

THE CORPORATION OF THE CITY OF ST. THOMAS
REAL PROPERTY ACQUISITION POLICY

SECTION 1 – POLICY STATEMENT

- 1.1 The City of St Thomas acquires Real Property Rights as necessary to support municipal purposes in alignment with its mandated programs, projects, policies, and strategic plans. In doing so, the City will act in a transparent, fair, and reasonable manner, while ensuring that its best interests are upheld.

SECTION 2 – PURPOSE

- 2.1 The purpose of this policy is to establish and maintain a consistent framework for the acquisition of real property and real property interests that supports City Council's approved mandates and projects, programs, policies and strategic plans.

SECTION 3 – APPLICABILITY

- 3.1 This policy applies where Real Property interests are acquired by the City, and pertains to any right, interest or benefit in land, including but not limited to Fee Simple Acquisitions, Easements and Rights-of Way, Encroachments, Expropriation, Leases, Licenses and Limited Interest Agreements, Options and any other limited interests.
- 3.2 This policy applies to all City staff and any agents authorized to transact in Real Property on behalf of the City.

SECTION 4 – NON-APPLICABILITY

- 4.1 This policy does not apply to the following types of Acquisitions:
- a. Real Property acquired by the City through the development application and agreement process pursuant to the *Planning Act, R.S.O. 1990* ("Planning Act")
 - b. Real Property acquired by the City through vesting by reason of tax arrears pursuant to the *Municipal Act, 2001, S.O. 2001* ("Municipal Act")
 - c. Real Property acquired by the City pursuant to the *Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c. 33*
 - d. Real Property acquired on behalf of another level of government.

SECTION 5 – LEGISLATIVE REQUIREMENTS

5.1 All Real Property transactions shall be conducted in accordance with applicable federal and provincial legislation, including but not limited to, the *Municipal Act, 2011*, the *Planning Act*, R.S.O. 1990, c. P.13, the *Expropriations Act*, R.S.O. 1990, c. E.26 (“Expropriations Act”), the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, the *Tenant Protection Act*, 1997, S.O. 1997, c. 24, the *Assessment Act*, R.S.O. 1990, c. A.31, the *Land Titles Act*, R.S.O. 1990, c. L.5, the *Condominium Act*, 1998, S.O. 1998, c. 19 and the *Ontario Heritage Act*, R.S.O. 1990, c. O.18. all as amended.

SECTION 6 – DEFINITIONS

6.1 In this policy:

“Acquisition” shall mean obtaining an interest in Real Property through a purchase or other transactional means.

"Appraisal" shall mean a reasonable form of valuation to establish an estimated Fair Market Value for the Real Property in question. An individual accredited by, and in good standing with, the Appraisal Institute of Canada, either internal City staff or an outside appraiser, may prepare the Appraisal. It is a formal, written, impartial estimate or opinion of the value of the Real Property, as of a specific date, and which should include the conditions and limitations at the time of the opinion or estimate of value.

“City” shall mean The Corporation of the City of St. Thomas.

"City Council" shall mean the municipal council of the Corporation.

“Development Agreement” shall mean an agreement entered into with a developer during the course of the development approval process, including but not limited to, subdivision agreements, site plan agreements and servicing agreements.

“Due Diligence” shall mean any activities required prior or during the acquisition of real property that will effectively assist in the decision-making process of the acquisition and will provide a thorough understanding of the potential asset.

“Easement” shall mean a partial interest in real property that is registered on title. An easement reflects the acquisition of property rights either on the surface, above or below ground and can be permanent or temporary and identifies a specific use.

“Encroachments” shall mean any type of vegetation, man-made object or item of personal property which exists wholly or upon, or extends from a person’s premises onto, public lands and shall include any aerial, surface or subsurface encroachments. The City may also encroach on the property of other parties.

“Expropriation” shall mean acquiring Real Property without the consent of the owner, by an expropriating authority in the exercise of its statutory powers.

“Fair Market Value” shall mean the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

“Fee Simple” shall mean the fee simple estate in land, which represents the highest estate in land allowed in Ontario and provides for ownership of land to a person (including their heirs) for an indefinite duration.

“Lease” shall mean a legal and binding agreement between two or more parties that specifies a specific property interest, for a specific term, for the right of a specific purpose of use, for a stated consideration and executed by the parties to the agreement.

“Licence” shall mean revocable authority or permission given solely to one having no possessory rights in a tract of land to do something on that land which would otherwise be unlawful or a trespass.

