

1 [Describing the Limits on the Redevelopment Agency's Use of Eminent Domain to Acquire
2 Real Property in Existing Redevelopment Plan Project Areas]

3 **Ordinance describing the limits in existing redevelopment plans on acquisition of real**
4 **property by the Redevelopment Agency of the City and County of San Francisco**
5 **through the use of eminent domain, in compliance with a new requirement of the**
6 **California Community Redevelopment Law.**

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8 Note: Additions are single-underline italics Times New Roman;
9 deletions are ~~strikethrough italics Times New Roman~~.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Purpose. In 2006, the California Legislature amended the California
14 Community Redevelopment Law ("CRL") by adding Section 33342.7 to the Health and Safety
15 Code. (Senate Bill No. 53, Stats. 2006, chapter 591, § 4). This new state law requires a local
16 legislative body to adopt "an ordinance on or before July 1, 2007, that contains a description of
17 the [redevelopment] agency's program to acquire real property by eminent domain" in all
18 redevelopment plans adopted prior to January 1, 2007. In compliance with Section 33342.7,
19 this ordinance describes the existing eminent domain programs that the Board of Supervisors
20 has adopted in various redevelopment plans under the jurisdiction of the Redevelopment
21 Agency of the City and County of San Francisco (the "Redevelopment Agency"). Changes to
22 any of these programs may only occur through compliance with the CRL procedures for
23 amendments to a redevelopment plan, including, among other requirements, approval by the
24 Board of Supervisors. Under a new state law, (Chapter 591, SB 53-Kehoe), the Board of
25 Supervisors must make new, updated blight findings before adopting any amendment to extend

1 the term of a redevelopment plan under which the Redevelopment Agency may use eminent
2 domain.

3 Section 2. Designated Redevelopment Plans. The Board of Supervisors has adopted
4 eight redevelopment plans that continue to authorize eminent domain under certain limited
5 circumstances: (1) the Hunters Point Shipyard Redevelopment Plan, (2) the Redevelopment
6 Plan for the Mission Bay North Project Area, (3) the Redevelopment Plan for the Mission Bay
7 South Project Area, (4) the Redevelopment Plan for the South of Market Project Area, (5) the
8 Redevelopment Plan for the Transbay Redevelopment Project Area, (6) the Bayview Hunters
9 Point Redevelopment Plan, (7) the Amendment to the Redevelopment Plan for the Yerba
10 Buena Center Approved Redevelopment Project Area D-1 (the "Emporium Site Area Plan"),
11 and (8) the Federal Office Building Redevelopment Plan (collectively referred to as the
12 "Designated Redevelopment Plans"). Of these Designated Redevelopment Plans, the
13 redevelopment programs for physical improvements of the sites in the Emporium Site Area Plan
14 and the Federal Office Building Redevelopment Plan are complete, and there is no longer any
15 need for the exercise of eminent domain powers in these two project areas.

16 Section 3. Use of Eminent Domain and Limitations on Eminent Domain Authority
17 Applicable to All Redevelopment Plans. Redevelopment agencies may only use eminent
18 domain as a last resort after good faith negotiations between the agency and the private
19 property owner fail, where the public benefits from the exercise of eminent domain are clear
20 and where all required legal procedures, including safeguards and assistance for property
21 owners and tenants, have been met. Over the past 20 years, the Redevelopment Agency has
22 not used eminent domain to acquire any residential property and has invoked its eminent
23 domain authority only once in the last ten years (through the adoption of a resolution of
24 necessity, Agency Resolution No. 73-98, approved April 14, 1998) to acquire commercial
25 property for the development of the new Federal Office Building at Seventh and Mission

1 Streets. The federal and state constitutions and various state statutes limit the use of eminent
2 domain by a redevelopment agency to acquire private property. These limitations apply to all
3 redevelopment plans, including the Designated Redevelopment Plans, and include, but are not
4 limited to, the following requirements:

5 1. That a redevelopment agency may exercise the power of eminent domain only if and
6 to the extent it is authorized to do so under the provisions of the specific redevelopment plan,
7 after the local legislative body has made the findings of physical and economic blight for the
8 project area as required under the CRL to support adoption of the redevelopment plan;

9 2. That the redevelopment agency makes every effort to acquire property by negotiation
10 instead of by condemnation or eminent domain;

