

CHAMBER ACTION

1 The Justice Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to eminent domain; creating s. 73.013,
7 F.S.; restricting certain transfers of property taken by
8 eminent domain to certain natural persons or private
9 entities; amending s. 163.335, F.S.; providing legislative
10 findings and declarations; amending s. 163.355, F.S.;
11 requiring disclosure of eminent domain authority in
12 resolutions finding slum or blight conditions; providing
13 for notice to property owners and business owners or
14 lessees and requirements therefor; providing for hearings
15 and advertising requirements therefor; amending s.
16 163.358, F.S.; providing that the power of eminent domain
17 does not vest in a community redevelopment agency but
18 rather with the governing body of a county or
19 municipality; amending s. 163.360, F.S.; requiring
20 disclosure of eminent domain authority in community
21 redevelopment plans; amending s. 163.370, F.S.; revising
22 powers of community redevelopment agencies with respect to
23 the acquisition of real property; amending s. 163.375,

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24 F.S.; revising eminent domain authority and procedures,
 25 including notice, hearings, and challenge; amending ss.
 26 127.01 and 127.02, F.S.; requiring county compliance with
 27 eminent domain limitations; amending ss. 166.401 and
 28 166.411, F.S.; requiring municipal compliance with eminent
 29 domain limitations; providing application; providing an
 30 effective date.

31

32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. Section 73.013, Florida Statutes, is created to
 35 read:

36 73.013 Conveyance of property taken by eminent domain.--

37 (1) Notwithstanding any other provision of law, including
 38 any charter provision, ordinance, statute, or special law, if
 39 the state, any political subdivision as defined in s. 1.01(8),
 40 or any other entity to which the power of eminent domain is
 41 delegated files a petition of taking on or after July 1, 2006,
 42 regarding a parcel of real property in this state, ownership or
 43 control of property acquired pursuant to such petition may not
 44 be conveyed by the condemning authority or any other entity to a
 45 natural person or private entity, except that ownership or
 46 control of property acquired pursuant to such petition may be
 47 conveyed to:

48 (a) A natural person or private entity for use in
 49 providing common carrier services or systems;

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50 (b) A natural person or private entity for use as a road
51 or other right-of-way or means open to the public for
52 transportation, whether at no charge or by toll;

53 (c) A natural person or private entity that is a public or
54 private utility for use in providing electricity services or
55 systems, natural or manufactured gas services or systems, water
56 and wastewater services or systems, stormwater or runoff
57 services or systems, sewer services or systems, pipeline
58 facilities, telephone services or systems, or similar services
59 or systems;

60 (d) A natural person or private entity for use in
61 providing public infrastructure;

62 (e) A natural person or private entity that occupies,
63 pursuant to a lease, an incidental part of a public property or
64 a public facility for the purpose of providing goods or services
65 to the public;

66 (f) A natural person or private entity, after public
67 notice and competitive bidding unless otherwise provided by
68 general law, if the property was owned and controlled by the
69 condemning authority or a governmental entity for at least 5
70 years after the condemning authority acquired title to the
71 property; or

72 (g) A natural person or private entity in accordance with
73 subsection (2).

74 (2) If ownership of property is conveyed to a natural
75 person or private entity pursuant to any of paragraphs (1)(a) -
76 (e), and that natural person or private entity retains ownership
77 and control of the property for at least 5 years after acquiring

78 | title, the property may subsequently be transferred, after
 79 | public notice and competitive bidding unless otherwise provided
 80 | by general law, to another natural person or private entity
 81 | without restriction.

82 | Section 2. Subsection (3) of section 163.335, Florida
 83 | Statutes, is amended, and subsection (7) is added to that
 84 | section, to read:

85 | 163.335 Findings and declarations of necessity.--

86 | (3) It is further found and declared that the powers
 87 | conferred by this part are for public uses and purposes for
 88 | which public money may be expended, the police power exercised,
 89 | and the power of eminent domain exercised subject to the
 90 | limitations in s. 163.375 ~~and the power of eminent domain and~~
 91 | ~~police power exercised~~, and the necessity in the public interest
 92 | for the provisions herein enacted is hereby declared as a matter
 93 | of legislative determination.

