

# RIGHT OF WAY

---

## THE ACQUISITION PROCESS

A Guide for Property Owners and Tenants



# CONTENTS

---

Introduction.....	2
What is right-of-way?.....	3
What is an easement?.....	3
What is fair market value?.....	3
What are your rights as a property owner?.....	4
What are the City’s rights?.....	4
How are locations for improvements determined?.....	5
How will you be informed?.....	5
What is the offer based on?.....	6
What is the offer process?.....	6
What happens if you accept the City’s offer?.....	7
What happens if you refuse the City’s offer?.....	7
What happens if you have to move because of the project?.....	9
How does the City assist you with moving?.....	10
What happens if you own your home?.....	11
What happens if you rent your home?.....	12
What if comparable housing is not available?.....	12
How will you be reimbursed for moving expenses?.....	12
How is a business, farm or non-profit organization reimbursed?....	13
What if you are dissatisfied with the relocation services?.....	14

# INTRODUCTION

---

This brochure has been created in order to assist those citizens affected by the City's public projects, which are necessary to ensure the safety of its residents and the adequacy of the City's infrastructure. To accomplish this, it is often necessary to acquire land from private property owners.

This brochure will provide you with information about the City's process of acquiring rights-of-way for streets, sidewalks and related transportation facilities and easements for public improvement projects, such as utilities and drainage.

This brochure contains information on public hearings, the valuation process, negotiations between you and the Right-of-Way Agent, what happens if you refuse the City's offer to buy, and how the City will assist you if you have to move.

The City recognizes that the acquisition and relocation process can create inconvenience, stress and disruption for citizens. The City does its best to ensure that the property is obtained by just compensation and that the City representatives work with property owners and tenants to make the transactions and transitions of any move as smooth as possible.

To answer all of your questions pertaining to the right-of-way acquisition process in this booklet would be difficult. However, in answering a few, the City hopes you will understand the basic process and be prepared for visits with representatives of the City's Right-of-Way Office.

## **WHAT IS A RIGHT-OF-WAY?**

---

A right-of-way is defined as the fee simple property rights purchased by the City for a public improvement project. To obtain these rights, the City must acquire title to the property and compensate the owner with just compensation as required by law.

## **WHAT IS AN EASEMENT?**

---

An easement is defined as the right to use land belonging to another for a specified purpose, such as for drainage or utilities, but the owner retains ownership of the property. The City purchases this right to use the easement for just compensation. An easement restricts but does not terminate the rights of the owner to the use and enjoyment of his land, subject to the easement holder's (the City's) rights.

Throughout this booklet, the use of the terms "right-of-way" will include the acquisition of "easement" rights.

You, as the owner of the land needed for right-of-way purposes, find yourself in the unique position of being both buyer and seller. You are one of thousands who has paid tax dollars into the City treasury. Some of these tax dollars will be used now to purchase required property interests from you. Most property owners, regardless of the inconvenience caused by right-of-way acquisition, understand the overall benefits of a public improvement project.

## **WHAT IS FAIR MARKET VALUE?**

---

The fair market value of a property, as used in this brochure, is defined as the price property will bring when offered for sale by one who desires, but is under no necessity, to sell and is bought by one who desires, but is under no necessity, to buy.

## **WHAT ARE YOUR RIGHTS AS A PROPERTY OWNER? WHAT ARE THE CITY'S RIGHTS?**

---

In order for the City to construct efficient public infrastructure for its citizens, the City must sometimes acquire parcels of, or interests in, privately-owned land.

The City has the right to acquire the land needed for these projects. That right is given to the City by the Virginia General Assembly. Without this right, the City could not provide its citizens with adequate transportation facilities, utilities, drainage systems and other public needs to meet the demands of the City's growing population and the traveling public.

The City's policy is to treat all property owners the same, in a fair, courteous manner, and with as little inconvenience as possible.

Sometimes agreements cannot be reached between property owners and the City. When these situations develop, the property owners, as well as the City, have well-defined rights under the law. These rights safeguard the landowner from receiving less than fair market value for his property and protect the tax funds set aside by the City for right-of-way purchases from unrealistic demands.

