

BOROUGH OF BOGOTA

ORDINANCE NO. 1296

**Amending the Revised General Ordinances
of the Borough of Bogota to Include a New Section in Chapter II, Titled “Eminent
Domain”**

WHEREAS, on November 8, 2005, the voters of the Borough of Bogota (“Borough”) approved the following public question by a vote of 1408 “yes” to 293 “no:” “Shall the Mayor and Council of the Borough of Bogota adopt an ordinance stating the Borough will not use the power of eminent domain to acquire private property, against the wishes of the property owner, for private development to increase tax ratables or tax revenue derived from the property, and that this power only will be used to acquire private property: (1) when the property is to be opened to the public or for the public’s use, or (2) when the acquisition is necessary to eliminate an existing use of the property that inflicts an affirmative harm on society?”; and

WHEREAS, the purpose of this ordinance is to enact provisions consistent with the will of the voters to protect the interests of the Borough’s property owners and occupants, voters, and taxpayers now and in future years.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Bogota as follows:

Section 1: A new Section 2-29 shall be added to the Revised General Ordinances of the Borough of Bogota, titled Eminent Domain,” which shall state as follows:

2-29.1. Purpose.

The purpose of this ordinance is to implement the following public question that, on November 8, 2005, was approved by the voters of the Borough of Bogota by a vote of 1408 “yes” to 293 “no:” “Shall the Mayor and Council of the Borough of Bogota adopt an ordinance stating the Borough will not use the power of eminent domain to acquire private property, against the wishes of the property owner, for private development to increase tax rates or tax revenue derived from the property, and that this power only will be used to acquire private property: (1) when the property is to be opened to the public or for the public’s use, or (2) when the acquisition is necessary to eliminate an existing use of the property that inflicts an affirmative harm on society?” The Mayor and Council adopted a resolution asking this question of the public because, on June 23, 2005, the United States Supreme Court decided the case of Kelo v. City of New London, 125 S. Ct. 2655 (2005). The Court’s 5 to 4 majority affirmed the use of the governmental power to condemn property, known as eminent domain, to acquire privately-owned property against the owner’s will, and then transfer the property to a developer for private redevelopment, only because the proposed redevelopment will provide increased tax revenue. The principal dissenting opinion, authored, by Justice Sandra Day O’Connor, would permit governments to condemn and then transfer condemned property to private parties in only two circumstances: when (as with railroads) the property is to be opened to the

public's use, or when the condemnation is necessary to eliminate an existing use of the property that "inflict[s] affirmative harm on society." Accordingly, the Mayor and Council adopted a resolution asking the legal voters of the Borough to express their views on a proposed ordinance that would limit the Borough's power to condemn and acquire property, as suggested by the dissenting Justices in the Kelo case.

2-29.2. Definitions. In this Section 2-28 the following definitions shall apply:

Borough - means the Borough of Bogota.

Eminent Domain - means the power of the Borough, whether authorized by statute, rule or regulation, or otherwise, to take or acquire private property and put it to public use through the legal process called condemnation.

Mayor and Council - means the duly elected mayor and council of the Borough.

2-29.3. Limitation on the Power of Eminent Domain.

The Mayor and Council of the Borough shall not adopt an ordinance or resolution using the Borough's power of eminent domain to acquire private property against the wishes of the property owner for private development to increase tax rates or tax revenue derived from the property, and this power only will be used by the Borough to acquire private property: (1) when the property is to be opened to the public or for the public's use, or (2) when the

acquisition is necessary to eliminate an existing use of the property that inflicts an affirmative harm on society.

Section 2: All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of any inconsistencies.

Section 3: The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional or invalid by any court, the remaining parts of this ordinance will remain in full force and effect.

Section 4: This ordinance shall take effect upon final approval and publication, according to law.

Introduced and passed first reading:

Passed second reading:

ATTEST:

APPROVED BY:

FRANCES GARLICKI, Borough Clerk

STEVEN LONEGAN, Mayor