state, the staff estimates that the annual cost to the City of Shoreline of processing and paying compensation for the enforcement and application of reasonable development regulations in order to protect the public health, safety and welfare could be as much as \$5 to \$6 million every year.

\$5 to \$6 million is a significant portion of Shoreline’s annual budget.. Since the initiative is retroactive at least to 1996, there could be up to ten times this amount filed for in the first year. Funding even a fraction of this liability would severely damage the ability of the City to provide needed public safety, infrastructure and other public services.

### **ACTION REQUESTED**

Notice has been given and the Clerk’s office has invited both the proponents and opponents of I-933 to offer testimony at the September 11 public hearing. The staff recommends that, after accepting and considering the public testimony, the City Council adopt a resolution (Exhibit E) that urges voters to reject I-933.

### **Exhibits**

- A. Initiative 933
- B. Initiative 933 proponents information posted at [www.propertyfairness.org](http://www.propertyfairness.org)
- C. Initiative 933 opponents information posted at [www.Noon933.org](http://www.Noon933.org)
- D. Association of Washington Cities fiscal impact analysis and advisory 933 posted at [www.awcnet.org](http://www.awcnet.org)
- E. Resolution opposing I-933

INITIATIVE 933

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 933 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to providing fairness in government regulation of  
2 property; adding new sections to chapter 64.40 RCW; adding a new  
3 section to chapter 36.70A RCW; and creating new sections.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 INTENT TO REQUIRE FAIRNESS WHEN GOVERNMENT  
6 REGULATES PRIVATE PROPERTY

7 NEW SECTION. Sec. 1. This act is intended to protect the use and  
8 value of private property while providing for a healthy environment and  
9 ensuring that government agencies do not damage the use or value of  
10 private property, except if necessary to prevent threats to human  
11 health and safety. The people also intend to recognize and promote the  
12 unique interests, knowledge, and abilities private property owners have  
13 to protect the environment and land. To this end, government agencies  
14 must consider whether voluntary cooperation of property owners will  
15 meet the legitimate interests of the government instead of inflexible  
16 regulation of property.

17 The people find that over the last decade governmental restrictions  
18 on the use of property have increased substantially, creating hardships

1 for many, and destroying reasonable expectations of being able to make  
2 reasonable beneficial use of property. Article I, section 16 of the  
3 state Constitution requires that government not take or damage property  
4 without first paying just compensation to the property owner. The  
5 people find that government entities should provide compensation for  
6 damage to property as provided in this act, but should also first  
7 evaluate whether the government's decision that causes damage is  
8 necessary and in the public interest.

9 The people find that eminent domain is an extraordinary power in  
10 the hands of government and potentially subject to misuse. When  
11 government threatens to take or takes private property under eminent  
12 domain, it should not take property which is unnecessary for public use  
13 or is primarily for private use, nor should it take property for a  
14 longer period of time than is necessary.

15 Responsible fiscal management and fundamental principles of good  
16 government require that government decision makers evaluate carefully  
17 the effect of their administrative, regulatory, and legislative actions  
18 on constitutionally protected rights in property. Agencies should  
19 review their actions carefully to prevent unnecessary taking or  
20 damaging of private property. The purpose of this act is to assist  
21 governmental agencies in undertaking such reviews and in proposing,  
22 planning, and implementing actions with due regard for the  
23 constitutional protections of property and to reduce the risk of  
24 inadvertent burdens on the public in creating liability for the  
25 government or undue burdens on private parties.

