



CITY OF KIRKLAND

City Attorney's Office
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Oskar Rey, Assistant City Attorney
Chris Dodd, Facilities Services Manager

Date: January 6, 2016

Subject: Authorization to Use Eminent Domain for Fire Station No. 24 Property Acquisitions

RECOMMENDATION:

It is recommended that the City Council adopt the attached Ordinance authorizing staff to proceed with acquisition of property by eminent domain for four parcels in connection with the Fire Station No. 24 Project.

BACKGROUND DISCUSSION:

The City annexed portions of the Juanita, Finn Hill and Kingsgate neighborhoods on June 1, 2011 ("Annexation"). Prior to Annexation, the City entered into an Interlocal Agreement ("Interlocal") with King County Fire Protection District No. 41 ("District"), which provided fire services in North Kirkland. The District was dissolved after Annexation, and the City agreed to continue and take over certain District projects intended to improve response times in North Kirkland.

One of those projects was construction of a new Fire Station No. 24 (at a new location) to replace the existing Fire Station 24. The Interlocal originally contemplated construction of a single fire station to replace Fire Station No. 24 and Fire Station No. 25. After Annexation, the City retained a consultant to prepare a Fire Strategic Plan. After extensive study and public input, the City Council determined that the most cost effective way to increase service and reduce response times in North Kirkland is to retain existing Fire Station No. 25 and construct a new Fire Station No. 24 near Juanita Elementary. The City Council also found that this approach was consistent with the purpose and intent of the Interlocal. See Kirkland Resolution No. 5156 (copy attached as Attachment A).

City staff has commenced negotiations with the four property owners for the proposed Fire Station No. 24 site. A map identifying the properties is attached hereto as Attachment B. The City has made considerable progress in negotiations with three of the four property owners. All of the owners are aware that City staff is seeking eminent domain authorization at this meeting.

It should be noted that the property owners may receive tax benefits from selling their property to the City under threat of eminent domain. Some of the owners have indicated that they intend to use the sale of their properties as part of a tax deferred exchange under Section 1033 of the Internal Revenue Code. One basis for eligibility under Section 1033 is when property is sold

under imminent threat of eminent domain. Whether these transactions would be eligible for Section 1033 is ultimately a matter between the property owners and their tax advisors. However, it appears that none of the property owners are philosophically opposed to the City's acquisition of their property through eminent domain.

RCW 8.12 authorizes and empowers Cities to condemn land and property for improvements such as those proposed for this project. Condemnation authority is not granted to public entities as a coercive measure. Rather, it allows for the acquisition of property for Projects deemed to be in the public's interest. The eminent domain statutes were written to prevent unreasonable demands from being placed on public entities and to afford property owners fair market value for their property.

Passing of the Ordinance by City Council at this time does not preclude agreements being reached with all property owners prior to the actual condemnation proceedings taking place, but it will enable the City to move forward in the event an impasse is reached with any of the property owners. City staff will use its best efforts to acquire these properties through negotiation and without commencing eminent domain proceedings.

Resolution R-5156

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO THE ACCOMPLISHMENT OF THE GOALS OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND KING COUNTY FIRE PROTECTION DISTRICT #41 TO INCREASE THE LEVEL OF SERVICE TO THE FORMER FIRE DISTRICT TERRITORY.

1 WHEREAS, the City of Kirkland (the "City") and King County Fire
2 Protection District #41 (the "District") entered into an Interlocal
3 Agreement dated as of May 24, 2011 (the "Interlocal Agreement"),
4 describing the intent of the City and the District to ensure that certain
5 funds being provided by the District to the City would be used to
6 enhance levels of fire service and emergency medical response to the
7 former District territory; and

8
9 WHEREAS, the District provided \$5.2 million to the City,
10 consisting of approximately \$1.2 million of cash reserves and \$4 million
11 of bond proceeds, with which to enhance levels of fire service and
12 emergency medical response to the former District territory, and in
13 particular to the Finn Hill neighborhood, by undertaking the Fire Station
14 Consolidation Project; and

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16 WHEREAS, at the time the Interlocal Agreement was entered
17 into, the Fire Station Consolidation Project contemplated the use of the
18 District's contribution to construct a new fire station potentially located
19 on public land, the consolidation of service previously provided by Fire
20 Stations 24 and 25, the resale of the properties vacated after the
21 consolidation of those stations, and the contribution of sale proceeds to
22 pay down debt service principal; and

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24 WHEREAS, the Interlocal Agreement describes two possible
25 publicly-owned sites that were under consideration at the time for the
26 construction of the new station to replace Fire Stations 24 and 25, and
27 assigns responsibility for the final site selection to the City after further
28 investigation; and

29
30 WHEREAS, on June 1, 2011 (the "Annexation Effective Date"),
31 the entire territory of the District was annexed into the City and the City
32 became the successor to the District, assuming all assets, liabilities and
33 responsibilities of the District in accordance with state law and the
34 Interlocal Agreement; and

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36 WHEREAS, since 2011, the City continued the siting process for
37 a consolidated Finn Hill fire station and, through that process,
38 determined that none of the previously-identified publicly owned sites

