

 <p style="text-align: center;">CITY COUNCIL POLICY</p>	CP 3-1
	Category: Property
	Department: City Attorney
TITLE: Real Property Acquisition and Eminent Domain	Approved: August 28, 2004

A. Purpose

1. To provide for consistent procedures for the acquisition of real property, right-of-way and easements and ensure that city resources are used in the most efficient manner and that upon completion of the transaction, the City's goals for acquisition of the property are met and the City has valid title to the property or property rights acquired.
2. This policy will identify the process that the City will use in making the decision to acquire property and complete the transactions for property identified as necessary for a public use. The Property Manager shall be responsible for the acquisitions of all real property rights for the City with the assistance of the Department requesting the acquisition and the City Attorney's Office.
3. To provide for the proper use of the power of eminent domain (forced acquisition of property by the City) in a manner to serve the public health and safety, while respecting private property rights guaranteed by the Arizona and United States Constitutions.

B. Authority to Acquire Property

1. The power to acquire interests in real property is granted to the City Council pursuant to Article I, Sec (1) (3) of the Peoria City Charter.
2. Acquisition includes the City obtaining any of the following interests in real property, fee simple, life estates, easements, temporary construction easements, leases, rights of entry and licenses.
3. Property rights include all interests in real property acquired by the City for municipal projects or through the development review process. In the case of dedications made through the development review process, not all steps identified will be necessary as determined by City Engineer.

Development dedications must specifically refer to the parcel and dedicate in the name of the City of Peoria, Arizona.

4. It is the policy of the City that property acquisitions should be done in a manner that protects the interest of Peoria's citizens and provides for efficient use of governmental resources.
5. It is the policy of the City, unless the City Attorney determines that the legal interest of the City will not be negatively impacted, that the City will take title to all real property other than rights of way by Special Warranty Deed with Title Insurance for the City's interest.
6. It is the policy of the City, unless the City Attorney determines that the legal interest of the City will not be negatively impacted that the City will take fee simple title to property and will not consent to any covenants and restrictions running with the land, other than those that the Seller of the property was subject to at the time of their acquisition of the property.
7. The City will not enter into development agreements, consent to zoning stipulations or any other form of agreement that limits, restricts or requires the exercise of the power of the City Council to determine the existence of a public purpose for which the power of eminent domain may be exercised.

C. Pre-Acquisition Process

1. The starting place for a acquisition of real property for a City of Peoria project is the inclusion of the project in the City's Capital Improvement Plan (CIP). Alternatively the project and proposed designation of real property needed for the project must be identified in one of the following plans:
 - a. City Street Classification Map
 - b. Parks and Open Space Master Plan and Trail's Plan
 - c. Utilities Department Master Plans
 - d. Public Safety Department Master Plans
 - e. City Specific Plans
2. Unless determined otherwise by the City Manager, preliminary identification of interests in real property to be acquired by the City should be made by the operating department and submitted to the Engineering Department and Property Manager for review.

- a. Property Manager is notified of upcoming fiscal year real property acquisitions.
 - b. Project Manager will meet with Property Manager to discuss what is required i.e., easement, right of way, land and the timing involved, as well as budget and appropriation authority
3. If property is to be acquired on behalf of a third party, the City will first determine that the acquisition meets the requirements of this policy. All acquisitions on behalf of third parties require a written agreement between the private party and the City prior to any contact with private property owners. All contracts for consultants engaged in the acquisition project shall be hired and managed by the City regardless of who will be responsible for payment of consulting services.
- a. The City Engineer may require the private party to pay to the City 115% of the costs estimated for the acquisition prior to commencing the process.

D. Property Acquisition Process

1. Preliminary Planning:
 - a. Full acquisition of Property
 - 1) Obtain project site plan; identify land needs and any off-site interests in property, including right of way or easements required.
 - 2) Identify requirements for appraisal, legal descriptions, title work, ALTA, environmental clearances and appropriation and budget authority.
 - b. Easements and other lesser interests in property.
 - 1) 30% plans will identify easements and lesser interests in property to be acquired. Property Manager will develop requirements for appraisals (legal description, title, account number, etc.).
 - 2) 30% plans for will identify costs of property interests to be acquired.