26 **FAIRNESS WHEN GOVERNMENT REGULATES PRIVATE**  
27 **PROPERTY BY REQUIRING CONSIDERATION**  
28 **OF IMPACTS BEFORE TAKING ACTION**

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.40 RCW  
30 to read as follows:

31 (1) To avoid damaging the use or value of private property, prior  
32 to enacting or adopting any ordinance, regulation, or rule which may  
33 damage the use or value of private property, an agency must consider  
34 and document:

- 35 (a) The private property that will be affected by the action;  
36 (b) The existence and extent of any legitimate governmental purpose  
37 for the action;

1 (c) The existence and extent of any nexus or link between any  
2 legitimate government interest and the action;

3 (d) The extent to which the regulation's restrictions are  
4 proportional to any impact of a particular property on any legitimate  
5 government interest, in light of the impact of other properties on the  
6 same governmental interests;

7 (e) The extent to which the action deprives property owners of  
8 economically viable uses of the property;

9 (f) The extent to which the action derogates or takes away a  
10 fundamental attribute of property ownership, including, but not limited  
11 to, the right to exclude others, to possess, to beneficial use, to  
12 enjoyment, or to dispose of property;

13 (g) The extent to which the action enhances or creates a publicly  
14 owned right in property;

15 (h) Estimated compensation that may need to be paid under this act;  
16 and

17 (i) Alternative means which are less restrictive on private  
18 property and which may accomplish the legitimate governmental purpose  
19 for the regulation, including, but not limited to, voluntary  
20 conservation or cooperative programs with willing property owners, or  
21 other nonregulatory actions.

22 (2) For purposes of this act, the following definitions apply:

23 (a) "Private property" includes all real and personal property  
24 interests protected by the fifth amendment to the United States  
25 Constitution or Article I, section 16 of the state Constitution owned  
26 by a nongovernmental entity, including, but not limited to, any  
27 interest in land, buildings, crops, livestock, and mineral and water  
28 rights.

29 (b) "Damaging the use or value" means to prohibit or restrict the  
30 use of private property to obtain benefit to the public the cost of  
31 which in all fairness and justice should be borne by the public as a  
32 whole, and includes, but is not limited to:

33 (i) Prohibiting or restricting any use or size, scope, or intensity  
34 of any use legally existing or permitted as of January 1, 1996;

35 (ii) Prohibiting the continued operation, maintenance, replacement,  
36 or repair of existing tidegates, bulkheads, revetments, or other  
37 infrastructure reasonably necessary for the protection of the use or  
38 value of private property;



1 (iii) Prohibiting or restricting operations and maintenance of  
2 structures necessary for the operation of irrigation facilities,  
3 including, but not limited to, diversions, operation structures,  
4 canals, drainage ditches, flumes, or delivery systems;

5 (iv) Prohibiting actions by a private property owner reasonably  
6 necessary to prevent or mitigate harm from fire, flooding, erosion, or  
7 other natural disasters or conditions that would impair the use or  
8 value of private property;

9 (v) Requiring a portion of property to be left in its natural state  
10 or without beneficial use to its owner, unless necessary to prevent  
11 immediate harm to human health and safety; or

12 (vi) Prohibiting maintenance or removal of trees or vegetation.

13 (c) "Damaging the use or value" does not include restrictions that  
14 apply equally to all property subject to the agency's jurisdiction,  
15 including:

16 (i) Restricting the use of property when necessary to prevent an  
17 immediate threat to human health and safety;

18 (ii) Requiring compliance with structural standards for buildings  
19 in building or fire codes to prevent harm from earthquakes, flooding,  
20 fire, or other natural disasters;

21 (iii) Limiting the location or operation of sex offender housing or  
22 adult entertainment;

23 (iv) Requiring adherence to chemical use restrictions that have  
24 been adopted by the United States environmental protection agency;

25 (v) Requiring compliance with worker health and safety laws or  
26 regulations;

27 (vi) Requiring compliance with wage and hour laws;

28 (vii) Requiring compliance with dairy nutrient management  
29 restrictions or regulations in chapter 90.64 RCW; or

30 (viii) Requiring compliance with local ordinances establishing  
31 setbacks from property lines, provided the setbacks were established  
32 prior to January 1, 1996.

