

CITY of OAKLAND

Agenda Report

OFFICE OF THE CITY MANAGER
2007 JAN 23 PM 12:42

TO: Office of the City Manager/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 23, 2007

SUBJECT: **An Ordinance and Agency Resolution Adopting an Amendment to the Broadway/MacArthur/ San Pablo Redevelopment Plan to Limit the Redevelopment Agency's Eminent Domain Authority Over Residential Property**

SUMMARY

The item is a request for City Council approval of an ordinance and Redevelopment Agency approval of a resolution amending the Broadway/ MacArthur/San Pablo Redevelopment Plan to limit the Redevelopment Agency's eminent domain authority over residential property. The amendment would exclude all residential-only properties with four or fewer units in the project area from acquisition through eminent domain by the Redevelopment Agency, unless the property has been declared substandard under the Oakland Housing Code. This amendment to the eminent domain policy in the redevelopment plan was recommended by the Broadway/ MacArthur/San Pablo Project Area Committee (PAC). This amendment will not impact any planned projects within the Project Area.

FISCAL IMPACTS

This item requests a policy change to the redevelopment plan. The limitation on eminent domain will have no impact on the General Fund or on tax increment revenues in the Broadway/ MacArthur/San Pablo Redevelopment Project Area.

BACKGROUND

The Broadway/MacArthur/San Pablo Redevelopment Plan was adopted on July 25, 2000 (Ordinance No. 12269 C.M.S.). The Project Area comprises approximately 600 acres and includes the area between 27th and 42nd Street from Telegraph to Broadway and San Pablo between 53rd and 67th Street. The PAC for this Project Area was seated in April 2000, and has remained active past their required three year period through extensions approved by City Council.

The primary concern about redevelopment for most neighborhoods is the potential use of eminent domain on residential properties. The adopted redevelopment plan for the Broadway/MacArthur/San Pablo Redevelopment Project does not place any restriction on the use of eminent domain other than those required by state law.

Following the national press coverage of a recent Supreme Court ruling upholding the use of eminent domain for economic development purposes in Kelo v. City of New London, the PAC raised concerns about potential use of eminent domain on residential properties within the Broadway/MacArthur/San Pablo Redevelopment Project Area. The PAC decided at their November 2005 meeting to revisit their eminent domain policy and to make a recommendation for a policy revision to the City Council. After discussing policy options over the course of several meetings, the PAC reached consensus on their preferred policy option at their July 2006 meeting. The PAC's policy recommendation is based on similar policies formulated by the West Oakland and the Central City East Project Area Committees.

At the time of their decision, the PAC was aware that State Proposition 90 ballot measure would be going forward in November 2006. If this measure had passed, it would have placed much stricter limits on the use of eminent domain which would have over-ridden the PAC's recommendation. At staff's request, the PAC agreed to wait until after the results of the November election were known before going forward to Council with their policy recommendation. Proposition 90 was not approved by voters, so staff is now bringing the PAC's eminent domain policy recommendation forward to City Council for consideration.

KEY ISSUES AND IMPACTS

Proposed Eminent Domain Policy Amendment

The proposed amendment to the redevelopment plan would prohibit the use of eminent domain in the Broadway/MacArthur/San Pablo Redevelopment Project Area on all residential-only properties with four or fewer units, including both owner-occupied properties and rental properties. The PAC included an exception to allow eminent domain to be used on residential-only properties that have been declared substandard, as defined by the Oakland Housing Code. Mixed-use properties that contain both residential and commercial uses would not be exempt from eminent domain under this policy.

The full text of the amendment is included in the ordinance, which is attached to this report. The amendment will have no impact on the generation of tax increment revenues in the Broadway/MacArthur/San Pablo Redevelopment Project Area. In addition, the amendment will not impact any development projects that are currently proposed and will have only a limited impact on the Agency's ability to use eminent domain on properties located on the main commercial corridors in the Project Area.

Eminent Domain Policy in other Redevelopment Areas

Similar restrictions on residential eminent domain have already been adopted as part of the redevelopment plans for the Coliseum, Central City East, and West Oakland redevelopment project areas. The remaining adopted redevelopment project areas do not have any restrictions on eminent domain other than those required by State law.

The Coliseum redevelopment plan prohibits eminent domain actions on any residential property within the Project Area. The Central City East redevelopment plan exempts all owner-occupied single family houses from eminent domain, except for those owner-occupied single family

properties (1) located on designated commercial corridors, or (2) that have been declared substandard or a public nuisance by the City due to illegal activities or hazardous conditions.