11 3. That the redevelopment agency pay just compensation, which is generally based on
12 fair market value, and, under a new state law (Chapter 594, SB 1210-Torlakson), that the
13 agency pay the reasonable costs, not to exceed \$5,000, of an independent appraisal ordered
14 by the property owner and performed by a licensed appraiser at the time the agency offers to
15 purchase the property;

16 4. That the redevelopment agency adopt at a public hearing, by a vote of not less than
17 two-thirds of all of the members of its governing body, a resolution of necessity finding that
18 acquisition of such property through eminent domain is in the public interest, is necessary to
19 carry out a particular redevelopment plan, and is planned in such a way as to do the greatest
20 public good and the least private harm;

21 5. That a final decision regarding the redevelopment agency's use of eminent domain
22 authority to acquire particular property lies with a superior court should the property owner file a
23 lawsuit challenging the exercise of that authority, subject to appellate review and to the right of
24 the property owner to have a jury determine the property's fair market value, which is
25 determined based on the highest and best use of the property;

1 6. That the redevelopment agency provide relocation assistance and administer benefits
2 to residential and business owners or tenants displaced through the agency's exercise of
3 eminent domain, as required by federal, state and local law, including relocation assistance and
4 benefits under the provisions of the federal Uniform Relocation Assistance and Real Property
5 Acquisition Policies Act of 1970 (as amended);

6 7. That a redevelopment agency may exercise the power of eminent domain for up to
7 12 years after adoption of a particular redevelopment plan unless the legislative body, here the
8 Board of Supervisors, amends the plan to extend this authority and, under a new State law
9 (Chapter 591, SB 53-Kehoe), the redevelopment agency finds that significant blight still remains
10 in the project area and the blight cannot be eliminated without the use of eminent domain; and

11 8. As required under a new state law (Chapter 602, SB 1650-Kehoe), that the
12 redevelopment agency must use property acquired by eminent domain for the public use stated
13 in the resolution of necessity, that before the agency may use the property for a different use it
14 must adopt a new resolution of necessity at a public hearing, by a vote of not less than two-
15 thirds of all of the members of its governing body, and that if the agency does not use the
16 property for the public use stated in the resolution of necessity within 10 years of the adoption
17 of the resolution it must offer to sell the property back to the property owner unless the
18 governing body of the agency adopts a new resolution authorizing a different public use or
19 reauthorizing the existing stated public use.

20 Section 4. Program for Eminent Domain in Designated Redevelopment Plans. In
21 approving the Designated Redevelopment Plans, the Board of Supervisors authorized the
22 Redevelopment Agency to use eminent domain under the following limited circumstances:

23 (a) The Hunters Point Shipyard Project Area. The Hunters Point Shipyard
24 Redevelopment Plan, adopted by the Board of Supervisors and approved on July 18, 1997 by
25

1 Ordinance No. 285-97, authorizes the use of eminent domain until July 18, 2009 and contains
2 the following limitations:

3 Any real property located within the [Hunters Point Shipyard] Project Area may be
4 acquired by the [Redevelopment] Agency by purchase, gift, devise, exchange,
5 condemnation, lease, or other lawful method, including utilization of the power of eminent
6 domain, if one or more of the following conditions are met:

- 7 1. The building is substandard to a degree requiring clearance as demonstrated
8 by a structural inspection of the property.
- 9 2. The property must be acquired in order to eliminate an environmental
10 deficiency, including but not limited to: incompatible land uses, small and
11 irregular lot subdivision, or overcrowding of the land.
- 12 3. The property must be acquired in order to eliminate impediments to land
13 development through assembly of land into parcels of reasonable size and
14 shape, served by an improved street system and public utilities.
- 15 4. The building must be removed in order to effect a change in land use as
16 provided in this [Hunters Point Shipyard] Plan.
- 17 5. Without the consent of an owner, the [Redevelopment] Agency shall not
18 acquire any real property on which an existing building is to be continued on its
19 present site and in its present form and use unless such building requires
20 structural alteration, improvement, modernization or rehabilitation, or the site
21 or lot on which the building is situated requires modification in size, shape or
22 use or it is necessary to impose upon such property any of the standards,
23 restrictions and controls of the [Hunters Point Shipyard] Plan and the owner
24 fails or refuses to agree to participate in the [Hunters Point Shipyard]
25 Redevelopment Plan.