33 This subsection (2)(c) shall be construed narrowly to effectuate  
34 the purposes of this act.

35 (d) "Compensation" means remuneration equal to the amount the fair  
36 market value of the affected property has been decreased by the  
37 application or enforcement of the ordinance, regulation, or rule. To  
38 the extent any action requires any portion of property to be left in  
39 its natural state or without beneficial use by its owner;

1 "compensation" means the fair market value of that portion of property  
2 required to be left in its natural state or without beneficial use.

3 "Compensation" also includes any costs and attorneys' fees reasonably  
4 incurred by the property owner in seeking to enforce this act.

5 **FAIRNESS WHEN GOVERNMENT DIRECTLY**  
6 **REGULATES PRIVATE PROPERTY**

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.40 RCW  
8 to read as follows:

9 An agency that decides to enforce or apply any ordinance,  
10 regulation, or rule to private property that would result in damaging  
11 the use or value of private property shall first pay the property owner  
12 compensation as defined in section 2 of this act. This section shall  
13 not be construed to limit agencies' ability to waive, or issue  
14 variances from, other legal requirements. An agency that chooses not  
15 to take action which will damage the use or value of private property  
16 is not liable for paying remuneration under this section.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.40 RCW  
18 to read as follows:

19 An agency may not charge any fee for considering whether to waive  
20 or grant a variance from an ordinance, regulation, or rule in order to  
21 avoid responsibility for paying compensation as provided in section 3  
22 of this act.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW  
24 to read as follows:

25 Development regulations adopted under this chapter shall not  
26 prohibit uses legally existing on any parcel prior to their adoption.  
27 Nothing in this chapter shall be construed to authorize an interference  
28 with the duties in chapter 64.40 RCW.

29 **MISCELLANEOUS**

30 NEW SECTION. **Sec. 6.** The provisions of this act are to be  
31 liberally construed to effectuate the intent, policies, and purpose of  
32 this act to protect private property owners.

1        NEW SECTION.   **Sec. 7.**   Nothing in this act shall diminish any other  
2        remedy provided under the United States Constitution or state  
3        Constitution, or federal or state law, and this act is not intended to  
4        modify or replace any such remedy.

5        NEW SECTION.   **Sec. 8.**   Subheadings used in this act are not any  
6        part of the law.

7        NEW SECTION.   **Sec. 9.**   If any provision of this act or its  
8        application to any person or circumstance is held invalid, the  
9        remainder of the act or the application of the provision to other  
10       persons or circumstances is not affected.

11       NEW SECTION.   **Sec. 10.**   This act shall be known as the property  
12       fairness act.

--- END ---

**Vote Yes on Initiative 933 this Fall!**

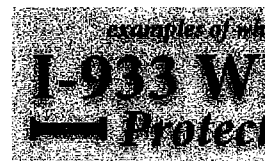
We have submitted more than 317,000 signatures to the Secretary of State. I-933 will be on the November ballot.

Now the campaign to reach every voter with the message that politicians should think before they damage private property begins. **Contribute today** to help fund this crucial effort to protect your rights!

The Property Fairness Initiative will protect our rights, our pocketbooks, our jobs, and our economy. The concept is simple: We want politicians to think before they act. Initiative 933 will require politicians and agencies to:

- Tell us why they want new regulations.
- Identify the properties they want to regulate.
- Identify how much damage they will cause to the use and value of private property.
- Determine if voluntary, cooperative programs can accomplish the goal.
- If the politicians and agencies then decide to damage the use and value of private property, they must follow the state Constitution and pay for the damage.

Click **here** for examples of excessive land-use regulations or proposed regulations that damage the use and value of private property.




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**I-933 will protect private property rights from excessive government regulations that damage the use and value of private property.**

State and local governments have already begun dismantling these rights. Below are several examples.

King County has adopted a "65-10" plan requiring some property owners to leave 65 percent of their property in native vegetation, and to have "impervious surfaces" on no more than 10 percent. Impervious surfaces, in King County, include dirt and gravel roads.

