

TO: James App, City Manager

FROM: Ron Whisenand, Community Development Director

SUBJECT: Redevelopment: Ordinance and Statement to Implement SB 53 and SB 1809

DATE: May 15, 2007

Needs: For the City Council and the Redevelopment Agency to consider the following items:

- a. An ordinance to describe the Redevelopment Agency's program for acquiring real property by eminent domain.
- b. A notice, to be recorded, describing the Redevelopment Project Area and the Redevelopment Plan's policies and procedures for using eminent domain.

Facts:

1. SB 53 requires that the City Council adopt an ordinance to describe the Redevelopment Agency's program for acquiring real property by eminent domain no later than July 1, 2007. This bill also provides that the program for use of eminent domain cannot be changed without amending the Redevelopment Plan pursuant to the process set forth in Health and Safety Code Section 33450.
2. SB 1809 requires that the Redevelopment Agency record a notice describing the Redevelopment Project Area and stating that the proceedings for redevelopment of the Project Area have been instituted pursuant to the Community Redevelopment Law.
3. SB 1809 also requires that, if the Redevelopment Plan authorizes the use of eminent domain, the recorded notice must contain the following:
  - a. A prominent heading in boldface type noting that the property that is the subject of the statement is located within a redevelopment project;
  - b. A general description of the provisions of the Redevelopment Plan that authorize the use of the power of eminent domain by the Agency; and
  - c. A general description of any limitation on the use of the power of eminent domain contained in the redevelopment plan, including, without limitation, the time limit required by Health and Safety Code Section 33333.2
4. Sections 600.30 – 600.32 of the Redevelopment Plan (copies attached) contain the Redevelopment Agency's policies for the use of eminent domain. The City Attorney has prepared an ordinance and notice (attached) that incorporate the language used in these sections.
5. Following adoption of the Redevelopment Plan in 1987, the City recorded a notice describing the Redevelopment Project Area. SB 1809 imposes new requirements for the notice. Hence the attached notice includes the word "Revised" in its title.



City Council Action: Introduce for first reading attached Ordinance No. XXX N.S., and set June 5, 2007 as the date for adoption of said ordinance and direct the City Clerk to file the attached Revised Notice of Adoption of the Redevelopment Plan.

- b. Amend, modify, or reject the foregoing option.

Prepared By:

Ed Gallagher  
Housing Programs Manager

Attachments:

1. Draft Ordinance No. XXX N.S.
2. Revised Notice of Adoption of the Redevelopment Plan
3. Sections 600.30 – 600.32 of the Redevelopment Plan

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Section 4. The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the same to be published once in the \_\_\_\_\_, a newspaper of general circulation, published and circulated in the City of El Paso de Robles, and it will take effect thirty (30) days after its final passage.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



are generated by the major highways and the railroad are blighting conditions which negatively impact the property within the Project Area. Provision must be made to minimize or eliminate those conditions and to insure compatibility between the properties adjacent to, and in close proximity with, the major highways; and

9. Severely dilapidated housing structures in which individuals and families are forced to live. Said housing condition is characterized by unsafe structures, insufficient space, poor ventilation, and inadequate sized lots.

In order to eliminate these blighting conditions and prevent their recurrence, it may be necessary to exercise the power of eminent domain.

In approving the Agency's Redevelopment Plan, and Ordinance No. 786 N.S. extending the time limit on the authority of eminent domain within the Project Area, the City Council found and determined that the condemnation of real property within the Project Area, as provided for in the Redevelopment Plan, is necessary to the execution of the Redevelopment Plan and adequate provisions have been made for the payment for any property that is acquired as provided by law. This finding was based upon:

1. The need to ensure that the provisions of the Redevelopment Plan would be carried out; and
2. The need to prevent the recurrence of blight; and
3. The fact that the Agency will utilize its authority to acquire property by eminent domain only as a last resort.

