

**RESOLUTION NO. 1544
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION ESTABLISHING A POLICY FOR CITY OF PRINEVILLE LAND
ACQUISITION**

Whereas, the City Council wishes to establish policies and procedures for when the City of Prineville (“City”) conducts land acquisition.

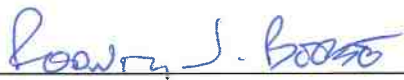
Whereas, the City Council recognizes the importance to establish a policy that encourages uniformity, fairness to property owners, and to the City.

Whereas, City legal has created the attached City of Prineville Land Acquisition Policy Statement.

Now, Therefore, the City of Prineville Resolves as follows:

1. The attached City of Prineville Land Acquisition Policy Statement is hereby approved and adopted as the official policy of the City.

Approved by the City Council this 13th day of December, 2022.



Rodney J. Beebe, Mayor

ATTEST:



Lisa Morgan, City Recorder

CITY OF PRINEVILLE LAND ACQUISITION POLICY STATEMENT

I. Administrative Organization for Land Acquisition Operations

A. All land acquisition functions, including negotiations and closings, will be performed by the City of Prineville ("City"), or its agents. The conduction of condemnations will be performed by the Legal Counsel for the City. The staff is experienced and capable in the conduct of acquisition programs.

B. The City approved land acquisition policies and procedures within the limits prescribed by the statutes of the State of Oregon. Each individual property purchase, and the disbursement of payment, therefore, is approved by the Mayor and City Manager. Condemnation proceedings are instituted by City Attorney staff only after all efforts to reach a negotiated settlement have failed. Legal services will be performed by the Legal Counsel for the City.

II. Policies

A. Real Estate appraisals and reviews are made by staff or selected fee appraisers. Second real estate appraisals and reviews, if required, may also be by fee appraisers. The City's Realtor of Record may also provide an opinion regarding the fair market value and said opinion may be used in lieu of an appraisal.

The following are policies for Real Property Acquisition:

1. Every reasonable effort will be made to expeditiously acquire real property by negotiation.
2. Before initiation of negotiations for real property, the City's Realtor of Record will establish an amount considered to be just compensation and the City shall make prompt effort to acquire the property for that amount. In the event of an appraisal prior to the initiation of negotiations, the owner, or the owner's representative, will be given the opportunity to accompany the appraisers on their inspection tour of the property. Any owner may request the City to provide a formal appraisal rather than the City's Realtor of Record's opinion if the purchase exceeds \$25,000.00.
3. In establishing a purchase price, the City's Agent is authorized and directed as follows:
 - a. The established amount shall not be less than the approved appraisal of fair market value for the property.
 - b. Any decrease or increase in the fair market value of the property, prior to the date of valuation, caused by public improvement; by physical deterioration within reasonable control of the owner, has been disregarded by the City and by the Appraisers in making the determination of fair market value.

c. The City's negotiator shall provide the owner with a written statement summarizing the basis for the amount established as just compensation. Where appropriate, compensation for property acquired and for damages to any remaining real property shall be separately stated.

d. The City's negotiator may establish an amount that exceeds the value of approved appraisal of fair market value for the property in the event the City negotiator believes that the value of the property to the City in particular, exceeds the value of the fair market value, and the City negotiator has obtained approval from the Prineville City Council.

4. The following policies shall apply in any Property Acquisition:

a. No owner shall be required to surrender possession until the City pays the agreed purchase price, or deposits with a Court of competent jurisdiction the amount of award determined by the Condemnation Appraisers.

b. Improvements will be scheduled so the owner or tenants shall receive a minimum 90 days written notice before having to move. Every effort will be made by the City to provide such notice as is required without undue hardship to the owner or tenant. (This is applicable to total acquisition of property).

c. If Owner or tenant is permitted to rent property, the amount of rent shall not exceed fair rental value of subject property.

d. The City shall not take any action coercive in nature to compel an agreement on price for property.

e. If acquisition must be by eminent domain, the City shall institute formal condemnation proceedings. The City shall not intentionally make it necessary for the owner to institute legal proceedings to provide fact of taking of the real property.

f. If the owner feels the City's offer does not represent the true value of the property, the owner may refuse to accept it. The owner should then provide evidence concerning value, or damage, that warrants a change in the City's determination of just compensation. Should the City determine the additional information is valid, the price will be adjusted accordingly.

g. If as a result of the real estate acquisition there is a portion of property which is considered by the City to be an uneconomic remnant, the property owner has the right to request an offer from the City to acquire the remnant.

