



ITEM NO. 23

## STAFF REPORT

CITY OF OCEANSIDE

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DATE: June 6, 2007

TO: Honorable Mayor and City Councilmembers  
Chairman and Members of the Community Development Commission

FROM: Economic Development and Redevelopment Department

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE DESCRIBING THE CITY OF OCEANSIDE'S REDEVELOPMENT AGENCY'S PREVIOUSLY APPROVED PROGRAM TO ACQUIRE PROPERTY WITHIN THE DOWNTOWN REDEVELOPMENT PROJECT AREA BY EMINENT DOMAIN PURSUANT TO HEALTH AND SAFETY CODE SECTION 33342.7(a)**

### **SYNOPSIS**

An ordinance of the City Council of the City of Oceanside describing the City of Oceanside's Redevelopment Agency's previously approved program to acquire property within the Downtown Redevelopment Project Area by eminent domain pursuant to Health and Safety Code Section 33342.7(a)

### **BACKGROUND**

New legislation, called SB53, was passed by the California State Legislature effective January 2007 requiring all Redevelopment Agencies to adopt an ordinance describing their eminent domain program by July 1, 2007.

At this time, the Oceanside Redevelopment Agency (Agency) has the ability to acquire property through the use of eminent domain, however, this action is rarely used by the Agency and only as a last measure once all other negotiation tools have been exhausted. Most property acquisitions have been accomplished through a negotiated purchase. The power of eminent domain for the Agency will expire on November 11, 2010, but can be extended by amending the Downtown Redevelopment Plan.

If adopted, this ordinance would assure that the Agency can continue to acquire properties that are needed to accomplish the goals and objectives of the Redevelopment Plan.

The history of the Agency is that:

- On November 19, 1975, the Oceanside City Council established the Redevelopment Plan for the Downtown Redevelopment Project by adopting Ordinance 75-35. On July 14, 1982, the City Council approved Ordinance 82-32, the first amendment to the Redevelopment Plan, updating the redevelopment area map.

- On December 17, 1986, the City Council adopted the second amendment to the Redevelopment Plan with Ordinance 86-48, which imposed various limitations for the Redevelopment Project Area pursuant to new requirements of Health and Safety Code Section 33333.4. This new legislation limited the amount of property tax increment dollars that could be received, limited the time to incur debt to November 19, 2010, and established an end date of November 19, 2015, to receive property tax increment and pay on indebtedness. Additionally, the use of eminent domain was limited to a 12-year term.
- On April 20, 1994, the City Council adopted the third amendment to the Redevelopment Plan with Ordinance 094-08, pursuant to the requirements of another new law, Assembly Bill 1290, outlined in Health and Safety Code Section 33333.6. The Ordinance established a new end date of January 1, 2004, for the Agency to establish loans, advances or other indebtedness to be repaid with tax increment revenue.
- The City Council adopted Ordinance 98-32 on April 15, 1998, which extended the Agency's power of eminent domain 12 years until November 19, 2010. The fourth amendment to the Redevelopment Plan was adopted on June 16, 1999, with Ordinance 99-012, pursuant to the requirements of a new law, Assembly Bill 1342. Ordinance 99-012 extended the effectiveness of the Redevelopment Plan to November 19, 2015, and the time limit to collect property tax increment and pay on indebtedness to November 19, 2025.
- On December 13, 2006, Ordinance 06-0R0697-1 was adopted extending the effectiveness of the Redevelopment Plan to November 19, 2016, and the time limit to collect property tax increment and pay on indebtedness to November 19, 2026; and Ordinance 06-0R0698-1, was adopted to eliminate the time limit for establishing debt. Ordinance 07-0R0054-1 was adopted on February 14, 2007, to extend the effectiveness of the Redevelopment Plan to November 19, 2018, and the time limit to collect property tax increment and pay on indebtedness to November 19, 2028.

## **ANALYSIS**

There are many state laws that control the ability of a redevelopment agency in California to use eminent domain for the acquisition of property. The eminent domain process is very difficult to complete. In general, these steps include:

- Noticing the property owner of the intent to purchase
- Obtaining appraisals of the property at the fair market value
- Negotiating the purchase price with the property owner
- Evaluating counter offers to ensure a gift of public funds is not being made by overpaying for a property
- If the owner and the City cannot decide on a fair price through negotiation; then
- Eminent domain proceedings occur, where the court decides what the fair market value price is for the property

As shown above, eminent domain is used only as a last resort on the part of the Agency. Although property acquisition through eminent domain is not anticipated by the Oceanside Redevelopment Agency anytime soon, if the Community Development Commission does not enact this ordinance by July 1, 2007, it may not have the ability to exercise the power of eminent domain within the Project Area in the future if it chooses to.