- c. The Property Manager will hire, direct and control all consultants that are needed to assist City staff in the acquisition. Consultants include, but are not limited to appraisers, engineers, title companies, environmental consultants and surveyors.
2. Third Party Funding of Property Acquisitions.
 - a. Before the City agrees to enter into an agreement with a third party to acquire any land, right of way or easements, the requirements defining the City public purpose **must** be identified and approved per above.
 - b. In the event a third party is funding the acquisition of real property by the City, there shall be a written agreement between the City and the third party governing the requirements of such funding and must be acceptable to the Chief Financial Officer, City Attorney and the City Engineer. Depending on the scope of the project and time involved the City may include compensation for staff time to acquire the needed property.
3. Negotiation Process.
 - a. Property Manager orders Appraisals, the City Engineering Department and City Attorney's Office have established a list of qualified firms that will be used.
 - b. Property Manager orders title report. The City Engineering Department and City Attorney's Office have established a list of qualified firms that will be used.
 - c. Property Owners are contacted by Property Manager and/or Project Manager to discuss upcoming project and need for acquisition of land.
 - d. Property Manager and Project Manager review appraisals to ensure land acquisition costs are within budget and appropriation authority.
 - e. Negotiations are commenced with owner of real property.
 - 1) Offers to purchase will be made in writing by the City. The City Attorney's Office and Property Manager/City Manager will direct the offer and negotiation process.

- 2) The offer to purchase will include a copy of the appraisal upon which the offer is based.
4. Acceptance and Closing the purchase of Real Property.
 - a. Pursuant to Section 2-76 of the Peoria City Code (1992) all deeds, contracts and conveyances, including those pertaining to real property, are to be drafted or approved by the City Attorney. It is the policy of the City that preparation of and approval of documents pertaining to the acquisition of the real property shall be in conformance with these provisions of the code.
 - b. If the offer is accepted, request the execution of the standard City of Peoria purchase agreement as approved by the City Attorney's Office. Escrow should be opened with an approved Title Insurance Company and such other addendums executed as requested by the Title Insurance Company.
 - c. In accordance with Article I, Section 3 of the Peoria City Charter, the City Council must approve the acquisition of Property. The Property Manager or City Attorney's Office shall prepare the submission to Council seeking authorization for the purchase and execution of documents. If the authority to exercise eminent domain is requested, the submission should specifically identify the request.
 - 1) For right of way, easements, temporary construction easements and dedications for projects that have been previously approved by the City Council as part of a capital improvements plan or a subdivision, the initial approval by the City Council shall be sufficient to meet the requirements of this policy.
 - d. A phase 1 environmental assessment and an ALTA survey will be ordered at this time if the property is acquired for use as a building site, park or recreation area. Soil assessments and feasibility studies, as necessary will be ordered.
 - e. Provide to Title Company requested conveyance documents, settlement statements will be sent to the Property Manager to request funds for the closing.
 - f. Once Escrow has closed, original documents will be forwarded to the City Clerk. Copies shall be provided to property and project

manager who will be responsible to incorporate the information into the City Property Database. Property Manager will provide Engineering Technicians with information to update GIS and other maps for parks, utilities, etc.

E. Eminent Domain

1. Authority

The power of eminent domain is granted to the City pursuant to Article II, Section 17 of the Arizona Constitution. This power is subject to the following limitations:

- a. Eminent Domain may only be used by the City to acquire property for a public purpose. The ultimate determination of the public purpose is a judicial question, not a legislative one. Public purpose has been defined by the Arizona Courts as the need for the City to acquire property for the good of the public and that such need warrants that the City as a whole incurs the cost for acquisition of the property.
- b. Eminent Domain authority must be exercised by the City in a manner consistent with applicable statutes enacted by the legislature.