39 were ideally suited and/or available for the purposes of constructing a
40 consolidated fire station; and

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42 WHEREAS, the Interlocal Agreement also provided that the
43 District would provide funding for a Strategic Plan for the Kirkland Fire
44 Department, which the City completed in September 2012, the results
45 of which included a recommendation that the City undertake
46 development of a Standard of Coverage and Deployment Plan; and

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48 WHEREAS, the City temporarily suspended the siting process
49 while the City completed a Standard of Coverage and Deployment Plan
50 and adopted new standards for levels of service throughout the City,
51 including the former District territory; and

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53 WHEREAS, the efforts to adopt a new Standard of Coverage and
54 Deployment Plan identified a new "dual station" option, involving
55 renovating Station 25 and constructing and staffing a new Station 24,
56 operating the two together as a "dual station" model; and

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58 WHEREAS, the City subsequently restarted the station siting
59 process, including evaluation of both the consolidated "single station"
60 and "dual station" options; and

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62 WHEREAS, in connection with this evaluation, it has become
63 apparent that the cost of either a consolidated single station option or
64 a dual station option, located on any of the sites that had been
65 previously identified, is likely to be between \$7.5 million and \$11.9
66 million, which is significantly more than the \$5.2 million provided by the
67 District; and

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69 WHEREAS, in light of the new Coverage and Deployment Plan,
70 the City has determined that the dual station option is the most effective
71 way to provide improved response times to the residents formerly
72 served by Fire District #41, that the dual station option is the most cost-
73 effective alternative to increase the levels of service to the Finn Hill
74 neighborhood; and

75

76 WHEREAS, because the dual station option was not
77 contemplated at the time that the Interlocal Agreement was entered
78 into, the City determined that it would be appropriate to seek the input
79 of the former District Commissioners and of the residents of the Finn
80 Hill neighborhood, who are most affected by the selection of a new
81 option that was not previously contemplated; and

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83 WHEREAS, to this end, the City Council held a public hearing on
84 October 20, 2015, in order to ensure that the current residents of the
85 former District have an opportunity to provide input into the use of the

86 District funds that were provided to the City to increase the levels of
87 service to their neighborhood; and
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89 WHEREAS, the City also conducted outreach to the former
90 District Commissioners and publicly posted information about the public
91 hearing on its website, listservs and other means of public
92 communication; and
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94 WHEREAS, the Deputy City Manager has contacted each of the
95 former Commissioners (Rich Krogh, Jim Lloyd and Toby Nixon) to seek
96 their input on behalf of the current residents of the former District and
97 invited each to attend a public hearing on the topic; and
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99 WHEREAS, the Deputy City Manager received written responses
100 from two former Commissioners (Rich Krogh and Jim Lloyd), declining
101 to participate and voicing no objection to the proposal, and the third
102 former Commissioner (Toby Nixon) is now a member of the City Council
103 and will participate in the public hearing in that capacity; and
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105 NOW, THEREFORE, be it resolved by the City Council of the City
106 of Kirkland as follows:
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108 Section 1. In light of the facts and circumstances recited in
109 this resolution and after due consideration upon public hearing and an
110 opportunity for comment, the City Council finds that:
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112 1. The goals of the Interlocal Agreement cannot
113 reasonably and cost-effectively be accomplished by undertaking
114 the Fire Station Consolidation Project as described in the
115 Interlocal Agreement.
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117 2. To continue to attempt to consolidate the two stations
118 in a new location would frustrate the purpose of increasing
119 service levels in the near-term and within the budget provided
120 by the District, and such attempt would not be in the public
121 interest.
122

123 3. The most cost-effective option that will increase
124 service and response times the most quickly and effectively is
125 the dual station option, including the use of the District's funds
126 (1) to renovate existing Station 25, and (2) to acquire land to
127 construct a new station at some time in the future that will
128 replace Station 24.
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130 4. The use of the District's funds for these purposes is
131 the most reasonable and cost-effective way to accomplish the
132 goals of the Interlocal Agreement.

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5. Because ownership of the two properties is being retained by the City solely to accomplish the goals of the Interlocal Agreement, the provisions of the Interlocal Agreement (specifically Section 6(d), which purports to require the sale of both properties or to permit the City to retain only upon payment of the fair market value of the property) are not applicable. Those provisions are interpreted to apply only if the City retains either property or both for a City use other than increasing levels of fire service and emergency medical response within the former District.

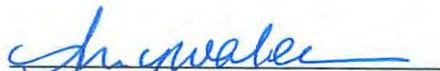
6. Consistent with the Interlocal Agreement, upon completion of construction of a new station to replace Station 24 and sale of the existing Station 24 property, the City will contribute the proceeds of any such sale toward the costs of constructing that new station or to other allowable costs under the Interlocal Agreement.

7. Upon the completion of renovations to Fire Station 25 and the purchase of property intended for the construction of a new fire station in the former District territory, the Fire Station Consolidation Project will be deemed to have been completed and the goals of and obligations under the Interlocal Agreement with respect to that project shall be deemed satisfied.