94 | (7) It is further found that the prevention or elimination
 95 | of a "slum area" or "blighted area" as defined in this part and
 96 | the preservation or enhancement of the tax base are not public
 97 | uses or purposes for which private property may be taken by
 98 | eminent domain.

99 | Section 3. Section 163.355, Florida Statutes, is amended
 100 | to read:

101 | 163.355 Finding of necessity by county or municipality.--

102 | (1) No county or municipality shall exercise the community
 103 | redevelopment authority conferred by this part until after the
 104 | governing body has adopted a resolution, supported by data and
 105 | analysis, which makes a legislative finding that the conditions

106 | in the area meet the criteria described in s. 163.340(7) or (8).

107 | The resolution must state that:

108 | ~~(a)(1)~~ One or more slum or blighted areas, or one or more
109 | areas in which there is a shortage of housing affordable to
110 | residents of low or moderate income, including the elderly,
111 | exist in such county or municipality; and

112 | ~~(b)(2)~~ The rehabilitation, conservation, or redevelopment,
113 | or a combination thereof, of such area or areas, including, if
114 | appropriate, the development of housing which residents of low
115 | or moderate income, including the elderly, can afford, is
116 | necessary in the interest of the public health, safety, morals,
117 | or welfare of the residents of such county or municipality.

118 | (2) A resolution finding slum or blight conditions must
119 | indicate that property within the community redevelopment area
120 | may be subject to taking by eminent domain pursuant to s.
121 | 163.375. In the alternative, the county or municipality may
122 | explicitly state in the resolution that the power of eminent
123 | domain provided under s. 163.375 will not be exercised by the
124 | county or municipality within the community redevelopment area.
125 | A county or municipality is not required to provide notice in
126 | accordance with subsections (3) and (4) if the resolution
127 | finding slum or blight conditions, as proposed and adopted by
128 | the county or municipality, expressly declares that the power of
129 | eminent domain provided under s. 163.375 will not be exercised
130 | by the county or municipality within the community redevelopment
131 | area.

132 | (3) At least 30 days prior to the first public hearing at
133 | which a proposed resolution finding slum or blight conditions

134 will be considered by a county or municipality, actual notice of
135 the public hearing must be mailed via first class mail to each
136 real property owner whose property may be included within the
137 community redevelopment area and to each business owner,
138 including a lessee, who operates a business located on property
139 that may be included within the community redevelopment area.

140 (a) Notice must be sent to each owner of real property
141 that may be included within the community redevelopment area at
142 the owner's last known address as listed on the county ad
143 valorem tax roll. Alternatively, the notice may be personally
144 delivered to a property owner. If there is more than one owner
145 of a property, notice to one owner constitutes notice to all
146 owners of the property. The return of the notice as
147 undeliverable by the postal authorities constitutes compliance
148 with this subsection. The condemning authority is not required
149 to give notice to a person who acquires title to property after
150 the notice required by this subsection has been given.

151 (b) Notice must be sent to the address of the registered
152 agent for the business located on the property or, if no agent
153 is registered, by certified mail or personal delivery to the
154 address of the business located on the property. Notice to one
155 owner of a multiple ownership business constitutes notice to all
156 owners of that business. The return of the notice as
157 undeliverable by the postal authorities constitutes compliance
158 with this subsection. The condemning authority is not required
159 to give notice to a person who acquires an interest in a
160 business after the notice required by this subsection has been
161 given.

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162 (c) At a minimum, the mailed notice required by paragraphs
163 (a) and (b) must:

164 1. Generally explain the purpose, effect, and substance of
165 the proposed resolution;

166 2. Indicate that private property within the proposed
167 redevelopment area may be subject to taking by eminent domain if
168 the current condition of the property poses an existing threat
169 to the public health or public safety that is likely to continue
170 absent the exercise of eminent domain;

171 3. Indicate that private-to-private transfers of property
172 may occur;

173 4. Contain a geographic location map that clearly
174 indicates the area covered by the resolution, including major
175 street names as a means of identification of the general area;

176 5. Provide the dates, times, and locations of future
177 public hearings during which the resolution may be considered;

178 6. Identify the place or places within the county or
179 municipality at which the resolution may be inspected by the
180 public;

181 7. Indicate that the property owner may file written
182 objections with the local governing board prior to any public
183 hearing on the resolution; and

184 8. Indicate that interested parties may appear and be
185 heard at all public hearings at which the resolution will be
186 considered.

