

RIGHT OF WAY AND THE PROPERTY ACQUISITION PROCESS

A Guide for Property Owners and Tenants



**CITY OF SUFFOLK
Department of Public Works-Engineering
Post Office Box 1858
Suffolk, Virginia 23439
(757) 514-4355**

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INTRODUCTION

The City of Suffolk's Department of Public Works is responsible for the construction and maintenance of all Public Works projects. These projects include but are not limited to road construction, improvement, and maintenance, drainage improvements and maintenance, and public buildings. The Department of Public Utilities is generally responsible for sewer and drinking water projects.

In construction or maintenance projects, it may be necessary for the City to acquire land and/or easements from private property owners.

Private property rights are protected by both the Virginia and United States Constitutions. The City respects these rights, and is dedicated to ensuring that all property owners are treated with fairness and respect. When the City needs to acquire private property, the City strives to ensure that the property owner is provided with all the information necessary to fully understand the proposed City project and how it will impact his property. It is our goal to ensure that property owners and tenants experience as little inconvenience as possible during the process.

This guide will provide general information on the City's procedures for acquiring real estate interests for such projects. In it, you will find information about the appraisal process, the City's offer and negotiations between you and the City, and how the City will assist you if you have to move.

PROPERTY NEEDED BY THE CITY

In order for the City to construct and improve its roads and facilities, the City often will need to purchase property, or rights to use property, from private property owners. Most rights to property that the City usually needs can be defined as either an easement or right of way.

An *easement* is the right of the City or other person or entity to use all or part of the property of another person for a specific purpose, with the owner retaining ownership of the land. Easements can be permanent or temporary (i.e., limited to a stated period of time). Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of slopes during construction.

Right of Way, as used herein, is a specific grant of land to the City for a public improvement project, usually for construction or improvement of a road. The owner does not retain ownership of the land, but it is deeded to the City.

NOTIFICATION OF CITY PROJECT

Public hearings are held for some projects. At these community meetings, City of Suffolk representatives will be present to answer your questions and provide information about the project. You will also be given an opportunity to express your opinion about the project. You will be able to get an idea of how the project will affect your property, and whether you will be required to relocate. The City of Suffolk decides to hold public hearings based on public interest and the magnitude of the project. If a public hearing is not held on the project affecting your property, a Right of Way Agent from the City's Department of Public Works will contact you to answer your questions.

THE APPRAISAL PROCESS

The City determines what property needs to be acquired after the project has been planned and all requirements have been met. If your property or a portion thereof needs to be acquired, you will be notified of the City's interest to acquire your property. When the City begins the acquisition process, the first personal contact with the property owner should be no later than during the appraisal process.

The purpose of the appraisal process is to determine what the fair market value is of the property, including improvements, which will be affected by the project. You will receive fair market value for any real estate interest purchased by the City.

A qualified, independent appraiser will contact you to make an appointment to inspect your property. To determine fair market value, the appraiser will value your property using the best information available, and takes into consideration recent property sales in your community as well as any resulting damages to the residue of the property, if any.

You will be given the opportunity to accompany the appraiser when the appraiser inspects your property. You can point out any improvements or features of your property that may contribute to its value.

Once the appraisal is complete and has been accepted by the City, negotiations can begin. You will be provided a copy of the appraisal during the negotiation process.

Exceptions to the Appraisal Requirement

State law permits the formal appraisal process to be waived for relatively low-value, non complex acquisitions, or if you elect to donate the property and release the City from the obligation of performing an appraisal. If the City is of the opinion that the acquisition of your property is uncomplicated and a review of the available data supports that the fair market value is likely to be \$10,000 or less, the City may prepare a waiver valuation, or administrative report, rather than an appraisal, to estimate the fair market value.

THE OFFER PROCESS

After the appraisal has been prepared and accepted by the City, the City will begin negotiations with you or your designated representative. The City Right of Way Agent will visit you to explain the project and advise you of the amount of property and/or easements required. Any fee interest (including right of way) will be purchased at its full value, and any easements required will be purchased at a percentage of full value. If it is not practical to meet with you and discuss the City's offer, the offer will be made by mail and followed up in person or by telephone.

If you have any questions about what is being acquired or the City's offer, do not hesitate to ask the Right of Way Agent. Once the City has made you an offer, you will be given adequate time to consider your alternatives. The agent will contact you to answer any further questions and to find out if you have reached a decision.

