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Date: January 13, 2020

To: David R. Martin  
Mayor

From: Kathryn Emmett  
Corporation Counsel



Cynthia Anger *Cynthia Anger*  
Assistant Corporation Counsel

Re: The Procedure for Acquiring Property by Eminent  
Domain

As requested, below is a memorandum which provides a detailed summary of the procedure for acquiring property by eminent domain.

#### **Administration's Responsibility**

- Initiate a public works project that may require the exercise of the City's eminent domain powers.<sup>1</sup>
- Refer the project to the Planning Board for a report.<sup>2</sup>

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<sup>1</sup> Property may be acquired for public works projects through direct purchase rather than through the eminent domain process, in which case the procedures set forth in Code of Ordinances section 9-7.1 apply.

- Refer the public works project to the Board of Representatives to commence the process.

### **Planning Board's Responsibility**

- Issue a report within 60 days and forward it to the Board of Representatives. Charter § C6-30-13.
- Failure to issue a report within 60 days shall be taken as approval.

### **Board of Representatives' Responsibility**

- Consider Planning Board report. A two-thirds (2/3) vote is required to approve a project that the Planning Board has disapproved.
- Hold a public hearing.
- Declare by resolution that the exercise of the power is for a municipal purpose or use. The resolution must generally describe the project and include a request that the Mayor cause a report to be made on the project.

### **Administration's Responsibility**

- The Mayor:
  - directs the Office of Operations to perform the preliminary engineering work, and
  - obtains cost estimates from the Director of Administration of the improvement.
- Two appraisals are obtained by the Director of Administration and good faith negotiations to purchase the property in lieu of eminent domain begin as provided by state statute.<sup>3</sup> Charter § C8-60-3 and Conn. Gen. Stat. §§ 8-129 and 48-12.
- If the preliminary engineering work, cost estimates of the improvement, and appraisals have been performed prior to the resolution they may be reviewed and updated as needed after its passage.
- File a copy of the Mayor's report, Office of Operations' report and Director of Administration's cost estimate for public inspection in such office as the Mayor may designate.

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<sup>2</sup> Historically, the referral process has been inconsistent, with the Board of Representatives sometimes making the referral to the Planning Board.

<sup>3</sup> The standard used to appraise the property is based on the highest and best use of the property. Just compensation to the owner(s) is determined as the average of the two appraisals. Conn. Gen. Stat. § 8-129.

- If the negotiations fail, the Office of Operations' work is submitted to the Director of Administration, who provides the property owner(s) with notice and an opportunity to be heard. Charter § C8-60-4.
- The Director of Administration reports to the Board of Representatives their determination regarding the compensation amount and improvement costs. These documents are available for public inspection. Charter § C8-60-5.
- Refer project to the Board of Finance for approval.<sup>4</sup>

### **Board of Finance Responsibility**

- Consider and approve the project.

### **Board of Representatives' Responsibility after Director of Administration Report and Board of Finance Approval**

- Accept the report of the Director of Administration as submitted, modify the report and refer it back to the Director of Administration, reject the report and refer it back to the Director of Administration, or abandon the project or improvement.
- The Board may increase the amount of benefits and lower the amount of damages, but it may not lower the benefits or increase the damages without the approval of the Director of Administration. Charter § C8-60-7.<sup>5</sup>
- If the Board accepts the report, it adopts a resolution indicating adoption of the report and directing that the improvement be carried out in accordance with the report. Charter §§ C8-60-2 and C8-60-8.
- Provided that the Board of Finance has approved the project, the resolution and the report are forwarded to the Mayor for signature.

### **Administration's Responsibility**

- The Director of Administration provides notice to the property owners of the resolution and compensation amount. Charter §§ C8-60-8 and C8-60-9.<sup>6</sup>

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<sup>4</sup> The referral process to the Board of Finance has also been inconsistent. However, the Board of Finance approval must be obtained before the Board of Representatives adopts a resolution accepting the Director of Administration's report and directing that the improvements be carried out.

<sup>5</sup> "Benefits" refers to the increase in value that will accrue to the property from the public works project. Benefits commonly arise in instances where there is a partial taking to provide a city service, such as public sewers and water to the property. Benefits cannot arise where there is a total taking because no privately owned property remains to be benefited. "Damages" refers to the amount of compensation to be paid to the owner by the City. The amount of compensation is based on the highest and best use of the property. The amount of relocation financial assistance is calculated separately.

<sup>6</sup> Prior to notice, sufficient funds must have been appropriated and the report recorded on the land records. Charter § C8-60-8.

- Then, with the prior approval of the Mayor, the Board of Finance, and the Board of Representatives, the City deposits the approved compensation amount in Court, title vests in the City, and the City may proceed with the work. Charter § C8-60-9.
- The owner either accepts the amount deposited in Court or contests the amount. The Court may increase, but not decrease the amount awarded for the taking.
- The amount of relocation financial assistance is separately calculated and is included in the overall compensation paid.