

**INFORMATION BOOKLET**

**ACQUISITION OF PROPERTY**

**ROCK CREEK MATANZAS WATER AND SEWER MAIN  
REPLACEMENT PROJECT**

**Santa Rosa, CA**

**City of Santa Rosa**

*This is an informational pamphlet only. It is not intended to give a complete statement for all state or federal laws and regulations pertaining to the purchase of your property for a public use, the relocation assistance program, technical legal definitions, or any form of legal advice.*

## **Acquisition of Property Information Booklet**

- **Introduction**

The purpose of this booklet is to provide the property owner with information about the City's process of acquiring property for public projects, including information about the appraisal process, eminent domain and the rights of the property owner in that process. The decision to acquire private property for a public project, such as roadway or utility improvements, is made by the City of Santa Rosa only after a thorough review of the project and includes an evaluation of the need for the project and the necessary project location. Often, the decision-making process will include public meetings.

In every case, the City will use efforts to negotiate any real property acquisition with the property owner prior to considering the use of eminent domain, but there have been occasions where the assertion of this authority is necessary to proceed with an important public project.

- **What is a "public use"?**

A "public use" is a use that confers public benefits, like the provision of public services or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects such as street improvements, construction of water pipelines or storage facilities, construction of civic buildings, redevelopment of blighted areas, and levee improvements to increase flood protection. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public.

- **What is "just compensation"?**

Just compensation is the fair market value of the property being acquired by the government. The state law definition of fair market value is "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available".

- **The Eminent Domain Process and the Property Owner's Rights**

The eminent domain process begins with a public use project. When selecting a project location, the goal is to render the greatest public good and the least private injury or inconvenience. If it is determined that all or a portion of your property may be necessary for a public use project, the City of Santa Rosa will begin the appraisal process to determine the property's fair market value.

- **What factors does the appraiser consider in determining fair market value?**

Each parcel of real property is different and, therefore, no single formula can be used to appraise all properties. Among the factors an appraiser typically considers in estimating fair market value are:

## Acquisition of Property Information Booklet

- The location of the property;
  - The age and condition of improvements on the property;
  - How the property has been used;
  - Whether there are any lease agreements relating to the property;
  - Whether there are any environmental issues, such as contaminated soil;
  - Applicable current and potential future zoning and land use requirements;
  - How the property compares with similar properties in the area that have been sold recently;
  - How much it would cost to reproduce the buildings and other structures, less any depreciation; and
  - How much rental income the property produces, or could produce, if put to its highest and best use.
- **Will I receive a copy of the appraisal?**

The City of Santa Rosa is required to provide you with its purchase offer, a summary of the appraiser's opinion, and the basis for the City of Santa Rosa's offer. Among other things, this summary must include:

- A general statement of the City of Santa Rosa's proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer;
- The amount of the offer; and
- The amount considered to be just compensation for each improvement which is owned by a tenant and the basis for determining that amount.

However, the City of Santa Rosa is only required to show you a copy of the full appraisal if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City of Santa Rosa may, but is not required to, disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- **Can I have my own appraisal done?**

Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City of Santa Rosa. At the time of making its initial offer to you, the City of Santa Rosa must offer to reimburse you the reasonable costs, not to exceed \$5,000, of an independent appraisal of your property. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers. If you are interested in pursuing this option, please contact the City of Santa Rosa contacts identified on page 10 of this booklet in advance for further instruction.

- **What advantages are there in selling my property to the City of Santa Rosa?**

## Acquisition of Property Information Booklet

A real estate transaction with the City of Santa Rosa is typically handled in the same way as the sale of private property. However, you will not be required to pay for title costs, preparation of documents, title policy or recording fees required in closing the sale. The City of Santa Rosa will pay all these costs. Although the City of Santa Rosa cannot give you tax advice or direction, you might also be eligible for certain property and income tax advantages. You should check with the Internal Revenue Service (IRS) for details or consult your personal tax advisor.

- **If only a portion of my property is taken, will I be paid for the financial loss to my remaining property?**

In general, when only a part of your property is needed, every reasonable effort is made to ensure you do not suffer a financial loss to the "remainder" property. The City of Santa Rosa will pay you the fair market value of the property being taken as well as compensation for any loss in value to your remaining property that is not offset by the benefits conferred by the project. The compensation for the loss in value to your remaining property is often referred to as "damages". Also, if any remaining part is of such a size, shape, or condition as to be of little market value, the City of Santa Rosa will offer to acquire that remaining part (or remnant) from you, if you so desire.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that is conducted on the property being acquired, you may have a right to compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

- **What will happen to the loan on my property?**

Where the City of Santa Rosa is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City of Santa Rosa are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign an offer to sell or enter into a purchase agreement.

