

## **Property Acquisition for Public Improvement Projects**

### **Table of Contents**

- I. Introduction**
- II. Eminent Domain (Condemnation)**
- III. Statement of Property Owner’s Rights**
- IV. Appraisal Process**
- V. Acquisition Process**
  - Just Compensation**
  - Negotiated Agreement**
  - Donation of Real Property**
  - Timely Payment**
  - Conveyance of Title**
  - Transfer Costs**
  - Mortgage Balances, Liens**
  - Real Estate Taxes**
  - Retention of Buildings and Improvements**
  - Rental Agreements**
  - Right to Renegotiate**
  - Notice to Move**
- VI. Relocation Assistance Program**
  - Relocation Payments**
  - Expenses Covered**
  - Fixed Moving Payment Option**
  - Relocation Appeals**
  - Additional Relocation Information**
  - Fair Housing**
- VII. Additional Benefits to Person Transferring Property for a Public Improvement Project**
  - Uneconomic Remnants**
  - Income Tax**
  - Veterans Administration Loans**

## **INTRODUCTION**

This brochure has been prepared to acquaint you with the basic procedures the City of Des Moines follows in acquiring property interests for public improvement projects. These basic procedures are applied to all types of City projects including Airport, Economic Development, Park & Recreation, Urban Renewal and Engineering projects. It is not intended to be a legal document that comprehensively explains every right or obligation you have under the law nor is it a complete listing of every procedure the City is obligated to follow as required under certain State and Federally assisted projects.

## **II. EMINENT DOMAIN (CONDEMNATION)**

Eminent domain is the legal term used to describe the City's inherent right or power to use private property for public purposes. The use of this power is a delicate balance between the rights of the public as a whole and those of the private citizen. Federal and state laws and rules protect the interests of each citizen, as well as the interests of the City in serving the general public. If the owner and the City do not reach an agreement on the purchase of property, the issue will go to a condemnation hearing. A court-appointed panel of six compensation commissioners view the property and hear both sides' opinions of its value. The commissioners then determine the amount to be paid by the City to the owner. This award is final unless either side appeals this decision to district court within 30 days. The City has the right to possession of the property when it deposits the awarded amount with the county sheriff. However, if the property owner's primary residence (house) is condemned and an appeal is made to district court, the City does not have the right to possession for 180 days from the condemnation hearing date or the date the amount to be paid the owner is finally determined and paid, whichever occurs first.

## **III. STATEMENT OF PROPERTY OWNER'S RIGHTS**

Just as the law grants certain entities the right to acquire private property, you as the owner of the property have certain rights. You have the right to:

1. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)
2. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18; Iowa Code section 6B.54 as amended by 1999 Iowa Acts, House File 476, section 20)
3. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than ten days before being contacted by the acquiring agency's acquisition agent. (Iowa Code section 6B.45 as amended by 1999 Iowa Acts, House File 476, section 18)

4. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code section 6B.54)
5. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (1999 Iowa Acts, House File 476, section 3)
6. A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring agency. (Iowa Code section 6B.4; Iowa Code section 6B.7 as amended by 1999 Iowa Acts, House File 476, section 8; Iowa Code section 6B.18)
7. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code section 6B.25; Iowa Code section 6B.26; Iowa Code section 6B.54(11))
8. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code section 6B.33 as amended by 1999 Iowa Acts, House File 476, section 15; Iowa Code section 6B.54(10))
9. Reimbursement of certain litigation expenses: (a) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (b) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code section 6B.33)
10. To the greatest extent practicable, be provided at least 90 days' written notice to vacate occupied property prior to construction or development of a public improvement. (Iowa Code section 6B.54(4))
11. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Iowa Code section 316.9; Iowa Code section 6B.42 as amended by 1999 Iowa Acts, House File 476, section 17)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