2. Principles

- a. To provide for the proper use of the power of eminent domain (forced acquisition of property by the City) in a manner to serve the public health and safety, while respecting private property rights guaranteed by the Arizona and United States Constitutions.
- b. This policy is to identify a process that the City will use in making the decision to exercise the power of eminent domain. While each property acquisition stands on its own merits, the use of a consistent process to analyze the need for such acquisition and the use of the power of eminent domain will ensure that the public interest will be better identified and private property rights respected in the acquisition process.
- c. The City will not delegate its responsibility to acquire interests in property and if necessary exercise eminent domain for a public purpose to third party property owners.

- d. Projects that may require the City to exercise the power of eminent domain against parties other than the applicant shall clearly identify the parcels that may need to be acquired and the public purpose for the City to acquire such a parcel as part of any land use application.
3. Pre-litigation Process.
 - a. The Eminent Domain process is commenced by a determination of City that a project meets the public purpose requirements for acquisition and negotiations by the Property Manager have not been successful.
 - 1) If the public purpose of the eminent domain is Public Safety, Transportation, Flood Control, or Utility and/or the affected property is not an owner-occupied residence, then the remainder of this Section 5 shall be followed as written.
 - 2) If the public purpose of the eminent domain is some purpose other than Public Safety, Transportation, Flood Control, or Utility and the affected property is an Owner-Occupied Residence, then the City shall consider the potential impacts of Ch. 239, Laws 2004 (HB2539) as part of the determination as to whether to proceed with the eminent domain process. An eminent domain that falls under this category will be referred to as a "HB2539 Property" throughout the remainder of this Section 5.
 - b. The Community Development Department of the City of Peoria as the Planning Agency, shall review each project for which eminent domain may be exercised in accordance with A.R.S. 9-461.07.c for conformity with the City's General Plan, unless the City otherwise provides by Ordinance.
 - c. Specific state laws govern the exercise of eminent domain in areas designated as slum and blighted or previously designated as redevelopment areas. The City will comply with those statutes.
 - d. Final pre-litigation communications with the property owner shall proceed as follows:
 - 1) Not less than ten (10) days prior to requesting the exercise of the power of eminent domain by the City Council, either separately or part of an authorization to acquire, the City will

make an Final pre-litigation offer to acquire the property based on a determination of market value. The determination may be based on an appraisal of the subject or adjacent property or the Assessor's determination of full cash value with adjustments. If the City has the appraisal completed, a copy shall be provided to the property owner. The owners and other parties with interest in the real property ("Owners") shall be given a specific date to respond and notice that if agreement can not be reached the City will consider the exercise of the power of eminent domain to acquire the property. The City's offer letter will designate a single individual in the Engineering Department or City Attorney's Office to serve as a contact person for the owners concerning the offer. The offer letter shall address the City's need to acquire the property and the deadline for any counter offers from the owners to the City.

2) If the eminent domain is for a HB2539 Property, the City will make an offer to the owner-occupant to acquire the property based on a determination of market value. The determination may be based on an appraisal of the subject or adjacent property or the Assessor's determination of full cash value with adjustments. If the City has any appraisals of the property that it has obtained, the City shall provide them to the owner-occupant. If the owner-occupant disagrees with the City's offer, the owner-occupant may request to view the City's approved appraiser list and choose an appraiser from that list to conduct another appraisal of the property. The City shall pay for such appraisal. The owner-occupant shall have 60 days from the date of the City's original offer to respond to the offer. At that time if the City and owner-occupant are not able to agree on the terms of an acquisition of the property, the City will provide to the owner-occupant a Final pre-litigation offer consistent with the process provided in Subsection (C)(4)(a) above. If the City acquires a HB2539 property by eminent domain or threat of eminent domain, the City shall provide the owner-occupant with relocation benefits as determined by law.

e. Council communications requesting the acquisition of real property and the exercise of the power of eminent domain shall be submitted through the Office of the City Attorney in accordance with adopted policy. Prior to the meeting in which the communication will be discussed, the owner of the property as determined on the

assessor's records or pursuant to City information, shall be notified in writing of the proposed agenda item concerning the property.

