



Legislation Details (With Text)

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Title: Actions pertaining to the acquisition of an easement and right of way to construct a public sidewalk on East Ashlan Avenue between North Effie Street and State Route 41 (Council District 7)
1. HEARING to consider a resolution of public use and necessity for acquisition of an easement and right of way for public purposes over, under, through and across a portion of the real property located at 1929 East Ashlan Avenue in the City of Fresno (APN: 428-233-18), owned by the Estate of Adalberto Zuniga, for the purpose of constructing a public sidewalk on the north and south side of East Ashlan Avenue between North Effie Street and State Route 41.
2. Adopt a finding of Categorical Exemption Class 1 pursuant to CEQA Guidelines Section 15301
3. ***RESOLUTION - Determining that public interest and necessity require acquisition of an easement and right-of-way for public purposes over, under, through and across a portion of the real property located at 1929 E. Ashlan Avenue in the City of Fresno (APN: 428-233-18), owned by the Estate of Adalberto Zuniga, for the purpose of constructing a public sidewalk on the north and south side of Ashlan Avenue between North Effie Street and State Route 41 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. 19-11256 Resolution of Public Use and Necessity, 2. 19-11256 Vicinity Map, 3. 19-11256 Location Map

Date	Ver.	Action By	Action	Result
9/26/2019	1	City Council	adopted	Pass

REPORT TO THE CITY COUNCIL

SEPTEMBER 26, 2019

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

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

BY: R. SCOTT BEYELIA, Supervising Real Estate Agent
Public Works Department, Real Estate and Lease Services

SUBJECT

Actions pertaining to the acquisition of an easement and right of way to construct a public sidewalk

on East Ashlan Avenue between North Effie Street and State Route 41 (Council District 7)

1. HEARING to consider a resolution of public use and necessity for acquisition of an easement and right of way for public purposes over, under, through and across a portion of the real property located at 1929 East Ashlan Avenue in the City of Fresno (APN: 428-233-18), owned by the Estate of Adalberto Zuniga, for the purpose of constructing a public sidewalk on the north and south side of East Ashlan Avenue between North Effie Street and State Route 41.
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RECOMMENDATIONS

Staff recommends the City Council conduct the required public hearing and at the close of the hearing, adopt the attached resolution of necessity (RON) determining that public interest and necessity require acquisition of an easement and right-of-way for public purposes over, under, through and across a portion of the real property located at 1929 E. Ashlan Avenue in the City of Fresno (APN: 428-233-18), owned by the Estate of Adalberto Zuniga, for the purpose of constructing a public sidewalk on the north and south side of Ashlan Avenue between North Effie Street and State Route 41 and authorizing eminent domain proceedings for public use and purpose.

EXECUTIVE SUMMARY

Adoption of the RON for public use will authorize and direct the City Attorney to institute and conclude eminent domain proceedings; authorize and direct the City Controller to disburse \$2,400 for deposit into the State of California - Condemnation Fund, as approved by the City Attorney, and such amounts for litigation costs as may be required to acquire possession of, or title to the permanent easement and right-of-way required over APN: 428-233-18. The appraised value of the easement and right-of-way sought is \$2,400. The easement is necessary to begin construction of the Project. The Project will eliminate a gap in the sidewalks in the Project area, provide an Americans with Disabilities Act (ADA) compliant travel path for pedestrians, and comply with the City and State Complete Street Goals by making the area attractive to all modes of transportation. The Project will benefit Pyle Elementary school students who reside in the Project area and walk to and from school.

If the RON is not adopted, and possession of the remaining easement and right of way is not secured, the City will not meet the Grant-funded Active Transportation Program (ATP) requirements to certify possession of necessary right of way to remain eligible to receive construction funding and the entire project will be in jeopardy. The California Transportation Commission (CTC) has granted the City a twelve month extension to complete Project construction. There are no further extensions available from the CTC. It is essential to obtain possession of the remaining easement to receive the necessary grant funds available under the ATP program to construct the Project.

BACKGROUND

Pursuant to the California Code of Civil Procedure Section 1245.230, the RON shall contain all of the following: (a) a general statement of the public use for which the property is to be taken and a

reference to the statute that authorizes the public entity to acquire the property by eminent domain; (b) a description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification; (c) a declaration that the Council has found and determined each of the following:

- (1) The public interest and necessity require the proposed use.
- (2) The proposed use is planned and located in the manner that will be most compatible with the greatest public good and least private injury.
- (3) The property described in the resolution is necessary for the proposed use.
- (4) That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

Eleven of the twelve necessary partial acquisitions of street easements and right of way necessary for the Project have been acquired through mutually agreed upon purchase and sale agreements. Staff has been unsuccessful, after diligent attempts, to acquire the necessary street easement and right of way from one remaining parcel necessary for the construction of the Project, due to the owner's death without a succession plan.

