

POLICY FOR ACQUISITION OF REAL PROPERTY -

Adopted by Council Action - TBD

The following policy applies to the acquisition of real property by the City of Pensacola, including rights-of-way and easements. This policy is a set of guidelines for general property purchases. This policy does not supersede any specifically-denoted requirements, terms, or conditions of real property acquisitions utilizing State and/or Federal grant funds. This policy does not intend nor should be construed as contradictory to any prior action by City Council regarding the use of real estate brokers for acquisitions or to any grant requirements, terms, or conditions.

Methods of Acquisition

- A. Purchase
- B. Lease
- C. Donation
- D. Property Swap/Trade

Process

1. Determination of Need.

A determination is made that the City is interested in acquiring real property via one of the methods of acquisition. The real property must be deemed to serve a public need – i.e. improvement project-related, restoration, expansion of site or City services, development of affordable housing, conservation purposes, etc. – as confirmed by the Mayor or their designee. The funding source for the potential acquisition must be identified during this determination period and confirmed with the Financial Services Director or their designee. Staff is then directed to attempt acquisition. The property of interest is reviewed from a variety of aspects to determine best path forward.

2. Evaluation / Preliminary Due Diligence.

- a. Regardless of the method of acquisition, all parcels considered for acquisition must have an appraisal performed by a Florida state-certified, licensed appraiser. The only exceptions are (i.) in the case of an acquisition of little or no value as assessed by the Escambia County Property Appraiser (such as small or narrow right-of-way acquisitions or access easements, wasteland property, etc.), whereas the cost of obtaining an appraisal would be prohibitively expensive to acquiring the parcel in question; or (ii.) a property swap or trade where the parcels are of such close size, proximity, and current use that an appraisal would provide virtually the same value for each parcel.

[Depending upon the funding source, specifically grant funds, there may be detailed requirements on obtaining an appraisal for the acquisition and more than one appraisal or an appraisal review may be required. To prevent any issues with closing or potential acquisition violations that would require the repayment of grant funds, it is very important that the terms and requirements of the funding source are followed. Any issues or deviations from grant requirements regarding appraisals or anything else, if unavoidable, must be identified and resolved in writing with the granting agency during this period.]

- b. An environmental site assessment (ESA) must be completed on any potential acquisition in which the parcel is suspected or known to have any agricultural, commercial, or industrial use historically, or is in close proximity to a known site. The type of ESA obtained – Phase I or II – depends upon the certainty of and type of previous use. This ESA report is particularly significant if the purpose of the acquisition is housing-related or for permanent public use.

[Exceptions to this ESA requirement include instances where the potential acquisition has already been designated “wasteland” or other prior knowledge of an assessment or abatement being conducted at or very near the site, and an expenditure for another ESA would be redundant. In instances such as this, please contact our Environmental staff or the Florida Department of Environmental Protection regarding a search of their site databases for verification of the current site conditions.]

[Also, depending upon the funding source used, additional environmental due diligence may be required, at this step or any other time prior to the completion of the acquisition.]

- c. A preliminary search of available public records on the potential acquisition is also conducted at this step in the process. Whether the acquisition has outstanding taxes or is “heir(s) property” would be easily determined by this preliminary search. Depending on the anticipated use of the property, it is essential to determine other general facts, such as if restrictive covenants exist that would impede use, or if the current zoning matches the zoning necessary for the anticipated use. Any liens or encumbrances to clear title and ownership (if the property is being purchased or swapped) may also be revealed at this time.

Though all three of the requirements for evaluation – appraisal, ESA, and preliminary public records review – can be initiated simultaneously oftentimes, their importance depends upon the method of acquisition. For purchases and leases (methods of acquisition A. and B.), an appraisal to determine value and negotiating starting point is the likely first step, though all three are imperative. For donations and swaps (method of acquisition C. and D.), an ESA would be likely more important, as it is essential in determining what liability the City may be exposing itself to in acquiring the property.

The results of this evaluation and preliminary due diligence may determine whether it is in the City’s best interest to proceed with the potential acquisition. Many potential acquisitions do not make it past this step in the process.

