



STAFF REPORT

Date: 3/9/2016

To: Honorable Mayor and City Council

CC: Bryan Montgomery, City Manager; Derek Cole, City Attorney; Kim Carmody, Acting City Clerk

From: William R. Galstan, Special Counsel *William R. Galstan*

Subject: Designating officers authorized to send notice of hearing for resolutions of necessity.

SUMMARY AND BACKGROUND

When the City Council considers beginning eminent domain actions to acquire real property, it is required to conduct a hearing in each case and adopt a "resolution of necessity". A notice is required to be given to the property owner so that the owner may appear at the hearing and speak.

State law, at Code of Civil Procedure Sec. 1245.235 provides that the "governing body", meaning the City Council, gives the notice. If read literally, this could lead to unnecessary delays because two separate Council meetings would be required: one for the Council to instruct staff to give notice on its behalf, and the next to actually consider the matter.

Typically notices of hearings are given by the City Clerk. However if the City Clerk were to give notice, and not the Council, property owners' counsel could use this technicality to challenge adoption of the resolution of necessity and create further delay.

Fortunately, the above code section, at paragraph (d) thereof, authorizes the City Council to designate another procedure for the giving of notice. Thus the attached Resolution authorizes the City Clerk and her deputies, the City Manager, the City Attorney and his deputies, and the City Engineer and his deputies, to give the notice. While such notices will, for all practical purposes

almost always be given by the City Clerk, it was felt that a bit of "overkill" might be to the City's advantage. If Council wanted to limit this authority only to the City Clerk and her deputies, the resolution could be so amended.

FISCAL IMPACT

None.

RECOMMENDATION

Adopt the Resolution designating officers authorized to send notice of hearing for resolutions of necessity

ATTACHMENT

- 1) Resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY DESIGNATING OFFICERS AUTHORIZED TO GIVE NOTICE OF HEARING REGARDING RESOLUTIONS OF NECESSITY

WHEREAS Code of Civil Procedure Sec. 1245.235 requires that the "governing body" of a local entity give notice of intention to adopt resolutions of necessity when considering the exercise of the eminent domain power; and

WHEREAS strict compliance with this provision could result in unnecessary delays, consuming one agenda item for the City Council to give notice and an agenda item at a subsequent meeting to consider resolutions of necessity; and

WHEREAS Code of Civil Procedure Sec. 1245.235(d) authorizes the governing body to adopt other procedures for issuing notice of such hearings, as long as the other requirements of notice content and property ownership are met;

NOW, THEREFORE, BE IT RESOLVED that the following officers are hereby authorized to give notice of hearings to consider adoption of resolutions of necessity: City Manager, City Attorney and his/her assistants or Special Counsel, the City Clerk and his/her deputies, and the City Engineer and his/her assistants.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

ATTEST:

Libby Vreonis, City Clerk

Kevin Romick, Mayor