B. An Owner will be reimbursed for the following expenses incidental to conveyance of real property:

1. Recording fee, transfer taxes, and similar expenses.

2. Penalty costs for repayment of any pre-existing recorded mortgage encumbering real property, provided the mortgage was entered into in good faith.
3. Pro-rate portion of real property taxes paid which are allocable to a period subsequent to date of vesting title, or effective date of possession, whichever is earlier.
4. The cost of abstract continuation and/or evidence of assurance of title.
5. Litigation expenses such as legal, appraisal, engineering fees, etc., when:
 - a. Court determines that condemnation was unauthorized.
 - b. City abandons a condemnation.
 - c. Property owner brings inverse condemnation action and obtains award of compensation.

C. If a separate fixture appraisal is obtained it shall contain the following immovable fixtures and personal property:

1. Determination of division of appraisal coverage, enumerating and classifying improvements in-place.
2. Appraisal of improvable fixtures, correlating their findings with any real estate appraisals.

D. All appraisal contracts shall provide terms and conditions and fix the compensation for expert witnesses. These services will be utilized by the City to the extent necessary.

E. Both real estate acquisition appraisals and immovable fixture appraisals will be reviewed by City staff. All appraisals will be reasonably free of error and conferences with appraisers will ascertain that methods of approach and documentation are compatible, with no elements of value being omitted from consideration. City staff or relocation agents will conduct relocation interviews to verify ownership of certain fixtures and personal property claimed. Said claims will then be checked against existing leases and through interviews with fee owners.

F. Preparation for acquisition includes:

1. Preliminary title information supplied by local title companies; contents reviewed and entered in individual parcel files.
2. Individual parcel files prepared; chronological activity indexed, and all pertinent historical information entered.
3. Basic forms of Real Estate Agreement (real estate, personal property and fixtures) reflecting policy for negotiations to acquire all classifications of property.

4. Closing methods and policy determined.
5. Policy for possession, property management, salvage and demolition, timetable of activities prepared.
6. Closing statement form prepared, together with such internal administration forms, for notice to various units of inspection, accounting, property management, finance and legal counsel, as may be required.
7. Information letters prepared for distribution to all owners and tenants.
8. Deed forms for conveyance of real estate, bill of sale forms for personal property, and condemnation forms for eminent domain procedure prepared.

G. The "single offer" system for acquisition will be utilized in all negotiations. The City will establish fair market value and be prepared to justify and substantiate the determination in the event it is challenged. Staff will present and explain forms, terms and conditions of purchase in personal interviews with each property owner and tenants. The date of this interview will establish the beginning of negotiations which regulates many relocation payments.

For the purpose of all negotiated transactions, the City will require conveyance of real estate by Warranty Deed or deed instrument sufficient to place marketable title in the City of Prineville. Standard forms of such instruments conforming to Oregon Law are on hand and will be used in every case. After each Owner executes a Real Estate Agreement, City staff will order a title policy for review and City staff or Legal Counsel for the City will render an opinion of the condition of said title, and upon determination that said title appears merchantable, will assist with the closing process. Title to all property will be vested in the City of Prineville on the date of closing, which will also be the date of payment of the purchase price and the date of conveyance instruments. The City of Prineville shall have the right to possession within 90 days of closing date, (or 90 days from date of written notice if later than closing date), or as provided in the Real Estate Agreement. A statement by a responsible City Official, resulting from an inspection of the property acquired, will be contained in each acquisition file. This statement will precede payment and closing and must determine that all property purchased is present and in place in substantially the condition as of the date appraised.

H. Immovable items attached to the Real Property that would incur substantial economic damage if removed, will be negotiated for and acquired at the appraised value-in-place for continued use in the present location. A "Single Offer" at the maximum price will be offered the owner of such property, but if the owner elects to move any such appraised item it will be relocated rather than acquired and the appraised amount deducted. Until the business to be displaced has definitely located a relocation site, it is almost impossible to determine whether certain process fixtures can be relocated or should be acquired by the City of Prineville. When such fixtures have been acquired, paid for, and a bill of sale conveyed, and the seller then finds it would have been desirable to have relocated them, it shall be the City's policy to reconvey such items to the original owner in return for the exact amount of value-in-place price paid for them, and then pay for their relocation. Under no circumstances will fixtures sold back to the original owner by the City be at salvage value, or any amount less than that paid for them. Generally, the

terms and conditions of existing leases and pre-acquisition conferences with owners and tenants by all appraisers and City Staff will have clarified ownership.

Process utilities that are service entrances and concealed utilities are ineligible for compensation as relocation expense and will be treated as immovable fixtures. The utilities listed by the fixture appraiser as "Eligible for Relocation" formerly would have been compensated in relocation for those items. Therefore, process utilities are appraised even though eligible for relocation compensation. However, the claimant may still enter a claim for payment for replacement of those eligible utilities at the new location providing the appraised value-in-place of the claimed utilities is deducted from the claim.

