



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/17/07
AGENDA ITEM 8
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Ordinance to Adopt a Program Regarding the Redevelopment Agency Use of Eminent Domain, Pursuant to Senate Bill 53

RECOMMENDATION:

It is recommended that the City Council introduce the attached ordinance containing a description of the Hayward Redevelopment Agency's Program to acquire Real Property by Eminent Domain in the Downtown Hayward Redevelopment Project.

BACKGROUND:

In 2006, the California legislature passed Senate Bill 53, which took effect January 1, 2007. According to the legislation, the City Council must adopt an ordinance that contains a description of the Redevelopment Agency's program to acquire real property by eminent domain. Provisions regarding the Agency's ability to acquire property by eminent domain are set out in several sections of the Redevelopment Plan, and in various ordinances that have amended the Redevelopment Plan over the years. The program attached to the proposed ordinance was developed in conjunction with the provisions laid out in the Redevelopment Plan.

There are several aspects to the Agency's use of eminent domain that are called out in the attached program. First, eminent domain is allowed to be used in the Redevelopment Project Area where it is required to address blighting conditions or to implement the Redevelopment Plan. Eminent Domain may only be considered after the Agency has negotiated in good faith to acquire the property from the owner on a voluntary basis for fair market value. In addition, the Plan specifies certain situations where eminent domain may not be used to acquire property, including:

- a) where the subject property has a structure on it, and the Agency has determined by resolution that the rehabilitation of the structure is consistent with the objectives of the Plan, and the property owner has agreed to enter into an owner participation agreement with the Agency regarding the rehabilitation or re-use of the property;
- b) where the property has a structure on it, and the Agency has determined by resolution that the structure and property use are consistent with the Plan, and no owner participation agreement is necessary as long as the property is adequately maintained;

- c) the subject property is owned by a public agency; or
- d) within Project Expansion Area No. 1, which is located south of C Street in the downtown area, and was added in March 1987 (see the attached Project Area Map). The use of eminent domain is not allowed in this Sub-area for residential properties that are owned and occupied by the original persons who owned and occupied them when this Sub-area was added to the Redevelopment Project Area in 1987, unless a resolution of necessity for acquisition by eminent domain has been adopted by a two-thirds majority vote of the Agency Board.

The above-mentioned owner participation process is set forth in more detail in the Agency's Owner Participation and Business Preference Rules. The Owner Participation Rules outline a process for offering existing property owners the opportunity to participate in the redevelopment process by either: 1) retaining their property and developing or rehabilitating it in accordance with the Redevelopment Plan; 2) acquiring adjacent properties (in order to create larger development parcels) and developing them in accordance with the Redevelopment Plan; or 3) selling their properties to the Agency and purchasing other properties in the Redevelopment Area. The Owner Participation Rules are generally implemented by extending an invitation to existing owners of property located within an identified redevelopment site to respond to Agency requests for development proposals for the site in question. Another method is for the Agency to enter into an Owner Participation Agreement directly with a property owner for the rehabilitation or redevelopment of his or her property. Owner participation opportunities are subject to and limited by factors such as the appropriateness of the existing and proposed land use, the ability of owner participants to finance additional property acquisition and development in accordance with the Redevelopment Plan, and the need for construction or expansion of public facilities.

The Agency's ability to acquire property by eminent domain is time limited. The Agency has approximately three and one-half years (or until November 10, 2010) to initiate eminent domain proceedings in the Downtown and Cannery/Burbank areas, and has six years (or until June 26, 2013) to initiate eminent domain in the Mission Boulevard corridor and South Hayward BART areas. These time limits can only be changed by an amendment of the Redevelopment Plan.

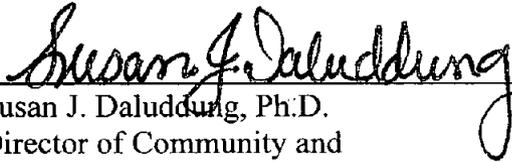
The Hayward Redevelopment Agency has acquired approximately 60 properties in total since 1978. To staff's knowledge, the Agency initiated eminent domain actions on 10 of those acquisitions, and settled all but one of them (the McCullough Chevrolet property) prior to trial. For most of the eminent domain-approved acquisitions, the settlements occurred within a few months. Of the 60 property acquisitions, approximately 18 were housing units acquired for the Renaissance Walk project and the new Burbank School. All of these homes were acquired on a voluntary settlement basis, and in most cases where the homes were owner-occupied, the sellers were provided additional financial assistance to acquire homes in Hayward or nearby communities. It has been staff's experience that eminent domain is a very useful tool to achieve revitalization goals, if used sparingly, and only after a concerted effort to settle an acquisition fairly, and with full attention to the relocation needs of the tenants.