187 (4) In addition to mailing notice to property owners, the
188 county or municipality must conduct at least two advertised
189 public hearings prior to adoption of the proposed resolution. At

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190 least one hearing must be held after 5 p.m. on a weekday, unless
191 the governing body, by a majority plus one vote, elects to
192 conduct the hearing at another time of day. The first public
193 hearing must be held at least 7 days after the day the first
194 advertisement is published. The second hearing must be held at
195 least 10 days after the first hearing and must be advertised at
196 least 5 days prior to the public hearing. The required
197 advertisements must be no less than 2 columns wide by 10 inches
198 long in a standard size or a tabloid size newspaper, and the
199 headline in the advertisement must be in a type no smaller than
200 18 point. The advertisement must not be placed in that portion
201 of the newspaper where legal notices and classified
202 advertisements appear and must be placed in a newspaper of
203 general paid circulation rather than one of limited subject
204 matter. Whenever possible, the advertisement must appear in a
205 newspaper that is published at least 5 days a week unless the
206 only newspaper in the community is published fewer than 5 days a
207 week. At a minimum, the advertisement must:

208 (a) Generally explain the substance and effect of the
209 resolution;

210 (b) Include a statement indicating that private property
211 within the proposed redevelopment area may be subject to taking
212 by eminent domain if the current condition of the property poses
213 an existing threat to the public health or public safety that is
214 likely to continue absent the exercise of eminent domain;

215 (c) Provide the date, time, and location of the meeting;

216 (d) Identify the place or places within the county or
 217 municipality at which the resolution may be inspected by the
 218 public;

219 (e) Contain a geographic location map that clearly
 220 indicates the area covered by the resolution, including major
 221 street names as a means of identification of the general area;

222 (f) Indicate that any interested party may file written
 223 objections with the local governing board prior to the public
 224 hearing; and

225 (g) Indicate that any interested party may appear and be
 226 heard at the public hearing.

227 Section 4. Subsection (6) is added to section 163.358,
 228 Florida Statutes, to read:

229 163.358 Exercise of powers in carrying out community
 230 redevelopment and related activities.--The community
 231 redevelopment powers assigned to a community redevelopment
 232 agency created under s. 163.356 include all the powers necessary
 233 or convenient to carry out and effectuate the purposes and
 234 provisions of this part, except the following, which continue to
 235 vest in the governing body of the county or municipality:

236 (6) The power of eminent domain.

237 Section 5. Paragraph (d) is added to subsection (2) of
 238 section 163.360, Florida Statutes, to read:

239 163.360 Community redevelopment plans.--

240 (2) The community redevelopment plan shall:

241 (d) Indicate that real property within the community
 242 redevelopment area may be subject to taking by eminent domain
 243 pursuant to s. 163.375. If consistent with the resolution

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244 finding slum or blight conditions, the plan must indicate that
 245 the power of eminent domain provided under s. 163.375 will not
 246 be exercised by the county or municipality within the community
 247 redevelopment area.

248 Section 6. Paragraph (o) of subsection (1) and paragraph
 249 (a) of subsection (3) of section 163.370, Florida Statutes, are
 250 amended to read:

251 163.370 Powers; counties and municipalities; community
 252 redevelopment agencies.--

253 (1) Every county and municipality shall have all the
 254 powers necessary or convenient to carry out and effectuate the
 255 purposes and provisions of this part, including the following
 256 powers in addition to others herein granted:

257 (o) To exercise all or any part or combination of powers
 258 herein granted or to elect to have such powers exercised by a
 259 community redevelopment agency; however, the power of eminent
 260 domain shall not be exercised by a community redevelopment
 261 agency.

262 (3) With the approval of the governing body, a community
 263 redevelopment agency may:

264 (a) Prior to approval of a community redevelopment plan or
 265 approval of any modifications of the plan, acquire real property
 266 in a community redevelopment area by purchase, lease, option,
 267 gift, grant, bequest, devise, or other voluntary method of
 268 acquisition, demolish and remove any structures on the property,
 269 and pay all costs related to the acquisition, demolition, or
 270 removal, including any administrative or relocation expenses.