Acceptance of the City's Offer

If you decide to accept the City's offer, you will be asked to sign a binding agreement (called an "Agreement of Sale") between you and the City. The agreement commits you to sell your property for the amount of the offer and commits the City to compensate you in that amount.

Later, you will be expected to sign the deed and other necessary documents when they are delivered to you. Closing is usually within ninety (90) days of the date of the Agreement of Sale.

If there is a mortgage or lien on the property, the noteholder may require payment of all or a portion of the compensation.

Rejection of the City's Offer

The City will make every effort to reach an agreement with you during negotiations. You may provide additional information, and make reasonable counteroffers for the City to consider.

However, you have the right, by law, to refuse the City's offer and to have the value of your property established by the Court. Virginia law allows the City to acquire property even when agreement cannot be reached with the landowner. These rights of a municipality to acquire private property for public use is called "eminent domain." If an agreement cannot be reached, the City will file a legal document called a "Certificate" with the Suffolk Circuit Court. The filing of this document gives the City the right to proceed with construction of its project. The City's offer will still remain open, and negotiations between you and the City should continue in an effort to reach settlement. However, if a settlement is not reached, your case will be heard by the Court, and a panel of commissioners will determine the amount of just compensation for your property.

Eminent domain or condemnation proceedings can have benefits:

For you:

- You have additional time to consider the City's offer.
- By petitioning the Court, you could get your money while negotiations continue if you have clear title to the property.

For the City:

- The project continues on schedule.
- There is more time for the City to review the owner's expectations.

While condemnation proceedings may be necessary, mutual agreement is preferred.

NANSEMOND 1716 SUFFOLK 1742 RELOCATION

Occasionally, it is necessary for a landowner or business to relocate their home or business as a result of the construction project. For those who must move, the City will offer relocation assistance services for the purpose of locating suitable replacement property.

The City abides by State and Federal regulations regarding relocation assistance to ensure that displaced residents and businesses receive all payments to which they are entitled. Relocation services and payments will be explained in accordance with your eligibility.

Once the acquisition process begins for the property that you now occupy, you will receive a notice from the City giving an assurance that you will not have to move for at least 90 days. This notice is usually provided at the same time the City's offer letter to purchase is sent.

Residential Assistance for Homeowners

The City's goal is to offer you the opportunity to relocate to comparable housing of your choice, as long as the replacement home meets the City's minimum housing standards.

A City representative will contact you and interview you to find out your needs. Relocation services and payments will be explained in accordance with your eligibility, and you will be provided with a current listing of comparable properties. You will also be provided written documentation of the amount of the replacement housing payment for which you qualify.

You will not be required to move unless at least one comparable decent, safe and sanitary replacement dwelling is made available to you. It is important that you do not sign a sales contract or lease agreement for a new home until a City representative has inspected

the dwelling and certified in writing that it meets the City's standards. Moving without the assistance of the City could jeopardize your potential benefits.

Purchase Supplement for Owner Occupants of 180 Days or More

The City's goal is to offer you the opportunity to relocate to a home that is equal to or better than your current one. If you have been a homeowner (owner-occupant) for 180 days or more before the offer to purchase is made, you are eligible for certain benefits. If you cannot find another home that meets the guidelines and is comparable to your current home at the price offered to you for your home, you may be entitled to a replacement housing payment. Such payments includes the difference between the amount the City pays you for your house and the reasonable cost of a comparable home, as well as certain eligible closing costs. The combined total of these payments cannot exceed \$22,500, and are limited to the amount actually required to pay for such eligible expenses in buying your home.

NANSEMOND 1646

SUFFOLK 1742

Rental Assistance for Owner Occupants and Tenants of 90 Days or More

If you were a homeowner for at least 90 days but less than 180 days, you may be eligible for a maximum payment of \$5,250 as reimbursement for reasonable expenses required for the purchase. If you rented or were a homeowner for at least 90 days before offer to purchase is made and choose to rent rather than buy, you may be entitled to a maximum of \$5,250. This payment is designed to enable you to rent a comparable replacement home for a 42-month period.

Inability to Locate Comparable Housing

If comparable housing is unavailable within the \$5,250 and \$22,500 limits, the City may have other options available to ensure that you are successfully relocated. A City representative will explain the options available to you, should the need arise.