- **If I agree to accept the City of Santa Rosa's offer, how soon will I be paid.**

If you reach a voluntary agreement to sell your property or an interest in the property to the City of Santa Rosa, payment will be made at a mutually acceptable time.

## Acquisition of Property Information Booklet

Generally, this should be possible within 30 to 60 days after a purchase/sale contract is signed by all parties.

- **What happens if we are unable to reach an agreement on the property's fair market value?**

The City of Santa Rosa, to the greatest extent practicable, will make every reasonable effort to acquire your property by negotiated purchase. If, however, the negotiations are unsuccessful, the City of Santa Rosa may either file an eminent domain action in a court located within the same county where your property is located or it may decide to abandon its intention to acquire the property. If the City of Santa Rosa abandons its intention to acquire, it will promptly notify you.

If the City of Santa Rosa proceeds with eminent domain, the first step is for the City of Santa Rosa staff to request authority from the Santa Rosa City Council to file a condemnation action. The approval from the Santa Rosa City Council is called a "Resolution of Necessity". In considering whether condemnation is necessary, the Santa Rosa City Council must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project. You will be given notice and an opportunity to appear before the Santa Rosa City Council when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral right away. You or your representatives can raise any objections to the Resolution of Necessity and the condemnation either orally before the Santa Rosa City Council or in writing to the Santa Rosa City Council.

If the Santa Rosa City Council adopts the Resolution of Necessity, the City of Santa Rosa can file a complaint in court as the plaintiff to acquire title to the property upon payment of the property's fair market value. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), are named as defendants. Often, the City of Santa Rosa will also deposit the amount the City of Santa Rosa believes is the "probable amount of compensation" with the State Treasurer where the complaint is filed. A deposit must be made if the City of Santa Rosa is seeking to acquire possession of the property before agreement is reached on the fair market value.

- **Can the City of Santa Rosa acquire possession of my property before the property's fair market value is determined in the eminent domain lawsuit?**

In some cases, the City of Santa Rosa may decide it needs possession of the property before the property's fair market value is finally determined. In such a case, the City of Santa Rosa must apply to the court for an "order for possession" to allow it to take possession and control of the property prior to resolution of the property's fair market value. The City of Santa Rosa is required to schedule a hearing with the court on the proposed order for possession and to give you notice of the hearing. Notice must generally be sent at least 90 days before the hearing date if the property is occupied

## Acquisition of Property Information Booklet

and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City of Santa Rosa must deposit with the State Treasurer the probable amount of just compensation in order to obtain possession of the property.

- **Can I oppose the motion for an order for possession?**

Yes. You may oppose the motion in writing by serving the City of Santa Rosa and the court with your written opposition within the period of time set forth in the notice from the City of Santa Rosa.

- **Can I rent the property from the City of Santa Rosa? (Where applicable)**

If the City is proposing to purchase your property in its' entirety and agrees to allow you or your tenants to remain on the property after the City of Santa Rosa acquires possession, you or the tenants will be required to pay a fair rent to the City of Santa Rosa. Generally, such rent will not be more than that charged as rent for the use of a property similar to yours in a similar area. **Since the City is only proposing to acquire easement interests for this project, this is not applicable in your case.**

- **Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don't agree that the amount reflects the fair market value of my property?**

Yes. Subject to the rights of any other persons having a property interest (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings, but you may not contest the right of the City of Santa Rosa to acquire the property, meaning you cannot contest that the acquisition of your property is for a public purpose or is otherwise improper.

You also have the right to ask the court to require the City of Santa Rosa to increase the amount deposited with the State Treasurer if you believe the amount the City of Santa Rosa has deposited is less than the "probable amount of compensation. "

- **Can I contest the condemning agency's acquisition of the property?**

Yes. Provided you have not withdrawn the amount deposited, you can challenge in court the City of Santa Rosa's right to acquire or condemn the property.

- **What happens in an eminent domain trial?**

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (and any others with interests in the property) and the City of Santa Rosa

## **Acquisition of Property Information Booklet**

will have the opportunity to present evidence of value, and the jury will determine the property's fair market value. In cases where the parties choose not to have a jury, the judge will decide the property's fair market value. Generally, such party to the litigation must disclose its respective appraisals to the other parties prior to trial.