1 6. The [Redevelopment] Agency shall not acquire real property to be retained by
2 an owner pursuant to an Owner Participation Agreement unless said owner
3 fails to enter into or perform under that agreement.

4 7. The Property is offered to the [Redevelopment] Agency by the United States
5 Navy or any other Federal Agency.

6 (Source: Section III C of the Hunters Point Shipyard Redevelopment Plan.)

7 (b) The Mission Bay North Project Area. The Redevelopment Plan for the Mission Bay
8 North Project Area, adopted by the Board of Supervisors and approved on October 30, 1998
9 by Ordinance No. 327-98, authorizes the use of eminent domain until October 30, 2010 and
10 contains the limitation that "the [Redevelopment] Agency is not authorized to employ the power
11 of eminent domain to acquire property on which any persons legally reside." (Section 404.1 of
12 The Redevelopment Plan for the Mission Bay North Project Area.) In addition, the
13 Redevelopment Agency has entered into the Mission Bay North Owner Participation
14 Agreement ("OPA") dated November 16, 1998, with Catellus Development Corporation (the
15 "Owner") that further limits eminent domain authority. The "exercise by the Agency of its
16 eminent domain power with regard to any portion of the [Mission Bay] North Plan Area owned
17 by the Owner in a manner which precludes performance by the Owner of any of its material
18 obligations (or would otherwise give rise to a default by Owner) hereunder shall constitute a
19 default by the [Redevelopment] Agency of its obligations under this [Mission Bay] North OPA."
20 (Section 19.7 of the Mission Bay North OPA.)

21 (c) The Mission Bay South Project Area. The Redevelopment Plan for the Mission Bay
22 South Project Area, adopted by the Board of Supervisors and approved on November 2, 1998
23 by Ordinance No. 335-98, authorizes the use of eminent domain until November 2, 2010 and
24 contains the limitation that "the [Redevelopment] Agency is not authorized to employ the power
25 of eminent domain to acquire property on which any persons legally reside." (Section 404.1 of

1 the Redevelopment Plan for the Mission Bay South Project Area.) In addition, the
2 Redevelopment Agency has entered into the Mission Bay South Owner Participation
3 Agreement ("OPA") dated November 16, 1998, with the Catellus Development Corporation
4 (the "Owner") that further limits eminent domain authority. The "exercise by the Agency of its
5 eminent domain power with regard to any portion of the [Mission Bay] South Plan Area owned
6 by the Owner in a manner which precludes performance by the Owner of any of its material
7 obligations (or would otherwise give rise to a default by Owner) hereunder shall constitute a
8 default by the [Redevelopment] Agency of its obligations under this [Mission Bay] South OPA."
9 (Section 19.7 of the Mission Bay South OPA.)

10 (d) ~~The South of Market Project Area. The Redevelopment Plan for the South of~~
11 ~~Market Redevelopment Project Area, adopted by the Board of Supervisors and approved on~~
12 ~~December 16, 2005 by Ordinance No. 276-05, authorizes the use of eminent domain until~~
13 ~~December 16, 2017 and contains the following limitations:~~

14 The Agency shall not use eminent domain to acquire a property unless one or
15 more of the following conditions exist and (i) the property owner refuses to enter into an
16 Owner Participation Agreement that provides for the redevelopment of the property in
17 accordance with this [South of Market] Plan and implementing policies, or (ii) an Owner
18 Participant fails to comply substantially with the responsibilities of an Owner Participation
19 Agreement:

- 20 1. The property contains a Single-Room Occupancy hotel that has been cited
21 repeatedly for violations of applicable laws, codes and ordinances.
- 22 2. The property contains an unreinforced masonry bearing wall building that has
23 not been seismically retrofitted by the date required by City ordinance (an
24 unreinforced masonry bearing wall building is a building or structure having at
25 least one unreinforced masonry bearing wall).

1 3. The property contains uses that have led to recurrent problems of public safety
2 and welfare.

3 4. The property is located on Sixth Street and is vacant or significantly
4 underutilized or used as a surface parking lot.

5 5. The property is located on Sixth Street and exhibits one or more conditions of
6 blight as defined by the Community Redevelopment Law.

7 (Source: Sections 4.3.1 and 4.3.2 of the Redevelopment Plan for the South of Market
8 Redevelopment Project Area.)