3. Negotiation.

A prospective seller or lessor (methods of acquisition A. or B.) may have a dollar amount in mind at which they will relinquish ownership or lease the property to the City. The appraised value of the property can be less than this desired amount, but often the City does have means to negotiate.

For donations and swaps (methods of acquisition C. and D.), it is important that the intent of both parties is clear, and this may require some negotiation. As an example: a prospective donor may be donating their property for easement or conservation purposes, with the idea that the City will maintain this property to an ideal standard; whereas the City may not intend to maintain the property specifically but actually allow it to naturalize or “grow wild”.

Prior to negotiation, confirmation from the seller or lessor of their continued interest in relinquishing the property should be obtained, including their desired financial terms. Further, staff must clearly obtain from the authorizer of the acquisition the negotiating range and terms prior to negotiation. Also, staff should make no promises or commitments to the property owner and must make clear that the acquisition must be approved by City Council. Staff must receive confirmation of the negotiated amount and/or terms in writing from the seller/lessor or their representative (such as a realtor).

[Depending upon the funding source, it may be required that the seller be offered at minimum the appraised value of the subject property plus moving expenses if the property is their homestead. It is very important that the terms and requirements of the funding source are followed in these cases, to prevent any issues with closing or possible repayment of funds to the source.]

4. City Council Decision.

After negotiations have been completed, approval of the acquisition by City Council is then scheduled for placement on the agenda of the next available City Council meeting. At this time, the City Attorney has reviewed any documents or draft documents associated with the acquisition thus far. The Financial Services Director or their designee is notified of the pending acquisition, as a budget amendment for the negotiated amount may be appropriate and may require a separate agenda item (a Supplemental Budget Resolution) to accompany the acquisition item. The funded amount must also include an additional 5 to 10% over the negotiated amount to cover closing costs of the acquisition.

Backup material for the agenda item will illustrate the factors involved in acquiring the property. This material should include but not be limited to: appraisal(s), justification for a negotiated sale or lease amount greater than the appraisal value, exceptional acquisition terms addressing a public need, non-monetary benefits to the public, etc.

Staff shall maintain communications with the prospective seller/lessor/donor, keeping them apprised of timelines and meeting dates regarding the negotiated acquisition. If the acquisition is not approved by the City Council, Staff must notify the respective party as soon as feasible.

5. Closing / Final Due Diligence.

After approval by City Council, the final step is closing, or the conveyance of ownership or use rights. Closing usually takes a minimum of 30 days to ensure all of the final due diligence is complete, but can take longer if necessary and agreed to by both parties. For leases, this may be as simple as executing the negotiated lease agreement, as reviewed and approved by the City Attorney or their designee. For all other methods of acquisition, there is work that must be completed – the final due diligence – before the execution of documents for the conveyance.

A survey and title work (search, insurance) are the two essential items that must be completed prior to closing. The survey definitively establishes the boundaries and features of the property being conveyed, and can be completed by the City Surveyor (schedule allowing) or another licensed surveyor. The title work identifies any issues missed during the preliminary search of public records, issues that must be resolved prior to the City obtaining clear title to the subject property. This title work is contracted by the closing agent or attorney handling

the closing, as agreed by to by both parties.

Any issues with the survey, the title, or anything else impacting conveyance must be resolved prior to the execution of the conveyance documents by the Mayor or their designee. Also prior to execution, it is imperative that the final documents are reviewed or approved in some manner by the City Attorney or their designee.

For all acquisition methods except donations, the Staff responsible for the closing will not, in most cases, have the exact dollar amount necessary for the acquisition until the week of closing. Staff must make contact with the Financial Services Department / Accounting Division immediately upon receiving the exact dollar amount to coordinate submitting the required documentation and obtaining a check for the necessary amount by the necessary date.

After documents are executed, the deed (or lease) is recorded by the closing agent (or City staff as appropriate). To complete all other post-closing requirements, Staff then utilizes Finance's Land Procedures Process and contacts the Finance Department with any issues related to this new City asset.