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ROUND THREE !!!



2009 “CPR” CONSTITUTIONAL AMENDMENTS:
EMINENT DOMAIN OR *SLUMLORDS’ BILL OF RIGHTS?*

TEMPLATE RESOLUTION/POLICY:
“BEST PRACTICES” PROCEDURES IN
EMINENT DOMAIN FOR REDEVELOPMENT



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LIMITED PURPOSE OF TEMPLATE RESOLUTION/POLICY:

The policies contained in the attached template Resolution are intended solely as guidelines for those communities seeking to formalize a procedure for considering the use of eminent domain for economic development and redevelopment projects and areas. The template reflects certain “Best Practices” Procedures, some of which were recommended in 2005 by the Missouri Eminent Domain Task Force (“EDTF”). (References in the template are to enumerated “EDTF Action Items.”)

The procedures contained in the template are intended to apply only to a limited “subset” of eminent domain issues involving (1) permanent acquisitions of (2) fee interests in real property (3) for redevelopment purposes. (These policies/procedures do not apply to temporary acquisitions, acquisitions of property interests less than fee (e.g., easements, rights-of-way), or to acquisitions of any property interest for any purpose other than economic development and redevelopment (e.g., public works, parks and recreation, utilities, etc.).

The policies and procedures offered are themselves, however, guided by three basic principles:

- Eminent Domain determinations are and should remain issues of local (not state-wide) concern and should be responsive to local concerns and dynamics;
- Any such procedures should seek to balance public necessity with individual property rights through a process perceived by the local community as fundamentally fair with the primary objective of reducing potential for controversy and conflict;
- Resolution of conflicts that may arise in the context of developing such policies and any remedial responses should involve the political, not the judicial process.

With this in mind, the presenters are not advocating wholesale adoption of the template Resolution, but rather encouraging such communities and practitioners as may be interested to consider relevant portions of the template as starting points to be modified and adapted as the individual communities’ needs dictate.

RESOLUTION NO. _____

A RESOLUTION ADOPTING A POLICY TO APPLY CERTAIN “BEST PRACTICES” PROCEDURES IN CONNECTION WITH THE EXERCISE OF EMINENT DOMAIN FOR REDEVELOPMENT PURPOSES.

WHEREAS, Chapter 523 of the Revised Statutes of Missouri, as amended, entitled “Condemnation Proceedings” (“Chapter 523”) governs the authority of the State of Missouri and its political subdivisions, public corporations, and public authorities to exercise the power of eminent domain by establishing standards and procedures as minimum requirements for any such exercise; and

WHEREAS, the City of _____, Missouri (the “City”) has determined that, in connection with the permanent acquisition by or in the name of the City of real property related to redevelopment activities, it is appropriate and in the public interest that a policy be adopted to announce certain standards and procedures intended to balance public necessity with individual property rights through a process perceived by the community as fundamentally fair; and

WHEREAS, the governing body of the City now wishes to adopt a policy providing for application in connection with such acquisitions of certain eminent domain “best practices” that are intended to supplement the standards and procedures of Chapter 523 when exercised for redevelopment purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE [BOARD OF ALDERMEN/CITY COUNCIL] OF THE CITY OF _____, MISSOURI as follows:

Section 1. That the following policies and procedures for the application of certain “best practices” in connection with consideration of acquisitions of parcels for redevelopment purposes to be undertaken by or under authority of the City are hereby adopted and approved:

I. Purpose and Scope.

(A) The [Board of Aldermen/City Council] of the City hereby finds and determines as follows that:

(i) the acquisition of interests in real property for public purpose through the exercise of eminent domain, particularly when the property interest is to be acquired in furtherance of redevelopment objectives, but will not be directly owned or primarily used by the general public, poses unique issues and concerns and has potential to engender significant controversy;

(ii) although eminent domain remains an essential tool to achieve local redevelopment objectives, this authority must be exercised sparingly and, if and when exercised, should preserve a balance between public necessity and individual rights in property through a process perceived by the community as fundamentally fair to all affected parties;

(iii) the City should act therefore as a good steward of eminent domain authority, assuming responsibility for achieving a balance of interests and

maintaining fundamental fairness in the consideration of any exercise of eminent domain; and

(iv) in light of the foregoing, the City intends to diligently apply the policies and procedures set forth herein with the understanding that inadvertent failure to apply the policies and procedures in a specific instance shall not invalidate the act or acts undertaken, so long as such act or acts comply with applicable law.

