



Office of the City Manager

CONSENT CALENDAR

May 22, 2007

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Real Property Acquisition - West Berkeley Industrial Park and Savo Island
Redevelopment Plans

RECOMMENDATION

Adopt first reading of Ordinances

- 1) adopting a description of the program for the acquisition of real property for the Redevelopment Plan for the West Berkeley Redevelopment Project Area, and related actions and
- 2) adopting a description of the program for the acquisition of real property for the redevelopment plan for the Savo Island Redevelopment Project Area.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

For each redevelopment project area, the City is required, prior to July 1, 2007, to adopt an ordinance that contains a description of the redevelopment agency's program for the acquisition of real property using eminent domain even if the agency's plans contain no eminent domain powers currently, as is the case here. This new requirement was adopted by the State legislature last year (SB 53, codified in Health and Safety Codes Section 33342.7). After adoption of the ordinance, a redevelopment agency can only amend its program for acquisition of real property by use of eminent domain by amending its redevelopment plan in accordance with the procedures and requirements of the California Community Redevelopment Law for such an amendment.¹ The Berkeley Redevelopment Agency had the power of eminent domain when the West Berkeley and Savo Island Redevelopment Plans were originally adopted, however that power expired in 1998. Thus, the Plans currently do not allow the Agency to acquire property by the use of eminent domain and the attached Ordinances do not in any way change the provisions of the Plans with regards to the power of eminent domain.

¹ The State legislature also adopted a new requirement to record a Statement of Institution, however, since neither the West Berkeley nor Savo Island Redevelopment Plan contain eminent domain powers, this is not required in Berkeley.

The attached Ordinances include a description of the Agency's current real property acquisition program as set forth in the Plans that only allows the Agency to acquire property if the owner voluntarily agrees to sell it. The Ordinances simply restate the existing language in the Plans with regard to acquisition of real property and do not modify the Agency's powers as currently set forth in the Plans.

BACKGROUND

Eminent domain is the authority of a government agency to acquire property for public purposes through a compulsory process. The public purposes can include, but are not limited to developing public buildings, creating or expanding infrastructure such as roadways or sewer systems, establishing parks, and supporting economic development. While fair market value of the property to be used for the public purpose must be paid, sale is compulsory; thus eminent domain is also known as condemnation.

In response to the recent US Supreme Court decision affirming a city's use of eminent domain in the economic development context (Kelo v. City of New London, 545 U.S. 460 (2005)), the State Legislature passed two bills in the last legislative session relating to redevelopment agencies' power of eminent domain. Under one of these bills, SB 53, cities or counties with redevelopment plans adopted prior to January 1, 2007 are required to adopt, on or before July 1, 2007, an ordinance that contains a description of the agency's program for the acquisition of real property using eminent domain. There are no special redevelopment law requirements for adoption of the Ordinance. The City Council may adopt the proposed Ordinances in accordance with the normal procedures for the enactment of ordinances.

Under the other bill, SB 1809, a redevelopment agency with an existing redevelopment plan that authorizes the use of eminent domain is required to record on all properties within the Project Area a new Statement of Institution no later than December 31, 2007. Since neither the West Berkeley nor Savo Island Redevelopment Plan contain eminent domain powers, this is not required in Berkeley.

RATIONALE FOR RECOMMENDATION

Passage of SB 53 requires redevelopment agencies to make explicit their eminent domain powers in an ordinance. As the Agency's powers of eminent domain have expired in 1998, the required ordinances provide landowners with certainty that property condemnation for economic development cannot occur without amendment to the existing Plans.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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Regulation of Real Property Acquisition for the West Berkeley Industrial
Park and Savo Island Redevelopment Plans

May 22, 2007

Attachments:

1: Ordinance – West Berkeley

Exhibit A: Property Acquisition By Eminent Domain Policy

2: Ordinance – Savo Island

Exhibit A: Property Acquisition By Eminent Domain Policy

ORDINANCE NO. ##,###-N.S.

