



**DATE:** July 23, 2019

**CATEGORY:** Public Hearing

**DEPT.:** Public Works

**TITLE:** **Adopt an Amended Resolution of Necessity and Authorize the Initiation of Eminent Domain Proceedings**

### **RECOMMENDATION**

It is recommended that the City Council open a hearing on an amended Resolution of Necessity, take testimony, close the hearing, and consider adopting the following Amended Resolution authorizing the acquisition of the identified property by eminent domain for the Shoreline Boulevard Reversible Transit Lane Project:

1. Adopt An Amended Resolution to Determine the Necessity to Acquire a Portion of Property Located at 808 Shoreline Boulevard (APN 153-14-002) by Eminent Domain for the Construction of the Shoreline Boulevard Reversible Transit Lane Project; to Authorize Commencement of Litigation to Acquire Property by Eminent Domain; and to Seek an Order of Possession (Code of Civil Procedure Section 1245.220), to be read in title only, further reading waived (Attachment 1 to the Council report). (Five votes required)
2. Authorize the City Attorney to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire the portion of the property described herein by eminent domain, if necessary, and petition the court for immediate Order of Possession.

### **BACKGROUND**

On May 23, 2019, the City Council, acting in a Public Hearing, adopted Resolutions of Necessity for the acquisition of portions of five parcels for the Shoreline Boulevard Reversible Bus Lane project ([Attachment 2](#)). Resolution Number 18334, Series 2019, was adopted for the acquisition of a small portion of a property located at 808 Shoreline Boulevard (APN 153-14-002) in order to construct a reversible transit lane. After the Council adopted Resolution Number 18334, staff noticed there was an error in the square footages for the fee acquisition and temporary construction easement. Resolution Number 18334 stated the area to be acquired in fee contained approximately

578 square feet, but the correct area, as described and shown on the legal description attached to the Resolution, is 1,215 square feet. The area of the temporary construction easement was incorrectly stated as being approximately 1,000 square feet but should read approximately 1,800 square feet.

The correct square footages—1,215 square feet for the fee take and 1,800 square feet for the temporary construction easement—were correctly described in the Appraisal Summary Statement attached to the May 6, 2019 Government Code Offer Letter, the Council report for the May 23, 2019 City Council meeting, the May 7, 2019 Notice of Hearing of the Resolution of Necessity, and in each of the legal descriptions attached thereto.

By letter dated July 8, 2019, staff explained the error and gave the property owner notice that the City Council would meet on July 23, 2019 to consider an amended Resolution of Necessity setting forth the correct square footages for the acquisition and the temporary construction easement described herein. That letter enclosed a Notice of Intention to adopt an amended Resolution of Necessity.

### ANALYSIS

In order for a public agency in California to initiate eminent domain proceedings, its governing body must adopt a Resolution of Necessity in a public hearing. A two-thirds vote is required to adopt a Resolution of Necessity. Code of Civil Procedure Section 1245.230 provides that in order to adopt a Resolution of Necessity, the City Council must find that: (1) the public interest and necessity require the Project; (2) the interests sought to be acquired are necessary for the Project; (3) the Project is located in such a manner as to offer the greatest public benefit with the least private detriment; and (4) a Government Code offer has been extended to the property owner. The Council report for the May 23, 2019 City Council meeting provides a detailed analysis supporting of each of these findings.

Although the City Council has already adopted Resolution Number 18334, Series 2019, the City Council nevertheless needs to hold a de novo hearing to consider whether to adopt the amended Resolution of Necessity.

The City Council's adoption of the amended Resolution of Necessity would authorize the City to file a complaint in eminent domain, to deposit the probable amount(s) of just compensation with the State Treasury, and to obtain an order for prejudgment possession of the property and temporary construction easement described herein. The purpose of the hearing on the Resolution of Necessity is to provide the owner of the

property and members of the public the opportunity to address the City Council on this matter. However, the amount of compensation owed for the acquisition will be decided through negotiations, or by a court of law, and is not a proper matter to be discussed at the public hearing.

### **ENVIRONMENTAL REVIEW**

The proposed acquisition was addressed in the Addendum to the North Bayshore Precise Plan Final Environmental Report for the Shoreline Boulevard Bus Lane and Utility Improvements, Project 16-58, which was certified on or about March 21, 2017.

### **FISCAL IMPACT**

Funding for the acquisition was approved with the adoption of Shoreline Bus Lane Property Acquisition, Project 18-47. There is sufficient funding in the project to deposit and pay fair-and-just compensation for the acquisition of the property described herein through negotiations or eminent domain.

### **ALTERNATIVES**

1. Do not adopt the amended Resolution of Necessity to initiate condemnation proceedings.
2. Provide other direction.

## **PUBLIC NOTICING**

Posting of the meeting agenda serves as notice to the general public. A public notice was also published in the *San Jose Post Record* and notices were mailed to the property owner. Notice of the public hearing was mailed to the property owner at least 15 days in advance of the hearing, as required by law. A copy of the staff report was also provided to the property owner.

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Attachments: 1. Amended Resolution of Necessity for 808 Shoreline Boulevard  
(APN 153-14-002)  
2. [May 23, 2019 Council Report](#)