At any time during the acquisition and relocation process, you are free to hire an attorney to assist you with legal issues. You are not required to have an attorney and if you decide to hire one, you are responsible for all legal fees and costs. The City Attorney's Office cannot provide you with legal advice.

## **HOW ARE LOCATIONS FOR IMPROVEMENTS DETERMINED?**

---

Professional staffs spend months studying possible locations for public improvements. They evaluate present and anticipated traffic volumes and drainage flows, as well as any other factors that must be considered in deciding on the most appropriate location for the public good. These professionals use extreme care to maximize the improvement with minimum interference to private landowners.

Before construction plans are prepared, several possible locations are chosen from aerial and ground surveys. These locations may sometimes be presented and explained at public hearings to give all interested citizens an opportunity to express their opinions on the proposed improvements. For large projects, public information meetings may be held to obtain as much information as possible from citizens prior to public hearings. Both the information meetings and the public hearings are advertised on the City's website and in local publications. Also property owners who will be directly affected by the project are notified individually by letter.

## **HOW WILL YOU BE INFORMED?**

---

Public hearings are held for many projects. At these community meetings, City representatives will answer your questions and provide information on the proposed construction.

You will have a chance to voice your opinions about the construction and to propose alternatives or changes. All information received will be carefully reviewed by the City.

The City decides whether to hold a hearing based on public interest and the magnitude of the project.

## **WHAT IS THE OFFER BASED ON?**

---

You will receive just compensation for any property, including land and buildings, required to build, operate and maintain the public improvement. To determine just compensation, a qualified individual (usually a licensed appraiser) will estimate the fair market value of your property, using the best information available. The appraiser considers recent property sales in your community and neighborhood, as well as improvement costs and land values.

You may want to point out any unusual features of the property or provide information you think may help determine its value. You will be provided the opportunity to accompany the appraiser during his/her visit to your property.

Once the valuation is completed and approved through a review process, the City will make you an offer to purchase the right-of-way for just compensation. You will be provided with a copy of the approved document which estimates the fair market value of the right-of-way.

## **WHAT IS THE OFFER PROCESS?**

---

A Right-of-Way Agent, employed by the City, will be assigned to personally contact the property owners.

A Right-of-Way Agent will visit you, at a time convenient to both of you, to describe the proposed public improvement, explain why the City needs to acquire your property, describe the amount of property required, along with any permanent or temporary easement(s) and explain how your property will be affected. The Agent will advise you of the City's offer to purchase and explain how the purchase price was determined.

If you have any questions do not hesitate to ask the Right-of-Way Agent. Realizing that your decision regarding acceptance of the City's offer is an important one, the Agent is prepared to make one or more return visits. You will have sufficient time to consider the offer, and the Right-of-Way Agent will strive to answer any question you may have.

## **WHAT HAPPENS IF YOU ACCEPT THE CITY'S OFFER?**

---

If you find the City's offer acceptable, you will be asked to sign an agreement to convey to the City the right-of-way needed for the purchase price set forth in the agreement. You will then receive a copy of the agreement and a plat showing the property to be acquired by the City and also showing the remainder of the property not acquired by the City, if any, sometimes referred to as the "residue" or "remainder."

The process usually takes approximately 45 - 60 days from signature to closing. At closing, you will sign a deed conveying the right-of-way to the City. After the deed has been accepted by the City and recorded at the courthouse, the purchase funds will be released to you. If there is a mortgage or lien on the property, or a title defect, additional time may be needed to complete the necessary paperwork.

Since the City arranges for the transfer of title, the legal expenses are covered by the City.

## **WHAT HAPPENS IF YOU REFUSE THE CITY'S OFFER?**

---

The law recognizes your right to refuse the purchase offer and have the value of your property established by the courts.

In some cases, a difference of opinion exists as to the value of the property needed for right-of-way purposes. Also, a property owner may attach a sentimental value to certain possessions which cannot be recognized as true value under the law.

In those instances where agreements cannot be reached, the City acquires the property by eminent domain, also known as “condemnation,” which is a right given to local, state and federal government to acquire private property needed for public use.

Eminent domain or condemnation proceedings are initiated by the City Attorney’s Office after all attempts to reach a mutual agreement have failed.

