


## A U S T I N C I T Y C O U N C I L

**AGENDA**

Thursday, June 22, 2006

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**Law****RECOMMENDATION FOR COUNCIL ACTION**

**Subject:** Approve a resolution to clarify, confirm, and ratify Resolution No. 010809-11, adopted August 9, 2001, that authorized the City Manager or his designee to acquire by eminent domain the fee simple interest in Lots 1-8, Inclusive, Block 38, of the Original City of Austin and that said authorization was intended to include the 20 foot wide strip of land separating Lots 1-4 and Lots 5-8 as shown on the plat of the Original City of Austin (the "Alley") and as further described in the attached Exhibit "A." Furthermore, if there is a final nonappealable judgment of a Texas court that the Alley was not included in the property description of Block 38 in Resolution No. 010809-11, then the City Manager or his designee is authorized to offer to purchase the Alley, or, if the parties are unable to agree on an appropriate purchase price, to file suit in eminent domain to effect the acquisition of the Alley in the amount of \$397,000. The Alley contains approximately 5,520 square feet and if it is not already subject to a condemnation proceeding giving the City of Austin a right to possession, it is owned by Harry M. Whittington, Mercedes B. Whittington, Mercedes Gregg f/k/a Mercedes Whittington, Individually and as Trustee of the Margaret Lynn Puckett 1989 Trust, the Sara Whittington May 1989 Trust, the Caroline Elizabeth Puckett 1989 Trust, the Michael Erskine May 1989 Trust, the Camille Meriwether May 1989 Trust, and the William Tyndale Puckett, Jr. 1989 Trust, Sally Whittington May, Individually as Trustee of the Margaret Lynn Puckett 1989 Trust, the Sara Whittington May 1989 Trust, the Caroline Elizabeth Puckett 1989 Trust, the Michael Erskine May 1989 Trust, the Camille Meriwether May 1989 Trust, and the William Tyndale Puckett, Jr. 1989 Trust, and Margaret Whittington Puckett, Individually and as Trustee of the Margaret Lynn Puckett 1989 Trust, the Sara Whittington May 1989 Trust, the Caroline Elizabeth Puckett 1989 Trust, the Michael Erskine May 1989 Trust, the Camille Meriwether May 1989 Trust, and the William Tyndale Puckett, Jr. 1989 Trust. The Alley is needed for the public use of a City parking garage, chilling plant, and other municipal facilities.

**Amount and Source of Funding:** Funding in the amount of \$198,500 is available in the Fiscal Year 2005-2006 Operating Budget of the Austin Convention Center and \$198,500 is available in the Fiscal Year 2005-2006 Amended Operating Budget of Austin Energy.

**Additional Backup Material**

(click to open)

☐ Resolution

**For More Information:** Chester Beaver, Assistant City Attorney, 974-2317

Resolution No. 010809-11, adopted August 9, 2001, authorized the City Manager to acquire by eminent domain the fee simple interest in Block 38 of the Original City of Austin including the alley separating Lots 1-4 from Lots 5-9 of Block 38 of the Original City of Austin. Block 38 is bordered on the west by Red River Street, on the north by West Fifth Street, on the east by Sabine Street, and on the south by West Fourth Street, in the City of Austin, Travis County, Texas. The property is needed for the construction of a City parking garage, chilling plant and other municipal facilities. The current resolution clarifies, confirms, and ratifies Resolution No.

010809-11, and if there is a final nonappealable judgment of a Texas court that the alley was not included in the description of Block 38 in Resolution No 010809-11, then the City Manager is authorized to acquire the alley by eminent domain.

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, the City Council of the City of Austin on August 9, 2001, approved resolution No. 010809-11, resolving that the City Manager or his designee attempted to negotiate with the property owners to purchase the fee simple of the interest in Lots 1-8, inclusive, Block 38 of the Original City of Austin, in the City of Austin, Travis County, Texas ("Block 38") for a public use.

**WHEREAS**, Resolution No. 010809-11, approved by the City Council of the City of Austin on August 9, 2001, also resolved that, since the City was unable to negotiate to purchase the fee simple interests, the City Attorney was authorized to file suit in eminent domain to acquire the fee simple of the interest in Block 38 and take other appropriate action to acquire the property.

**WHEREAS**, the City of Austin filed, under Cause No. 2403, its Original Petition for Condemnation on October 29, 2001, in the Probate Court No. 1 of Travis County, Texas, against the owners of Block 38 ("Cause No. 2403").

**WHEREAS**, the City of Austin, on or about January 24, 2002, following the filing of the written award of the Special Commissioners, deposited with Probate Court No. 1 the sum of Seven Million Six Hundred Fifty Thousand and no/100 Dollars (\$7,650,000.00), and thereafter took possession of all of Block 38 and constructed thereon a parking garage and other municipal facilities, including, with the City-owned utility, Austin Energy, a chilling plant;

**WHEREAS**, on July 30, 2003, after Cause No. 2403 was transferred to County Court at Law No. 1, Travis County, Texas, the Court signed a final judgment vesting in the City of Austin fee simple title to Block 38 and awarding Condemnees the sum of Seven Million Seven Hundred

Fifty Thousand (\$7,750,000.000) for their fee interests in the property condemned, which sum was deposited with the Court.

