

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

DECEMBER 1, 2020

TITLE:

**PUBLIC HEARING – ADOPT A
RESOLUTION DETERMINING PUBLIC
INTEREST AND NECESSITY FOR THE
ACQUISITION OF REAL PROPERTY
LOCATED AT 215 EAST WARNER
AVENUE (PROPERTY OWNER: JPACIFIC
INTERNATIONAL)
(PROJECT NO. 146802)
(NON-GENERAL FUND)**

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

/s/ Kristine Ridge

CITY MANAGER

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Adopt a resolution authorizing the condemnation of the entire real property located at 215 East Warner Avenue (APN 403-142-15), owned by JPacific International, as Trustee of 215 Warner SA Land Trust dated July 7, 2014, declaring the public necessity and interest thereof.

DISCUSSION

Warner Avenue is classified as an East-West Major Arterial in the City's General Plan Circulation Element and the County of Orange Master Plan of Arterial Highways. Improving the one-mile segment of Warner Avenue from Main Street to Wright Street has been a long-term priority project that is being constructed in several phases. Improvements include widening the street from a four-lane roadway to a six-lane arterial to address safety issues and provide adequate vehicular capacity; and installing parkways, raised median landscaping, storm drains, protected bike lanes, sound walls, street lights, and traffic signals. The City is acquiring properties for the development of Phase 1 of the Warner Avenue Improvements project, bounded by Main Street and Oak Street. Construction is anticipated to begin in early 2021.

To accommodate these improvements, acquisition of the parcel at 215 East Warner Avenue is required (Exhibit 1). The Public Works Agency has made a diligent effort to negotiate with owner's JPacific International, as Trustee of 215 Warner SA Land Trust dated July 7, 2014 and their representatives for the past 24 months. A good faith offer was made on August 21, 2020, in the amount of \$615,000 (Exhibit 2). The Public Works Agency has made, and will continue to make every effort to reach a settlement with the property owner. However, to maintain the Warner Avenue Improvements project schedule and meet the funding requirement to commence construction in early 2021, staff is requesting adoption of a Resolution of Necessity (Exhibit 3) and initiation of condemnation proceedings while negotiations continue.

ENVIRONMENTAL IMPACT

On September 1, 2015, City Council approved the Warner Avenue Final Environmental Impact Statement (SCH No. 2012101004).

FISCAL IMPACT

Funds in the amount of \$615,000 are budgeted and available in the Warner Avenue Improvements Project (No. 14-6802) for property acquisition expenditures in FY 2020-21 as follows:

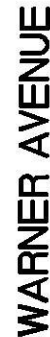
Fiscal Year	Accounting Unit–Account No.	Fund Description	Accounting Unit – Account No. Description	Amount
PROPERTY ACQUISITION				
FY 2020-21	03217663-66100	Measure M-Street Construction	Measure M2 Competitive Street, Land	\$461,250
FY 2020-21	05917668-66100	Select Street Construction (City of Tustin Contribution)	Warner Ave-Tustin CFD, Land	\$153,750
Total				\$615,000

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Nabil Saba, P.E., Executive Director – Public Works Agency

Exhibits: 1. Location Map
2. Offer Letter
3. Resolution of Necessity

(NTS)



The seal of Downtown Orange County, Santa Ana, is a circular emblem. The outer ring contains the text "DOWNTOWN ORANGE COUNTY" at the top and "SANTA ANA" at the bottom. The center of the seal features a stylized illustration of the Santa Ana Convention Center, a large modern building with a prominent central tower. To the left of the main building is a smaller, older-style building, and to the right is a tall, thin tower. The entire scene is set against a background of radiating lines, suggesting a sun or a stylized sky.