(B) The policies and procedures set forth herein are intended to apply only to those permanent acquisitions of fee interests in real property by or in the name of the City:

(i) that relate to the elimination of blighted, substandard, or unsanitary conditions, or conditions rendering the property to be acquired, or its surrounding area a conservation area, or to any similar redevelopment purpose authorized by law; or

(ii) when the property to be permanently acquired will not be directly owned by the City or a governmental entity or agency; or

(iii) that are conveyed within three (3) years following acquisition by the City or a governmental entity or agency to a private individual or a for-profit entity (collectively, “*Redevelopment Acquisitions*”).

(C) These policies and procedures are intended to provide guidance and to facilitate full, open and timely communication with and among all interested parties in connection with Redevelopment Acquisitions with the primary objective of reducing potential for controversy and conflict. Accordingly, nothing in these policies and procedures or their application either generally or in specific instances is intended to or shall be deemed to create a cause of action or claim against the City or any other interested party.

(D) These policies are not intended to and shall not apply to any temporary acquisition, acquisitions of property interests less than fee (e.g., easements, rights-of-way), or to any acquisition of any property interest for any purpose other than a Redevelopment Acquisition (e.g., public works, parks and recreation, utilities).

II. Initial Determinations; Notice and Public Hearing; “Plain Language” Summary of Process.

(A) As part of the consideration of any proposed exercise of eminent domain for any Redevelopment Acquisition, the [Board of Aldermen/City Council] should determine and identify:

(i) each property to be acquired in fee and location or each such property by street name or other sufficiently specific description; and

(ii) the use or uses intended to be made of the property to be acquired and the persons or entity that will hold title to the acquired property after redevelopment.

(B) Prior to the approval of any Redevelopment Acquisition, the [Board of Aldermen/City Council] should provide for public comment on the proposal by holding a public hearing after giving notice to the public and to those owners of record of property

to be acquired in fee (each an “*Original Owner*”). The notices provided should include the determinations called for in paragraph (A) of this section. **[EDTF Action Item #1]**

(C) The [Board of Aldermen/City Council] should cause to be prepared a written, “plain language” summary of the acquisition process and the rights of property owners under Chapter 523 of the Revised Statutes of Missouri, as amended, and should cause a copy of such written summary to be provided to each Original Owner in advance of the holding of any scheduled public hearing to consider a Redevelopment Acquisition. **[EDTF Action Item #2]**

III. Use of Redevelopment Acquisition Consistent with Initial Determinations.

After the exercise of eminent domain in connection with a Redevelopment Acquisition, the City should use the property so acquired for the use or uses that were originally identified by the [Board of Aldermen/City Council]. Within a three (3) year period following authorization of eminent domain, a use of a Redevelopment Acquisition that is substantially different from that originally identified should be authorized by an affirmative [two-thirds/three-fourths] majority vote of the entire [Board of Aldermen/City Council], which vote should be a public vote or, if the acquired property is no longer needed or suitable for the originally identified use, the Original Owner may be afforded the opportunity to re-acquire the property at the amount of the final award in condemnation paid by or on behalf of the City. **[See EDTF Action Item #12]**

IV. Exercise of Authority; Time for Filing Condemnation Action.

(A) Eminent domain for Redevelopment Acquisitions should be exercised only in the name of the City as approved by the [Board of Aldermen/City Council]. **[EDTF Action Item #10]**

(B) The City should provide final authority to exercise eminent domain for Redevelopment Acquisitions only by ordinance or resolution, and after public hearing. Each such ordinance or resolution should identify the property to be acquired and should contain and be informed by the following findings and determinations:

