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2003 NOV 13 PM 4:27

City of Oakland
Agenda Report

TO: Office of the City Manager and Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: November 18, 2003
SUBJECT: West Oakland Redevelopment Plan

RECOMMENDATION: Adopt the following legislation:

- 1) Adopt a City resolution adopting findings in response to written objections to the adoption of the West Oakland Redevelopment Plan
- 2) Approve the Final Passage (Second Reading) of a City Ordinance approving and adopting the Redevelopment Plan for the West Oakland Redevelopment Project

At the joint public hearing of the City Council and Agency on November 4, 2003, the City Council approved the first reading of an ordinance approving the West Oakland Redevelopment Plan and took other related actions. One additional resolution is attached which responds to written objections to the adoption of the West Oakland Redevelopment Plan.

Health and Safety Code Section 33363 requires the legislative body (i.e., the City Council), before adopting a redevelopment plan, to respond in writing and make written findings in response to each written objection of an affected property owner or taxing entity submitted before or at the joint public hearing on redevelopment plan adoption. The Council must address the written objections in detail, giving reasons for not accepting specified objections and suggestions, and must describe the disposition of the issues raised.

On November 4, 2003, a written objection to the adoption of the West Oakland Redevelopment Plan was received from Jed Silver, Public Relations Director, East Bay Small Business Council. Responses to these objections are attached to the above resolution as Attachment A. The objections center around the policies and use of eminent domain.

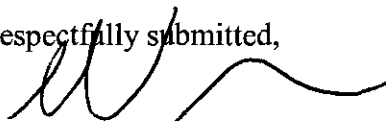
Item No. S-25
ORA/City Council
November 18, 2003

RECOMMENDATIONS

Staff recommends the following actions related to the attached resolution and related ordinance:

- 1) Approve a City resolution adopting findings in response to written objections to the adoption of the West Oakland Redevelopment Plan
- 2) Approve the Final Passage (Second Reading) of a City Ordinance approving and adopting the Redevelopment Plan for the West Oakland Redevelopment Project

Respectfully submitted,



**DANIEL VANDERPRIEM, Director
Redevelopment, Economic
Development and Housing**

Prepared by: Gloria King-jackson
Urban Economic Analyst III
Redevelopment Agency

Approved and Forwarded to the
City Council:



**DEBORAH EDGERLY
Office of the City Manager**

OFFICE OF THE CITY CLERK
APPROVED AS TO FORM AND LEGALITY
2003 NOV 13 PM 4:27
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION ADOPTING FINDINGS IN RESPONSE TO WRITTEN OBJECTIONS TO THE ADOPTION OF THE WEST OAKLAND REDEVELOPMENT PLAN

WHEREAS, in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.), the Redevelopment Agency of the City of Oakland (the "Agency") prepared and submitted to the City Council a proposed Redevelopment Plan for the West Oakland Redevelopment Project (the "Plan"); and

WHEREAS, the City Council and the Agency held a joint public hearing on November 4, 2003, on adoption of the Plan; and

WHEREAS, the City Council has provided an opportunity for all persons to be heard and has received and considered all written comments received and all evidence and testimony presented for or against any and all aspects of the Plan; and

WHEREAS, Section 33363 of the Health and Safety Code provides that, before adopting the redevelopment plan, the legislative body shall make written findings in response to each written objection of an affected property owner or taxing entity and shall respond in writing to the written objections received before or at the noticed public hearing; now, therefore, be it

RESOLVED: That the City Council has considered all evidence and testimony on the adoption of the West Oakland Redevelopment Plan and has responded in writing to the written objections received before or at the noticed public hearing; and be it further

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RESOLVED: That the City Council hereby adopts the written findings in response to each written objection of affected property owners and taxing entities attached hereto as Attachment A and incorporated herein by reference.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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ATTACHMENT A

**WEST OAKLAND REDEVELOPMENT PLAN
RESPONSES TO WRITTEN OBJECTIONS**

(attached)

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ATTACHMENT A

WEST OAKLAND REDEVELOPMENT PLAN

RESPONSES TO WRITTEN OBJECTIONS

On November 4, 2003, a written objection to the adoption of the West Oakland Redevelopment Plan was received from Jed Silver, Public Relations Director, East Bay Small Business Council. Attached is a copy of the written objection. The objections centers around the policies and use of eminent domain.

General response: The Community Redevelopment Law provides for the use of eminent domain for redevelopment purposes. In blighted and run-down areas eminent domain is in some instances the only effective tool available to mitigate health and safety issues and to alleviate blight conditions identified in the Project Area.