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Phil Bacerra
Nelida Mendoza
David Penaloza
Vicente Sarmiento
Jose Solorio



CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA

Public Works Agency – Design Engineering
20 Civic Center Plaza, M-36 • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

August 21, 2020

Via certified mail

JPacific International, Trustee of the
215 Warner SA Land Trust dated July 7, 2014
13043 Bach Way
Cerritos, CA 90703

**SUBJECT: OFFER TO ACQUIRE PROPERTY AT:
215 East Warner Avenue, Santa Ana, CA 92707
APN: 403-142-15**

Dear Property Owner:

The City of Santa Ana ("City") is proceeding with its plans to construct the Warner Avenue Improvement Project - Phase 1 between Main Street to Oak Street. The City obtained a preliminary title report that lists JPacific International, as Trustee of 215 Warner SA Land Trust dated July 7, 2014, as the vested owner, Attachment 1. No final determination has been made as to the ownership of the Property. This offer is contingent upon presentation of conclusive evidence of title. If more than one person has an interest in the Property that the City is seeking to acquire, all parties with such interest must accept this offer.

As you know, the City had your Property appraised to determine its fair market value. The appraisal was conducted in accordance with commonly accepted appraisal standards and included consideration of the highest and best use of the land. Based on the appraisal, the City offers a **total compensation of \$615,000.00**.

The basis for this offer is explained thoroughly in the attachments to this letter that are made a part of this offer by reference. This offer is conditional upon the City Council ratifying this offer by formal action taken at a regular public meeting authorizing the execution of a Purchase and Sale Agreement of adopting a Resolution of Necessity, or both.

If you are not satisfied with the City's offer, you are encouraged to present us any material you believe to be relevant to the value of the Property, which material will be carefully considered by the City. If, in the City's opinion, the additional information warrants a change in the offer, the City's offer will be adjusted accordingly. If a voluntary agreement cannot be reached, the City may consider formal condemnation proceedings against the Property through its power of

SANTA ANA CITY COUNCIL

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nmendoza@santa-ana.org

75G-4

eminent domain or abandon its intention to acquire the Property, giving proper notice to you in either event. The City has made no decision to exercise its power of eminent domain to acquire the Property and can only do so after it holds a hearing, at which all affected Property owners have had an opportunity to appear and be heard.

The Purchase Price is the full amount established by the appraisal as the fair market value of the property and the just compensation for such acquisition. A written statement and a summary of the basis for the amount established as the Purchase Price is set forth in the attached Statement of Just Compensation, identified as Attachment 3.

The California Relocation Assistance and Real Property Acquisition Guidelines provide that each Owner from whom the City purchases real property or an interest therein, or each tenant owning improvements on said Property, be provided with information relating to the acquisition procedures pursuant to the Government Code, Paragraph 7267.2(a) This information is provided in Attachment 4.

Please be advised that under Code of Civil Procedure Section 1263.025, the City of Santa Ana will reimburse an owner of property, up to the amount of \$5,000 for the owner to secure an independent appraisal of property subject to a potential acquisition. Although you have the right of obtain your own appraisal and are entitled to receive up to \$5,000 for your appraisal as described above, please note that the City of Santa Ana is not obligated to accept your appraiser's value of the Property Interest. The City of Santa Ana, however, will review your appraisal and if appropriate, confer with the City's independent appraiser regarding the merits of your appraisal.

Please let us know prior to September 24, 2020 if the City' offer is acceptable. A written agreement concerning the acquisition of the Property will be provided to you for your review and approval.

If for any reason you should see fit not to accept the City's offer, please be advised that this letter, the offer made herein, the enclosed summary statements and all matters stated herein are made under the provisions of California Evidence Code §1152 and 1154 and shall not be admissible in evidence in any eminent domain proceeding which may subsequently be instituted for acquisition of the Property, or in any other action.

If you need additional information, please call the City's acquisition consultant, Mona Montano, from Overland, Pacific & Cutler, LLC at (562) 304-2000.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Gabriel", written over a horizontal line.

