

EMINENT DOMAIN GUIDELINES

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I. DEFINITIONS:

1.1 Condemnation - The process of taking private property for public use through the power of “eminent domain”.

1.2 Eminent Domain - The power to take private property for public use or purpose by the state, municipalities, or other entity created by state law. In the United States, the power of eminent domain is founded in both the federal (Fifth Amendment) and state constitutions. The United States Constitution limits the power of eminent domain to taking for a public purpose and prohibits the exercise of this power without “just compensation” to the owners of the property which is taken.

1.3 Fair Market Value - The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value is meant to be the price in cash, or its equivalent, that the property would have brought at the time of taking.

1.4 Just Compensation - Compensation which is fair to both the owner and the public when property is taken for public use through condemnation (eminent domain).

II. INTENT TO USE EMINENT DOMAIN

2.1 The most unique power provided to redevelopment agencies is the ability to acquire property through eminent domain to eliminate blight and improve areas in the community. The rationale is that eminent domain is necessary because, without this power, unwilling property owners can defeat efforts to revitalize blighted neighborhoods and other redevelopment activities. While this tool is extremely important to redevelopment agencies, what is even more critical is how an agency decides to use it. For this reason, it is important for the Redevelopment Agency establish guidelines for its use and to establish a predictable process to better enable and guide the Agency Staff in conducting business activities.

2.2 It is the intent of the Agency to consider the use of eminent domain only when the following circumstances occur: 1) all possible measures to acquire the subject property without the use of eminent domain have been exhausted, and 2) it becomes necessary to achieve the major goals and objectives of the Agency as specified in the Clark County Redevelopment Plan & Report and as may be amended from time to time.

III. CONSIDERATIONS FOR USE OF EMINENT DOMAIN

3.1 Use of condemnation to acquire property to meet a public need is not used lightly. It may, however, be necessary for the Agency to use eminent domain. It is the intent of the Agency to use eminent domain to acquire land or improvements only to meet major goals and objectives and only after all possible measures to acquire property have been exhausted. Occasions may include, but are not limited to, those listed below, which do not result in the sale of property at fair market value:

- a. An owner isn't willing to sell by mutual agreement;
- b. Friendly condemnation is not a viable alternative to the property owner;
- c. A land swap for a parcel of land or building of equal or greater value is not acceptable to the owner; or
- d. All other remedies to acquire the land or improvements have been exhausted without agreement.

IV. PROCEDURES - EMINENT DOMAIN FOR PUBLIC USE OR PURPOSE

4.1 Eminent Domain for Public Use or Purpose naturally, there are various circumstances under which the agency would consider using eminent domain. One use could be the acquisition of property for public facilities, utilities, drainage facilities, roadways and other similar improvements. The County Commission has the power of eminent domain and has historically used it for such purposes. Therefore, it is the intent of the Redevelopment Agency to defer to the powers granted to the Clark County Board of County Commissioners where such action affects the Redevelopment Area.

V. PROCEDURES - EMINENT DOMAIN FOR REDEVELOPMENT PURPOSES

5.1 Eminent Domain for Redevelopment Purposes
Alternatively, the special and unique power to acquire property to eliminate blight is inherently more sensitive than an acquisition for a typical public use. Property owners often feel it is unfair to cause their business to cease or relocate only to be rebuilt or be replaced by another private business use. Due to the highly sensitive nature of such proceedings, it is the intent of the Agency Board to consider these eminent domain cases where such action affects the Redevelopment Area.

5.2 Findings of the Agency Board

When the Agency, through its granted power, decides to acquire property using eminent domain for a redevelopment project, the Agency must find that: (a) the property sought to be acquired is necessary to carry out the Redevelopment Plan; (b) the Agency has made every reasonable effort to negotiate the purchase of the property; and (c) the Agency feels it is necessary and in compliance with the requirements of the Community Redevelopment Law. The Agency must also find that all reasonably possible measures to achieve the major desired goals and objectives of the Agency without acquisition of the subject property by eminent domain have been exhausted. The intent is to provide the Agency with the ability to use eminent domain as a last resort which typically occurs when efforts to eliminate blight, redevelop, and improve an area are hindered by one or a few property owners.

