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BY: P.W.

JEFFERSON COUNTY, TENNESSEE

BOARD OF COMMISSIONERS

RESOLUTION 2016-43

**A RESOLUTION URGING THE GENERAL ASSEMBLY
OF TENNESSEE TO PASS NEW LAW OR AMEND CURRENT LAW TO
PROTECT CITIZENS FROM EMINENT DOMAIN ABUSE**

WHEREAS, eminent domain is a power held by federal, state, and local government;
and

WHEREAS, citizens in Jefferson County and the State of Tennessee deserve protection
from the potential abuse of eminent domain; and

WHEREAS, protection of private property from eminent domain under the 5th
Amendment of the U. S. Constitution was restricted and limited by Kelo vs. City of New London
Connecticut (hereinafter "Kelo") decided by the United States Supreme Court in June 2005; and

WHEREAS, as a result of the Kelo decision, economically disadvantaged and politically
disadvantaged demographics are at greater risk of being abused by government when private
property is taken for economic development; and

WHEREAS, the takings clause and the proper and necessary clause of the 5th
Amendment should be considered a restriction or limitation of power; and the taking of property
should only fall under the strict definition of "proper and necessary"; and

WHEREAS, the Kelo decision broadened the standard by which property takings could
occur from the constitutional standard of "public use" to "public purpose"; and

WHEREAS, a private property owner, or owners, who are the target of eminent domain
may face significant legal expenses in contesting the government taking of property; that said
legal expenses, in part, may be related to a court determination of the value of the targeted
property; and that said property owners may risk great financial harm in a contested property
taking; and

WHEREAS, the Industrial Parks Act of Tennessee may allow a government entity to
take private property for private development.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of
Jefferson County, Tennessee, meeting in its regular session on this 19th day of September, 2016,
as follows:

SECTION 1: That the General Assembly of the State of Tennessee is urged to examine all aspects of law that govern the use of eminent domain for the protection of individual property rights, and amend or pass law(s) that:

- a. Strictly define “public use” to eliminate the use of eminent domain for the purposes of private economic development;
- b. Protect property owners from suffering financial harm from eminent domain action, by requiring that the cost for property appraisal in a condemnation action should always be taxed to the condemning body;
- c. Protect property owners from suffering financial harm from eminent domain action, by requiring that the legal expenses of the property owner be taxed to the condemning party if the property taking falls outside the definition of “public use: as described in Exhibit A; and
- d. Require that “the highest land-use” value be used to determine the value of property taken by eminent domain.

SECTION 2: In considering the amendment or passage of such legislation, it is urged that the Tennessee General Assembly give deference to the Model Eminent Domain Legislation offered by the Institute for Justice, which is attached to this Resolution as **Exhibit 1** and incorporated herein by reference.

SECTION 3: That upon approval of this resolution and its signing, the Board of Commissioners of Jefferson County directs the County Clerk’s Office to mail a copy of this resolution to Jefferson County’s State Representatives and State Senators.

Resolution 2016-43

Date of Adoption by County Commission: 9-18-16 **RECEIVED**

SEP 20 2016

Date Received by County Mayor: _____ BY: P.W.

Votes: 17 0 2 2
Yes No Abstain Absent

Approved: James E. Carmichael Date: 9/19/2016
James E. Carmichael, County Commission Chairman

Attest: Frank C. Herndon Date: 9/19/16
Frank C. Herndon, County Clerk



Approved: Alan Palmieri Date: 9-20-16
Alan Palmieri, County Mayor

Veto Override Votes: _____
Yes No Abstain Absent

Veto Override: _____ Date: _____
James E. Carmichael, County Commission Chairman

EXHIBIT 1

Model Eminent Domain Legislation for Remediation of Blighted Property

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100.01	Preemption.
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100.01 Preemption.

(a) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations.

(b) Additional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of property owners under this chapter may be provided by other law, ordinance, or charter.

100.02 Public use.

(a) Eminent domain shall only be used for a public use. "Public use" means exclusively:

- (1) The possession, occupation, ownership, and enjoyment of the land by the general public or by public agencies;
- (2) The possession, occupation and ownership of land necessary for operations of a utility that serves the general public;
- (3) The remediation of a blighted property; or
- (4) The possession of an abandoned property.

(b) The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not constitute a public use.

100.03 Blighted property.

(a) "Blighted property" means a structure:

- (1) That was inspected by the appropriate local government and cited for one or more enforceable housing, maintenance or building code violations that (a) affect the safety of the occupants or the public and (b) involve one or more of the following:
 1. a roof and roof framing element;
 2. support walls, beams, and headers;
 3. foundation, footings, and subgrade conditions;
 4. light and ventilation;
 5. fire protection, including egress;
 6. internal utilities, including electricity, gas, and water;
 7. flooring and flooring elements; or
 8. walls, insulation, and exterior envelope;
- (2) in which the cited housing, maintenance, or building code violations have not been remedied within a reasonable time after two notices to cure the noncompliance; and
- (3) that the satisfaction of those enforceable, cited and uncured housing, maintenance, and building code violations cost more than 50 percent of the assessor's taxable market value for the building, excluding land value, for property taxes payable in the year in which the condemnation is commenced.

[Alternative definition]

100.03 Blighted property.

"Blighted property" means a structure, in its current condition, which has been designated as unfit for human use or habitation by the agency responsible for enforcement of housing, building or fire codes because (1) it is dilapidated, unsanitary, or unsafe; (2) it is a fire hazard; or (3) its electricity, heating, or plumbing has been destroyed or removed.

100.04 Abandoned property.

"Abandoned property" means property that: (1) has been substantially unoccupied or unused for any commercial or residential purpose for at least one year by a person with a legal or equitable right to occupy the property; (2) has not been maintained; and (3) for which property taxes have not been paid for at least two years.

100.05 Local government hearing requirements.

(a) Definitions.

For the purposes of this section:

- (1) "Local government" means the elected governing body of a statutory or home rule charter city, county, or township; and
 - (2) "Local government agency" means a subdivision, agency, authority, or other entity created by or whose members are appointed by the local government, including a port authority, economic development authority, housing and redevelopment authority, or other similar entity established under law.
- (b) Required vote by local government.
- (1) If the taking is for the remediation of a blighted property or the possession of an abandoned property, a public hearing must be held before a local government or local government agency commences an eminent domain proceeding. The local government must notify each owner of property that may be acquired in writing by certified and regular mail of the public hearing on the proposed taking, post the public hearing information on the local government's website, and publish notice of the public hearing in a newspaper of general circulation in the local government's jurisdiction. Notice must be provided at least 30 days but not more than 60 days before the hearing.
 - (2) Any interested person must be allowed reasonable time to present relevant testimony at the public hearing. The proceedings of the hearing must be recorded and available to the public for review and comment at reasonable times and a reasonable place.
 - (3) At the next regular meeting of the local government that is at least 30 days after the public hearing, the local government must vote on the question of whether to authorize the local government or local government agency to use eminent domain to acquire the property.

100.06 Administrative warrant.

For the purposes of establishing the basis for the use of eminent domain for the remediation of a blighted property or possession of an abandoned property, a local government is authorized to seek from a judge or magistrate an administrative warrant to gain access to inspect a specific building. The local government must show probable cause that a code violation has occurred, that the violation has not been cured, and that the owner has denied the local government access to the specific building. Items of evidence that may support a conclusion of probable cause include recent fire or police inspections, exterior evidence of deterioration, or other similarly reliable evidence of present violations of the municipal code in the specific building.