If you challenge the City of Santa Rosa's right to acquire the property, the eminent domain trial will also determine whether or not the City of Santa Rosa has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

At the end of the trial, the judge will enter a judgment requiring the City of Santa Rosa to pay fair market value. Once the City of Santa Rosa pays the amount listed in the judgment, the judge will enter a final order of condemnation. The City of Santa Rosa will record the final order with the County Recorder, and title to the property will then pass to the City of Santa Rosa.

- **Am I entitled to interest?**

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving compensation has been fully paid. The rate and calculation of the interest is determined under formulas in State law.

- **Will the City of Santa Rosa pay my attorneys' fees and costs?**

In an eminent domain action, you are entitled to be reimbursed by the condemning agency for your court costs such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the condemning agency for your attorneys' fees in the lawsuit. Whether you will be entitled to receive reimbursement for your attorneys' fees will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in the action.

- **Will I receive assistance with relocation?**

Any person, business, or farm operation displaced as a result of the property acquisition is typically entitled to relocation advisory and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation is determined on a case-by-case basis in accordance with the prescribed law. Relocation benefits are handled separate and apart from the determination of the property's fair market value and are not part of the eminent domain process.

# Acquisition of Property Information Booklet

## DEFINITIONS

The *language* used in relation to eminent domain proceedings may be new to you. These are some terms you may hear and their general meaning.

***Eminent domain:*** The right of government to purchase private property for public use.

***Condemnation:*** The legal process by which a proceeding in eminent domain is accomplished.

***Parcel:*** Usually means the property that is being acquired.

***Market value:*** The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller being willing to sell but under no particular or urgent necessity for so doing nor obliged to sell, and a buyer, ready, willing and able to buy under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

The fair market value of property taken for which there is no relevant market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

***Compensation:*** The amount of money to which a property owner is entitled under the law for the purchase or damage to the property.

***Defendant:*** The property owner and any other persons who may have an interest in the property.

***Easement:*** An interest in real property that conveys use, but not ownership, of a portion of an owner's property. An Easement can be permanent or temporary for a period of months or years. A Public Utility Easement (PUE) allows a public agency to construct, improve, maintain, repair and replace roadways, sidewalks, landscaping & utilities. It also allows private utility companies to install & maintain their facilities if an agreement to undertake such work exists between the public agency & utility company. Once granted, a Public Utility Easement precludes the owner of the underlying land from constructing any physical improvements, other than approved landscaping, in areas specifically designated for such use.

***Plaintiff:*** The public agency that desires to purchase the property.

***Counsel:*** An attorney or attorneys.

## Acquisition of Property Information Booklet

**Summons:** Notification of filing of an eminent domain proceeding and of the necessity to file an answer or other responsive pleading.

**Complaint:** The document filed with the court or by the plaintiff which initiates an eminent domain proceeding.

**Answer:** The defendant's written reply, in appropriate legal form, filed with the court in response to the complaint and as requested by the summons.

**Trial:** The hearing of the facts from plaintiff and defendant in court, either with or without a jury.

**Verdict:** The amount of compensation to be paid for the property.

**Judgment:** The court's formal decision based on applicable law and the verdict.

**Acquire:** To purchase.

**Title:** Legal ownership.

**Possession:** Legal control; to have the right to use.

**Final order of condemnation:** The instrument which, when recorded, transfers title to public ownership.

**Property:** The right or interest which an individual has in land, including the rights to use or possess. Property is ownership; the exclusive right to use, possess or dispose of a thing.

## Acquisition of Property Information Booklet

The City's representative assigned to purchase your property will assist you in the transaction and will be happy to answer any additional questions you may have. For more information you may contact the following people:

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For questions regarding the acquisition process described in this booklet, contact:

Celeste Carranza, Associate Real Property Agent

City of Santa Rosa

100 Santa Rosa Ave, Rm 6

Santa Rosa, CA 95401

(707) 543-4520

[ccarranza@srcity.org](mailto:ccarranza@srcity.org)

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For any questions relating to the Project, contact the City Project Manager:

Liz Hanley, Associate Civil Engineer

City of Santa Rosa

69 Stony Circle

Santa Rosa, CA 95401

(707) 543-3862

[lhaley@srcity.org](mailto:lhaley@srcity.org)

## Acquisition of Property Information Booklet

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