Prepared by:



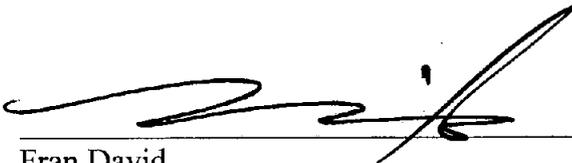
Maret Bartlett
Redevelopment Director

Recommended by:



Susan J. Daluddung, Ph.D.
Director of Community and
Economic Development

Approved by:



Fran David
Acting City Manager

Attachment A: Redevelopment Project Area Map
Draft Ordinance

**DUE TO THE COLOR OF THE
REFERENCED ATTACHMENT, IT
HAS BEEN ATTACHED AS A
SEPARATE LINK**

DRAFT

ORDINANCE NO. _____

AN ORDINANCE CONTAINING A DESCRIPTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD'S PROGRAM TO ACQUIRE REAL PROPERTY BY EMINENT DOMAIN IN THE DOWNTOWN HAYWARD REDEVELOPMENT PROJECT

me
7/9/07

WHEREAS, the City Council of the City of Hayward, California ("City Council") adopted Ordinance No. 75-029 on December 30, 1975 ("Original Project Area") approving and adopting the Redevelopment Plan for the Downtown Hayward Redevelopment Project (the "Redevelopment Plan") as amended by Ordinance 86-041 adopted December 16, 1986, Ordinance No. 87-009 on April 21, 1987 ("Expansion Area No. 1"), Ordinance No. 92-21 on July 28, 1992, Ordinance No. 94-30 on December 20, 1994, Ordinance No. 98-16 on November 10, 1998 ("Expansion Area No. 2"), and Ordinance No. 01-07 on June 25, 2001 ("Expansion Area No. 3"), Ordinance No. 04-03 on March 16, 2004 and Ordinance No. 06-10 on May 2, 2006. The Original Project Area, Expansion Area No. 1, Expansion Area No. 2 and Expansion Area No. 3 are referred to hereafter as the "Project Area"; and

WHEREAS, the Redevelopment Agency of the City of Hayward ("Agency") has been designated as the official redevelopment agency in the City of Hayward to carry out the functions and requirements of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) and to implement the Redevelopment Plan; and

WHEREAS, IV. E. of the Redevelopment Plan contains Agency authority to acquire property by eminent domain; and

WHEREAS, Section 33342.7 of the Health and Safety Code, which was added by Senate Bill 53 ("SB 53"), which took effect on January 1, 2007, requires a legislative body that adopted a redevelopment plan containing eminent domain authority before January 1, 2007, to adopt an ordinance on or before July 1, 2007, containing a description of the agency program to acquire real property by eminent domain;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Pursuant to Section 33342.7 of the Health and Safety Code, a description of the Agency's program to acquire real property by eminent domain is set forth in Exhibit A, attached hereto and incorporated herein by this reference. The Agency's program to acquire real property by eminent domain may be amended only by amending the Redevelopment Plan pursuant to Article 12 of the Community Redevelopment Law (commencing with Health and Safety Code Section 33450).

Section 2. The City Clerk is hereby directed to send a certified copy of this Ordinance to the Agency.

Section 3. The City Clerk is hereby directed to record with the County Recorder of Alameda County a revised notice of the approval and adoption of the Redevelopment Plan, including a description of the Agency's program to acquire real property by eminent domain, in compliance with Health and Safety Code Section 33373.

Section 4. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

Section 5. The City Clerk will certify to the passage of this Ordinance by the City Council, and cause the same to be published once in the _____, a newspaper of general circulation, published and circulated in Alameda County, and it will take effect thirty (30) days after its final passage.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2007, by Council Member_____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2007, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

DESCRIPTION OF PROGRAM TO ACQUIRE REAL PROPERTY BY EMINENT DOMAIN FOR THE DOWNTOWN HAYWARD REDEVELOPMENT PROJECT

The City Council of the City of Hayward, California ("City Council") adopted Ordinance No. 75-029 on December 30, 1975 ("Original Project Area") approving and adopting the Redevelopment Plan for the Downtown Hayward Redevelopment Project (the "Redevelopment Plan") as amended by Ordinance 86-041 adopted December 16, 1986, Ordinance No. 87-009 on April 21, 1987 ("Expansion Area No. 1"), Ordinance No. 92-21 on July 28, 1992, Ordinance No. 94-30 on December 20, 1994, Ordinance No. 98-16 on November 10, 1998 ("Expansion Area No. 2"), and Ordinance No. 01-07 on June 25, 2001 ("Expansion Area No. 3"), Ordinance No. 04-03 on March 16, 2004 and Ordinance No. 06-10 on May 2, 2006. The Original Project Area, Expansion Area No. 1, Expansion Area No. 2 and Expansion Area No. 3 are referred to hereafter as the "Project Area."

