



Legislation Details (With Text)

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**File created:** 2/17/2023      **In control:** City Council  
**On agenda:** 3/9/2023      **Final action:** 3/9/2023

**Title:** Actions pertaining to the acquisition of easements and right of way for the MLK Center Active Transportation Project (Council District 3)  
1) HEARING to consider a resolution of public use and necessity for acquisition of easements and rights of way for public street purposes over, under, through and across portions of APN 479-050-04, owned by Ruth McDonald and Florine Parish, for the construction of a concrete public sidewalk, concrete curb ramp and installation of public utilities along a portion of South Walnut Avenue and East Grove Avenue  
2) Adopt a finding of Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301/Class 1, 15303/Class 3, and 15304/Class 4 for the MLK Center Active Transportation Project  
3) \*\*\*RESOLUTION - Determining that public interest and necessity require acquisition of easements and rights of way for public street purposes over, under, through and across portions of APN 479-050-04, owned by Ruth McDonald and Florine Parish, for the construction of a public sidewalk, concrete curb ramp and installation of public utilities along a portion of South Walnut Avenue and East Grove Avenue and authorizing eminent domain proceedings for public use and purpose (Requires 5 affirmative votes) (Subject to Mayor’s Veto)

**Sponsors:** Public Works Department

**Indexes:**

**Code sections:**

**Attachments:** 1. 23-359 Environmental Assessment, 2. 23-359 Resolution of Necessity (RON) with Exhibits, 3. 23-359 Agreement for Purchase and Sale, 4. 23-359 Vicinity Map, 5. 23-359 Location Map

Date	Ver.	Action By	Action	Result
3/9/2023	1	City Council	ADOPTED	Pass

**REPORT TO THE CITY COUNCIL**

**FROM:** SCOTT L. MOZIER, PE, Director  
Public Works Department

**BY:** RANDALL W. MORRISON, PE, Assistant Director  
Public Works Department, Engineering Division

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Public Works Department, Real Estate Section

**SUBJECT**

Actions pertaining to the acquisition of easements and right of way for the MLK Center Active Transportation Project (Council District 3)

1) HEARING to consider a resolution of public use and necessity for acquisition of easements and rights of way for public street purposes over, under, through and across portions of APN

479-050-04, owned by Ruth McDonald and Florine Parish, for the construction of a concrete public sidewalk, concrete curb ramp and installation of public utilities along a portion of South Walnut Avenue and East Grove Avenue

- 2) Adopt a finding of Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301/Class 1, 15303/Class 3, and 15304/Class 4 for the MLK Center Active Transportation Project
- 3) \*\*\*RESOLUTION - Determining that public interest and necessity require acquisition of easements and rights of way for public street purposes over, under, through and across portions of APN 479-050-04, owned by Ruth McDonald and Florine Parish, for the construction of a public sidewalk, concrete curb ramp and installation of public utilities along a portion of South Walnut Avenue and East Grove Avenue and authorizing eminent domain proceedings for public use and purpose (Requires 5 affirmative votes) (Subject to Mayor's Veto)

## RECOMMENDATIONS

Staff recommends the City Council (1) Conduct a public hearing to consider the adoption of a resolution of public use and necessity for the acquisition of a 3,357 square foot street easement and right of way, and 99 square foot Public Utility Easement, for public street purposes from Assessor's Parcel Number 479-050-04 owned by Ruth McDonald and Florine Parish, (2) adopt a finding of Categorical Exemption pursuant to CEQA Guidelines Sections 15301/Class 1, 15303/Class 3, and 15304/Class 4 for the MLK Center Active Transportation Project, and (3) adopt the attached resolution of public use and necessity, which states the public interest and necessity require permanent street easements and right of way for purposes over, under, through and across real property for the construction of a public sidewalk on a portion of South Walnut Avenue and East Grove Avenue; and authorize an eminent domain action to acquire the street easement pursuant to the California Code of Civil Procedure.

## EXECUTIVE SUMMARY

The City of Fresno plans to construct essential bicycle and pedestrian infrastructure around the new State Center Community College District's (SCCCD) West Fresno Campus and proposed West Creek Village development in Southwest Fresno. The MLK Center Active Transportation Project improvements include a Class I trail, Class II bike lanes, pavement rehabilitation, sidewalk, curb & gutter, traffic signal modifications, and Americans with Disabilities Act (ADA) compliant curb ramps. The project is funded by a federal Congestion Mitigation and Air Quality (CMAQ) grant and local Senate Bill 1 (SB1) Road Maintenance and Rehabilitation Account (RMRA) funds. The improvements will provide essential multimodal options for the college and surrounding area.