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271 Section 7. Section 163.375, Florida Statutes, is amended
272 to read:

273 163.375 Eminent domain.--

274 (1) After the community redevelopment plan is adopted, a
275 county or municipality may acquire by eminent domain any
276 interest in a parcel of real property within a community
277 redevelopment area, including a fee simple title thereto, for
278 the purpose of eliminating an existing threat to public health
279 or public safety if the parcel of real property is condemnation
280 eligible as defined in subsection (2). A county or municipality
281 shall exercise the power of eminent domain in the manner
282 provided in this section and in chapters 73 and 74, or pursuant
283 to the power of eminent domain provided by any other statutory
284 provision, as limited by s. 73.013. Real property belonging to
285 the United States, the state, or any political subdivision of
286 the state may not be acquired without its consent. ~~Any county or~~
287 ~~municipality, or any community redevelopment agency pursuant to~~
288 ~~specific approval of the governing body of the county or~~
289 ~~municipality which established the agency, as provided by any~~
290 ~~county or municipal ordinance has the right to acquire by~~
291 ~~condemnation any interest in real property, including a fee~~
292 ~~simple title thereto, which it deems necessary for, or in~~
293 ~~connection with, community redevelopment and related activities~~
294 ~~under this part. Any county or municipality, or any community~~
295 ~~redevelopment agency pursuant to specific approval by the~~
296 ~~governing body of the county or municipality which established~~
297 ~~the agency, as provided by any county or municipal ordinance may~~
298 ~~exercise the power of eminent domain in the manner provided in~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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299 ~~chapters 73 and 74 and acts amendatory thereof or supplementary~~
300 ~~thereto, or it may exercise the power of eminent domain in the~~
301 ~~manner now or which may be hereafter provided by any other~~
302 ~~statutory provision for the exercise of the power of eminent~~
303 ~~domain. Property in unincorporated enclaves surrounded by the~~
304 ~~boundaries of a community redevelopment area may be acquired~~
305 ~~when it is determined necessary by the agency to accomplish the~~
306 ~~community redevelopment plan. Property already devoted to a~~
307 ~~public use may be acquired in like manner. However, no real~~
308 ~~property belonging to the United States, the state, or any~~
309 ~~political subdivision of the state may be acquired without its~~
310 ~~consent.~~

311 (2) Private property is condemnation eligible if the
312 current condition of the property poses an existing threat to
313 public health or public safety that is likely to continue absent
314 the exercise of eminent domain as evidenced by at least one of
315 the following factors:

316 (a) The property contains a structure which, in its
317 current condition, has substantial dilapidation which is either
318 physically incurable or economically incurable in that the cost
319 of repair or rehabilitation would exceed the replacement cost of
320 a new structure. Superficial or cosmetic disrepair, which is
321 repairable by a nominal expenditure, not to exceed 20 percent of
322 the market value of the existing structure, shall not constitute
323 dilapidation for purposes of constituting a condemnation-
324 eligible factor;

325 (b) The property contains a structure which, in its
326 current condition, is unsanitary, unsafe, or vermin infested and

327 is designated by the agency responsible for enforcement of the
328 housing, building, or fire codes as unfit for human habitation
329 or use;

330 (c) The property contains a structure which, in its
331 current condition, is a fire hazard, or otherwise dangerous to
332 the safety of persons or property, and is designated by the
333 agency responsible for enforcement of the housing, building, or
334 fire codes as unfit for human habitation or use;

335 (d) The property contains a structure from which, in its
336 current condition, the utilities, plumbing, heating, sewerage,
337 or other facilities have been disconnected, destroyed, removed,
338 or rendered ineffective so that the property is unfit for human
339 habitation or use; or

340 (e) The physical condition, use, or occupancy of the
341 property constitutes a public nuisance and the property has been
342 the subject of code violations affecting public health or public
343 safety that have not been substantially rehabilitated within 1
344 year after receipt of notice to rehabilitate from the
345 appropriate code enforcement agency.