Thurston County is considering a set of regulations that would impose 300-foot buffers along waterways; require some property owners to fence themselves out of part of their property for wildlife habitat, restrict gardening and agricultural activities, limit the use of some generators, and damage use and value of property by not permitting additional structures on some properties.

Clark County has proposed to set aside habitat for banana slugs.

Jefferson County has proposed 450-foot "default" wetland buffers, threatening the flexibility farmers need to stay in business.

The City of Bellevue considered banning tree topping, which would have limited the view from many properties.

The City of Sammamish at one point created a "lottery" to draw the names of residents to determine if they were allowed to apply for permits for uses already allowed on their properties.

The state Supreme Court has upheld a growth hearings board order for Ferry County to adopt habitat restrictions for certain animals



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that have not been seen in Ferry County.

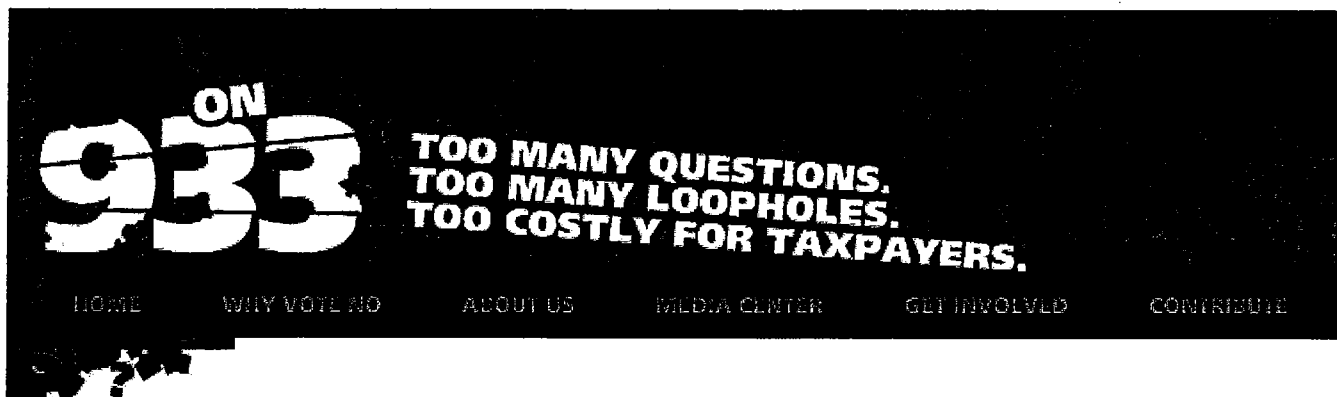
A growth management hearings board has ordered Stevens County to adopt property use restrictions to protect a bird that is not on the state or federal protected species lists and is found in great abundance across several states.

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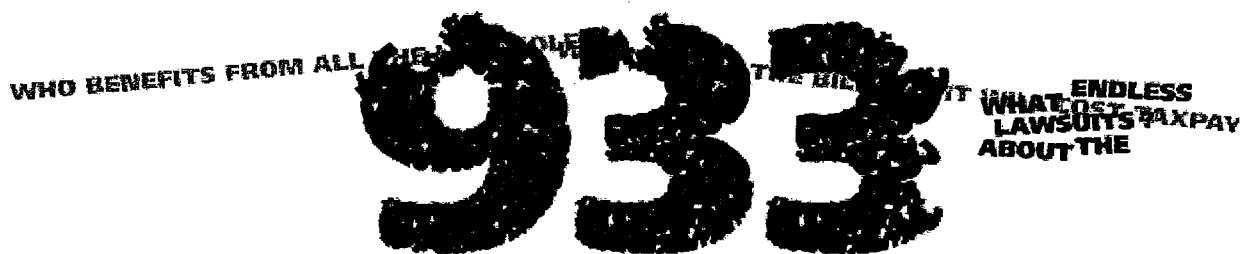
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**WHY CAN GOVERNMENT WAIVE THE RULES?**




Initiative 933 begs more questions than it answers. How much will it cost? Who gets exempted from the law and who decides? Why should taxpayers have to pay for attorney's fees? We know there are more, here is a list of 933 questions that I-933 has left unanswered.