“Limited Interest” shall mean an ownership of real estate rights that is less than Fee Simple ownership rights in which the owner of the limited interest has some specific rights to control and use property, said rights are typically conveyed by agreement.

“Needs Assessment” shall mean a departmental or service area report documenting the need for and purpose of acquiring Real Property signed by the appropriate Department Head, Economic Development Corporation CEO or City Manager.

“Real Property” shall mean land, buildings, anything that is erected or growing on or affixed to the surface of the land, minerals and anything subsurface, and all rights issuing out of, annexed to, and exercisable without or about land such as leases, licenses, mortgages, air rights, easements and rights of access.

“Real Property Rights” shall mean any right, interest or benefit in land, but is not limited to, fee simple acquisitions, leases, licenses, options, permits, air rights, density transfers, permanent easements, rights-of-way, linear corridors, and other limited interests such as joint-use agreements, temporary working easements, access easements, permissions to enter and construct, and any other legal binding agreement related to the acquisition of property rights.

SECTION 7 –OBJECTIVES FOR LAND ACQUISITION

7.1 The City will acquire, retain, maintain, renovate and improve Real Property only when those properties clearly align with the goals and objectives of the City's Strategic Plan, Official Plan, Capital Budget, Master Plans and approved Municipal Class Environmental Assessments, approved business plans or Council direction related to the provision of City mandated programs. City mandated programs are services, products or facilities which are owned, operated, or purchased in fulfillment of City objectives and delivered to the public. The objectives, mandates and strategies of the Economic Development Corporation are also included.

SECTION 8 – ACQUISITION RATIONALE AND/OR NEEDS ASSESSMENT

8.1 All acquisition requests should be supported by a department / service area needs assessment or capital project/program or provincial order explaining the rationale for the acquisition, a form of Council authority or proof of approval through the current or capital budget process.

8.2 Needs Assessment -

Prior to initiating an acquisition of any Real Property, the department / service area will prepare on its behalf, or on behalf of a partner agency, a Needs Assessment. The Needs Assessment shall:

- a) Provide justification and rationale for the proposed acquisition.
- b) State the municipal need or issue the acquisition will satisfy.
- c) Evaluate the total cost of ownership including the impact of on-going operating and estimated capital expenditures over the life cycle of the asset.
- d) Discuss the risks and benefits of the acquisition.
- e) Identify, if any, options to asset acquisition.
- f) Evaluate, if required, the lease term and proposed conditions compared to the market.
- g) Provide a Net Present Value analysis (NPV) that considers the financial costs and benefits of these options.
- h) Identify, if any, unique factors that are applicable to the acquisition, including applicable policies, plans or strategies of the City.

All Needs Assessments shall be vetted through the City's Leadership Team and Treasury in collaboration with the department / service area to determine whether the City's existing Real Property inventory, or any capital works initiatives or development approvals process, may fulfill the service area requirements and determine the impact, if any, on the remainder of the

City's real estate portfolio. In the case of leased property, this process shall apply to all potential leased premises.

8.3 Needs Assessment Exemptions -

For Real Property Rights required for infrastructure, environmental acquisition, emergency scenarios, and at the discretion of the City Manager for other municipal purposes, a department /service area Needs Assessment shall not be required prior to completing the transaction. An approved Master Plan or Municipal Class Environmental Assessment with any supplemental information specific to the land parcel may be sufficient in lieu of a full Needs Assessment.

8.4 Council Direction -

City Council direction of a request to pursue land acquisition shall include authority for the appropriate person(s) or body to initiate and undertake legal surveys, appraisals, environmental assessments, due diligence, negotiations, expropriations, legal and other such related activities or reports, as may be required. A budget item should be identified or approved for the program or project, including the costs of acquiring a Real Property and future operational budget impacts should be considered, before action is taken to acquire property.

8.5 Funding -

A source of funding for the acquisition of Real Property, life cycle costs, including ongoing annualized operating costs of the asset, must be identified through a Council approved budget item, specific to the program, project or policy defining the need, or allocated from an approved Service Area budget, with approval of the City Treasurer.

8.6 Parkland -

The City may acquire Real Property as part of its park and open space, trails or natural heritage system as provided for through the City's Official Plan and any parkland master plan, trails plan, policy, bylaw or Needs Assessment. A combination of the methods of acquisition outlined in this policy may be required to deliver on a specific mandate, program, project, policy or strategic plan.