9 In addition, the Redevelopment Plan for the South of Market Project Area requires the
10 Redevelopment Agency to confer with, and seek the advice of, the South of Market Project
11 Area Committee prior to using eminent domain to acquire property.

12 ~~(e) The Transbay Redevelopment Project Area. The Redevelopment Plan for the~~
13 ~~Transbay Redevelopment Project, adopted by the Board of Supervisors and approved on~~
14 ~~June 23, 2005 by Ordinance No. 124-05, authorizes the use of eminent domain to acquire real~~
15 ~~property until June 23, 2017.~~

16 (f) The Bayview Hunters Point Redevelopment Project Area. The Redevelopment Plan
17 for the Bayview Hunters Point Redevelopment Project, adopted by the Board of Supervisors
18 and approved on June 1, 2006 by Ordinance No. 113-06, authorizes the use of eminent
19 domain until June 1, 2018 and contains the following limitations:

20 Under no circumstances shall the [Redevelopment] Agency acquire, through its use of
21 eminent domain, real property in Project Area A [the original Hunters Point Project Area]
22 because this power expired on December 1, 1998.

23 The Agency may exercise the power of eminent domain in [BVHP] Project Area B [the
24 area added by the adoption of the Bayview Hunters Point Redevelopment Plan on June 1,
25 2006] only if the [Redevelopment] Agency complies with state law including, but not limited to,

1 the requirement that the Agency make every effort to acquire property by negotiation, instead
2 of by condemnation or eminent domain; that the Agency pay just compensation based upon
3 fair market value; and that the [Redevelopment] Agency adopt at a public hearing by a vote of
4 not less than two-thirds of all members of the Agency Commission, a resolution of necessity
5 finding that acquisition of such property through eminent domain is in the public interest, and
6 necessary to carry out the [BVHP] Redevelopment Plan. In addition, the use of eminent
7 domain [is] subject to the following limitations and prohibitions:

- 8 • The [Redevelopment] Agency shall not use eminent domain to acquire property
9 without first receiving a recommendation from the [Bayview Hunters Point Project
10 Area Committee, known as the] PAC or appointed citizens advisory committee. As
11 stated in Section 1.1.5.1, the [Redevelopment] Agency commits to maintain a PAC
12 or an appointed citizens advisory committee for the duration of this [BVHP]
13 Redevelopment Plan.
- 14 • The [Redevelopment] Agency shall not use eminent domain to acquire publicly
15 owned property including, without limitation, property owned by the San Francisco
16 Housing Authority.
- 17 • Eminent domain proceedings, if used in Project Area B, must be commenced within
18 twelve (12) years from the Effective Date. This time limitation may be extended only
19 by amendment of this [BVHP] Redevelopment Plan, as adopted and approved by
20 the Board of Supervisors and the Agency Commission, following a community
21 process.
- 22 • The [Redevelopment] Agency shall not acquire, through the use of eminent domain,
23 [any] real property in a Residential (R) District, as defined by the Planning Code
24 ("R" zone), as of the Effective Date, in Project Area B.

- 1 • The [Redevelopment] Agency shall not acquire, through the use of eminent domain,
2 property that contains legally occupied dwelling units.
- 3 • The [Redevelopment] Agency shall not acquire, through the use of eminent domain,
4 property owned by Churches or other religious institutions, as defined in Planning
5 Code Section 209.3(j).
- 6 • The [Redevelopment] Agency shall not acquire real property in Project Area B to be
7 retained by an owner pursuant to an Owner Participation Agreement, unless the
8 owner fails to perform under that agreement and as a result the [Redevelopment]
9 Agency exercises its reverter rights, if any; or successfully prosecutes a
10 condemnation or eminent domain action.
- 11 • ~~The [Redevelopment] Agency shall use eminent domain on a parcel not zoned "R"~~
12 ~~(Residential) only as a last resort after the property owner has failed, after~~
13 ~~reasonable notice, to correct one or more of the following conditions:~~
- 14 ○ The property contains an unreinforced masonry building (UMB) that has not been
15 seismically retrofitted by the date required by City ordinance.
- 16 ○ The property contains a building in which it is unsafe or unhealthy for persons to
17 live or work as determined by the Department of Building Inspection, after failure
18 to comply with an order of abatement of such conditions pursuant to Section 102
19 of the Building Code.
- 20 ○ The property contains uses that pose a threat to the public's safety and welfare
21 as formally determined through major citations by the appropriate City agencies
22 or departments, including, but not limited to the San Francisco Police
23 Department, San Francisco Fire Department, San Francisco City Attorney's
24 Office, San Francisco District Attorney's Office, San Francisco Department of
25