The Redevelopment Plan adopted in 1975 for the Oceanside Downtown Redevelopment Project Area describes the program for acquiring property through eminent domain in Sections 307 and 308 of Article III of the Redevelopment Plan, entitled Acquisition of Property, as follows:

“Except as specifically exempted herein, the Agency may acquire but is not required to acquire, any real property located in the project area, by any means authorized by law.

It is in the public interest and is necessary in order to eliminate the conditions requiring redevelopment and in order to execute the Plan, for the power of eminent domain to be employed by the Agency to acquire the real property in the Project Area which cannot be acquired by gift, devise, exchange, purchase or any other lawful method.”

The attached ordinance describes the Agency’s program for eminent domain in accordance with California Health and Safety Code Section 33342.7(a).

**FISCAL IMPACT**

None.

**CITY ATTORNEY'S ANALYSIS**

The attached ordinance was reviewed by the City Attorney and approved as to form.

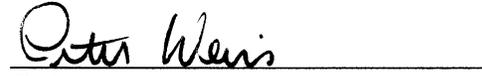
**RECOMMENDATION**

An ordinance of the City Council of the City of Oceanside describing the City of Oceanside's Redevelopment Agency's previously approved program to acquire property within the Downtown Redevelopment Project Area by eminent domain pursuant to Health and Safety Code Section 33342.7(a)

PREPARED BY:

SUBMITTED BY:

  
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Tracey Bohlen  
Development Project Coordinator

  
\_\_\_\_\_  
Peter Weiss  
Acting Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Mike Blessing, Deputy City Manager

Jane McVey, Economic Development and Redevelopment Director

Kathy Baker, Redevelopment Manager

  
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**ATTACHMENTS**

1. Ordinance



1 Safety Code Section 33342.7(a), the Agency's program for exercise of eminent domain powers  
2 within the Oceanside Downtown Redevelopment Project Area (the "Program") is described in  
3 Sections 307 and 308 of Article III of the Redevelopment Plan, entitled Acquisition of Property,  
4 as follows:

5 "Except as specifically exempted herein, the Agency may acquire but is not required to acquire,  
6 any real property located in the project area, by any means authorized by law.

7 It is in the public interest and is necessary in order to eliminate the conditions requiring  
8 redevelopment and in order to execute the Plan, for the power of eminent domain to be employed  
9 by the Agency to acquire the real property in the Project Area which cannot be acquired by gift,  
10 devise, exchange, purchase or any other lawful method.

11 However, the Agency shall not exercise the power of eminent domain to acquire real property  
12 within the Project Area for which proceedings in eminent domain have not commenced within  
13 twelve (12) years after the adoption of the ordinance adopting the Fourth Amendment to this  
14 Plan, Ordinance 098-32 adopted November 11, 1998. This time limitation may be extended by  
15 amendment of this Plan."

16 **SECTION 3. Program Change.** The Program may only be changed by an amendment  
17 to the Redevelopment Plan, pursuant to and in the manner required and to the extent permitted by  
18 law.

19 **SECTION 4. Authorization for Further Acts.** The City Council authorizes and directs  
20 the City Manager to undertake such actions and execute such documents as may be reasonably  
21 necessary or convenient to carry out and administer the actions authorized by this Ordinance and  
22 direct staff to file a revised Statement of Proceedings with the San Diego County Recorder's  
23 Office on or before December 31, 2007.

24 **SECTION 5. Severability.** If any provision of this Ordinance as applied to any person  
25 or to any circumstance is adjudged by a court of competent jurisdiction to be void or  
26 unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible  
27 by law) any other provision of this Ordinance, the application of any such provision regarding  
28 another person or under circumstances different from those adjudicated by the court, or the

1 validity or enforceability of this Ordinance as a whole.

2 **SECTION 6. Publication.** The City Council authorizes and directs the City Clerk to  
3 publish this Ordinance in the manner and time required by law.

4 **SECTION 7. CEQA Notice of Exemption.** This action is Exempt from filing CEQA  
5 pursuant to Title 14 California Code of Regulations Section 15062.

6 **SECTION 8. Effective Date.** This Ordinance shall take effect and be in force on the  
7 thirtieth (30<sup>th</sup>) day following the date of its adoption.

8 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
9 California, held on the **day of 2007**, and, thereafter.

10 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
11 Oceanside, California, held on the **day of 2007**, by the following vote:

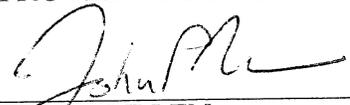
- 12 AYES:
- 13 NAYES:
- 14 ABSENT:
- 15 ABSTAIN:

16 \_\_\_\_\_  
JIM WOOD  
MAYOR

18 ATTEST:

APPROVED AS TO FORM:

19  
20  
21 \_\_\_\_\_  
BARBARA REIGEL WAYNE  
CITY CLERK

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21 \_\_\_\_\_  
  
JOHN P. MULLEN  
CITY ATTORNEY