SECTION 9 – METHODS OF LAND ACQUISITION

9.1 Real Property interests may be acquired through any of the following methods:

a. Negotiation -

Negotiation is the preferred method of obtaining Real Property Rights. It shall be conducted through a fair and equitable agreement mutually acceptable to all parties. Negotiations may occur with a specific property owner as a result of a direct interest

in a particular property or in an emergency situation. Negotiations may originate from a request for proposal with multiple proponents initially, until one is selected for completion of a transaction. Staff may negotiate with other levels of government, utility companies or other agencies, for direct acquisitions.

b. Unsolicited proposal -

Any unsolicited proposal regarding a request for the City to acquire Real Property or enter into a Lease agreement shall follow the City's Purchasing Bylaw. All unsolicited proposals should:

- i) identify how it can stimulate or support the development and growth for the City,
- ii) illustrate the benefit of acting upon a limited or single opportunity,
- iii) be supported by a department / service area Needs Assessment, and
- iv) identify the budget funding source or resources for the acquisition, including consideration of annual operating costs of the asset.

c. Charitable donation -

The City may acquire Real Property as a donation (i.e. a voluntary gift given without compensation or consideration) if an appropriate municipal purpose has been identified for the property and upon City Council's approval.

Before accepting a donation of Real Property, an analysis to determine the conditions of the gift, existing restrictions or encumbrances and assumption of liabilities or any tax implications, shall be undertaken. A charitable donation receipt may be issued in the amount of the appraised market value of the donated Real Property. An Appraisal shall determine the market value of any donated Real Property. A satisfactory Phase I Environmental Site Assessment may also be required.

d. Expropriation -

The City has the authority to expropriate Real Property in accordance with the provisions of the Expropriations Act. Expropriation may be considered and used where project requirements must be met in a timely manner or where negotiation has failed to produce an agreement.

Staff will develop a report to City Council to secure authorization to initiate Expropriation proceedings. The report should include:

- i) justification,
- ii) efforts undertaken to negotiate the acquisition, and
- iii) funding source or resources for all Expropriation-related expenses.

The Expropriation process may be initiated in parallel with negotiations for an Agreement of Purchase & Sale, if staff are of the view that the required Real Property Rights may not be acquired in a timely manner or where there is reasonable likelihood that the negotiations with the property owner will not succeed.

e. Competitive bid (Request for Proposal) -

The City may initiate the acquisition of a Fee Simple or Lease interest in Real Property through a purchasing process (Request for Proposal) in accordance with the City's Purchasing Bylaw. The City shall not be obligated to enter into negotiations and complete a transaction under this process.

f. Land exchange -

When an acquisition is pursued in support of Council approved mandates, programs, projects, policies or strategic plan and it is determined that an exchange of City-owned Real Property is in the best interests of the City, negotiations shall be initiated based on the Fair Market Value of the respective Real Properties.

g. Land Assembly -

The City may acquire property with the intent of a land assembly to satisfy a City mandate, program, project, policy or strategic/master plan that supports long term economic or strategic growth and be in the public interest.

h. Public-Private Partnership

The City may acquire an interest in Real Property as part of a Public-Private Partnership (P3) to provide infrastructure, municipal facilities and related services that would benefit the municipality, the private sector and City residents.

i. Transfer from another level of government or agency -

The City may use its position as a government agency to acquire interests in Real Property, prior to property being available on the open market, from other levels of government, school boards, railways, conservation authorities, and other agencies. The City may acquire Real Property as the result of a transfer of jurisdictional authority from one level of government or agency to another.

SECTION 10 – DUE DILIGENCE

10.1 All Acquisitions must be accompanied by a current Fair Market Value Appraisal. An appraisal shall be no more than twelve months old. Where the estimated market value is \$750,000 or greater, a second appraisal will be required, one of which will be undertaken by an independent real estate professional.

Appraisal reports will be based on the “Highest and Best Use” of the property in accordance with current standards of practice within the real estate industry and within the guidelines of the Appraisal Institute of Canada, which may be amended, from time to time.

10.1.1 The City Manager may waive the need for an appraisal in certain circumstances where the proposed acquisition is less than \$25,000, or there is an approved valuation rate (amount per acre) for specific type of land (e.g. hazard / conservation land) and the proposed acquisition is less than \$50,000.

10.2 The City shall complete a pre-screening on all Real Property to be acquired to identify potential environmental contamination issues associated with the land.