One thing Washington voters can be sure of is that I-933 creates a "pay or waive" system that will force taxpayers to pay millions of dollars to stop irresponsible development or exempt certain land owners and corporations from the law. I-933 is a poorly written law that will place additional unfair burdens on Washington taxpayers for years to come.

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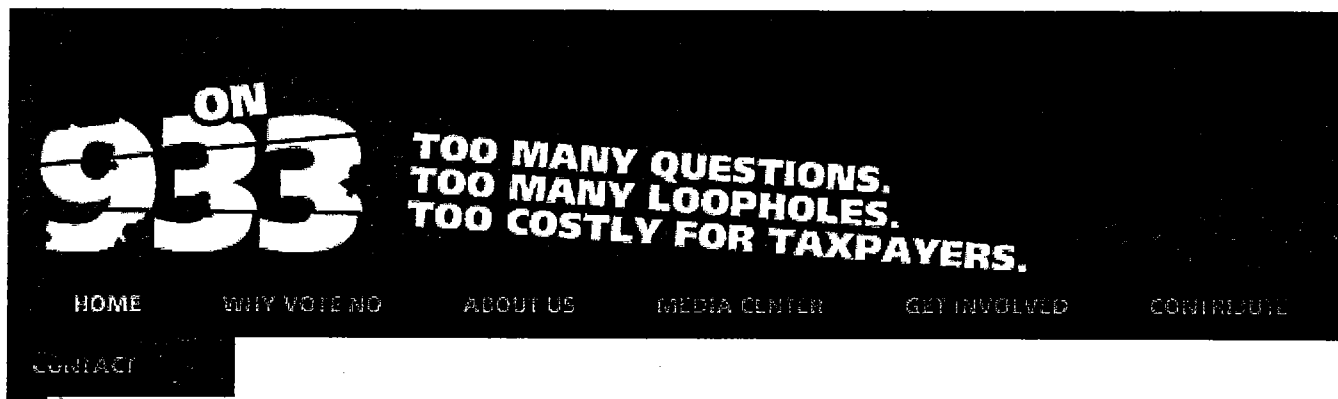
 **PLEDGE VOTE**

**933 QUESTIONS LEFT UNANSWERED**

**UPCOMING EVENTS**

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**WHY VOTE NO**

- Analysis of Initiative Text
- Other Analysis
- It's bad for farmers
- It's bad for neighborhoods
- It's bad for working families
- It's bad for business
- It's bad for the environment
- News Articles
- FAQs
- Debunking the Backers
- 933 Questions Left Unanswered

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**CONTRIBUTE**



**PLEDGE TO VOTE NO**

**WHY VOTE NO**

I-933 creates a "pay or waive" system that makes local communities decide whether to waive laws for special interests or force taxpayers to pay them to follow the rules.

Before local communities are even forced to waive laws for special interests, it will cost hundreds of millions of taxpayer dollars just to administer. I-933 also mandates that taxpayers must pay for all claimants' attorneys' fees.

Implementation of I-933 will take money away from important community services like education, public safety and other services we all depend upon or taxes will have to be raised to pay for this poorly written law.

I-933 is written so irresponsibly that it leaves voters guessing and doesn't say where the money will come from, who gets to be exempted from the law, or who decides.