- (i) that interested parties and the public have had opportunity to be informed of, and to be heard on, the proposed exercise of eminent domain;
- (ii) that the proposed use of the property is consistent with the City’s comprehensive plan;
- (iii) that the property to be acquired will be directly owned by the City or other governmental entity; or, in the event that the property to be acquired will not be so owned, the ordinance or resolution identifies the person(s) or entity(ies) who will hold title to the property after redevelopment; and
- (iv) that there is no other reasonable alternative to acquisition of the property by exercise of eminent domain. **[EDTF Action Item #11]**

(C) In each Redevelopment Acquisition, the City should file with the circuit court of relevant jurisdiction a petition in condemnation seeking to acquire a specific property not later than **[three (3) years]** from the date the [Board of Aldermen/City Council] adopts the ordinance or resolution approving exercise of eminent domain. **[See EDTF Action Item #14]**

V. Redevelopers.

(A) In each Redevelopment Acquisition in which the property to be acquired will not be directly owned by the City or other governmental entity, the [Board of Aldermen/City Council] should require written assurances that the person(s) or entity(ies) who will hold title to the property after redevelopment (the “*Redeveloper*”):

- (i) has demonstrated to the City’s satisfaction that the Redeveloper has considered alternative sites or locations and that the property to be acquired reasonably represents the minimum necessary to achieve the goals of an approved redevelopment plan; **[EDTF Action Item #11]**
- (ii) has provided adequate security for payment of all estimated condemnation costs including awards, fees and relocation costs; pre-condemnation damages; and damages in the event of abandonment of condemnation; and
- (iii) to the extent feasible under an approved redevelopment plan, has made a good faith offer to businesses or residents displaced by the Redevelopment Acquisition of an opportunity to relocate within the area to be redeveloped.

(B) In the event that multiple properties are required to assemble land for redevelopment, the City may additionally require that before authorization of eminent domain, the Redeveloper has obtained control over at least **[seventy-five percent (75%)]** of the total land area or total number of properties comprising the area to be redeveloped by negotiated purchase.

(C) In connection with authorization of eminent domain for a specific Redevelopment Acquisition, the City should additionally consider in applicable circumstances whether the Redeveloper has provided for:

- (i) determinations of value by independent appraisal;
- (ii) inclusion of payment of business interruption costs as a relocation cost;
- (iii) determination and payment of compensation based upon the true cost of replacing such property with a comparable property and taking into consideration, as applicable:
 - (a) the location of the acquired property;
 - (b) the school district in which acquired property lies;
 - (c) physical characteristics of the acquired property (e.g., acres, area, number of bedrooms, etc.); and
 - (d) any other relevant characteristics of the acquired property which bear on the true cost of replacement as of the date of the award in condemnation; and
- (iv) payment of compensation for any uncompensated rental interests acquired or displaced as a result of the acquisition of property by eminent domain.

VI. Abandonment of Project; Opportunity to Repurchase; Expenses in Advance of Award.

(A) If any project approved pursuant to an approved redevelopment plan in which a Redevelopment Acquisition has been authorized and acquisition completed is

abandoned, for any reason, the City should promptly notify all Original Owners of acquired properties and may provide an opportunity for each such Original Owner to repurchase the property acquired.

(B) Other than as provided by applicable law, any cost or expense incurred by any party affected by the exercise of eminent domain in advance of a commissioners' award in condemnation, shall be solely the responsibility of such party.

VII. Redeveloper's Prompt Payment of Condemnation Award.

(A) Prior to approving a Redevelopment Acquisition in which the property to be acquired will not be directly owned by the City or other governmental entity, the City should require that the Redeveloper pay the commissioners' award into court promptly, and in the event of unreasonable delay or failure by the Redeveloper to pay the commissioners' award into court that the Redeveloper indemnify and hold the City harmless from all damages, costs and expenses required to be paid.

(B) Any written agreement between the City and the Redeveloper may include provisions that Original Owners are entitled to the prompt payment of the commissioners' award into court.

Section 2. That his Resolution shall take full force and effect from and after the date of its passage and approval as provided by law.

APPROVED BY THE [BOARD OF ALDERMEN/
CITY COUNCIL] OF THE CITY OF
_____, MISSOURI

_____, Mayor

Date: _____

Attest:

_____, City Clerk