**WHEREAS**, the July 30, 2003, final judgment in Cause No. 2403 recited that "[t]his judgment does not address or determine any issue as to whether the description of the property condemned as Lots 1-8, inclusive, Block 38 of the Original City of Austin, includes a twenty-foot strip of land separating Lots 1-4 and Lots 5-8 as shown on the plat of the Original City of Austin."

**WHEREAS**, the Defendants and Condemnees in Cause No. 2403 subsequently appealed the final judgment of the County Court at Law No. 1 to the Third Court of Appeals at Austin, Texas under Cause No. 03-03-00496, and the Third Court of Appeals reversed the judgment and remanded Cause No. 2403 to the County Court at Law No. 1, where the case is now pending.

**WHEREAS**, the Defendants and Condemnees in Cause No. 2403 subsequently filed as Plaintiffs a petition for declaratory relief under Cause No. GN302752, styled *Harry M. Whittington, et al v. City of Austin*, in the 250<sup>th</sup> Judicial District Court of Travis County, Texas, seeking, *inter alia*, a declaratory judgment that the Plaintiffs are the owners in fee simple of the twenty-foot strip of land running across the center of Block 38 and separating Lots 1-4 and Lots 5-8 of Block 38, as depicted on the plat on file with the General Land Office.

**WHEREAS**, on or about March 3, 2005, the 250<sup>th</sup> Judicial District Court of Travis County, Texas, signed an Amended Final Judgment declaring, *inter alia*, that Plaintiffs are the owners in fee simple of the 20-foot strip of land separating Lots 1-4 and 5-8 of Block 38, according to the map or plat as filed with the General Land Office of the State of Texas, that the City of Austin did not condemn the entirety of Block 38 in Cause No 2403, and that the legal description of Block 38 in the Final Judgment in Cause No 2403 did not include the 20-foot strip

of land separating Lots 1-4 and 5-8 of Block 38 according to the map or plat as filed with the General Land Office of the State of Texas (such 20-foot strip of land referred to hereinafter in this Resolution as the "Property")

**WHEREAS**, the City of Austin has appealed the Amended Final Judgment of the 250<sup>th</sup> Judicial District Court of Travis County, Texas, to the Third Court of Appeals at Austin, Texas under Cause No. 03-05-00232, where the case is now pending.

**WHEREAS**, the Council desires to confirm, ratify and find that public necessity requires that the City own unencumbered fee simple title in the entirety of Block 38, including, but not limited to, the Property for the public use of a City parking garage, a chilling plant, and other municipal facilities;

**NOW, THEREFORE**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**SECTION 1.** Public necessity requires that the City have unencumbered fee simple title to the Property located in Block 38 more fully described in Exhibit A to this Resolution for the public purpose of a City parking garage, a chilling plant, and other municipal facilities. If there is a final nonappealable judgment of a Texas court that the legal description of Block 38 in the Petition and Final Judgment in Cause No. 2403 did not include the Property, or that there are private property interests encumbering the fee simple title to the Property that were not included in Cause No. 2403, public necessity requires that the City acquire unencumbered fee simple title to the Property located in Block 38 more fully described in Exhibit A to this Resolution, either through purchase or by the process of eminent domain, for the public purpose of a City parking garage, a chilling plant, and other municipal facilities.

**SECTION 2. The public necessity to acquire Block 38 in its entirety, including, but not limited to, the Property, for the public purpose of a City parking garage, a chilling plant, and other municipal facilities is hereby confirmed and ratified as of the effective date of Resolution No. 010809-11, and all acts done or initiated by employees, attorneys or representatives of the City to acquire and condemn Block 38 in its entirety, including the Property, are hereby authorized, ratified, approved, confirmed and validated and declared to be valid in all respects and purposes as of the respective dates thereof for the public necessity and for the public use as a City parking garage, a chilling plant, and other municipal facilities.**

**SECTION 3. If there is a final nonappealable judgment of a Texas court that to the Petition and Final Judgment in Cause No. 2403 did not include the Property, the City Manager or his designee is directed to negotiate with the property owners to purchase their property interests in the Property. If the City is unable to negotiate to acquire unencumbered fee simple title by reason of the City's inability to agree with the holders of such private property interests in the Property as to the value of such interests in the Property, or further negotiation with the owners of the Property becomes futile, the City Attorney is hereby directed and authorized to institute and prosecute to conclusion all necessary proceedings to condemn the private property interests in the Property in order to acquire unencumbered fee simple title to the Property and to take any other action necessary or incidental to such acquisition or eminent domain proceedings to secure unencumbered fee simple title to the Property.**

**SECTION 4. Severability:** If any provision, section, subsection, sentence, clause or phrase of this Resolution, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Resolution shall not be affected thereby, it being the intent of the City Council in adopting this Resolution that no portion hereof, or provisions or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Resolution are declared to be severable for that purpose.

**Adopted June 8, 2006**

**Attest:** \_\_\_\_\_  
**Shirley Gentry**  
**City Clerk**