



### Doing Right-of-Way the Right Way

“The city is widening the street in front of my house. How is it going to affect me? What rights do I have and can I fight it?”

These are comments that our office hears every day, especially as they relate to right-of-way projects. People have legitimate questions and concerns, when it involves their property. They fear that the city is acting like “big brother” and is picking on them in particular. They feel that the city “is stealing property for no reason”. But, is this true?

National, state and municipal governments have the power of eminent domain or the power to take private property for the public’s use. Eminent domain is established and granted overall in the Fifth Amendment of the US Constitution and by the various state constitutions and local ordinances. The authority to exercise the right of eminent domain for public use is based on the theory that property is granted to the property owner upon the condition that it may be taken to serve the necessities (public use) of the government and that the owner will receive just compensation for the taking. The keys to this authority are public use and just compensation.

The biggest component of the public use is right-of-way and its associated safety issues. With increases in population and the combined increase in the use of the automobile, governments are faced with providing adequate roads (right-of-way) for these vehicles. Even alternative transportation, such as light rail require right-of-way. In conjunction with the roads, adequate sidewalks need to be provided for pedestrians. Roads and sidewalks provide safe access for vehicles and pedestrians. In general, government tries to find the best way of providing roads, at the least expensive cost to the citizens and with the least amount of impact on peoples’ property. They don’t “pick-on” certain people, but try to provide for all.

Division of Real Estate provides acquisition services to city agencies for a variety of projects. This includes Public Works and the acquiring of right-of-way. In dealing with right-of-way acquisition, there are steps that are followed once a project has been established. These steps are simplified as follows:

1. After legal descriptions have been approved by the City Engineer's Office, a Division of Real Estate staff member files the necessary paperwork with City Council to obtain an ordinance to negotiate, purchase or condemn parcels that are required for the project. The staff member presents the ordinance request to Mayor/Council and appears at any committees to provide information.
2. The Division of Real Estate staff member obtains title commitments for each property that is being sought and creates files for each property owner. The staff member then sends introduction letters to the property owners whose parcels are affected, explaining the purpose of the proposed project.
3. An appraiser is contracted to provide an appraisal which establishes the “just compensation” for any taking or use of an owner’s property.
4. The Division of Real Estate staff member sends the offer letters and conducts negotiations with each of the owners. The staff member will work with the City Attorney’s office to provide a contract to the owner when an offer is accepted and then participate in the closing.
5. If there is failure to negotiate, the Division of Real Estate will turn over the file to the City Attorney’s office and provide any expertise as part of obtaining the parcels through condemnation.

Although the acquisition of property for public use may seem complicated, following the right steps and knowing what the government’s authority is helps to alleviate issues that crop up concerning eminent domain.