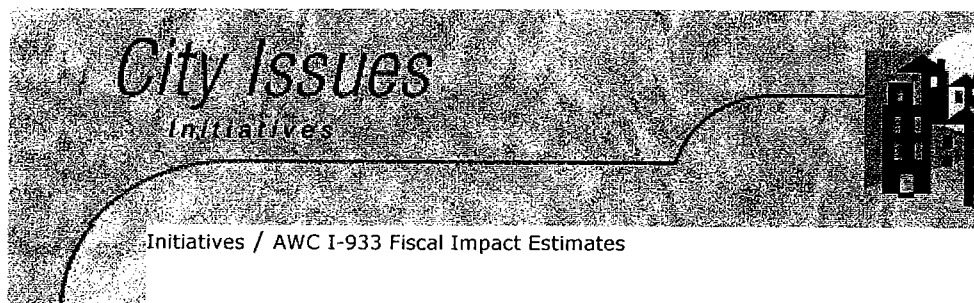
The extreme costs to taxpayers are not only monetary, but I-933 forces communities to waive laws that will create loopholes for irresponsible development leading to more traffic congestion, taking away a community's right to decide how it wants to look in the future, and result in an overall diminished quality of life.

I-933 is bad for Washington. Vote NO on 933.




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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](mailto:davew@awcnet.org) or Tim Gugerty at [timg@awcnet.org](mailto: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.

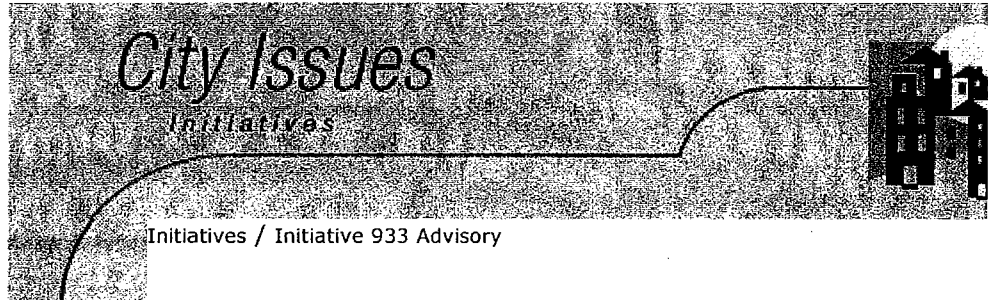
Again, we encourage cities and towns to conduct their own impact estimates to be better prepared if Initiative 933 passes, and to help educate citizens about potential impacts.

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](#).

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Initiative 933 Advisory

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## 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](mailto:davew@awcnet.org).

8/18/06

**RESOLUTION NO. 251**

**A RESOLUTION OF THE CITY OF SHORELINE, 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:

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" of 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 “shall be construed narrowly” (Section (2)(c)), 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, I-933 would deprive local jurisdictions, including the City of Shoreline, of the ability to adopt and enforce reasonable land use development standards to mitigate traffic impacts, assure appropriate building height and lot coverage maxima, 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, and

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

WHEREAS, an analysis dated August 18, 2006 by the Association of Washington Cities has estimated that the state-wide annual administrative costs to cities alone would be between \$60 million and \$76 million, while the state-wide annual cost to cities for paying off claims is estimated to be between \$3.5 billion and \$4.5 billion; and



WHEREAS, by dividing this state-wide city estimate by the number of households in Washington cities, as set forth in U.S. Census data, it is estimated that the average fiscal impact of I-933 on city taxpayers in Washington is between \$2,410 and \$3,078 per household every year; 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 provide needed public safety, infrastructure and other public services, and

WHEREAS, prior to adoption of this resolution, the City of Shoreline has given notice of the meeting at which it was considered containing the official Ballot Title of Initiative 933, and has afforded equal opportunity at the meeting for any person to express an opposing view, now, therefore, be it

RESOLVED by the City Council of the City of Shoreline, Washington, that the City of Shoreline opposes adoption of Initiative 933, and urges its rejection by the voters.

**PASSED BY THE CITY COUNCIL ON SEPTEMBER 11, 2006.**

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Robert L. Ransom, Mayor

**ATTEST:**

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Scott Passey, CMC  
City Clerk

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