346 (3) A county or municipality may not initiate an eminent
347 domain proceeding pursuant to authority conferred by this
348 section unless the governing body first adopts a resolution of
349 taking containing specific determinations or findings that:

350 (a) The public purpose of the taking is to eliminate an
351 existing threat to public health or public safety that is likely
352 to continue absent the exercise of eminent domain;

353 (b) The parcel of real property is condemnation eligible
354 as defined in subsection (2), including a specific description

355 of the current conditions on the property that pose an existing
356 threat to public health or public safety that is likely to
357 continue absent the exercise of eminent domain; and

358 (c) Taking the property by eminent domain is reasonably
359 necessary in order to accomplish the public purpose of
360 eliminating an existing threat to public health or public safety
361 that is likely to continue absent the exercise of eminent
362 domain.

363 (4) The county or municipality may not adopt a resolution
364 of taking under this section unless actual notice of the public
365 hearing at which the resolution is considered was provided, at
366 least 45 days prior to the hearing, to the property owner and to
367 any business owner, including a lessee, who operates a business
368 located on the property.

369 (a) Notice must be sent by certified mail, return receipt
370 requested, to the last known address listed on the county ad
371 valorem tax roll of each owner of the property. Alternatively,
372 the notice may be personally delivered to each property owner.
373 Compliance with this subsection shall also require conspicuous
374 posting of the notice to the premises of the property to be
375 acquired. The posted notice shall prominently and legibly
376 display the information provided in paragraph (c). The
377 condemning authority is not required to give notice to a person
378 who acquires title to the property after the notice required by
379 this subsection has been given.

380 (b) Notice must be sent by certified mail, return receipt
381 requested, to the address of the registered agent for the
382 business located on the property to be acquired or, if no agent

383 is registered, by certified mail or personal delivery to the
384 address of the business located on the property to be acquired.
385 Notice to one owner of a multiple ownership business constitutes
386 notice to all business owners of that business. Compliance with
387 this subsection shall also require conspicuous posting of the
388 notice to the premises of the property to be acquired. The
389 posted notice shall prominently and legibly display the
390 information provided in paragraph (c). The condemning authority
391 is not required to give notice to a person who acquires an
392 interest in the business after the notice required by this
393 subsection has been given.

394 (c) At a minimum, the notices required by paragraphs (a)
395 and (b) shall indicate:

396 1. That the county or municipal governing body will
397 determine whether to take the parcel of real property pursuant
398 to authority granted by this part and will formally consider a
399 resolution of taking at a public hearing;

400 2. That the property is subject to taking by eminent
401 domain under this part because current conditions on the
402 property pose an existing threat to public health or public
403 safety that is likely to continue absent the exercise of eminent
404 domain;

405 3. The specific conditions on the property that pose an
406 existing threat to public health or public safety and form the
407 basis for taking the property;

408 4. That the property will not be subject to taking if the
409 specific conditions that pose an existing threat to public
410 health or public safety and form the basis for the taking are

411 removed prior to the public hearing at which the resolution will
 412 be considered by the governing body;

413 5. The date, time, and location of the public hearing at
 414 which the resolution of taking will be considered;

415 6. That the property owner or business owner may file
 416 written objections with the governing board prior to the public
 417 hearing at which the resolution of taking is considered; and

418 7. That any interested party may appear and be heard at
 419 the public hearing at which the resolution of taking is
 420 considered.

421 (5) (a) In accordance with chapters 73 and 74, if a
 422 property owner challenges an attempt to acquire his or her
 423 property by eminent domain under this section, the condemning
 424 authority must prove by clear and convincing evidence in an
 425 evidentiary hearing before the circuit court that:

426 1. The public purpose of the taking is to eliminate an
 427 existing threat to public health or public safety that is likely
 428 to continue absent the exercise of eminent domain;

429 2. The property is condemnation eligible as defined in
 430 subsection (2); and

431 3. Taking the property by eminent domain is reasonably
 432 necessary in order to accomplish the public purpose of
 433 eliminating an existing threat to public health or public safety
 434 that is likely to continue absent the exercise of eminent
 435 domain.

