



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: AMENDMENT TO MUNICIPAL
CODE SECTIONS 4.04.010 and 4.04.020

DATE: 11-13-07

Approved

Date

11/18/07

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

The City Council approves an ordinance amending Sections 4.04.10 and 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code in order to delegate authority to the City Manager to execute agreements for purchases of real property and temporary construction easements with terms of two years or less in furtherance of projects previously approved by the Council, where the consideration for the real property or temporary construction easement does not exceed \$100,000.

OUTCOME

Amendment of certain sections of the Municipal Code, as recommended, will streamline the process for acquisition of real property solely for projects previously approved by the Council and for property rights in which payment for the property's purchase by the City does not exceed \$100,000. The ordinance will additionally streamline the process for granting and/or receiving temporary construction rights which in total duration do not exceed two years and for which in the acquisition of such temporary rights payment by the City does not exceed \$100,000.

BACKGROUND

The current Municipal Code requires that all purchases of fee title to real property be approved by the City Council, including in cases where small parcels are to be acquired in furtherance of capital projects that have been previously approved by the Council.

Additionally, acquisition of permanent easements, and any temporary construction easements where the City is either a grantor or grantee, presently require Council approval. Especially where the City is the grantee, these temporary easements are typically sought to facilitate construction of a City-approved capital project, although sometimes use of City property is sought by third parties for use during a project.

Examples of cases in which temporary construction easements are needed to implement a capital project include entering a private property to construct a curb within the public right of way or

reconstructing a portion of a private driveway in conjunction with installation of a sidewalk or a street improvement. Occasionally there are times when a third party desires to use City property for temporary construction purposes. One example of this is the use of City property by PG&E for temporary placement of equipment and construction supplies while undergrounding its transmission lines in Guadalupe Gardens.

Similarly, there frequently are purchases of small portions of real property, or of easements over such properties, that are needed in order to implement capital projects, such as in the cases of street or right of way improvements. In these cases, the project has typically been approved by Council and is being implemented when the purchase of the property or easement becomes necessary.

ANALYSIS

The proposed amendment to the Municipal Code would delegate to the City Manager the authority to execute agreements for the purchase of real property or of easements, and all documents necessary to complete the purchase, where: (1) the real property is being acquired in order to implement a project approved by the City Council; (2) the property or easement has been determined to present no significant toxics liability; and (3) compensation to the seller or grantor does not exceed \$100,000.

Similarly, the City Manager would be authorized to execute temporary construction easements for terms not exceeding two years, where the City is grantor or grantee and the total compensation for the temporary easement rights does not exceed \$100,000.

Council approval of the proposed amendments to the Municipal Code would streamline and reduce the time period for implementation of capital projects by six or more weeks.

EVALUATION AND FOLLOW-UP

Each grant or acceptance of permanent property rights by the City subject to conditions of the proposed amendments to the Municipal Code will require confirmation that the rights granted or accepted are for a project previously approved by the City Council and that such individual grant or acquisition does not exceed \$100,000. Grant or acceptance of temporary construction rights by the City subject to conditions of the proposed amendments to the Municipal Code will require confirmation that the rights granted or accepted are for a period not exceeding two years and that such individual grant or acquisition does not exceed \$100,000.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

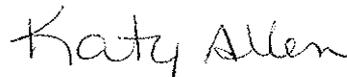
This action does not meet any of the above listed criteria; however this memorandum will be posted on the City's website for the December 4, 2007 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office and the Planning, Building and Code Enforcement Department.

CEQA

CEQA: Exempt – Not a project.



KATY ALLEN

Director, Public Works Department

For questions please contact PHILIP PRINCE, DEPUTY DIRECTOR, at (408) 535-8300.