ADOPTING A DESCRIPTION OF THE PROGRAM FOR THE ACQUISITION OF REAL PROPERTY FOR THE REDEVELOPMENT PLAN FOR THE WEST BERKELEY REDEVELOPMENT PROJECT AREA, AND RELATED ACTIONS

WHEREAS, the City Council of the City of Berkeley adopted the Redevelopment Plan for the West Berkeley Redevelopment Project Area by Ordinance No. 4,271–N.S., as amended by Ordinance No. 6272–N.S., as amended by Ordinance No. 6860–N.S., and as further amended by Ordinance No. 6861–N.S. (collectively, the "Redevelopment Plan"), establishing the West Berkeley Redevelopment Project Area (the "Project Area"); and

WHEREAS, the Project Area is situated in the County of Alameda, State of California, and is more particularly described as between Cedar Street and University Avenue and Eastshore Avenue and 6th Street in Berkeley, CA as in Exhibit A attached to the Redevelopment Plan for the West Berkeley Redevelopment Project Area; and

WHEREAS, the Redevelopment Plan formerly authorized the use of eminent domain under specified circumstances to acquire real property by the Berkeley Redevelopment Agency (the "Agency"), but such power of eminent domain completely expired as of December 25, 1998; and

WHEREAS, the State Legislature recently added Health and Safety Code Section 33342.7 to the Community Redevelopment Law, which requires the City Council to adopt by ordinance a description of the Agency's program to acquire real property by eminent domain; and

WHEREAS, the Agency has prepared the required description of the program (the "Acquisition Program") which is attached to and incorporated herein as Exhibit A, and which describes that the Agency has no power to acquire real property in the Project Area through eminent domain; and

WHEREAS, the Agency staff has prepared and submitted and the City Council has reviewed and considered the staff report on this Ordinance; and

WHEREAS, the Agency staff has prepared and submitted to City Council for review and approval a CEQA Notice of Exemption for the Ordinance; and

WHEREAS, the State Legislature recently added Health and Safety Code Section 33373(c) to the Community Redevelopment Law, which requires the Agency to record a revised Statement of Institution which includes a description of the Agency's program to acquire real property by eminent domain (the "Statement"), but only if the Agency possesses the power of eminent domain in the Project Area pursuant to the Redevelopment Plan; and

WHEREAS, because the Agency does not have the power of eminent domain in the Project Area, as noted above, no such Statement is required to be recorded with respect to the Redevelopment Plan and the Project Area pursuant to Health and Safety Code Section 33373(c).

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby finds and declares that the above recitals are true and correct.

Section 2. It is hereby found and determined that the adoption of this Ordinance is required by law is thus necessary and desirable.

Section 3. In compliance with Health and Safety Code Section 33342.7, the description of the Agency's Acquisition Program for the Project Area, as set forth in the attached Exhibit A, is hereby approved and adopted.

Section 4. The City Council hereby approves the CEQA Notice of Exemption and directs the City Clerk to file the Notice of Exemption with the County Clerk of the County of Alameda.

Section 5. The City Clerk is hereby directed to file a copy of the Ordinance and the CEQA Notice of Exemption with the minutes of this meeting. A copy of this Ordinance shall be transmitted to the Agency and the Agency is vested with the responsibility of implementing the Ordinance.

Section 6. The Executive Director of the Agency is hereby directed to record the Ordinance in compliance with the provisions of Health and Safety Code Sections 33342.7 and 33373(c), and Government Code Section 27295.

Section 7. If any provision, section, subsection, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion or portions of the.

Section 8. This Ordinance shall take effect and be in full force from and after thirty (30) days from the date of its final passage.

EXHIBIT A

PROPERTY ACQUISITION BY EMINENT DOMAIN POLICY

The Agency's power of eminent domain within the Project Area has completely expired. As a result, the Agency has no power to acquire real property in the Project Area through eminent domain. The Agency could obtain the power of eminent domain in the future with respect to any real property in the Project Area only if the City Council were to adopt a Redevelopment Plan amendment in accordance with the procedures and requirements of the California Community Redevelopment Law for such an amendment.

The Agency retains the power under the Redevelopment Plan to acquire real property in the Project Area by voluntary means, such as gift, exchange, or sale, in which the owner of the real property being acquired by the Agency voluntarily agrees to such gift, exchange, or sale.