When an acquisition involves the entire Fee Simple interest, or where it is deemed necessary by the Department / Service Area, for the acquisition of a lesser interest, at minimum a Phase I Environmental Site Assessment (ESA) shall be completed where the City does not already have information or confirmation of known or suspected environmental issues. A Phase II ESA may also need to be undertaken.

Whenever possible or appropriate, acquisition agreements should provide for the indemnification of the City by the vendor for environmental conditions.

SECTION 11 - ACQUISITION AND AGREEMENT

11.1 The City Council meeting regarding the acquisition of Real Property will be conducted in accordance with the Municipal Act and the City’s Procedural By-law.

11.2 Prior to completion of an Acquisition, tax and utility account status of the subject property should be verified through the Treasury.

11.3 The Acquisition of Real Property Rights shall be at the lowest possible negotiated cost and greatest economic advantage to the City. When the Acquisition is in support of a City mandated program, land may be acquired based on Fair Market Value and entitlements, as defined by the *Expropriations Act*. Acquisitions may be at less than fair market value in the following circumstances:

- a) Charitable donation or gratuitous dedication
- b) Transfer from other level of government or agency
- c) Negotiated price

11.4 Upon selection of a site by the Department / Service Area, successful negotiations, and Council authorization, an appropriate agreement (Purchase and Sale, Lease, Licence, etc.)

shall be prepared with Legal Counsel review and finalization. When the agreement has been fully executed and the transaction completed, the executed copies shall be provided to the City Clerk, City Treasurer, City Department/Service Area Head and any coordinating department.

SECTION 12 – ROLES AND RESPONSIBILITIES

- 12.1 The City Manager will identify any department or position responsible for coordinating the Real Property Acquisitions.
- 12.2 All negotiations and discussions pertaining to the potential acquisition of Real Property or Rights shall be kept confidential by all parties involved.
- 12.3 City Council approval is required for the Acquisition of Real Property interests in accordance with the provisions of this Policy and any and all applicable By-laws and Legislation.
- 12.4 Department / Service Area is responsible for:
 - a) Identifying through the Department Director to the City Leadership Team when becoming aware of a Real Property Rights requirement.
 - b) Reviewing the existing Real Property inventory and other acquisition initiatives, in consultation with other Departments, to determine if Real Property needs can be met through current inventory or initiatives, prior to the initiation of an acquisition process.
 - c) Ensuring that the asset rationalization effort and confirmation that the acquisition requirement satisfies its City-mandated program.
 - d) Participation or preparation of the Department / Service Area Needs Assessment.
 - e) Providing confirmation through Treasury that Capital and Operating Budgets to support an acquisition of Real Property is available prior to any site search or negotiations are undertaken.
 - f) Assisting in the preparation and coordination of the agreements and transactional documents with Legal Counsel.
- 12.5 Legal Counsel is responsible for the following matters:
 - a) Providing legal advice and making recommendations to City staff on compliance with all applicable legislation, by-laws and policies.
 - b) Providing an opinion on the steps required to satisfy applicable legislative requirements.

- c) Preparing, reviewing and/or finalizing the form and content of all legal agreements and documents required to complete transactions related to the Acquisition of any Real Property interest by the City (including Leases and other Limited Interest agreements).
- d) Completing transactions related to the Acquisition of any Real Property interest by the City and providing a final reporting letter to relevant City staff.

12.6 Treasury is responsible for:

- a) Ensuring any and all payments required under a real estate transaction, including leases/licenses are paid in accordance with the terms of the agreement to ensure no potential penalties to the City.
- b) Providing financial analysis and comment in a departmental Needs Assessment for property acquisitions in collaboration with the Department / Service Area.
- c) Ensuring, in collaboration with the Department / Service Area and Facilities, that no existing corporate asset will meet the current property initiative.
- d) Identifying sources of funding for any proposed initiative.
- e) Providing leadership for any competitive bid (RFP) process as required by this Policy.
- f) Verifying the tax and utility account status of the subject property.

12.7 Conflict of Interest –

No elected official, appointed officer or employee of the City, agency, board or commission, shall have any interest either directly or indirectly of the Real Property to be acquired or considered for acquisition. Once known, any interest must be disclosed. No party having a Conflict of Interest, even once disclosed, shall have any authority to negotiate the transaction. Direct or indirect interest shall include, but not limited to, being an owner, or partial owner, of the property or a party to financing the asset.

SECTION 13 – ADMINISTRATION

13.1 The City shall undertake the acquisition of Real Property interests in conformity with this Policy, unless otherwise directed by City Council.

13.2 A review of this policy should be conducted at minimum every 5 years.