If a property owner decides not to accept the offer made by the Right-of-Way Agent, the City Attorney prepares a Certificate of Take and notifies the property owner by registered or certified mail that the Certificate will be recorded with the Clerk of the Circuit Court for the purpose of taking immediate possession of the right-of-way or easement needed. The Certificate is recorded with the Clerk of the Circuit Court, and an amount of money equal to the offer made to property owner is deposited in an interest-bearing account through the Clerk of the Circuit Court for the property owner’s benefit.

This process allows the City to proceed with the public improvement project. The City’s offer will still be available through the court, provided you have clear title to the property. A settlement between you and the City will still be possible right up to the time the case is heard in court.

If a settlement is not reached, the City Attorney will initiate legal proceedings necessary to allow you to present evidence as to the value of your property. A jury or panel of commissioners will hear the evidence of both parties and issue an award of just compensation for your property. Or you may choose to have the value determined by a Judge.

The valuation set by the court-appointed jury, commission or Judge is binding on both the property owner and the City; unless it can be shown that some part of the proceeding was irregular. In this case, which is rare, the award is set aside, and the case will be reheard.

If the award of just compensation differs from the amount of funds placed with the Clerk of the Circuit Court or withdrawn by the landowner, necessary adjustments are made.

The court proceeding is for the sole purpose of determining the just compensation for the property needed and damages, if any, to the remainder or residue. In these proceedings, no evidence is considered covering location of the project, although a Judge may hear issues relating to whether the project is for a public purpose.

## **WHAT HAPPENS IF YOU HAVE TO MOVE BECAUSE OF THE PROJECT?**

---

Occasionally, the acquisition of right-of-way for City projects pass close to or even through a dwelling or business. In such cases, the City usually purchases the building. Although it may be necessary for you to move, state and federal Relocation Assistance Acts have been designed to minimize any inconveniences caused by relocation.

If you must relocate, either as an owner-occupant or tenant-occupant, you will receive a written notice advising you of the intended date by which you are to vacate the property. No one is expected to move immediately, and no one is required to vacate his home unless and until adequate replacement housing is available.

## HOW DOES THE CITY ASSIST YOU WITH MOVING?

---

An individual or family who is required to move is entitled to receive relocation costs and assistance in locating replacement housing. For each case the consideration, type and amount of compensation due depends upon the individual circumstances and applicable criteria. The Right-of-Way Agent has details. To ensure that displaced residents and businesses receive all payments to which they are entitled, the City abides by state and federal regulations regarding relocation assistance.

In the case of a residential relocation, the Right-of-Way Agent will assist you in determining your needs and preferences; give you information of properties available for rent or sale; help with inspecting your proposed replacement home, assess required housing standards and determine whether the home meets City, State and Federal guidelines; help with transportation to replacement properties, if necessary; and gather information on other programs which offer assistance to those who are eligible (e.g., low income housing, social services, etc.).

The City's goal is to offer you the opportunity to relocate to a comparable replacement home. The replacement home must meet certain standards, including state and city building, plumbing, electrical, housing and occupancy codes.

**Please do not sign a sales contract or lease agreement for a new home until a Right-of-Way Agent has inspected the replacement dwelling and certified in writing that it meets the guidelines.**

In the case of a commercial relocation, the Right-of-Way Agent will assist you with moving expenses as outlined later in this brochure.

## **WHAT HAPPENS IF YOU OWN YOUR HOME?**

---

The City's goal is to offer you the opportunity to relocate to a home that is equal to or better than your current one. If you have been a homeowner (owner-occupant) for 90 days or more before offer to purchase is made, you are eligible for certain relocation benefits.

If another home cannot be found that meets the guidelines and is comparable to your current home at the price offered you for your house, you may be entitled to a replacement housing payment.

You also may be entitled to a mortgage interest differential payment if the interest rates on the new mortgage exceed those of your former mortgage.

You will also be reimbursed for certain incidental closing costs.

The combined total of these payments cannot exceed \$31,000, and the payments will be limited to the amount you actually spend on eligible expenses in buying your home.