The West Oakland redevelopment plan has a fairly complex eminent domain policy. Eminent domain is only allowed in one of the three West Oakland redevelopment subareas. Within the one subarea where eminent domain is allowed, a residential property must meet all of the criteria below to be eligible for eminent domain: (1) the property is not an owner-occupied residential property with three or fewer units; (2) if the property is being acquired for a redevelopment project, it is located on a designated commercial corridor, contains four or more units, and the redevelopment project for which the property is being acquired does not exceed three acres. The West Oakland redevelopment plan also allows for the use of eminent domain in the subarea over non-owner-occupied residential property if the property presents an immediate danger to health and safety, has or is a source of environmental contamination, or has been used for illegal activities for a period of over a year.

Required Public Hearing

As required by redevelopment law, a joint public hearing on this proposed amendment will be scheduled for a City Council meeting. A notice of the public hearing will be published once a week for three weeks before the public hearing and will be mailed first-class to all property owners, residents, businesses, and taxing entities in the project area at least 30 days before the public hearing.

SUSTAINABLE OPPORTUNITIES

Environmental: This action presents no known environmental opportunities.

Economic: This action alone has no economic opportunities.

Social Equity: This action will restrict the use of eminent domain on residential-only properties with four or fewer units within the Broadway/MacArthur/San Pablo redevelopment project to provide protection from displacement for residents of these units.

DISABILITY AND SENIOR CITIZEN ACCESS

This report and the accompanying resolutions will have no impact on disability and senior citizen access.

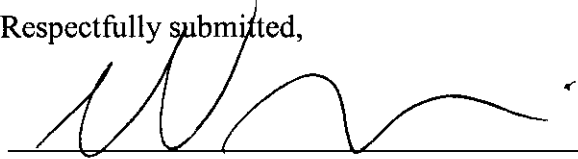
RECOMMENDATIONS AND RATIONALE

Staff supports the PAC's recommendation to amend the Redevelopment Plan for the Broadway/MacArthur/San Pablo Project Area to restrict the use of eminent domain on residential-only properties with four or fewer units, with the exception of properties that are deemed substandard. This amendment will have no impact on tax increment revenues in the project area and will not affect any development projects that are currently proposed within the project area.

ACTION REQUESTED OF THE COUNCIL

Staff recommends approval of the attached resolution and ordinance to amend the Redevelopment Plan for the Broadway/MacArthur/San Pablo project area to limit the Redevelopment Agency's eminent domain authority over residential property.

Respectfully submitted,



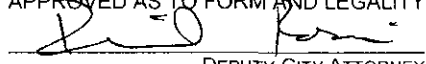
Dan Vanderprie, Director of Redevelopment,
Economic Development, and Housing and
Community Development

Prepared by:
Kathy Kleinbaum
Urban Economic Analyst IV

APPROVED FOR FORWARDING TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE


Office of the City Administrator

2007 JAN 11 PM 12:42


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO THE BROADWAY/MACARTHUR/SAN PABLO REDEVELOPMENT PLAN TO LIMIT THE REDEVELOPMENT AGENCY'S EMINENT DOMAIN AUTHORITY OVER RESIDENTIAL PROPERTY

WHEREAS, the City Council adopted the Redevelopment Plan for the Broadway/MacArthur/San Pablo Redevelopment Project (the "Redevelopment Plan") on July 25, 2000, as a redevelopment plan for the Broadway/MacArthur/San Pablo Project Area (the "Project Area") pursuant to the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.); and

WHEREAS, the Redevelopment Plan includes authority for the Redevelopment Agency to acquire property through eminent domain; and

WHEREAS, the City wishes to amend the Redevelopment Plan to limit the Agency's eminent domain authority to acquire certain residential properties in the Project Area; and

WHEREAS, Health and Safety Code Section 33450, et seq., authorizes a legislative body to amend a redevelopment plan after holding a public hearing; and

WHEREAS, this proposed amendment does not propose any additional property for inclusion in the Project Area, nor does it increase or reduce the Project Area or affect the Redevelopment Agency's authority to claim tax increment revenues; and

WHEREAS, the Broadway/MacArthur/San Pablo Project Area Committee recommended adoption of the proposed amendment on July 6, 2006; and

WHEREAS, the City has provided the published and mailed notice of the hearing and this amendment as required by Health and Safety Code Section 33452; and

WHEREAS, the Redevelopment Agency and the City Council held a joint public hearing on the proposed amendment, as permitted under Health and Safety Code Section 33458, on February 20, 2007, and

WHEREAS, it can be seen with certainty that this proposed amendment to the Redevelopment Plan will have no environmental effect, pursuant Section 15063(b)(3) of the California Environmental Quality Act Guidelines, since it merely limits the authority of the Redevelopment Agency to acquire property through eminent domain; now, therefore,

The Council of the City of Oakland does ordain as follows:

SECTION 1. The first two paragraphs of Section 309 of the Redevelopment Plan for the Broadway/MacArthur/San Pablo Redevelopment Project are hereby amended to read in their entirety as follows (text additions are indicated with double underlining, and text deletions are indicated by ~~strikeout text~~):

Except as specifically exempted ~~herein~~ or limited in this Plan, the Agency may acquire, but is not required to acquire, any real property located in the Project Area by any means authorized by law, including eminent domain.