#### **IV. APPRAISAL PROCESS**

The amount of compensation the City offers to property owners is usually based on a report prepared by an experienced, state certified real property appraiser. The appraiser may be an individual from the City's Real Estate Division or may be an independent appraiser hired by the City. The appraiser contacts the property owners, asks for permission to inspect the property, and invites the owner to

accompany the appraiser as he or she inspects the property. If the property owner accepts the invitation, the appraiser conducts an interview with the property owners, since the owner is often most knowledgeable about the property. The interview gives owners the opportunity to inform appraisers about a property's use and operation or point out any adverse affects the project would have on their property. In a written report, an appraiser includes his or her estimate of the amount of compensation due the property owner when right-of-way is acquired. This estimate includes payment for market value of any land and improvements to be purchased by the City. When the City acquires only a portion of an owner's property, the value of the remaining property may be reduced because of construction of the project. The appraiser's estimate of compensation will include any reduction in the value of the remaining property. Written reports are submitted to the City's Real Estate Division Office for analysis by a qualified review appraiser before right-of-way acquisition begins. The purpose of this review is to ensure all elements affecting the value of the real estate have been properly considered. The review appraiser may correct any irregularities before approval of the appraisal. Each approved appraisal establishes an amount of compensation to be offered to the owner. In some instances, a property owner may waive the right for an appraisal.

In the case of uncomplicated, lower valued acquisitions, the need for an appraisal is waived and a compensation estimate is used to estimate the value of the property interests to be acquired.

## **V. ACQUISITION PROCESS**

The City's Real Estate Division will work with the property owner to reach an agreement for the acquisition of the required property interests for the project.

### **Just Compensation**

The Iowa Constitution requires the payment of just compensation when private property is acquired for public use. As interpreted by the courts, the normal measure of just compensation is fair market value. Fair market value means the cash price which would be arrived at between a voluntary seller that is willing, but not compelled, to sell and a voluntary purchaser that is willing, but not compelled, to buy, both of whom are acting freely, intelligently, and at arm's length, bargaining in the open market.

The property owner receives a copy of the appraisal from the City's Real Estate Division and has a period of 10 days to review it prior to being contacted by a real estate coordinator. After the 10 day waiting period, the real estate coordinator contacts the property owner to answer any questions concerning the project's purpose and design and presents an Offer to Purchase representing just compensation. The Offer to Purchase will not be less than the amount of the approved appraisal.

## **Negotiated Agreement**

In most cases, an agreement on the purchase price is reached through negotiation. Although the City is not allowed to offer an amount less than fair market value for a property, there may be particular circumstances or conditions that warrant the City offering more if the property owner can provide evidence why a larger amount is justified.

All agreements with the City of Des Moines shall be in writing and there shall be no agreement to perform or not perform any act except as specifically provided for in the written agreement.

## **Donation of Real Property**

Owners of real property needed for a public improvement project are entitled to receive just compensation based on an approved appraisal. Even so, owners may waive the right to compensation and donate the required property to the City. If the Owner agrees to donate the required property to the City, an appraisal may not be completed.

## **Timely Payment**

After the agreement has been approved by the City the real estate coordinator arranges to pay the property owner as soon as possible in accord with the terms of the approved agreement.

## **Conveyance of Title**

The City prepares the documents to convey title of property or property rights as provided by the terms of the approved agreement. The City provides any land survey plat and description that may be necessary to convey title. The owner can speed the payment process by quickly returning the executed documents.

## **Transfer Costs**

The City pays fair and reasonable expenses incurred in transferring property to the City. These expenses include recording fees, mortgage release payments (except principal and interest), transfer taxes, abstract continuation costs and similar expenses necessary and incidental to the transfer. Penalty costs for pre-payment of any pre-existing recorded mortgage entered into in good faith are considered costs incidental to transfer of land to the City. The City pays for or reimburses for all such costs.

## **Mortgage Balances, Liens**

The City makes payments in check form. The City may include the holders of mortgages, liens, encumbrances and taxing bodies as payees on checks. In the case of a mortgage that has not been paid off, arrangements can be made to have

the City pay off the mortgage from the proceeds of the sale, if this is desired by the owner or required by the mortgage holder.

### **Real Estate Taxes**

Real estate taxes are the property owner's responsibility until the actual date the owner relinquishes possession to the City of Des Moines.

### **Rental Agreements**

The City may allow the former owner of a property it acquires to rent the property for a short period. The amount of rent charged will not exceed the fair short-term rental value of the property. Rental Agreements must be in writing and will be negotiated as part of the acquisition process.

### **Right to Renegotiate**

Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.