Jason Gabriel, PE
Principal Civil Engineer

RESOLUTION NO. 2020-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA FINDING AND DETERMINING THAT THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY OF SANTA ANA AT 215 EAST WARNER AVENUE (APN 403-142-15) FOR THE WARNER AVENUE IMPROVEMENTS PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. On December 1, 2020, the City Council of the City of Santa Ana, after written notice duly provided to all those claiming ownership in the property described hereafter, as they appeared on the last equalized County assessment roll, held a hearing pursuant to California Code of Civil Procedure section 1245.235 for the purpose of allowing the owners thereof a reasonable opportunity to be heard on the following matters:

- A. Whether the public interest and necessity requires the project described above ("Project");
- B. Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;
- C. Whether the property proposed to be acquired is necessary for the Project;
- D. Whether the offer required by California Government Code section 7267.2 has been made;
- E. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and
- F. Whether the City has statutory authority to acquire the property by eminent domain.

Section 2. The City Council has, as a result of its consideration and the evidence presented at the hearings on this matter, and in accordance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, determined that the proposed project has been adequately evaluated in the previously prepared Final Environmental Impact Report (SCH No. 2012101004). On the basis of this review, the City Council finds that there is no evidence from which it can be fairly argued that the Project will have a significant adverse effect on the environment.

Section 3. Pursuant to Title XIV, California Code of Regulations, section 753.5(c)(1), the City Council has determined that, after considering the record as a whole, there is no evidence that the Project will have the potential for any significant adverse effect on fish and wildlife. The Project exists in an urban environment characterized by paved concrete, roadways, surrounding buildings and human activity. Therefore, the payment of Fish and Game Department filing fees is not required in conjunction with this Project.

Section 4. The City of Santa Ana hereby finds and determines each of the following:

- A. The public interest and necessity require the proposed Project.
- B. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- C. The Property located at 215 East Warner Avenue (APN 403-142-15), as described in Exhibit A, is necessary for the Project.
- D. The offer required by Section 7267.2 of the California Government Code was made.

Section 5. The City hereby finds, determines and declares that the public interest, convenience, and necessity require the acquisition by the City of the property described in Section 4 above, including any and all leaseholds and related improvements, for the purposes of Phase 1 of the City's Warner Avenue Improvements Project. The location of the Project is between Main Street and Oak Street for the widening of Warner Avenue. Included in the Project will be street pave-out, and the installation of concrete curbs, gutters, and sidewalks in a manner which will be most compatible to the greatest public good and the least private injury.

Section 6. The taking of the interest in the property described in Section 4 above is necessary for the public right of way and is authorized by Section 19 of Article I of the California Constitution; Section 200 of the Santa Ana Charter; Santa Ana Municipal Code section 41-781; California Code of Civil Procedure sections 1240.010, 1240.110; California Government Code sections 37350.5 and 40404; California Streets and Highways Code sections 5101, 5101.5, 5102; and other applicable law.

Section 7. The City hereby declares that it is the intention of the City of Santa Ana to acquire in its name, in accordance with the provisions of the laws of the State of California with reference to condemnation procedures, all interests in and to the property described in Section 4 above.

Section 8. If any of the property described in Section 4 above has been appropriated for some public use, the public use to which it is to be applied and taken under this proceeding is a more necessary and paramount public use.

Section 9. The property described in Section 4 above is located within the City of Santa Ana, County of Orange, State of California, and is more particularly described in Section 4 hereof.

Section 10. The City of Santa Ana is authorized to acquire by eminent domain as provided in the California Code of Civil Procedure.

Section 11. The City Attorney is hereby authorized and directed to prepare, institute and prosecute in the name of the City such proceedings, in the proper court having jurisdiction thereof, as may be necessary for the acquisition of the interests in the property described in Section 4 above. The City Attorney is also authorized and directed to obtain a necessary order of immediate possession and occupancy of such property, at the discretion of the City Attorney.

Section 12. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this _____ day of _____, 2020.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia A. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby the attached Resolution No. 2020-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on _____.