ORDINANCE NO. ##,###-N.S.

ADOPTING A DESCRIPTION OF THE PROGRAM FOR THE ACQUISITION OF REAL PROPERTY FOR THE REDEVELOPMENT PLAN FOR THE SAVO ISLAND REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council of the City of Berkeley adopted the Redevelopment Plan for the Savo Island Redevelopment Project Area by Ordinance No. 4,807–N.S., as amended by Ordinance No. 5,781–NS § 1-6, 1986. (collectively, the "Redevelopment Plan"), establishing the Savo Island Redevelopment Project Area (the "Project Area"); and

WHEREAS, the Project Area is situated in the County of Alameda, State of California, and is more particularly located between Milvia and Adeline and Ward and Russell Streets in Berkeley, CA as described on Map 1 attached to the Redevelopment Plan for the Savo Island Project Area; and

WHEREAS, the Redevelopment Plan formerly authorized the use of eminent domain under specified circumstances to acquire real property by the Berkeley Redevelopment Agency (the "Agency"), but such power of eminent domain completely expired in 1998; and

WHEREAS, SB 53 added Health and Safety Code Section 33342.7 to the Community Redevelopment Law, which requires the City Council to adopt by ordinance a description of the Agency's program to acquire real property by eminent domain; and

WHEREAS, the Agency has prepared the required description of the program (the "Acquisition Program") which is attached to and incorporated in this Ordinance as Exhibit A, and which describes that the Agency has no power to acquire real property in the Project Area through eminent domain; and

WHEREAS, the Agency has prepared and submitted and the City Council has reviewed and considered the staff report on this Ordinance; and

WHEREAS, the Agency staff has prepared and submitted to City Council for review and approval a CEQA Notice of Exemption for the Ordinance; and

WHEREAS, SB 1809 added Health and Safety Code Section 33373(c) to the Community Redevelopment Law, which requires the Agency to record a revised Statement of Institution which includes a description of the Agency's program to acquire real property by eminent domain (the "Statement"), but only if the Agency possesses the power of eminent domain in the Project Area pursuant to the Redevelopment Plan; and

WHEREAS, because the Agency does not have the power of eminent domain in the Project Area, as noted above, no such Statement is required to be recorded with respect to the Redevelopment Plan and the Project Area pursuant to SB 1809 and Health and Safety Code Section 33373(c).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY:

Section 1. The City Council hereby finds and declares that the above recitals are true and correct.

Section 2. It is hereby found and determined that the adoption of this Ordinance is required by law is thus necessary and desirable.

Section 3. In compliance with Health and Safety Code Section 33342.7, the description of the Agency's Acquisition Program for the Project Area, as set forth in the attached Exhibit A, is hereby approved and adopted.

Section 4. The City Council hereby approves the CEQA Notice of Exemption and directs the City Clerk to file the Notice of Exemption with the County Clerk of the County of Alameda.

Section 5. The City Clerk is hereby directed to file a copy of the Ordinance and the CEQA Notice of Exemption with the minutes of this meeting. A copy of this Ordinance shall be transmitted to the Agency and the Agency is vested with the responsibility of implementing the Ordinance.

Section 6. If any provision, section, subsection, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion or portions of the.

Section 7. This Ordinance shall take effect and be in full force from and after thirty (30) days from the date of its final passage. |

EXHIBIT A

PROPERTY ACQUISITION BY EMINENT DOMAIN POLICY

The Agency's power of eminent domain within the Project Area has completely expired. As a result, the Agency has no power to acquire real property in the Project Area through eminent domain. The Agency could obtain the power of eminent domain in the future with respect to any real property in the Project Area only if the City Council were to adopt a Redevelopment Plan amendment in accordance with the procedures and requirements of the California Community Redevelopment Law for such an amendment.

The Agency retains the power under the Redevelopment Plan to acquire real property in the Project Area by voluntary means, such as gift, exchange, or sale, in which the owner of the real property being acquired by the Agency voluntarily agrees to such gift, exchange, or sale.

