

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Action on Ordinance No. 967 – Authorizing the Use of Eminent Domain for Acquisition of Certain Real Property identified as King County Tax Parcel No. 727810-0905 for Public Park Land
DEPARTMENT:	City Attorney’s Office
PRESENTED BY:	Margaret King, City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

The City Council has expressed interest in acquiring an approximately 2.6-acre tideland property so as to expand the area of City public parks with shoreline access. This parcel, which is at the southern end of 27th Avenue NW and is identified as King County Tax Parcel No. 727810-0905, is adjacent to the 2nd Class Tidelands associated with Richmond Beach Saltwater Park. At its May 23, 2022 Council meeting, the City Council discussed both acquisition of this property and the use of eminent domain to acquire it via proposed Ordinance No. 967 (Attachment A). Tonight, the City Council is scheduled to take action on proposed Ordinance No. 967.

RESOURCE/FINANCIAL IMPACT:

The City’s General Fund has sufficient funds for property acquisition of \$110,000 in just compensation and mailing, publication, and appraisal costs related to proposed Ordinance No. 967 and use of eminent domain. Proposed Ordinance No. 967 does not negatively impact other parkland property acquisitions anticipated by the City.

Proposed Ordinance No. 967 also does not in and of itself affect the ultimate purchase price of this tideland parcel. If use of eminent domain is authorized under this Ordinance, negotiations will continue as normal. Council adopting proposed Ordinance No. 967 is the first step for moving forward with the use of eminent domain if negotiations come to an impasse. There are some associated costs for statutorily required notices and correspondence but those costs are de minimis.

A Statutory Evaluation Allowance is available to the property owner if an offer is made under the threat of eminent domain to help defray the owner’s expenses. Under RCW 8.25.020, when the City is acquiring property by eminent domain or under the threat of it, property owners are entitled to reimbursement of up to \$750 for costs they incurred evaluating the City’s offer.

RECOMMENDATION

Staff recommends that Council adopt proposed Ordinance No. 967 authorizing the use of eminent domain for certain real property to expand the City's park land providing shoreline access. Staff will continue to negotiate for a voluntary sale of the property and will return to Council if those negotiations fail prior to filing a petition of eminent domain in the King County Superior Court.

Approved By: City Manager ***DT*** City Attorney ***JA-T***

BACKGROUND

Eminent domain is a power granted to political subdivisions, such as the City of Shoreline, through RCW 8.12 to acquire private property for a public use, including for public parks. If the Council desires to acquire the tideland property, having an ordinance authorizing eminent domain may be necessary to complete that acquisition or to encourage a voluntary sale. Thus, adoption of an ordinance is a precautionary step in the event negotiations with any specific property owner reaches an impasse.

The property of interest is a 113,023 square foot (approximately 2.6 acres) parcel of 2nd Class Tidelands in the Richmond Beach neighborhood at the southern end of 27th Avenue NW, identified as King County Tax Parcel No. 727810-0905 (see map in Attachment A, Exhibit A). This parcel is adjacent to the 2nd Class Tidelands associated with the City's Richmond Beach Saltwater Park. Acquisition of this parcel would provide a continuous public connection to these tidelands and preserves this area in its natural state. The general vicinity of the tideland property is depicted in the image to the right.



The City retained the services of CBRE to prepare a just compensation appraisal for this tideland parcel. Given the unique nature of the marketability of such a parcel, performing the appraisal was complicated, resulting in an appraised value of \$110,000, just a few thousand dollars more than King County's appraised value of \$107,000. The City's land acquisition consultant, Consultant Land Staff, contacted the property owner and tendered the City's offer of just compensation on May 12, 2022. This contact, along with prior and subsequent contact with City staff, reveals that the property owner, Dr. Peter Vitaliano, is not a willing seller.

As required by statute, a certified letter was sent to the property owner of record on May 13, 2022, satisfying the statutory required for such letter to be sent at least 15 days prior to final action on proposed Ordinance No. 967. A notice of final action regarding adoption of proposed Ordinance No. 967 has been published in the Seattle Times once a week for two successive weeks prior to final action. Publication in the Seattle Times was on May 16, 2022, and on May 26, 2022.

DISCUSSION

As noted above, the City Council discussed proposed Ordinance No. 967 on May 23, 2022. The Staff Report for the May 23rd Council meeting, along with written public comment received on the matter, can be reviewed at the following weblink: cosweb.ci.shoreline.wa.us/uploads/attachments/cck/Council/Agendas/Agendas2022/052322.htm.

A video of the May 23 meeting can be accessed at the following weblink:
[City Council Regular Meeting - May 23rd, 2022 \(granicus.com\)](https://www.granicus.com/ViewPage.aspx?id=102520).

At the May 23rd Council meeting, the City Council received a large volume of public comment from proponents and opponents, both written and oral, on this proposed Ordinance. Comments from proponents not only pointed out that acquisition would expand safe access to and extend the Richmond Beach Saltwater Park's shoreline in public ownership, but would also recognize the public's use of the property for decades for recreational purposes, thereby maintaining the status quo use of the property. Comments also reflected the public's desire to increase ownership of this type of land.

Comments from opponents sought to delay the City Council's consideration of proposed Ordinance No. 967 until additional study on issues such as increased traffic and parking (both on 27th Avenue NW and Richmond Beach Road), access over private property, and impact on the 27th Avenue NW neighborhood along with acquiring lands in areas of the City without sufficient park or open spaces.