Date: _____

Clerk of the Council
City of Santa Ana

EXHIBIT A

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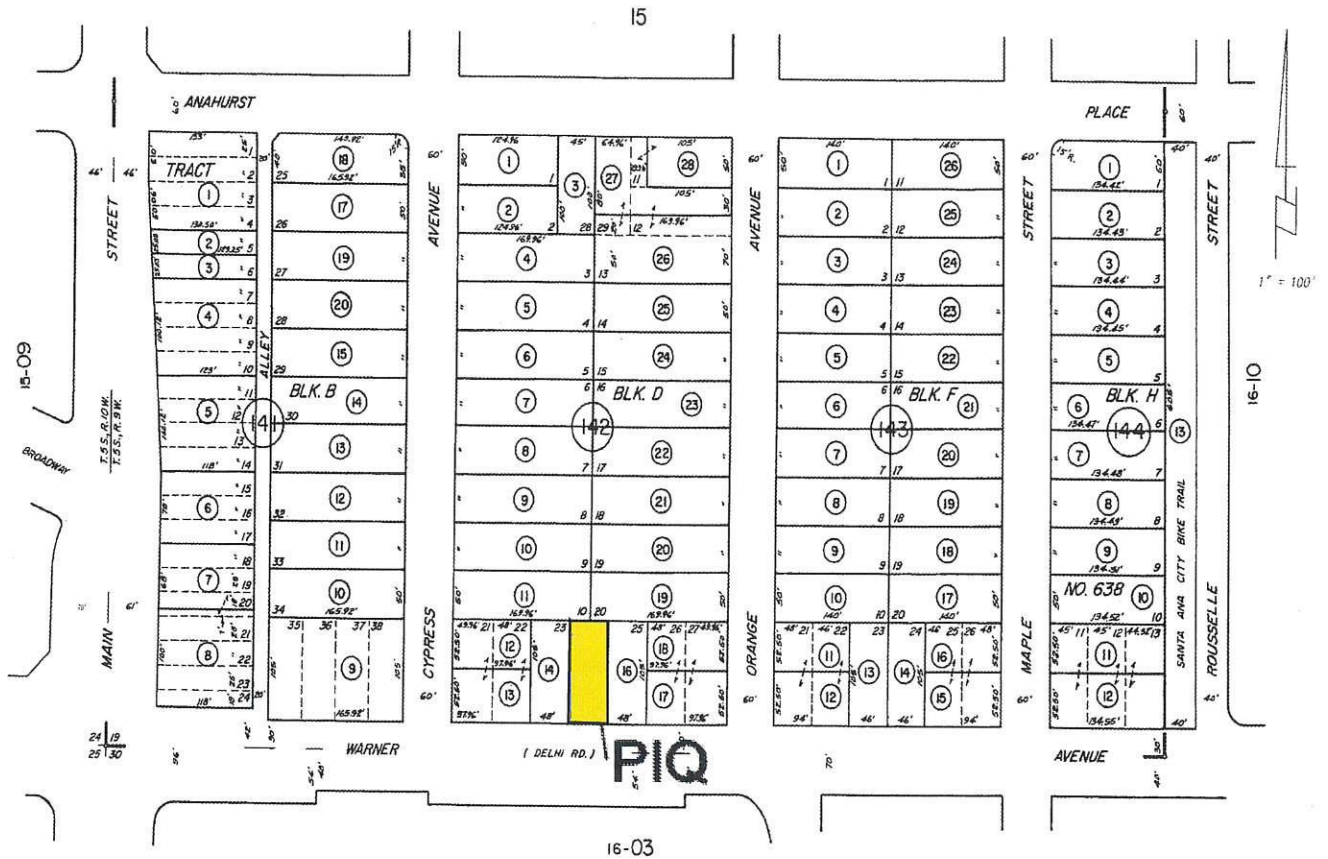
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS::

LOT 24, IN BLOCK D OF TRACT NO. 638, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 19, PAGE 17 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, LYING BELOW A DEPTH OF 500 FEET.

Assessor's Parcel Number: 403-142-15



MARCH 1976

TRACT NO. 638 M.M. 19-17

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES
 ASSESSOR'S MAP BOOK 403 PAGE 14 COUNTY OF ORANGE

This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.