Section 2. In light of the foregoing, the City is authorized to proceed to spend the amounts provided by the District to the City for the Fire Station Consolidation Project by pursuing the most cost-effective alternative for increasing service within the Finn Hill neighborhood, including retaining Stations 24 and 25 notwithstanding the provisions in the Interlocal Agreement requiring the sale of the existing fire station sites.

Passed by majority vote of the Kirkland City Council in open meeting this 20th day of October, 2015.

Signed in authentication thereof this 20th day of October, 2015.


MAYOR

Attest:


City Clerk

ORDINANCE O-4512

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF INTERESTS IN LAND FOR THE PURPOSE OF CONSTRUCTION AND OPERATION OF FIRE STATION NO. 24 WITHIN THE CITY OF KIRKLAND, PROVIDING FOR THE COST OF PROPERTY ACQUISITION, AND AUTHORIZING THE INITIATION OF APPROPRIATE EMINENT DOMAIN PROCEEDINGS IN THE MANNER PROVIDED FOR BY LAW.

1 WHEREAS, the City annexed portions of the Juanita, Finn Hill
2 and Kingsgate neighborhoods on June 1, 2011 ("Annexation"); and

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4 WHEREAS, prior to Annexation, the City entered into an
5 Interlocal Agreement ("Interlocal") with King County Fire Protection
6 District No. 41 ("District") in which the City agreed to continue and take
7 over certain District projects intended to improve response times; and

8
9 WHEREAS, on October 20, 2015, the City Council adopted
10 Resolution No. 5156 in which it found that construction and operation
11 of a new Fire Station No. 24 to replace the existing Fire Station No. 24
12 was consistent with the purpose and the intent of the Interlocal; and

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14 WHEREAS, the City has identified a proposed site for Fire Station
15 No. 24 and is conducting negotiations with the owners of the four
16 properties that comprise the proposed site; and

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18 WHEREAS, the City has provided notice to affected property
19 owners of this final action authorizing condemnation pursuant to RCW
20 8.25.290.

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22 NOW, THEREFORE, the City Council of the City of Kirkland do
23 ordain as follows:

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25 Section 1. The lands and property rights within the City of
26 Kirkland, King County, Washington, described in Exhibit A attached to
27 this Ordinance and which descriptions are hereby incorporated by
28 reference, necessary for the public purpose of construction and
29 operation of a fire station, are hereby condemned, appropriated and
30 taken for such public purposes, subject to the making or paying of just
31 compensation to the owners thereof in the manner provided by law.

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33 Section 2. The expense of acquiring said property rights shall
34 be paid for from the bond proceeds from the debt issued by the District
35 prior to Annexation.

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37 Section 3. The City Attorney is authorized and directed to begin
38 and prosecute legal proceedings in the manner provided by the law to
39 purchase, condemn, take, appropriate, and otherwise acquire the lands

40 and other property rights and privileges necessary to carry out the
41 purposes of this Ordinance.

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43 Section 4. This ordinance shall be in force and effect five days
44 from and after its passage by the Kirkland City Council and publication
45 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
46 form attached to the original of this ordinance and by this reference
47 approved by the City Council.

48
49 Passed by majority vote of the Kirkland City Council in open
50 meeting this ____ day of _____, 2016.

51 Signed in authentication thereof this ____ day of
52 _____, 2016.
53

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT A

Tax Parcel No. 395570-0040

Lot 4, La Chaussee No. 3, according to the plat thereof recorded in Volume 69 of Plats, page 70, in King County, Washington.

Tax Parcel No. 395570-0050

Lot 5, La Chaussee No. 3 according to the plat thereof, recorded in Volume 69 of Plats, page 70, in King County, Washington.

Tax Parcel No. 395570-0060

Lot 6, La Chaussee No. 3 according to the plat thereof, recorded in Volume 69 of Plats, page 70, in King County, Washington.

Tax Parcel No. 395570-0070

Lot 7, La Chaussee No. 3 according to the plat thereof, recorded in Volume 69 of Plats, page 70, in King County, Washington.

PUBLICATION SUMMARY
OF ORDINANCE O-4512

AN ORDINANCE OF THE CITY OF KIRKLAND AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF INTERESTS IN LAND FOR THE PURPOSE OF CONSTRUCTION AND OPERATION OF FIRE STATION NO. 24 WITHIN THE CITY OF KIRKLAND, PROVIDING FOR THE COST OF PROPERTY ACQUISITION, AND AUTHORIZING THE INITIATION OF APPROPRIATE EMINENT DOMAIN PROCEEDINGS IN THE MANNER PROVIDED FOR BY LAW.

SECTION 1. Authorizes condemnation of property necessary for the public purpose of construction and operation of a fire station.

SECTION 2. Provides that the expense of acquiring said property rights shall be paid for from the bond proceeds from the debt issued by King County Fire Protection District No. 41 prior to Annexation.

SECTION 3. Authorizes the City Attorney to initiate condemnation proceedings to acquire the property necessary for the public purpose.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2016.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk