



THE USE OF EMINENT DOMAIN BY THE CITY AND COUNTY OF SAN FRANCISCO

A SUMMARY OF THE PROCESS AND PROPERTY OWNERS' RIGHTS

January 2009

ABOUT THIS PAMPHLET

SB 698, which went into effect on January 1, 2008 and amended Section 1255.410 of the California Code of Civil Procedure and Section 7267.2 of the California Government Code, requires that every property owner whose property may be the subject of an eminent domain action be given an “informational pamphlet” outlining the property owner’s rights under the Eminent Domain Law of California.

The City and County of San Francisco has prepared this pamphlet based on the efforts of the following organizations:

League of California Cities California

State Association of Counties Association

of California Water Agencies California

Special Districts Association California

Redevelopment Association

INTRODUCTION

Eminent domain (sometimes called "condemnation") is the power of the government to purchase private property for a "public use" so long as the government pays the property owner "just compensation," which is the fair market value as determined by appraisal and which may ultimately be determined by a court. An owner's right to be paid just compensation in eminent domain is guaranteed by the Federal and State Constitutions and applicable State laws.

Whenever possible, the City tries to avoid eminent domain proceedings because of the added time, concern and cost to everyone. But if the City and a property owner cannot reach an agreement on the price for needed property, the City will consider whether to proceed with an eminent domain action.

The City decides whether to acquire private property for a public project only after a thorough public review of the project. That review process includes one or more public hearings, and, if required, environmental review for the project under the California Environmental Quality Act (CEQA). Ultimately, the City may not exercise its eminent domain power unless the San Francisco Board of Supervisors approves the action after a public hearing. Often, before the Board of Supervisors acts, a particular City commission with authority over the project also holds a public hearing to consider the proposed exercise of eminent domain.

This pamphlet provides general information about the eminent domain process under California law and the property owner's rights in that process.

IMPORTANT NOTE:

THIS PAMPHLET REFLECTS THE CURRENT LAW AS OF THE PUBLICATION DATE. BUT THE INFORMATION IN THIS PAMPHLET IS NOT, NOR SHOULD YOU CONSTRUE IT TO BE, LEGAL, FINANCIAL OR TAX ADVICE TO YOU. YOU SHOULD CONSULT WITH QUALIFIED LEGAL COUNSEL AND OTHER APPROPRIATE EXPERTS FOR LEGAL, FINANCIAL AND TAX ADVICE REGARDING YOUR SPECIFIC SITUATION, RATHER THAN RELYING ON THIS PAMPHLET AS A SUBSTITUTE FOR THAT ADVICE.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

- **What is a "public use"?**

A "public use" is a use that confers public benefits, like the provision of public services or facilities or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects, such as street and transportation improvements, parks, schools, construction of water pipelines or storage facilities, construction of civic buildings, open space and watershed preservation, and redevelopment of blighted areas. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public. These are some examples of public uses. There are many other public purposes for which a public agency may use eminent domain.

Proposition 99, adopted by California's voters in June 2008, amended the California Constitution to prohibit the government from "acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person." Sections 19(c) and 19(d) of this law provide that the government is still allowed to use eminent domain to acquire owner-occupied residences if the purpose is related to public health and safety; preventing serious, repeated criminal activity; responding to an emergency; remedying hazardous environmental contamination that poses a threat to public health and safety; or for a public work or improvement.

- **What is "just compensation"?**

Just compensation is the **fair market value** of the property being acquired by the government. State law defines fair market value as "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

THE EMINENT DOMAIN PROCESS AND THE PROPERTY OWNER'S RIGHTS

The eminent domain process begins with the creation of a public project. When selecting a project location, the City is guided by the goal of rendering the greatest public good and the least private injury and inconvenience. If the City determines that all or a portion of your property may be necessary for a public project, it will begin an appraisal process to determine the property's fair market value.

- **How is the fair market value of my property determined?**

The City will retain an independent, accredited appraiser familiar with local property values to appraise your property. The appraiser will invite you to come along during an inspection of your property. You may give the appraiser any information about improvements and any special features that you believe may affect the value of your property. It is in your best interest to provide the appraiser with all the useful information you can to ensure that nothing of value will be overlooked. If you are unable to meet with the appraiser, you may wish instead to have a person who is familiar with your property meet with the appraiser.

After the inspection, the appraiser will complete an appraisal that will include a determination of your property's fair market value and the information upon which the fair market value is based. The appraiser will provide the City with the appraisal. The City will then make a written offer to purchase your property, which will be for no less than the amount of the appraisal. The offer will also include a summary of the appraisal.

- **What factors does the appraiser consider in determining fair market value?**

Each parcel of real property is different. Therefore, no single formula can be used to appraise all properties. Factors an appraiser typically considers in estimating fair market value include the following:

- The location of the property;
- The age and condition of improvements on the property;
- How the property has been used;
- Whether there are any lease agreements relating to the property;
- Whether there are any environmental issues, such as contaminated soil;
- Applicable current and potential future zoning and land use requirements;
- How the property compares with similar properties in the area that have been sold recently;
- How much it would cost to reproduce the buildings and other structures, less any depreciation; and
- How much rental income the property produces, or could produce if put to its highest and best use.

- **Will I receive a copy of the appraisal?**

Before proceeding with eminent domain, the City must provide you with its purchase offer, a summary of the appraiser's opinion, and the basis for the City's offer, and give you a reasonable period to consider the offer. Among other things, the appraisal summary must include the following information:

- A general statement of the City's proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer;
- The amount of the offer; and
- The amount considered to be just compensation for each improvement that is owned by a tenant and the basis for determining that amount.

State law requires the City to show you a copy of the full appraisal only if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City may, but is not required to, disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- **Can I have my own appraisal done?**

Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City. At the time of making its initial offer to you, the City must offer to reimburse you the reasonable costs, not to exceed \$5,000, of an independent appraisal you obtain for your property. To be eligible for this reimbursement, you must have the independent appraisal conducted by an appraiser licensed by the California Bureau of Real Estate Appraisers.

- **What advantages are there in selling my property to the City?**

As a real estate transaction, a sale of property to the City is similar to a sale of property to a private buyer. But there may be certain financial advantages to selling to a public entity such as the City:

- You will not be required to pay for real estate broker commissions, preparation of sale documents, buyer's title insurance policy premiums or recording fees required in closing the sale. The City will pay any and all of these costs.
- Sales to the City are not subject to the local documentary transfer tax, which generally applies to sales of private property from one private owner to another. However, if the property is located within a charter city other than San Francisco, a sale to the City may be subject to the charter city's separate real estate transfer tax.
- The City cannot give you tax advice or direction. You might be eligible for certain real property tax and income tax advantages, and your tax liability may differ depending on where your property is located. You

should check with the Internal Revenue Service (IRS) and/or consult your personal tax advisor or lawyer for details.

- **If the City acquires only a portion of my property, will I be paid for the loss to my remaining property?**

In general, when the City needs only a part of your property for the project, it will make every reasonable effort to ensure you do not suffer a financial loss to the "remainder" property. The City will compensate you for any loss in value to your remaining property that is not offset by the benefits conferred by the project for which the City is taking your property. This compensation is often referred to as "severance damages."

Whether the City's purchase of a portion of your property will result in any loss in value to the remainder is a complex appraisal issue. If the appraiser concludes the proposed acquisition will have this effect, a City real estate representative will explain the effect to you.

Also, if any part your property that would remain after the City takes the portion it needs is of such a shape or condition as to be of little market value, the City will offer to acquire that remaining part (or remnant) from you, if you so wish.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that operates on the property being acquired, you may have a right to additional compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the economic value of a business, separate from the property on which the business is located, as a result of its location, reputation for dependability, skill or quality of the staff, services or merchandise, and any other circumstances that make the business attractive to existing and new patrons.

- **What will happen to the loan on my property?**

Where the City is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens, as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign or accept an offer or enter into a purchase agreement.

- **If I agree to accept the City's offer, how soon will I be paid?**

If you reach a voluntary agreement to sell your property or an interest in the property to the City, the City will make its payment at a mutually acceptable time, generally within 60 to 90 days after you, the City (including any necessary boards and commissions), and any other required parties with ownership interests in the property agree to the sale and sign the purchase and sale contract.

- **What happens if we are unable to reach an agreement on the property's fair market value?**

The City will make every reasonable effort to acquire your property by negotiated purchase. But if the negotiations are unsuccessful, the City may either file an eminent domain action in a court located in the county where your property is located or abandon its intent to acquire the property. If the City abandons its intent to acquire, it will promptly notify you.

If the City proceeds with eminent domain, the first public step is for its staff to request authority from the San Francisco Board of Supervisors—the elected legislative body—to file an eminent domain action. The Board of Supervisors grants approval to proceed by adopting a "Resolution of Necessity." In considering whether to adopt the Resolution of Necessity, the Board of Supervisors must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project.

You will be given notice and an opportunity to appear before the Board of Supervisors when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral service right away. You or your representatives can raise any objections to the Resolution of Necessity and the proposed eminent domain either orally at the hearing on the Resolution of Necessity or in writing to the Board of Supervisors before that hearing.

The full Board of Supervisors, not just a committee of the Board, must conduct a public hearing before considering approval of the Resolution of Necessity. The Board of Supervisors must approve the Resolution of Necessity by a 2/3 vote—i.e., at least eight of its eleven members. If the Board of Supervisors approves the Resolution of Necessity, the Resolution is forwarded to the Mayor, who then has 10 days to either approve the Resolution by signing it; allow it to go into effect without signing it; or veto it. If the Mayor vetoes it, the Board of Supervisors can override the veto by a 2/3 vote.

If the Resolution of Necessity is adopted, the City can then file a complaint in court to acquire title to the property by eminent domain upon payment of the property's fair

market value. In that action, the City is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), is named in the complaint as a defendant. Often, the City will also deposit with the State Treasurer of California the amount the City believes is the "probable amount of compensation." The City must make the deposit if it is seeking to acquire possession of the property before agreement is reached, or a judgment is entered, establishing the fair market value of the property.

- **Can the City acquire possession of my property before a court in the eminent domain lawsuit determines the property's fair market value?**

In some cases, the City may decide it needs possession of the property before a court finally determines the property's fair market value. This type of possession is commonly referred to as "immediate possession." In such a case, the City must apply to the court for an "order for possession" to allow it to take control of the property before a final determination of the property's fair market value. The City is required to schedule a hearing with the court on the proposed order for possession and to give you advance notice of the hearing. The City generally must send the notice at least 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City must deposit with the State Treasurer the probable amount of just compensation to obtain immediate possession of the property.

- **Can I oppose the motion for an order for possession?**

Yes. You may oppose the motion in writing by serving the City and the court with your written opposition within the period of time set forth in the notice from the City.

- **Can I rent the property from the City?**

If the City agrees to allow you or your tenants to remain on the property after it acquires possession, you or the tenants will be required to pay a fair market rent to the City. Generally, fair market rent is based on rent for the use of property similar to yours in a similar area.

- **Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don't agree that the amount reflects the fair market value of my property?**

Yes. Subject to the rights of any other persons having an interest in the property (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings. But your withdrawal will mean that you may not

contest the City's right to acquire the property, meaning you waive any ability to contest that the acquisition of your property is for a public purpose or is otherwise legally improper.

You also have the right to ask the court to require the City to increase the amount deposited with the State Treasurer if you believe the amount the City has deposited less than the "probable amount of compensation."

- **Can I contest the City's acquisition of my property?**

Yes. As long as you have not withdrawn the amount deposited, you can challenge in court the City's legal right to acquire or condemn your property.

- **What happens in an eminent domain trial?**

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (together with any others with interests in the property) and the City will have the opportunity to present evidence of your property's value. The jury will determine the property's fair market value. In cases where the parties choose not to have a jury, the judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties before trial.

If you challenge the City's right to acquire the property, the eminent domain trial will also determine whether the City has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

If the Court concludes the City has the right to acquire the property, the jury will establish the fair market value and the judge will enter a judgment requiring the City to pay that amount. Once the City pays the amount of the judgment, the judge will enter a final order of condemnation. The City will record the final order with the County Recorder, and title to the property will then pass to the City.

- **Am I entitled to interest?**

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving the compensation has been fully paid. Formulas set by State law determine the rate and method of calculation of the interest.

- **Will the City pay my attorneys' fees and costs?**

In an eminent domain action, you are entitled to be reimbursed by the City for your court costs, such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the City for your attorneys' fees in the lawsuit. Whether you are entitled to receive reimbursement for your attorneys' fees will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in connection with the action.

- **Will I receive assistance with relocation?**

Any person, business, or farm operation displaced as a result of the property acquisition is typically entitled to relocation advice and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation will be determined on a case-by-case basis in accordance with prescribed law. The City will work with you to help you obtain relocation assistance and benefits.

CONTACT INFORMATION

We are available to answer your questions and to assist you in understanding the acquisition program and the eminent domain process. If you would like further information, please contact:

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