5.3 Public Hearing

When eminent domain is to be considered, the Agency will hold a public hearing to decide whether to initiate condemnation proceedings. If the Agency decides in the hearing to pursue condemnation, all of the evidence, including appraisals, is submitted to the court and a judge or jury makes the final determination regarding value. Often, fair market value is agreed upon prior to final court proceedings. When appropriate, the court will determine a fair market value amount to pay the owner fair market value and award the occupant all relocation benefits and allowances to which one is entitled.

5.4 Notification of Public Hearing

Notice of a Public Hearing to be held by the Agency regarding whether to initiate condemnation proceedings shall be sent to the affected owner(s) of record of the subject property as shown on the most recent tax assessor's record at least 21 days prior to the hearing.

5.5 Voting Requirement

If and when eminent domain is proposed by the Agency Staff, no action may be taken without specific approval by the Redevelopment Agency Board through a 2/3 majority affirmative vote of those voting at the public hearing.

VI. ALTERNATIVE ACQUISITION METHODS

6.1 Willing Buyer/Willing Seller

There are many alternative methods of property acquisition. The most amicable method is that of "willing buyer/willing seller" whereby the individual owner or groups of owners are willing to sell based on all legitimate costs and compensation. Such compensation is based on a fair price for the property. Often a skeptical owner becomes comfortable with this action since the owner feels he/she has been treated in a reasonable fashion and is fairly compensated. It should be emphasized that an agency must always pay fair

market value as compensation for any property it acquires. Fair market value is almost always determined through the completion of a property appraisal by a certified appraiser.

Where sizable areas of property or improvements exist, and where multiple ownerships are present, an acquisition program should be established. Implementing such a program would be announced to affected property owners by sending a written notice of conditions and procedures as approved by the Agency Board. Since acquisition of fragmented parcels under multiple ownerships exists in some areas, it may take many years to assemble these properties and assemblage carrying costs are high. Therefore, the Agency anticipates that property acquisition will be considered on a case-by-case basis and as funds become available.

Benefits of this method include:

- a. If relocation of a business or resident is desired, this action may be prolonged to suit the timing and needs of the business or resident by executing a “lease-back agreement”.
- b. Time is not lost in possible lengthy court procedures to establish value during which time payment is not processed.
- c. The agreed upon value is processed for payment upon close of escrow (transfer of title to the property).

6.2 Friendly Condemnation

An intermediate solution between willing buyer/willing seller and eminent domain is known as “friendly condemnation”. This acquisition practice is so named because it acknowledges that the Agency has the right to acquire property through eminent domain, yet there is an understanding on both sides that no legal process will ensue.

In friendly condemnation, a property owner agrees to sell his/her property to the Agency as long as the Agency initiates the friendly condemnation process. Property owners may agree to a friendly condemnation for federal tax purposes because they may be entitled to a tax benefit. Settlements in condemnation cases may not be subject to federal tax liability for up to three years (as opposed to 45 days), as long as the property owner reinvests the proceeds in “like kind” property. Therefore, rather than being obligated for a large tax judgment if a property owner willingly sells, in this way the initiation of friendly condemnation may allow the property owner to postpone federal tax consequences for several years. However, each property owner should rely on his/her own tax advisor for final a determination.

Typically, a friendly condemnation action is initiated by a letter from the Agency informing the property owner of the proposed condemnation and advising him to seek the advice of his own tax attorney.

Benefits of this method include:

- a. Time is not lost in possible lengthy court procedures to establish value during which payment is not processed.
- b. The agreed upon value is processed for payment upon close of escrow (transfer of title to the property).
- c. Capital gains taxes are postponed for a longer period of time than allowed for through a 1031 Tax Exchange arrangement.