The remaining parcel, APN: 428-233-18, is owned by the Estate, and is the last remaining parcel necessary to secure Project funding. Staff has made diligent efforts to obtain the required easement. Prior to discovery of Mr. Zuniga's passing, staff had mailed a written offer in compliance with Section 7267.2 of the Government Code to Mr. Zuniga on November 9, 2018. Staff also attempted to contact the owner by phone and by visiting his residence of record. Thereafter, staff discovered that Mr. Zuniga had passed away on February 7, 2015. Staff located and met with the deceased property owner's brother, Isaias Zuniga, who provided a copy of Adalberto Zuniga's death certificate, and indicated he is the only living relative of the deceased, and does not have the resources to administer the Estate because the residence is the only asset owned by the Estate and is in foreclosure proceedings. The Estate has no legally authorized person or entity to execute an agreement with the City for the necessary acquisition. Adalberto Zuniga died intestate, and probate proceedings have not been initiated. Staff confirmed the lender's law firm, Zieve, Brodnax & Steele, LLP filed a Notice of Pendency of Action on August 23, 2018. Staff sent the lender's attorney of record a letter to discuss purchasing the necessary partial acquisition of an easement for the Project upon completion of the foreclosure proceedings, but did not receive a response.

Construction of the Project necessitates the acquisition of a 384 square foot street easement across the property owned by the Estate. The required easement will result in the loss of 54 square feet of concrete on the property and require minor fencing relocation. The total appraised value of the easement and right of way acquisition, including the value of damages and concrete relocation, has been appraised at \$2,400. The appraisal was conducted by James G. Palmer, MAI with James G. Palmer Appraisals Inc., located at 1285 West Shaw Avenue, Suite 108, Fresno, CA 93711.

The Project will provide sidewalks along the north and south sides of East Ashlan Avenue, eliminating a gap in the paved sidewalks within the Project area. Pedestrians will have paved sidewalk access through the Project area to existing businesses. The Project will provide safer access to the BRT system that operates along Blackstone Avenue.

Pyle Elementary School students residing in the area west of State Route 41 and north and south of East Ashlan Avenue (approximately 10-15% of the district area) will benefit from the installation of

sidewalks along the Project Area. Seven hundred thirty seven (737) students were enrolled at Pyle Elementary during the 2013-2014 school year. Assuming 10% of the students reside in the vicinity of the Project Area, approximately seventy-four students will benefit from the Project.

The City and Fresno Police Department collision databases were queried for all collisions (motorized and non-motorized) for the period of January 1, 2010 to July 7, 2015. During that time period, eighteen (18) collisions were reported within the Project Area. Five of the eighteen collisions involved either pedestrians or bicyclists. All five of these collisions involving pedestrians and bicyclists resulted in injuries. Staff observed approximately 50-60% of the pedestrians walking in the roadway rather than in the worn path along East Ashlan Avenue during collection of the counts.

The Project will create an Americans with Disabilities Act (ADA) compliant travel path for pedestrians and remove conflicts between pedestrians and vehicles. Providing a sidewalk facility will encourage pedestrians to use the sidewalk rather than continuing their current practice of walking in the roadway. The Project will also comply with the City and State Complete Street Goals by making the area more livable and inviting to all modes of transportation.

Pursuant to the California Code of Civil Procedure, notice was sent to the property owner, with an invitation to appear at the hearing, and a request to notify staff within 15 days if the owner intends to appear.

It is recommended the Council adopt the resolution with consideration of the following findings:

1. The public interest and necessity require the proposed project.

It is necessary to construct sidewalks along East Ashlan Avenue in the Project area to provide safe pedestrian travel routes in the area.

2. The proposed project is planned in a manner that will be most compatible with the greatest public good and the least private injury.

The project as planned will improve accessibility along East Ashlan Avenue and provide safe travel routes to residents and citizens, including students at nearby schools. The project cannot be constructed without acquiring this permanent easement and right-of-way being sought.

3. The property is necessary for the proposed project.

It is necessary to acquire the subject property easement in order to construct the sidewalk and related improvements along East Ashlan Avenue in the Project area. Acquisitions have also been made from the other eleven surrounding property owners to accommodate the Project and this is the last remaining piece for the defined project.

4. An offer to purchase the required street easement has been made pursuant to Section 7267.2 of the Government Code.

A written offer of the appraised fair market value has been delivered to the owners of the affected property pursuant to the requirements of the California Government Code.

The City Attorney has reviewed and approved the RON as to form.

ENVIRONMENTAL FINDINGS

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 Categorical Exemption set forth in CEQA Guidelines, section 15301 as this RON is for the acquisition of property for the minor alteration of existing public facilities involving negligible expansion of the use of East Ashlan Avenue for a pedestrian sidewalk, between North Effie Street and State Route 41, and within Class 3 Categorical Exemption set forth in CEQA Guidelines section 15303 as the Project consists of limited private parcels which are located in a developed urban area, designated as corridor-center mixed used planned use, and substantially surrounded by urban uses. Furthermore, it was determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

LOCAL PREFERENCE

Local preference is not applicable because the hearing to adopt a RON for public use does not include a bid or award.

FISCAL IMPACT

The Project is located in Council District 7. There will be no impact to the General Fund. The Project is to be funded by a State Grant through the Active Transportation Program (ATP) and local match provided by the Pedestrian and Bicycle State funding. All funding necessary for this acquisition is included in the currently adopted City budget.

Attachments:

Resolution of Public Use and Necessity

Vicinity Map

Location Map