At the May 23rd meeting, staff explained that an application has been filed with BNSF Railway to secure a license for a pedestrian path that would provide access from 27th Avenue NW northward to Kayu-Kayu Ac Park and southward to Richmond Beach Saltwater Park. At the time of the writing this Staff Report, the City's application is still under review by BNSF.

Staff also explained that passage of the proposed Ordinance does not mean steps are still needing to be taken to ensure the City Council is fully informed of what it would be acquiring, such as a title report, surveys, and the need for access rights from private property owners other than BNSF.

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ATTACHMENTS

Attachment A: Proposed Ordinance No. 967
Attachment A, Exhibit A: Parcel Acquisition Map

ORDINANCE NO. 967

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY LOCATED IN THE RICHMOND BEACH NEIGHBORHOOD AT THE SOUTH END OF 27th AVENUE NW, TAX PARCEL 727810-0905, BY NEGOTIATED VOLUNTARY PURCHASE, UNDER THREAT OF CONDEMNATION, BY CONDEMNATION, OR BY SETTLING CONDEMNATION LITIGATION, FOR THE PURPOSE OF SECURING ADDITIONAL PUBLIC PARK LAND; FINDING PUBLIC USE AND NECESSITY; AUTHORIZING JUST COMPENSATION FROM THE GENERAL FUND; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 8.12 RCW, the City has the authority to condemn property for public parks; and

WHEREAS, the City's Parks, Recreation, and Open Space (PROS) Plan, approved by the City Council on July 31, 2017, recognized that Richmond Beach Saltwater Park provides the City's only public water access to Puget Sound and, in the response to a survey on how the City could improve or expand parks, 34% responded that the City should acquire shoreline and beach access; and

WHEREAS, since 1971, the sale of state-owned tidelands has been prohibited but that was not before approximately 60 percent of Washington's tideland becoming privately owned; and

WHEREAS, the City Council finds that acquisition of the property generally depicted and described in Exhibit A, attached hereto (the "Acquired Property"), is necessary for the public use of park lands to meet the recreation and natural open spaces needs of the community and ensure continued access to these vital natural areas; and

WHEREAS, acquisition of the Acquired Property will provide additional public access to the Puget Sound shoreline and increase the amount of shoreline within the City's public park system; and

WHEREAS, just compensation for the Acquired Property can be funded through the City's General Capital Fund; and

WHEREAS, there have been, and will continue to be, sustained efforts to negotiate with the owner of the Acquired Property, and eminent domain action will be taken judiciously after reasonable efforts to reach a negotiated settlement with the owner; and

WHEREAS, in the event that negotiated acquisition of the Acquired Property is not successful, it is essential that the City be prepared to initiate condemnation proceedings; and

WHEREAS, the owner of the Acquired Property were given notice according to state statute that this condemnation ordinance was included for discussion by the City Council at its regular meeting of May 23, 2022, and were afforded an opportunity to comment at that meeting; and

WHEREAS, the City has provided notice of the adoption of this Ordinance in the manner set forth in RCW 8.12.005 and 8.25.290; and

WHEREAS, the City of Shoreline has the power to acquire lands through eminent domain for the purpose of providing public parks; and

WHEREAS, acquisition of the Acquired Property is categorically exempt from SEPA review under WAC 197-11-800(5)(a);

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Condemnation Authorized. The City Manager is hereby authorized to take necessary steps to acquire all necessary property interests in the land located within the City of Shoreline, County of King, State of Washington, depicted and legally described in Exhibit A attached hereto and by this reference incorporated herein (the “Acquired Property”) which is necessary for the public use of the operation of a public park, and is hereby condemned, appropriated and taken for such public use, subject to the making or paying of just compensation to the owners thereof in the manner provided by law.

The City Manager or designee is hereby authorized and directed to execute all documents for the acquisition of all interests in the Acquired Property and bring proceedings in the manner provided for by law to condemn, take, damage, and appropriate the Acquired Property described in this Ordinance pursuant to the powers granted to the City of Shoreline including RCW 35A.64.200 and Chapters 8.12 and 8.25 RCW. This authorization includes the right to condemn all reversionary interests, easements, and options in said Acquired Property.

The City Attorney is authorized to begin and prosecute legal proceedings in the manner provided by the law to purchase, condemn, take, appropriate, and otherwise acquire the land and all other interests and property rights and privileges necessary to carry out the purposes of this Ordinance. The City Attorney is also authorized to make minor amendments to any property description or map of property generally depicted on the attached Exhibit A as may become necessary to correct scrivener’s errors or to conform the legal description to the precise boundaries of the Acquired Property.

Section 2. Finding of Public Use and Necessity. The Shoreline City Council finds that the acquisition of the Acquired Property is for a public use and purpose, to-wit: to provide additional park land for the citizens of Shoreline. The City Council further finds the property generally depicted in Exhibit A is necessary for the proposed public use and for the benefit of the

public. The Whereas clauses set forth above are hereby incorporated into and made part of the Council’s findings.

Section 3. Compensation. Compensation to be paid to the owners of the Acquired Property identified in Section 1, above, and costs and expenses of litigation authorized by this Ordinance, shall be paid from the City’s General Capital Fund.

Section 4. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON JUNE 6, 2022.

Mayor Keith Scully

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie Ainsworth-Taylor
Assistant City Attorney on behalf of
Margaret J. King, City Attorney

Publication Date: _____, 2022
Effective Date: _____, 2022

ORDINANCE No. 967
Exhibit A

Tax Parcel No. 727810-0905