The West Oakland Project Area Committee (WOPAC) has been very sensitive to those concerns, and recommended that the Plan contain very limited authority for the use of eminent domain. This recommendation came only after extensive public outreach and discussion and numerous WOPAC meetings, as well as a number of community forums on redevelopment in general and eminent domain in particular which have been held in West Oakland over the past several years. Small businesses in the Project Area have been an active participant on the WOPAC and in those community forums.

In response to the recommendations of the WOPAC, the proposed Redevelopment Plan includes numerous restrictions and conditions on the use of eminent domain by the Redevelopment Agency. Section 305 of the Plan includes some general limitations on the use of eminent domain in the Project Area. The Plan prohibits the Agency from acquiring owner-occupied residential properties with fewer than four units under any circumstances. The PAC must be consulted before any use of eminent domain (if a PAC is in existence). The Agency's eminent domain authority expires after eight years (unlike the twelve years authorized by law). The Plan also includes the standard limits on eminent domain specified in redevelopment law.

Further, there are a number of limitations on the Agency's eminent domain authority to acquire property for a redevelopment project: (1) the property must be located within a designated commercial corridor in the Clawson/McClymonds/Bunche subarea; (2) the property may not be a residential rental property with fewer than four units; (3) the redevelopment project site may not exceed three acres; and (4) the Agency must have entered into a development agreement for the project with a redeveloper prior to the initiation of eminent domain.

In addition to the general limitations listed above, in order for the Agency to acquire blighted and hazardous properties through eminent domain, the property must meet one of four criteria: (1) the property presents a clear and immediate danger to the health and

safety of occupants or persons in the surrounding area; (2) the property is contaminated with hazardous materials; (3) the property is a source of air or water pollution; or (4) the property has been used for illegal activities.

The Redevelopment Agency believes the above restrictions, along with limitations on eminent domain set forth in state condemnation law and the Community Redevelopment Law, place adequate safeguards on the use of eminent domain within the West Oakland Redevelopment Project Area.

Specific responses:

1. **What rationale is being used to apply eminent domain powers to enforce city ordinances, zoning policies, or code enforcement in regards to private businesses and property.** *The use of eminent domain to address health and safety issues in the West Oakland Project Area, including properties that pose a danger to Project Area residents and businesses, is appropriate. The Community Redevelopment Law allows the use of eminent domain to acquire property for redevelopment purposes, including the alleviation of blight conditions in the project area and the promotion of the health, safety, and general welfare of residents and businesses in the project area. Blight conditions include dilapidated buildings, buildings with code violations, contaminated properties, and buildings that are otherwise unsafe or unhealthy for persons to live or work.*
2. **How can the “Plan” aspect of the Eminent Domain be removed without altering the intent and purpose of public seizure for private lands and businesses.** *The possible use of eminent domain is simply one tool among many to achieve the purposes of the Redevelopment Plan. As the Plan provides, any use of eminent domain must be consistent with the stated goals and purposes of the Plan.*
3. **Our membership understands such “last resort” policies were to be applied only when necessary, i.e. to provide vital, necessary and specific public resources such as schools, hospitals and public transportation.** *The Community Redevelopment Law allows a property to be acquired by eminent domain by a redevelopment agency, even if the property is to be used for private development, as long as the acquisition serves a redevelopment purpose.*
4. **If elected officials are allowed to seize public property to promote the principles set forth for Redevelopment Agencies to effect Redevelopment Zones for various reasons, does this recommendation not leave open-ended power onto a policy that is supposed to be anything but widely applicable.** *The power to use eminent domain as provided for under the West Oakland Redevelopment Plan is not open-ended. The use of the Agency’s eminent domain power in West Oakland will be subject to numerous limitations and restrictions as set forth above.*
5. **While we do not categorically oppose seizure for private property by city government, we are unclear why the previous processes and channels (i.e. Board of Zoning and Adjustments, City Planning Department etc.) have been circumvented**

to the overarching non-specific nature of the Eminent Domain policy. *The use of eminent domain to acquire blighted and hazardous properties by the Redevelopment Agency is not intended to supplant the existing code enforcement powers of the City. The authority to use eminent domain to acquire such properties by the Agency supplements the existing tools currently available to the City to deal with dangerous properties. The Community Redevelopment Law, Health and Safety Code Section 33346, does in fact require every redevelopment plan be submitted to the Planning Commission for its report and recommendation concerning the plan's conformity to the General Plan. On September 17, 2003, the Planning Commission reviewed the West Oakland Redevelopment Plan and found it to be consistent with the City's General Plan and recommended approval of the Plan by the City Council.*

6. **We also have several specific objections and/or confusions to assertions made by city staff that are integral parts of this decision-making process.** *It is not clear what the specific objections are here, so no response is provided.*

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