When the Agency exercises its power of eminent domain within the Project Area, in addition to those limitations on the acquisition of real property by any means as set forth in Sections 600.31(1) and 600.33 of the Redevelopment Plan, it shall be exercised within the following limitations:

1. Eminent domain proceedings, if used to acquire property within the Project Area, shall not be commenced after February 3, 2012. This time limit may be extended only by amendment of the Redevelopment Plan. Commencement of an eminent domain proceeding occurs when a complaint in eminent domain is filed with a court.
2. The Redevelopment Agency shall not acquire real property by the use of eminent domain if said property is (a) designated residential on the Zoning and General Plan Maps of the City; and (b) developed in accordance with the Municipal Code of the City; provided however, the Agency may acquire any such residential real property in the Project Area bounded by 15<sup>th</sup> Street on the north, 1<sup>st</sup> Street on the south, Spring Street on the west, and the Southern Pacific Railroad right-of-way on the east, and is necessary to facilitate the improvement of the Central Business District.
3. The Agency shall not acquire property outside of the area bounded by 15<sup>th</sup> Street on the north, 1<sup>st</sup> Street on the south, Spring Street on the west, and Southern Pacific right-of-way on the east which is developed with a residential dwelling unit which is owner-occupied



Project Area. The power of eminent domain shall not be exercised except in compliance with the rules and procedures set forth therein, as amended from time to time.

8. Generally, personal property shall not be acquired, unless such acquisition is necessary in connection with the acquisition of real property. However, where necessary in the execution of the Redevelopment Plan, the Agency is authorized to acquire personal property in the Project Area by any lawful means, including eminent domain.



**AGENCY'S EMINENT DOMAIN AUTHORITY.** Sections 600.30, 600.31, and 600.32 of the Redevelopment Plan authorize the Agency to acquire property by eminent domain, subject to those limitations on the acquisition of real property by any means as set forth in Sections 600.31(1) and 600.33 of the Redevelopment Plan, and further subject to the following limitations on the Agency's authority of eminent domain:

1. Eminent domain proceedings, if used to acquire property within the Project Area, shall not be commenced after February 3, 2012. This time limit may be extended only by amendment of the Redevelopment Plan. Commencement of an eminent domain proceeding occurs when a complaint in eminent domain is filed with a court.
2. The Redevelopment Agency shall not acquire real property by the use of eminent domain if said property is (a) designated residential on the Zoning and General Plan Maps of the City; and (b) developed in accordance with the Municipal Code of the City; provided, however, the Agency may acquire any such residential real property in the Project Area bounded by 15<sup>th</sup> Street on the north, 1<sup>st</sup> Street on the south, Spring Street on the west, and the Southern Pacific Railroad right-of-way on the east, and is necessary to facilitate the improvement of the Central Business District.
3. The Agency shall not acquire property outside of the area bounded by 15<sup>th</sup> Street on the north, 1<sup>st</sup> Street on the south, Spring Street on the west, and Southern Pacific right-of-way on the east which is developed with a residential dwelling unit which is owner-occupied as of the date of adoption of the Redevelopment Plan, whether or not such property is zoned for residential use, so long as such



5. In the event that it is determined that a particular portion of any real property is required pursuant to the conditions stated above, for the above stated uses, then the power of eminent domain shall not be exercised until a public hearing has been held before the Agency, with written notice of the said hearing given to all affected property owners as may be indicated on the latest tax assessment records, not less than ten (10) days prior to said hearing.
6. Prior to any acquisition through eminent domain, the Agency shall adopt a resolution declaring a need to acquire any specific property and authorize the acquisition by such method. The Agency shall commence an eminent domain proceeding thereunder within three (3) years after the date of adoption of the resolution declaring such need. Thereafter, the Agency shall declare the property to be exempt from acquisition by eminent domain.
7. It is the policy of the Agency to encourage the participation of property owners and businesses within the Project Area. Accordingly, the Agency has adopted Owner Participation Rules which extend reasonable preferences to persons who own property or are engaged in business in the Project Area, to continue or re-enter in business within the Project Area. The power of eminent domain shall not be exercised except in compliance with the rules and procedures set forth therein, as amended from time to time.
8. Generally, personal property shall not be acquired, unless such acquisition is necessary in connection with the acquisition of real property. However, where necessary in the execution of the Redevelopment Plan, the Agency is authorized to acquire personal property in the Project Area by any lawful means, including



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROJECT AREA**

All that real property in the City of El Paso de Robles, County of San Luis Obispo, State of California within the following described boundaries:

**[TO BE INSERTED]**



Section 600.16

Providing for open space and recreational land use.

Section 600.17

Encouraging public and private improvements so as to prevent, mitigate, or eliminate existing and/or anticipated blight conditions in the Project Area.