If you have been a homeowner for at least 90 days but less than 180 days and choose to buy another home, you may be eligible for a maximum of \$7,200 as reimbursement for reasonable expenses required for the purchase.

If you were a homeowner for at least 90 day before offer to purchase is made and choose to rent rather than buy, you may be entitled to a maximum of \$7,200. The exact amount would depend on the rent required for a house that meets City, State and Federal guidelines and on the rental value of your current home.

## **WHAT HAPPENS IF YOU RENT YOUR HOME?**

---

If you have rented your home for at least 90 days before offer to purchase is made with the owner of the property, you may be entitled to a maximum of \$7,200. If you rent but wish to buy, you may be eligible for a maximum of \$7,200, which could be applied to the purchase price of another home.

## **WHAT IF COMPARABLE HOUSING IS NOT AVAILABLE?**

---

If comparable housing is not available within the \$7,200 and \$31,000 limits, it will be necessary to consider other options under the “last resort” housing program. If you are eligible for reimbursement under the last resort housing program, the various options will be fully explained to you by a Right-of-Way Agent. You will not be required to move until comparable housing has been made available.

## **HOW WILL YOU BE REIMBURSED FOR MOVING EXPENSES?**

---

The City will pay actual reasonable moving expenses for a maximum distance of 50 miles. **Please keep receipts of all expenses.** Payment from the City also may be paid on the basis of a fixed moving cost schedule.

You must apply to the City in advance indicating how and when you anticipate moving. Once your request is reviewed, you will be notified in writing of the approved amount. The Right-of-Way Agent will be glad to assist you in filling out the request.

Payment will not be made until the move is completed and the property has been inspected.

**Actual Reasonable Moving  
Costs**

---

Packing and Unpacking  
Temporary Storage  
Transportation  
Moving Insurance  
Other Related Costs

**Fixed Moving Costs**

---

-OR-

One Minimum Payment  
Based on Per Room Schedule

**HOW IS A BUSINESS, FARM OR NOT-PROFIT  
ORGANIZATION REIMBURSED?**

---

**ACTUAL MOVING EXPENSES**

A business, farm or non-profit organization can be reimbursed for the actual cost of moving a maximum distance of 50 miles. **Please keep receipts of all expenses.**

In some instances, you can be reimbursed for the **loss of tangible personal property and the expense of looking for a replacement site.**

As part of the actual moving expenses, a small business, farm or non-profit organization may be entitled to a **re-establishment payment not to exceed \$25,000** for expenses actually incurred in relocating and re-establishing such small business, farm or non-profit organization at the replacement site.

**FIXED PAYMENT IN LIEU OF ACTUAL MOVING  
EXPENSES**

**A business operation may be entitled to a fixed payment in lieu of payment for actual moving and related expenses of \$1,000 minimum and a maximum of \$75,000 if:**

- The business vacates or relocates from the displacement site.
- The business cannot be relocated without a substantial loss of clientele or net earnings.

- The business is not a part of a commercial enterprise having more than 3 other entities which are not being acquired by the City.
- It is source of income for the displaced owner.

**A farm operation also can receive a minimum of \$1,000 or a maximum of \$75,000 if:**

- The farm operation stops or is relocated elsewhere on the remaining property.
- The project impedes the efficiency of the farm operation.
- The project makes it economically unfeasible to operate the remaining property as a farm.

**A non-profit organization can receive a minimum of \$1,000 or a maximum of \$75,000 if:**

- If cannot be relocated without a substantial loss of clientele or membership.

You must apply to the City, before you move, whether you are moving a business, farm or not-profit organization. If the City has approved the move, you will receive payment after the move takes place, a moving cost claim has been submitted, and the property has been inspected.

## **WHAT IF YOU ARE DISSATISFIED WITH THE RELOCATION SERVICES?**

---

If you do not agree with the relocation services you have received, you may appeal through the Department of Public Works, City of Chesapeake.

Department of Public Works  
 Right of Way Office  
 City Hall, 4th Floor  
 306 Cedar Road  
 Chesapeake, VA 23328

Right of Way Agent  
 Carole Gillespie  
 (757) 382-6308  
[cgillesp@cityofchesapeake.net](mailto:cgillesp@cityofchesapeake.net)