436 (b) The circuit court shall determine whether the public
 437 purpose of the taking is to eliminate an existing threat to
 438 public health or public safety that is likely to continue absent

439 | the exercise of eminent domain, whether the property is
 440 | condemnation eligible as defined in subsection (2), and whether
 441 | taking the property is reasonably necessary in order to
 442 | accomplish the public purpose of eliminating an existing threat
 443 | to public health or public safety that is likely to continue
 444 | absent the exercise of eminent domain. The circuit court shall
 445 | make these determinations without attaching a presumption of
 446 | correctness or extending judicial deference to any
 447 | determinations or findings in the resolution of taking adopted
 448 | by the condemning authority.

449 | ~~(6)(2)~~ In any proceeding to fix or assess compensation for
 450 | damages for the taking of property, or any interest therein,
 451 | through the exercise of the power of eminent domain or
 452 | condemnation, evidence or testimony bearing upon the following
 453 | matters shall be admissible and shall be considered in fixing
 454 | such compensation or damages in addition to evidence or
 455 | testimony otherwise admissible:

456 | (a) Any use, condition, occupancy, or operation of such
 457 | property, which is unlawful or violative of, or subject to
 458 | elimination, abatement, prohibition, or correction under, any
 459 | law, ordinance, or regulatory measure of the state, county,
 460 | municipality, or other political subdivision, or any agency
 461 | thereof, in which such property is located, as being unsafe,
 462 | substandard, unsanitary, or otherwise contrary to the public
 463 | health, safety, morals, or welfare.

464 | (b) The effect on the value of such property of any such
 465 | use, condition, occupancy, or operation or of the elimination,

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466 abatement, prohibition, or correction of any such use,
467 condition, occupancy, or operation.

468 ~~(7)(3)~~ In any proceeding to fix or assess compensation for
469 damages for the taking of property, or any interest therein, the
470 foregoing testimony and evidence shall be admissible
471 notwithstanding that no action has been taken by any public body
472 or public officer toward the abatement, prohibition,
473 elimination, or correction of any such use, condition,
474 occupancy, or operation. Testimony or evidence that any public
475 body or public officer charged with the duty or authority so to
476 do has rendered, made, or issued any judgment, decree,
477 determination, or order for the abatement, prohibition,
478 elimination, or correction of any such use, condition,
479 occupancy, or operation shall be admissible and shall be prima
480 facie evidence of the existence and character of such use,
481 condition, or operation.

482 Section 8. Subsection (3) is added to section 127.01,
483 Florida Statutes, to read:

484 127.01 Counties delegated power of eminent domain;
485 recreational purposes, issue of necessity of taking.--

486 (3) Each county shall strictly comply with the limitations
487 set forth in s. 73.013.

488 Section 9. Section 127.02, Florida Statutes, is amended to
489 read:

490 127.02 County commissioners may authorize acquirement of
491 property by eminent domain.--The board of county commissioners
492 may, by resolution, authorize the acquirement by eminent domain
493 of property, real or personal, for any county use or purpose

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494 | designated in such resolution, subject to the limitations set
495 | forth in s. 73.013.

496 | Section 10. Subsection (3) is added to section 166.401,
497 | Florida Statutes, to read:

498 | 166.401 Right of eminent domain.--

499 | (3) Each municipality shall strictly comply with the
500 | limitations set forth in s. 73.013.

501 | Section 11. Subsections (1), (9), and (10) of section
502 | 166.411, Florida Statutes, are amended to read:

503 | 166.411 Eminent domain; uses or purposes.--Municipalities
504 | are authorized to exercise the power of eminent domain for the
505 | following uses or purposes:

506 | (1) For the proper and efficient carrying into effect of
507 | any proposed scheme or plan of drainage, ditching, grading,
508 | filling, or other public improvement deemed necessary or
509 | expedient for the preservation of the public health, or for
510 | other good reason connected in anywise with the public welfare
511 | or the interests of the municipality and the people thereof,
512 | subject to the limitations set forth in s. 73.013;

513 | (9) For laying wires and conduits underground; and

514 | (10) For city buildings, waterworks, ponds, and other
515 | municipal purposes which shall be coextensive with the powers of
516 | the municipality exercising the right of eminent domain subject
517 | to the limitations set forth in s. 73.013. ~~and~~

518 | Section 12. This act shall take effect July 1, 2006, and
519 | shall apply to all condemnation proceedings in which a petition
520 | of taking is filed pursuant to chapter 73, Florida Statutes, on
521 | or after that date.