4. Third Party Development Projects.
 - a. Third party projects that may require the City to exercise the power of eminent domain should identify the parcels that may need to be acquired and the public purpose for the City to acquire such a parcel as part of any land use application, in no event later than the Site or subdivision planning process. The parcels descriptions must be identified and prepared.
 - b. There shall be a written agreement between the City and the third party governing the requirements of the use of eminent domain and must be acceptable to the Chief Financial Officer, City Attorney and the City Engineer. Depending on the scope of the project and time involved the City may include compensation for all direct and indirect costs arising out of the use of eminent domain. All costs, attorneys fees incurred by the City or awarded against the City shall be the responsibility of the third party.
 - c. If a third party is to reimburse the City for the cost of acquisition of the real property, the City Engineer shall establish the initial cost for the acquisition and bill the third party for the cost. The third party shall deposit the amount determined by the City Engineer in full upon filing of an action in condemnation or execution of a purchase agreement by the City.
5. Pre-filing process
 - a. After the initial determination of the existence of a public purpose that requires acquisition of real property, the City shall determine whether a need exists to seek immediate possession of the property pursuant to State law if an eminent domain action is filed. The Chief Financial Officer or his designee, the Property Manager and Attorney's Office shall assist the project manager in establishing a budget for the project, including but not limited to any costs for immediate possession of the property. The Property Manager shall confirm both items, prior to proceeding with the acquisition.
 - b. The City Attorney pursuant to A.R.S. § 12-1116 shall prepare at least twenty days before filing an action for condemnation of property or any interest in property and shall deliver to the property

owner of record and the sole lessee of record, if applicable, according to the records of the county recorder in the county in which the property is located:

- 1) A written offer to purchase the property or interest in the property and to pay just compensation for the property or interest in the property and for any compensable damages to any remaining property. The offer must constitute the plaintiff's estimate of just compensation.
 - 2) One or more appraisals that support the amount of the proposed compensation.
- c. The City must pay just compensation to the property owner as defined by the Arizona Supreme Court. The City also may be required to pay attorney's fees and/or expert witness fees and expenses pursuant to law.

F. Acquisition of State Land Parcels

1. When a project included in the City Council–approved Capital Improvement Program (CIP) requires the acquisition of state trust land, the City Manager, or designee, is expressly authorized to take all actions necessary to acquire any interest in real property identified in the CIP from the Arizona State Land Department (ASLD).
2. This authorization includes all authority necessary to comply with all ASLD requirements before, upon, and after a successful bid, including without limitation, authority to:
 - a. satisfy all requirements of the Arizona State Land Department (ASLD) to qualify the City as a Qualifying Bidder, including designating a City employee as the authorized representative and authorized officer of the City for such purpose;
 - b. bid at public auction;
 - c. conduct due diligence on the subject property;
 - d. execute a participation contract with ASLD;
 - e. agree to and implement zoning or land use designations as may be required by ASLD;
 - f. prepare and submit a cashier's check payable from the City to the "Arizona State Land Department" in the amount specified by ASLD;
 - g. sign and submit any affidavit required by ASLD directing immediate payment of all costs and fees required of a successful bidder;
 - h. execute all agreements, instruments, and documentation required of a successful bidder by ASLD;

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- i. dispose of any rights-of-way on the property as required by ASLD;
 - j. timely pay any down payment, fees, and costs required of a successful bidder by ASLD;
 - k. remit the balance of the purchase price in accordance with terms approved by ASLD; and
 - l. comply with all other terms, conditions, requirements, or requests of ASLD and execute any additional agreements the City Manager or designee deems necessary to effectuate the acquisition of state trust land for purposes consistent with the CIP or this policy.
3. All final forms of related agreements shall be subject to approval as to form by the Peoria City Attorney.

Adopted: 8/24/04, CC #318-4C [Prior Numbering: CP 04-01]