It is in the public interest and is necessary in order to eliminate the conditions requiring redevelopment and in order to execute this Plan for the power of eminent domain to be employed by the Agency to acquire real property in the Project Area which cannot be acquired by gift, devise, exchange, purchase or any other lawful method. However, the Agency may not acquire any residential property with four or fewer housing units through eminent domain, unless the property has been determined to be a substandard building under the Oakland Housing Code. A "residential property" is defined herein as any real property parcel containing one or more housing units in which a person resides. However, a "residential property" does not include a mixed-use property, that is, a property that includes commercial, retail or industrial uses (other than a home occupation as defined in the Oakland Planning Code) along with housing units. A "housing unit" means a living unit, a joint living and work quarter, or a joint residential-oriented living and working quarter, as those terms are defined in the Oakland Planning Code. Eminent domain proceedings, if used, must be commenced within twelve (12) years from the date the ordinance adopting this Plan becomes effective.

SECTION 2. The City Council finds that it is necessary and desirable to amend the Redevelopment Plan for the reasons set forth herein and in the staff report accompanying this Ordinance.

SECTION 3. The City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action.

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 Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

SECTION 5. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter, if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California


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**AN ORDINANCE ADOPTING THE FIRST AMENDMENT TO THE
BROADWAY/MACARTHUR/SAN PABLO REDEVELOPMENT
PLAN TO LIMIT THE REDEVELOPMENT AGENCY'S EMINENT
DOMAIN AUTHORITY OVER RESIDENTIAL PROPERTY**

NOTICE AND DIGEST

This ordinance amends the Broadway/MacArthur/San Pablo Redevelopment Plan to limit the authority of the Redevelopment Agency to acquire certain residential property by eminent domain.

2007 JAN 11 PM 12:42


AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

**A RESOLUTION APPROVING AND RECOMMENDING ADOPTION OF THE
FIRST AMENDMENT TO THE BROADWAY/MACARTHUR/SAN PABLO
REDEVELOPMENT PLAN TO LIMIT THE REDEVELOPMENT AGENCY'S
EMINENT DOMAIN AUTHORITY OVER RESIDENTIAL PROPERTY**

WHEREAS, the City Council of the City of Oakland (the "City Council") adopted the Redevelopment Plan for the Broadway/MacArthur/San Pablo Redevelopment Project (the "Redevelopment Plan") on July 25, 2000, as a redevelopment plan for the Broadway/MacArthur/San Pablo Project Area (the "Project Area") pursuant to the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.); and

WHEREAS, the Redevelopment Plan includes authority for the Redevelopment Agency to acquire property through eminent domain; and

WHEREAS, the Agency has submitted to the Council a proposed First Amendment to the Broadway/MacArthur/San Pablo Redevelopment Plan (the "First Amendment" or the "Amendment") limiting the Agency's eminent domain authority to acquire certain residential properties in the Project Area; and

WHEREAS, Health and Safety Code Section 33450, et seq., authorizes a legislative body to amend a redevelopment plan after holding a public hearing; and

WHEREAS, the proposed Amendment does not propose any additional property for inclusion in the Project Area, nor does it increase or reduce the Project Area or affect the Redevelopment Agency's authority to claim tax increment revenues; and

WHEREAS, the Broadway/MacArthur/San Pablo Project Area Committee recommended adoption of the proposed Amendment on July 6, 2006; and

WHEREAS, the City has provided the published and mailed notice of the hearing and this Amendment as required by Health and Safety Code Section 33452; and

WHEREAS, the Redevelopment Agency and the City Council held a joint public hearing on the proposed Amendment, as permitted under Health and Safety Code Section 33458, on February 20, 2007; and

WHEREAS, it can be seen with certainty that this proposed Amendment will have no environmental effect, pursuant Section 15063(b)(3) of the California Environmental Quality Act Guidelines, since it merely limits the authority of the Redevelopment Agency to acquire property through eminent domain; now, therefore, be it

RESOLVED: That the Agency hereby approves and recommends adoption of the First Amendment to the Broadway/MacArthur/San Pablo Redevelopment Plan; and be it further

RESOLVED: That the Agency Secretary is directed to transmit a copy of this Resolution to the City Council for its consideration in adoption of the First Amendment.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE
NOES-
ABSENT-
ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland