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APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

**OAKLAND CITY COUNCIL**  
**ORDINANCE NO. 12802 C.M.S.**

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**AN ORDINANCE DESCRIBING THE EMINENT DOMAIN PROGRAM FOR THE WEST OAKLAND REDEVELOPMENT PROJECT**

**WHEREAS**, the City Council adopted the West Oakland Redevelopment Plan (the "Redevelopment Plan") on November 18, 2003; and

**WHEREAS**, the Redevelopment Plan as amended contains provisions on the acquisition of real property by eminent domain; and

**WHEREAS**, Health and Safety Code Section 33342.7(a) requires the legislative body to adopt an ordinance that contains a description of the redevelopment agency's program to acquire real property by eminent domain; now, therefore

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

**SECTION 1.** The Redevelopment Agency of the City of Oakland's program for acquiring real property by eminent domain for the West Oakland Redevelopment Project, as set forth in the current Redevelopment Plan, is as follows:

Except as specifically exempted or limited in the Redevelopment Plan, the Agency may acquire, but is not required to acquire, any real property located in the West Oakland Project Area by any means authorized by law.

Notwithstanding the above, the Agency may not acquire property located in either the Prescott/South Prescott subarea or the Hoover/MacArthur subarea by eminent domain. The Agency may acquire real property located in the Clawson/McClymonds/Bunche subarea by eminent domain but only if the property acquisition meets all of the conditions set forth below. The Agency is authorized to acquire either the entire fee or any other interest in real property less than a fee.

Real property in the Clawson/McClymonds/Bunche subarea may not be acquired by the Agency through eminent domain unless the property acquisition meets all of the following conditions:

- a. The property is not an owner-occupied residential property. For purposes of this paragraph, an “owner-occupied residential property” means a residential property with three or fewer living units if either (a) the property is eligible for the homeowners’ property tax exemption under Article XIII, Section 3, Subsection (k) of the California Constitution, or (b) a person or persons owning a 50% or greater interest in the property, or a relative of such a person or persons, resides on the property as their principal place of residence. A “residential property” means any real property parcel containing one or more living units in which a person resides, including a mixed-use property that contains one or more such living units. A “living unit” means any dwelling unit, live-work, work-live, or live-in artist studio unit, rooming unit, or mobile home. A “relative” means a spouse, domestic partner, child, grandchild, child or grandchild of a spouse or domestic partner, sibling, parent, or grandparent. A “domestic partner” means a domestic partner declared under a Declaration of Domestic Partnership pursuant to City of Oakland policy. For purposes of this subsection, a beneficiary of a trust shall be deemed to hold an ownership interest in the property.
  
- b. If the property is being acquired for a redevelopment project, the property meets all of the following criteria:
  - (1) The property is located within a designated commercial corridor in the Clawson/ McClymonds/Bunche subarea of the West Oakland Project Area.
  - (2) The property is not occupied by a residential rental property with fewer than four living units.
  - (3) The redevelopment project does not exceed three acres in total land area. For a project that is to be developed in multiple phases, “total land area” means the land area for all phases of the project.
  - (4) The Agency has entered into an agreement for redevelopment of the property, prior to adoption of the resolution of necessity, committing the owner or developer to develop the redevelopment project. This agreement shall include requirements that the project be developed according to development plans approved by the Agency and consistent with the Redevelopment Plan, and that the development be commenced and completed within a specified timeframe. This agreement may make development contingent on the Agency’s discretionary adoption of a resolution of necessity.
  
- c. If the property is not being acquired for a redevelopment project, the property is blighted or hazardous, as determined by the Oakland City Council by resolution. Such a Council determination may be made only if one of the following conditions is met:

- (1) The property presents a clear and immediate danger to the health and safety of persons occupying the property or persons in the surrounding area, as determined by the Oakland City Council, and such conditions have not been abated after notice as required by law. A property shall be deemed to present a clear and immediate danger to health and safety if it meets the standard of a "dangerous building" under the Oakland Housing Code (section 15.08.380 of the Oakland Municipal Code) or the Oakland Dangerous Buildings Code (Ordinance No. 8016 C.M.S.), an "immediate hazard and danger" under the Earthquake-Damaged Structures Ordinance (section 15.24.040 of the Oakland Municipal Code), or an "imminent danger" under the Uniform Fire Code (section 15.12.010 of the Oakland Municipal Code).
  - (2) Soils or groundwater on or under the property are contaminated with hazardous materials beyond applicable legal standards, as determined by a public agency that regulates such materials under state or federal hazardous materials laws, such contamination has been generated onsite or has been brought on-site by a user of the property, and such conditions have not been abated within one year after notice as required by law.
  - (3) The property has been a documented source of air or water pollution in violation of federal, state or local environmental laws, and such conditions have not been abated after notice as required by law.
  - (4) The property has been used for illegal activities, including without limitation illegal dumping and storage, such illegal uses have been ongoing and documented for one year or more prior to adoption of the resolution of necessity, and the property owner has failed to take reasonable steps to prevent or abate the illegal activities.
- d. A Project Area Committee ("PAC"), within the meaning of Section 33385 of the Community Redevelopment Law, is in existence for the West Oakland Project Area, and the Agency has consulted with the PAC about the proposed use of eminent domain. The Agency shall submit any proposed use of eminent domain to the PAC no later than 90 days prior to the scheduled Agency public hearing on the resolution of necessity for the acquisition, and the PAC shall forward its recommendation as to the proposed acquisition to the Agency within 60 days of submission. A PAC recommendation to the Agency in favor of the proposed use of eminent domain shall require a two-thirds vote of the PAC.
- e. The eminent domain proceedings for the acquisition are commenced within eight years from the date the ordinance adopting the Redevelopment Plan became effective, that is, by November 18, 2011.
- f. The property has not been retained by an owner pursuant to a participation agreement, unless the owner has not fully performed under the agreement.

- g. The property does not contain an existing building to be continued on its present site and in its present form and use, unless: (a) such building requires structural alteration, improvement, modernization or rehabilitation; (b) the site, or lot on which the building is situated, requires modification in size, shape or use; or (c) it is necessary to impose upon such property any of the controls, limitations, restrictions and requirements of the Redevelopment Plan, and the owner fails or refuses to execute a participation agreement in accordance with the provisions of the Redevelopment Plan.
- h. The property is not owned by a public body.

Notwithstanding a through c above, the Agency shall have the power to acquire billboards or other outdoor advertising signs, as defined in Section 202 of the Oakland Sign Code (Oakland Municipal Code Section 14.04.070), by eminent domain in the Clawson/McClymonds/Bunche subarea.

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 West Oakland Project Area by any lawful means.


**SECTION 2.** 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, JUN 5 2007, 2007

**PASSED BY THE FOLLOWING VOTE:**

AYES-	BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE	-8
NOES-	<u>0</u>	
ABSENT-	<u>0</u>	
ABSTENTION-	<u>0</u>	

Introduction Date: **MAY 15 2007**

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



**AN ORDINANCE DESCRIBING THE EMINENT DOMAIN  
PROGRAM FOR THE WEST OAKLAND REDEVELOPMENT  
PROJECT**

**NOTICE AND DIGEST**

This ordinance describes the eminent domain program for the West Oakland Redevelopment Project as required by California Health and Safety Code Section 33342.7(a). This description conforms to the eminent domain provisions contained in the current Redevelopment Plan for the West Oakland Project Area.