

MIKE FEUER
CITY ATTORNEY

REPORT NO. R 1 3 - 0 2 4 9
AUG 27 2013

REPORT RE:

**DRAFT ORDINANCE TO REPEAL ORDINANCE NUMBER 182630
(ADOPTED ON JULY 3, 2013) WHICH AUTHORIZED THE TAKING
VIA EMINENT DOMAIN OF TWO PARCELS LOCATED AT
1138 AND 1144 SOUTH STREET ANDREWS PLACE**

**ST. ANDREWS PLACE PARK
(COUNCIL DISTRICT 10)**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 11-1811

Honorable Members:

This Office has prepared and now transmits to you for your consideration, approved as to form and legality, the enclosed draft ordinance. This draft ordinance would repeal Ordinance Number 182630, which was adopted on July 3, 2013, to authorize acquisition of property located at 1138 and 1144 South St. Andrews Place, Los Angeles for the St. Andrews Place Park Project (Project), which is located in Council District Ten.

Background

On July 3, 2013, your Honorable Body authorized acquisition of 1138 and 1144 South St. Andrews Place for the construction of a new St. Andrews Place Park in

Council District Ten. Ordinance Number 182630 was adopted to authorize the acquisition, via condemnation, of the above-referenced parcels for the Project. The Ordinance was approved by the Mayor on July 11, 2013, and would have become effective on August 24, 2013.

At the time of adoption of Ordinance Number 182630, City staff was aware of the planned development of two custom residential houses on the Project site. City staff had several meetings with the property owner, Mr. Isaac Davidi, President of Aldo Services, Inc., during the permitting and approval process.

In late June 2013, Mr. Davidi advised the Recreation and Parks and General Services staffs that over the past few months he had finally obtained all of the required building and development permits and approvals required for his plans to develop and construct two 3,000 to 4,000 square foot custom houses and garages on the two parcels. City staff confirmed that both foundations had been laid and framing was soon to commence at the time of the public hearing.

Mr. Davidi opposed the adoption of the Resolution of Necessity which authorized the taking of his two parcels via eminent domain, and he made his position known during the comment period during the public hearing. Notwithstanding the owner's opposition, the Council unanimously approved the proposed Ordinance Number 182630.

Shortly after the adoption of the condemnation ordinance, community meetings were held with area stakeholders. At a meeting held on the evening of July 8, 2013, the Country Club Park Neighborhood Association, which includes area homeowners, residents, and other stakeholders, made it clear that, while a new park would have been a welcomed addition to their neighborhood, they also liked the potential for a positive impact on their property values if the two new custom homes were constructed on these corner parcels.

Given the fact that foundations had been laid and framing had commenced on each parcel, the Country Club Park Neighborhood Association made it clear to the Department of Recreation and Parks that they would rather see the construction of the two homes completed, instead of being demolished and going forward with the proposed park.

On August 14, 2013, the Department of Recreation and Park Board of Commissioners voted to abandon the Project. The Board's decision requires the rescission of the approval of the previously adopted Ordinance Number 182630.

Discussion

State law authorizes a public entity to rescind a previously adopted ordinance authorizing condemnation without being subject to an action for damages by the owner

of the property which was the subject of a condemnation ordinance, provided certain requirements are met.

“A public entity may rescind a Resolution of Necessity as a matter of right at any time before the property owner commences an action under this section [for damages for inverse condemnation.] If the public entity . . . rescinds the resolution of necessity before the property owner commences an action under this section, the property owner may not thereafter bring an action under this section.” California Code of Civil Procedure Section 1245.260 (c).

Under Code of Civil Procedure Section 1245.260(a), the property owner cannot file an action in inverse condemnation earlier than six months after the adoption of the Resolution of Necessity. The City is within that six-month period given the adoption of the original ordinance on July 3, 2013. It is unclear if the affected property owner intends to file an inverse condemnation action against the City. However, if he did, the City would argue that the property owner has not been damaged given the prompt notification which was provided to him on July 22, 2013, the date which the Department of Recreation and Parks informed the General Services Department (GSD) and this Office of its decision to abandon the Project. The Project’s cancellation should have no adverse impacts on the owner. The adoption of the original Resolution of Necessity was approved on July 3, 2013, and on July 23, 2013, the owner was advised in writing that the project would be cancelled. City staff believes that it would be difficult for the owner to establish that he substantially changed his position to his detriment within such a short 20-day period.

CEQA Findings

When acquisition of the subject properties on South St. Andrews Place for the Project was authorized, that action was subject to the California Environmental Quality Act (CEQA) because it approved a project which had the potential to cause a change in the environment. Adoption of the enclosed ordinance to repeal the previously adopted ordinance would not constitute “a project” as defined by CEQA because it will not have the potential to cause a physical change to the environment. Therefore, adoption of the proposed ordinance is exempt from CEQA under the City’s CEQA Guidelines, as amended July 31, 2002, Article II, Section 1, General Exemption.

Council Rule 38 Referral

A copy of the enclosed draft ordinance seeking to repeal the original ordinance was sent, pursuant to Council Rule 38, to the Department of Recreation and Parks. Given its decision to cancel the Project, the Department of Recreation and Parks is in agreement with the terms and purpose of the proposed ordinance to repeal the original Resolution of Necessity.

Recommendations

If you wish to repeal the original Resolution of Necessity (Ordinance Number 182630, adopted on July 3, 2013) authorizing condemnation of 1138 and 1144 South St. Andrews Place, you should do the following:

1. Find that your action is exempt from the California Environmental Quality Act under Article II, Section 1 of the City's CEQA Guidelines, because it can be seen with certainty that repeal of the prior ordinance authorizing condemnation will have no significant impact on the environment;
2. Direct staff to file a notice of exemption under CEQA;
3. Adopt the enclosed draft ordinance; and
4. Direct the GSD to notify the property owner of the Council action to rescind the original Ordinance Number 182630.

Should you have any questions about the decision to cancel the Project, you may contact Cid Macaraeg, Director of Real Estate Asset Management Construction and Maintenance for the Department of Recreation and Parks at (213) 202-2608.

If you have questions regarding this matter, please contact Deputy City Attorney John Minor at (213) 978-8255. He or another member of this Office will be present when you consider this matter to answer any questions that you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM/JAM:zra
Transmittal

ORDINANCE NO. _____

An ordinance to repeal Ordinance No. 182630, adopted on July 3, 2013, to authorize acquisition of land for the development of the St. Andrews Place Park project.

WHEREAS, on July 3, 2013, the City Council adopted Ordinance No. 182630 entitled "An Ordinance of the City Council of the City of Los Angeles finding that the public interest and necessity require the acquisition of property located at 1138 and 1144 South St. Andrews Place"; and

WHEREAS, it has now been determined that construction of the St. Andrews Place Park is no longer supported by the neighboring community, residents and stakeholders; and

WHEREAS, the Department of Recreation and Parks has decided to abandon the plans to construct the St. Andrews Place Park;

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Ordinance No. 182630 is hereby repealed.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk

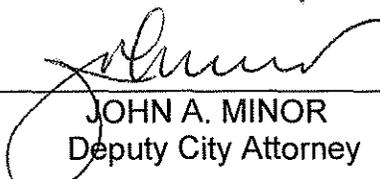
By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
JOHN A. MINOR
Deputy City Attorney

Date Aug 27, 2013

File No(s) CF 11-1811