### **Notice to Move**

If it is necessary for people to move from the property the City acquires, they are given reasonable time to move. They are not required to move sooner than 90 days after either the City makes the first offer to acquire the property or 90 days from the date comparable replacement housing is available, whichever is later. The City must give written notice specifying the date the property must be vacated at least 30 days before the required date the move must be completed. The 30-day written notice is not issued until the property owner has received payment from the City or the City has deposited the money as prescribed by law.

## **VI. RELOCATION ASSISTANCE PROGRAM**

The City's Real Estate Division provides a Relocation Assistance Program to assist persons who are required to move because of a public improvement project. Immediately following the initiation of negotiations, and if you are required to move because of the project, a relocation agent will meet with you to explain the relocation program and present you with a written offer of relocation benefits. This amount is in addition to the amount offered for the purchase of the required property interests.

## **Relocation Payments**

Relocation assistance payments are made to landowners, tenants, businesses, farm operators and non-profit organizations for actual and reasonable moving expenses.

If residents must move from their primary residence because of a public improvement project, a relocation agent will assist the residents in finding replacement housing. Once relocated, the residents may submit a claim for a relocation assistance payment. After the claim is approved, the City will promptly process the claim. To ensure that residents do not jeopardize their rights and benefits under the program, they should contact the City's relocation agent before they make any moving decisions.

## **Expenses Covered**

Owner occupants of homes and residential tenants also are eligible to be reimbursed for certain incidental closing and transfer costs incurred when purchasing replacement housing. Displaced businesses, farm operators or non-profit organizations also may be eligible for reimbursement of actual and direct losses of tangible personal property incurred in moving and for actual and reasonable expenses incurred in searching for a replacement location.

## **Fixed Moving Payment Option**

Under certain circumstances, a displaced business or farm operator may choose to receive a fixed payment, based on past earnings, instead of actual moving expenses. Likewise, under certain circumstances, a non-profit organization may choose to receive a fixed payment, based on past revenues, instead of actual moving expenses.

Residential occupants may also choose a fixed payment option that is based on the number of finished rooms.

## **Relocation Appeals**

Persons who are dissatisfied with a determination concerning eligibility for relocation assistance benefits or the amount of relocation assistance payment offered by the City may have their applications reviewed. Additional information is provided to you by the relocation agent that explains the appeal procedures.

## **Additional Relocation Information**

A more detailed relocation brochure will be provided to you if you are required to move because of the project. A relocation agent will be assigned to assist you personally with your moving needs.

## **Fair Housing**

All replacement housing shall be open to all persons regardless of race, color, religion, sex or national origin.

## **ADDITIONAL BENEFITS TO PERSONS TRANSFERRING PROPERTY FOR A PUBLIC IMPROVEMENT PROJECT**

### **Uneconomic Remnants**

If the City only needs to acquire part of a property for a public improvement project, the owner may request that the City acquire the part that is needed by the City and any remaining "uneconomic remnants." Uneconomic remnants are remaining parts of land that are of little or no use or value to the owner after the land needed for the project is acquired by the City. If the owner sells an uneconomic remnant to the City, he or she also will receive just compensation for the uneconomic remnant. If an owner sells to the City only that part of the property that is needed for the project, the City pays for the part that is needed and for any damages caused to the remaining property.

### **Income Tax**

The sale of land and improvements to the City is considered by the Internal Revenue Service to be an "involuntary conversion." A property owner who sells property to the City is not required to pay income tax or capital gains tax if the seller invests the money received from the sale in similar property within a specified period. For details about taxes, property owners should consult their nearest Internal Revenue Service office, a tax adviser or an attorney. Relocation assistance benefit payments are not considered income for either state or federal income tax purposes. The seller may be requested to complete an IRS 1099S form at the time of negotiations. This will help expedite the closing process.

### **Veterans Administration Loans**

The Veterans Administration recognizes that a sale of property for a public improvement project is not of one's own choosing; consequently, G.I. privileges can be restored and made available for coverage on the purchase of another property.

If you have questions about the proposed project or the information provided in this brochure, please call or write:

City of Des Moines  
Engineering Department  
Real Estate Division  
400 Robert D. Ray Drive  
Des Moines, IA 50309-1891  
(515) 283-4561