The acquisition of 3,357 square foot easement and 99 square foot Public Utility Easement from 2487 South Walnut Avenue, with a fair market value of \$8,700, is one of two partial acquisitions needed for the project. The project also included multiple right of way dedications by SCCC and the West Creek Village development. The resolution of public use and necessity authorizes the City Attorney to initiate an eminent domain action and obtain an order of possession of the property. One of the two property owners, Florine Parish, is deceased and the family does not wish to pursue probate at this time. The surviving owner, Ruth McDonald, is in favor of granting the easements to the City. In order to meet the projects grant funding deadlines, the City must obtain the easements, through a court order under the Eminent Domain process. This action requires five affirmative votes and is subject to veto by the Mayor.

## BACKGROUND

The properties surrounding and fronting the new SCCCD West Fresno Campus along the East side of Walnut Avenue, south side of Church Avenue, west side of Martin Luther King Boulevard and north side of Jensen Avenue do not currently have public sidewalks nor any multimodal travel options. With the new college and adjacent West Creek Village development planned in this area, the pedestrian and bicycle infrastructure are essential to this area and part of the Transformative Climate Communities grant.

The proposed improvements require a varying amount of right of way in the area. The subject property requires ten feet of right of way in order to construct the proposed twelve-foot sidewalk and ADA compliant curb ramp in accordance with the standards, specifications and policies of the City of Fresno. The public utility easement of 99 square feet is required on the subject property as part of the utility coordination and relocation.

The purpose of the street easement is to provide a safe and accessible pedestrian walkway for the public.

The 3,357 square foot pedestrian easement and 99 square foot public utility easement to be acquired from a portion of APN: 479-050-04 is owned by Ruth McDonald and Florine Parish, with Florine Parish now deceased, has been appraised with a fair market value of \$8,700. The City retained Kelly P. Stevens of Real Property Analysts to appraise the property. Mr. Stevens worked under the direction of Tiffany K.V. Mach, MAI.

There are four tests to meet when approving a Resolution of Necessity:

1. The Public Interest & Necessity require the property for the Project; we know that the public sidewalks and ADA curb ramp are needed because of proposed developments in the area, which will increase the pedestrian usage along the frontage of the properties in the area.
2. The project is planned to be most compatible with the greater good of the public with the least private injury; the installation of a concrete sidewalk and ADA compliant curb ramp will provide for safe commuting in the area.
3. This parcel is necessary to fully complete the project for its intent; this parcel is one of two partial acquisitions needed to complete the walkway, along with multiple dedications from SCCCD and the developer in the area to construct the improvements.
4. The First Written Offers (FWO) were made in compliance with Government Code 7267.2; The First Written Offers were completed and mailed to the property owners on January 3, 2023

The City Attorney's Office has reviewed and approved the Resolution of Necessity and related documents as to form.

## ENVIRONMENTAL FINDINGS

Staff performed a preliminary environmental assessment (EA No. P21-06568 dated May 17, 2022) of this project and has determined it falls within Sections 15301/Class 1, 15303/Class 3, and 15304/Class 4 under the California Environmental Quality Act (CEQA) Guidelines. The Project will

make improvements to existing public facilities to reconstruct pavement, install curb, gutter, and ramps to meet ADA regulations, add signage and striping to include both Class I and Class II bike lanes, adjustment of water valve lids and sewer manhole covers to finished grade, landscaping, and traffic signal modifications. The proposed street improvements are minor, do not constitute an expansion of use, and will improve the public right-of-way without increasing road capacity. The Project involves negligible expansion of the existing use and will have substantially the same purpose. None of the exceptions to the Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this Project.

## **LOCAL PREFERENCE**

Local preference was not considered because these actions does not include a bid or award of a construction or services contract.

## **FISCAL IMPACT**

This project is located in Council District 3 and will not impact the General Fund. The project is funded by Federal Congestion Mitigation and Air Quality Improvement (CMAQ) Program funds and the allocated local Senate Bill 1 (SB1) Road Maintenance and Rehabilitation Account (RMRA) funds, as included in the current fiscal year adopted budget.

### Attachments:

Environmental Assessment  
Resolution of Necessity (RON) with Exhibits  
Agreement for Purchase and Sale  
Vicinity Map  
Location Map