As provided in IV. E. of the Redevelopment Plan, it is in the public interest and is necessary in order to eliminate the conditions requiring redevelopment and in order to execute the Redevelopment Plan for the Redevelopment Agency of the City of Hayward ("Agency") to employ the power of eminent domain to acquire real property in the Downtown Hayward Redevelopment Project Area ("Project Area"). This power is necessary because the Project Area suffers from blighting conditions, including without limitation: The area includes unsafe or unhealthy buildings and structures due to hazardous materials, the Hayward earthquake fault line, obsolescence, mixed character, and residential overcrowding; properties which suffer from code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate utilities which cannot be remedied with private or governmental action without redevelopment; stagnant and unproductive conditions of land caused by irregular parcels in multiple ownership, obsolete commercial uses, deterioration, age, absentee property owners, inadequate parcel size, traffic and circulation problems, piecemeal development, inadequate public facilities and infrastructure and incompatible uses which prevents economically viable uses; prevalence of economic maladjustment evidenced by depreciated property values and impaired investments, vacancies, abandoned buildings, low lease rates, lack of necessary commercial facilities, crime rates. In order to eliminate these blighting conditions and prevent their recurrence, it may be necessary to exercise the power of eminent domain.

In approving the Redevelopment Plan, the City Council found and determined that the condemnation of real property within the Project Area, as provided for in the Redevelopment Plan, is necessary to the execution of the Redevelopment Plan and adequate provisions have been made for the payment for any property that is acquired as provided by law. This finding was based upon:

1. The need to ensure that the provisions of the Redevelopment Plan and the Agency's efforts to eliminate blight and redevelop the Project Area would be carried out and that the Project Area would be redeveloped in conformity with the Community Redevelopment Law and in the interests of the public peace, health, safety and welfare;
2. The need to prevent the recurrence of blight;
3. The fact that any condemnation or other acquisition of property by the Agency would be undertaken in accordance with all applicable laws including, without limitation, the Eminent Domain Law (California Code of Civil Procedure Section 1230.010 et seq.), the California Relocation Assistance Act (Government Code Section 7260 et seq.), and the Agency rules and regulations adopted pursuant thereto, as applicable.

When the Agency exercises its power of eminent domain, it shall be exercised within the following limitations:

1. Eminent domain proceedings, if used to acquire property within the Project Area, shall not be commenced after November 10, 2010 except that the Agency may institute eminent domain proceedings to acquire property within Project Expansion Area No. 3 for a period of twelve (12) years after the adoption of the ordinance approving the Sixth Amendment to the Redevelopment Plan (or June 26, 2013). This time limit for commencement of eminent domain may be extended only by amendment of the Plan. Commencement of an eminent domain proceeding occurs when a complaint in eminent domain is filed with a court.
2. That certain real property within the Project Area that was previously exempted from acquisition by eminent domain by Agency Resolution RA 92-08 adopted on July 7, 1992, shall be subject to acquisition by eminent domain from and after the effective date of the ordinance adopting the Fifth Amendment to the Plan (or November 10, 1998).
3. Eminent domain shall not be used when the property in question is improved with a structure and the Agency has determined by resolution that the rehabilitation of the structure and its proposed use is consistent with the objectives of the Plan and that such rehabilitation is in the best interest of the Project and the owner has thereafter entered into an owner participation agreement with the Agency and is faithfully performing under the terms of the agreement.
4. Eminent domain shall not be used when the property in question is improved by a structure and the Agency has determined by resolution that said structure and its use is consistent with and conforms to the objectives of the Plan, and that no owner participation agreement is necessary so long as the structure is adequately maintained and properly landscaped.
5. Eminent domain shall not be used when the property in question is owned by a public body.

6. Within Project Expansion Area No. 1, acquisition of property by eminent domain is not authorized for any residential properties which the Agency determines were owned and occupied by the property owners as of March 28, 1987, so long as such properties continue to be occupied by said property owners or as to such properties, the Agency has adopted a resolution of necessity pursuant to Article 2 of Chapter 4 of Title 7 of the code of Civil Procedure (commencing with Section 1254.210 by a vote of two-thirds (2/3) of all the members of the Agency.
7. It is the policy of the Agency to encourage the participation of property owners and businesses within the Project Area. Accordingly, the Agency has adopted Rules Governing Participation by, and the Extension of Reasonable Preferences to, Property Owners and Tenants in the Downtown Hayward Redevelopment Project, which extend reasonable preferences to property owners and tenants in the Project Area, to participate in the redevelopment of the Project Area. The power of eminent domain shall not be exercised except in compliance with the rules and procedures set forth therein, as amended from time to time.
8. Generally, personal property shall not be acquired. However, where necessary in the execution of the Redevelopment Plan, the Agency is authorized to acquire personal property in the Project Area by any lawful means.