Immovable fixtures and process utilities not appraised will be handled through the direct loss of property process. It is expected that claims for severance damages caused by partial taking will be minimal.

All fixtures and improvements appraised and acquired become the property of the City of Prineville as clarified in the Real Estate Agreement and may not be removed by any other than authorized personnel or the demolition contractor.

Upon thoroughly exhausting every avenue of negotiation available, the City of Prineville will direct their Legal Counsel to prepare for the appropriation of all property to be acquired through eminent domain proceedings. Such petitions will be drafted by the Legal Counsel clearly defining the property to be acquired and the ownership thereof, land, improvements, immovable and movable property (if any) located therein, with such particularity that the petitions and the resulting action of the condemnation appraisers, or district court appeals, will clearly establish such ownership and rights to compensation. Owner-Occupants of dwelling units that may be eligible for the Replacement Housing Payment will be made aware that the award received through eminent domain proceedings (excluding interest thereon, or consequential damages), determined by the condemnation appraisers, or by Circuit Court will become the basis for any Replacement Housing Payment to be claimed. Immediately preceding preparation of petitions, preliminary title information will be updated. Fee appraisals and fixture appraisals will be reviewed.

To the extent necessary, a reinspection of each property to be condemned will be conducted by the appraisers to determine that the property, on the date of taking, is in substantially the same condition as it was on the date of their original appraisal and that their opinions of value, therefore, hold true as of the date of taking. Each appraiser's testimony may then be presented to the condemnation appraisers and, in case an appeal is filed, to the Circuit Court.

The City will not require any owner to surrender the right to possession of their property until the City pays or causes to be paid, to the Crook County Circuit Court the amount due each interest acquired for the taking thereof as determined by the condemnation. Immediately following the determination of the amount of the condemnation award for the property, or each separate interest therein taken, the City will direct that payment to be made in an amount equal to the City's offer by the issuance of warrants drawn in favor of those entitled thereto to the Circuit Court of Crook County, Oregon, for payment of the condemnation appraiser's fees connected with the taking. Upon approval of the City's Legal Counsel, such warrants shall be deposited with the Circuit Court and will represent full compensation for the property taken, subject to appeal. In any event, title to the

property rests with the City of Prineville as of the date of payment of the condemnation award, as does the right to possession there within 90 days of said date, provided compensation due has been paid as prescribed and property notice given.

Oregon statutes provide a 30-day period from the award of condemnation during which an appeal can be filed by either party. Acceptance of the award deposited with the Circuit Court extinguishes the right of appeal as to that particular party. In the event an award is not claimed and no appeal is filed during the statutory period, the right to appeal is barred and Legal Counsel shall immediately cause the condemnation papers to be recorded in the records and transfer books of Crook County, Oregon.

In case an appeal is filed, the City, with or without the consent of condemnee, may petition the Court of Appeals to order payment immediately of the award appealed from, thereby reducing interest costs on the award while the case is being prepared and subjected to trial.

Although title and right to possession is vested in the City as of the date of payment of the condemnation award, no lawful occupant of property taken will be required to surrender possession without at least 90 days written notice (a separate notice in addition to the notice of condemnation) from the City stating the date on which possession will be required. City staff will notify owner-occupants and tenants of the terms and conditions for temporary rental of condemned property.

All condemnation awards appealed will be defended by the City of Prineville's Legal Counsel utilizing the services of contract appraisers as expert witnesses for the City. Compensation for witness services is provided for in existing appraisal contracts or by separate agreement. After condemnation suits, awards, and appeals therefrom have been filed, agreements as to value may be entered into by stipulation. Appeal cases will be diligently prosecuted to bring the case to trial and judgment in the shortest time possible and necessary for the preparation of an adequate defense. In this manner, and with the court directed partial payments of awards outlined previously, interest and court costs will be held to a minimum level.

In most instances, the sale of privately-owned property to the City of Prineville for public purposes is considered "involuntary conversion" by the Internal Revenue Service, and the owner may not have to pay capital gains tax on any profit from the sale of the property to the City of Prineville, if the money is reinvested in similar property within two years. Internal Revenue Service Publication 549, entitled "Condemnations of Private Property for Public Use", is available from the IRS. It explains how the federal income tax applies to gains or losses resulting from the condemnation of property, or its sale under the threat of condemnation, for public purposes. IRS Publication 17, "Your Federal Income Tax," available from the IRS contains similar guidance. The owner is advised to discuss particular circumstances with his or her personal tax advisor or local IRS office. State income tax considerations should also be discussed as appropriate.