Section 600.18

The disposition of property including the lease or sale of land at a value determined by the Agency for reuse in accordance with this Plan and under all the conditions contained within it.

Section 600.19

Providing relocation assistance to displaced residential and nonresidential occupants (if any).

Section 600.20

Demolishing or removing certain existing buildings and improvements on land acquired by the Agency.

Section 600.21

The demolition, removal, rehabilitation, alteration, modernization, general improvement, or any combination thereof, of existing structures in the Project Area where such are permitted or required under the Redevelopment Plan.

Section 600.22

The vacation or closure of certain street areas and dedication of other areas for public street purposes.



disposition within the entire Project Area unless the Agency is not authorized to acquire such property under other provisions of this Plan.

The Agency is authorized to acquire any interest in real property fee or less than fee interest, and to acquire structures without acquiring the land upon which said structures are located. The Agency is not authorized to acquire interest in oil, gas, or other mineral substance within the Project Area, but may acquire water rights to any and all properties within the Project Area.

Prior to acquiring real property, the Agency shall have an independent appraisal made of the property by a professional appraiser to determine the fair market value of the property. Said fair market value shall be publicly disclosed prior to the Agency taking action on the acquisition. The Agency may acquire said property for a value not less than the fair market appraisal.

The Agency, at the request of the legislative body, may accept a conveyance of real property (located within or outside the survey area) owned by a public entity and declared surplus by the public entity, or owned by a private entity. The Agency may dispose of such property to private persons or to public or private entities, by sale or long-term lease for development. All or any part of the funds derived from the sale or lease of such property may, at the discretion of the City Council, be paid to the community or to the public entity from which any such property was acquired.

The Agency shall not acquire from any of its members or officers any property, or interest in property.

Without the consent of an owner, the Agency shall not acquire any real property on which an existing building is to be continued on its present site and in its present form and use unless such building requires structural alteration, improvement, modernization, or rehabilitation, or the site or lot on which the building is situated requires modification in size, shape or use, or it is necessary to impose upon such property any of the standards, restrictions, and controls of the Plan and the owner fails or refuses to agree to participate in the Redevelopment Plan pursuant to an owner participation agreement.

Any covenants, conditions, or restrictions existing on any real property within a Project Area prior to the time the Agency acquires title to such property, which covenants, conditions, or restrictions restrict or purport to restrict the use of, or building upon, such real property, shall be void and unenforceable as to the Agency and any other subsequent owners, tenants, lessees, easement holders, mortgagees, trustees, beneficiaries under a deed of trust, or any other persons or entities acquiring an interest in such real property from such time as



- b. Is not needed to provide for or replace very low-, low-, and moderate-income housing pursuant to specific provisions of this Plan;
- c. Is not needed for any other public improvement or facility;
- d. Is not needed to promote historical or architectural preservation;
- e. Is not needed to remove the blighting influences on surrounding properties which might prevent achievement of the objectives of this Plan but, rather, said property will develop in conformity with the objectives of this Plan through private initiative;
- f. Is not needed for the elimination of any environmental deficiency including, among other things, inadequate street layout, incompatible and mixed land uses, overcrowding and small parcel size; or
- g. Is not needed for the removal of impediments to land development and disposition through assembly of land into appropriately sized and shaped parcels served by improved circulation, parking, and utilities.

Through the adoption of this Plan, the Agency has not designated and/or identified any particular parcel of property or properties to be acquired through eminent domain.

In the event that it is determined that a particular portion of any real property is required pursuant to the conditions stated above, for the above stated uses, then the power of eminent domain shall not be exercised until a public hearing has been held before the Agency, with written notice of the said hearing given to all affected property owners as may be indicated on the latest tax assessment records, not less than ten (10) days prior to said hearing.

A time limit of twelve (12) years from the date of the ordinance adopting the Redevelopment Plan is established within which time the Agency may commence eminent domain proceedings as herein above set forth. Such time limitation may be extended only by amendment of the Redevelopment Plan.

3. Declaration of Need to Acquire Real Property and Eminent Domain

Prior to any acquisition through eminent domain, the Agency shall adopt a resolution declaring a need to acquire any specific property and authorize the acquisition by such a method. The Agency shall commence an eminent domain proceeding thereunder within three (3) years after the date of adoption of the resolution declaring such need.