A City representative will contact you and interview you to find out your needs. Relocation services and payments will be explained in accordance with your eligibility, and you will be provided with a current listing of comparable properties. You will also be provided written documentation of the amount of replacement housing payment for which you qualify.

Relocation Payments Not Considered Income

No relocation payments received by the displaced person shall be considered income for the purposes of the Internal Revenue Code, or for the purpose of determining the eligibility of any person for assistance under the Social Security Act or any other federal law (except for any Federal law providing low-income housing assistance

Moving Expenses for Residential Relocations

The City will pay actual reasonable moving expenses for a maximum distance of 50 miles. Payment from the City may also be paid on the basis of a fixed moving cost schedule.

You must apply to the City in advance, using the forms provided by the City, indicating how and when you anticipate moving. Once your request is reviewed, you will be notified in writing of the approved amount. You should not enter into a contract with a mover until you have received approval from the City. The City will be glad to assist you in completing the necessary paperwork to make this request.

It is important that you keep your receipts of all expenses. Payment will not be made until the move is completed and the property has been inspected.

**Actual Reasonable
Moving Costs**

OR

Moving Costs

- Packing and Unpacking
- Temporary Storage
- Transportation
- Moving Insurance
- Other Related Costs

One Maximum Payment
Based on a Per Room
Schedule

**REIMBURSEMENTS TO BUSINESS, FARM
OR NON-PROFIT ORGANIZATIONS**

Actual Moving Expenses

A business, farm or non-profit organization can be reimbursed for the actual cost of moving a distance of 50 miles. In some instances, you can be reimbursed for the loss of tangible personal property and the expense of looking for a replacement site.

As part of the actual moving expenses, a small business, farm or non-profit organization may be entitled to a re-establishment payment not to exceed \$25,000 for expenses actually incurred in relocating and re-establishing such business, farm or non-profit organization at the replacement site.

Fixed Payment in Lieu of Actual Moving Expenses

A displaced business, farm or non-profit organization meeting eligibility criteria may receive a fixed payment in lieu of a payment for actual moving and related expenses, as follows:

Business Organization - The fixed payment for a displaced business is based on the “average annual net earnings”, as defined by law, of the operation for the two taxable years immediately preceding the tax year in which it was displaced, but not less than \$1,000 or greater than \$75,000 if:

- The business owns or rents personal property that must be moved, and vacates or relocates from the displaced site.
- The business cannot be relocated without a substantial loss of existing clientele or net earnings.
- The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the City and are engaged in the same or similar business activities.
- The business is a source of material income for the displaced owner during the two taxable years prior to displacement.
- The business is not operated at displacement site or dwelling solely for the purpose of renting such dwelling or site to others.

Farm Operation - The fixed payment for a displaced farm is based on the average annual net earnings of the operation for the two taxable years immediately preceding the tax year in which it was displaced, but not less than \$1,000 or greater than \$75,000 if:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- The partial acquisition caused a substantial change in the nature of the farm operation.

Non-profit Organization - The fixed payment computation for non-profit organizations is based on the average annual gross revenues less administrative expenses for the two twelve-month periods prior to the acquisition, but not less than \$1,000 or greater than \$75,000 if:

- It cannot be relocated without a substantial loss of clientele or membership.
- You must apply to the City using the appropriate forms, before you move, whether you are moving a business, farm or non-profit organization. If the City has approved the move, you will receive payment after the move takes place, and a moving cost claim has been submitted and the property has been inspected.

RIGHT TO APPEAL

If you do not agree with the relocation services you have received, you may appeal through either the City of Suffolk Department of Public Works or the Department of Public Utilities (as appropriate).

ADDITIONAL INFORMATION

From the public hearing stage until you are contacted personally by the City's Right of Way Agent, you may get additional information by contacting the appropriate party listed below. After the Right of Way Agent has contacted you, your best source of information is through the agent.

CITY OF SUFFOLK

Director of Public Works: Eric T. Nielsen, Jr.
441 Market Street
Suffolk, VA 23434
Phone (757) 514-4355

Director of Public Utilities: Albert S. Moor, II
1258 Holland Road
Suffolk, VA 23434
Phone (757) 514-7000

Director of Planning and
Community Development: D. Scott Mills
441 Market Street
Suffolk, VA 23434
(757) 514-4150