1 Public Health, San Francisco Department of Building Inspection, and
2 San Francisco Planning Department.

- 3 ○ A parcel that is vacant, used solely as a surface parking lot (not accessory to
4 another use), or contains a vacant or substantially vacant (approximately 75% or
5 more of the rentable area) building(s) and the owner has no active plans for a
6 new use or development.
- 7 ○ Under-utilization of a property of irregular form and shape, and of inadequate
8 size that substantially hinders its economically viable uses for development
9 consistent with this [BVHP] Redevelopment Plan.

10 (Source: Section 1.4.5 of the Redevelopment Plan for the Bayview Hunters Point
11 Redevelopment Project.)

12 (g) The Emporium Site Area. The eminent domain provisions of the Yerba Buena
13 Center ("YBC") Redevelopment Plan have expired for all portions of YBC except the
14 Emporium Site Area, added to YBC in 2000 pursuant to the YBC Redevelopment Plan
15 amendment adopted by the Board of Supervisors and approved on October 13, 2000 by
16 Ordinance No. 236-00 (the "Emporium Site Plan"). The Emporium Site Area Plan provides
17 that eminent domain is available for the limited purpose of acquiring property within the
18 Emporium Site Area until October 13, 2012. The physical improvements authorized under the
19 Emporium Site Area Plan are complete, and the use of eminent domain authority is no longer
20 applicable.

21 (h) The Federal Office Building Redevelopment Project Area. The Redevelopment
22 Plan for the Federal Office Building Redevelopment Project Area, adopted by the Board of
23 Supervisors and approved on October 17, 1997 pursuant to Ordinance No. 403-97 authorizes
24 the acquisition of real property by the use of eminent domain until October 17, 2009 to
25

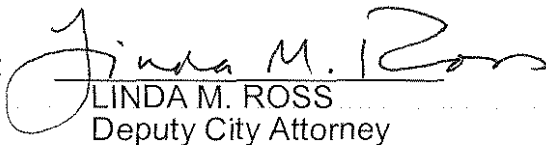
1 accomplish the purposes of the plan. The physical improvements authorized under the plan
2 are complete, and the use of eminent domain authority is no longer applicable.

3 Section 5. Effect of Ordinance. This ordinance merely restates existing law and does
4 not expand or limit the use of eminent domain authority in the Designated Redevelopment
5 Plans.

6 Section 6. California Environmental Quality Act Requirements. The adoption of this
7 ordinance does not constitute a project as defined in the California Environmental Quality Act
8 ("CEQA") and the State CEQA Guidelines, since this ordinance is a ministerial action adopted
9 solely to comply with Health and Safety Code Section 33342.7 and is declaratory of existing
10 law contained in the Designated Redevelopment Plans, each of which has been previously
11 adopted on the dates set forth in this ordinance, in compliance with applicable laws, including
12 CEQA.

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14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16
17 By:


LINDA M. ROSS
Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 070628

Date Passed:

Ordinance describing the limits in existing redevelopment plans on acquisition of real property by the Redevelopment Agency of the City and County of San Francisco through the use of eminent domain, in compliance with a new requirement of the California Community Redevelopment Law.

June 26, 2007 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

July 10, 2007 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 070628

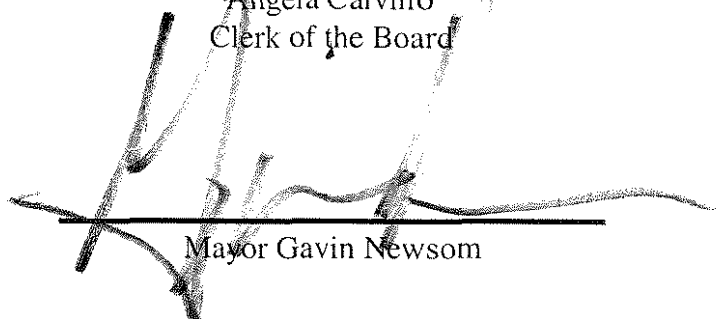
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on July 10, 2007 by
the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board

JUL 20 2007

Date Approved



Mayor Gavin Newsom