

Legislation Details (With Text)

File #: 21-701 **Version:** 1

Type: Community & Economic Development **Status:** Agenda Ready

File created: 3/30/2021 **In control:** City Council

On agenda: 4/13/2021 **Final action:**

Title: Actions Related to the Park Avenue Reconfiguration Project.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Memorandum, 2. (b) Resolution, 3. (c) Resolution, 4. (d) Resolution, 5. (e) Resolution, 6. (f) Resolution, 7. Presentation - Est 10-15 minutes

Date	Ver.	Action By	Action	Result
4/13/2021	1	City Council		

Actions Related to the Park Avenue Reconfiguration Project.

(a) Conduct a Public Hearing to allow each person whose property is to be acquired a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030 of Cal. Cod of Civ. Proc.

(b) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel A (consisting of ±1,281 square feet and owned by the heirs and devisees of James Smith, deceased), with the Parcel referred to as a “Property” for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:

(1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 et seq.), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;

(2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit “A” to Parcel A’s proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;

(3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;

(4) The acquisition of Property, as described in Exhibit “A” to Parcel A’s proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;

(5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has not been made by the City to the owner of record, the heirs and devisees of James Smith, deceased, because the heirs or devisees of the deceased owner cannot be identified with reasonable diligence;

(6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, et seq.). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown

Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;

(7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;

(8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and

(9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.

PLEASE NOTE: APPROVAL OF THIS RESOLUTION OF NECESSITY REQUIRES 8 OR MORE AFFIRMATIVE VOTES (2/3 VOTE OF ALL MEMBERS OF THE COUNCIL). California Code of Civil Procedure Section 1245.240.

(c) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel B (consisting of $\pm 2,849$ square feet and owned by the heirs and devisees of Jose M. Villar, deceased (Brad Jepson, Trustee of Estate of Charleyne Nobes, Janet Lipscomb, Karen Washburn, Michael Nobes, Rose Nobes Rawcliffe, Carol Nobes, Garret Nobes, Kyle Nobes, Lyndsey Nobes and Tammy Nobes Hill), with the Parcel referred to as a "Property") for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:

(1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 et seq.), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;

(2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit "A" to Parcel B's proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;

(3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;

(4) The acquisition of Property, as described in Exhibit "A" to Parcel B's proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;

(5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has been made by the City to the living heirs and devisees of the last owner of record Jose M. Villar, deceased;

(6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California

Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, et seq.). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;

(7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;

(8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and

(9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.

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(d) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel C (consisting of ±782 square feet owned by the heirs and devisees of Carmen I. De Queveda, deceased, Adelena Quevedo and Alfonso Quevedo), with the Parcel referred to as a “Property”) for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:

(1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 et seq.), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;

(2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit “A” to Parcel C’s proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;

(3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;

(4) The acquisition of Property, as described in Exhibit “A” to Parcel C’s proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;

(5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has been made by the City to the living heirs and devisees of Carmen I. De Queveda, deceased;

(6) The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California

Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, et seq.). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;

(7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;

(8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and

(9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.

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(e) Adopt a resolution determining that the public interest and necessity require the acquisition through condemnation of Parcel D (consisting of 1,312 square feet owned by the heirs and devisees of Francois Baptiste Christian, deceased), with the Parcel referred to as a “Property”) for the Park Avenue Reconfiguration Project in conformance with Cal. Code Civ. Proc. Section 1245.220, et. seq., and making the following findings and determinations to declare that:

(1) The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 et seq.), Section 200 of the City of San José Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404;

(2) The public interest and necessity require the project, described below, which is in the Park Avenue public right-of-way, at the corner of Almaden Boulevard and Park Avenue as described in Exhibit “A” to Parcel D’s proposed resolution of necessity, to be posted separately and by reference made a part hereof, for the Park Avenue Reconfiguration Project;

(3) The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury;

(4) The acquisition of Property, as described in Exhibit “A” to Parcel D’s proposed resolution of necessity, to be posted separately, is necessary for the public uses proposed in the Park Avenue Reconfiguration Project;

(5) The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has not been made by the City to the owner of record, the heirs and devisees of Francois Baptiste Christian, deceased, because the heirs or devisees of the deceased owner cannot be identified with reasonable diligence;

(6) The City has complied with all conditions and statutory requirements that are necessary for approval and

adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, et seq.). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility;

(7) All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City;

(8) Authorizing the City Attorney, or their designee, to institute, maintain, and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City and correcting any errors or to making or agreeing to non-material changes in the description of the Property interests to be acquired that are deemed necessary for the conduct of the condemnation action; and

(9) Authorizing the City Attorney, or their designee, to make a deposit in the State Treasury Condemnation Fund from lawfully available funds of the City, in the amount determined by the summary appraisals of the Property or by the court in which eminent domain proceedings concerning the Acquisition Parcels herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement dated December 4, 2020 between SJ CityView LLC and the City of San José.

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(f) Adopt a resolution:

(1) Approving the report of the Director of Public Works setting forth the facts justifying the conditional summary vacation of the 14,348 square feet portion of Park Avenue between Almaden Boulevard and Market Street (“Subject Property”);

(2) Conditionally vacating the Subject Property, which after the satisfaction of the condition, will be superseded by relocation; and

(3) After the satisfaction of the condition, directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

(g) Accept the funds of \$310,000 from a Real Property and Sale and Cost Payment Agreement to reimburse the City for any City-incurred costs, fees, and expenses associated with the pursuit and/or completion of the purchase or condemnation action related to the Acquisition Parcels to support the construction of the Park Avenue Reconfiguration Project and CityView Development Project.

(h) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

(1) Increase the estimate for Other Revenue by \$310,000; and

(2) Increase the Office of Economic Development’s Non-Personal/Equipment appropriation by \$310,000.

CEQA: Supplemental Environmental Impact Report to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 79586) for CityView, File No. H19-016; Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for 200 Park Avenue Office Project, File No. H18-045; Determination of Consistency to the Downtown Strategy 2040 Final Environmental Impact Report for the Park Avenue Reconfiguration Project, File No. PP19-071. Council District 3. (Economic Development/Public Works/City Manager)