

Policy Title: Acquisition and Disposal of Interests in Real Property**Policy Number: 05-04-01**

Section:	Property and Facilities	Subsection:	Real Property Management
Effective Date:	July 5, 2017	Last Review Date:	June, 2017
Approved by: Council	Owner Division/Contact: Realty Services, Facilities and Property Management Corporate Services Department		

Policy Statement

In support of the City's strategic pillars for change, the City of Mississauga's Real Property is managed and assessed in accordance with the City's legislative authority, accepted business practices, the principles of fair, open, transparent and accountable government and the Real Property management principles outlined in this policy.

Purpose

This policy establishes the structure, authorities and accountabilities for decision-making in the assessment, acquisition, disposal, management and administration of the City's Real Property.

Scope

This policy applies to the Acquisition and Disposal of Interests in Real Property undertaken by the City of Mississauga.

Additional detailed procedural information is available in the Acquisition and Disposal of Interests in Real Property Procedures Manual, available from Realty Services.

Exceptions**Acquisitions**

This policy does not apply to the following types of Acquisitions:

- Real Property dedicated to the City either through development applications or cash in lieu/parkland dedications (refer to Corporate Policies and Procedures – Dedication of Land, or Cash in Lieu Thereof, for Public Open Space; and Applications for Development of Contaminated or Potentially Contaminated Sites)
- Real Property acquired by the City through vesting by reason of tax arrears pursuant to the *Municipal Act, 2001*
- Real Property acquired by the City pursuant to the *Funeral, Burial and Cremation Services Act, 2002*, and

- Acquisition of Easements from the Region of Peel pursuant to the Easement Protocol Agreement By-Law 0296-2007, as amended

Disposals

This policy does not apply to the following types of Disposals:

- The sale of lands for municipal tax arrears purposes pursuant to the *Municipal Act, 2001*
- Encroachments on City property pursuant to the Encroachments By-Law 57-04, as amended
- The re-conveyance of lands to the owner, or successor in title, who conveyed the land gratuitously to the City by virtue of the terms of a Development and Servicing Agreement, and
- Conveyance of Easements to the Region of Peel pursuant to the Easement Protocol Agreement By-Law 0296-2007, as amended

Definitions

For the purposes of this policy:

“Acquisition” means the obtaining of interests in Real Property through purchase or other means of acquiring Real Property interests deemed appropriate by the City.

“Appraisal” means a written opinion of the current Market Value of property, the conditions and limitations at the time of the opinion or estimate of value. An individual accredited by the Appraisal Institute of Canada, either internal City staff or an outside appraiser, may prepare the Appraisal. The form and content of the report shall be at the discretion of the Manager.

“City” means the Corporation of the City of Mississauga.

“Disposal” means the sale, conveyance, exchange or grant of the City’s interest in Real Property.

“Donation” means a voluntary gift of Real Property, given without compensation or consideration.

“Easement” means an interest in land transferred from one party to another, consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose.

“Encroachment” means 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.

“Expropriation” means the Acquisition of land pursuant to the *Expropriations Act* of Ontario.

“Heritage Easement” means an easement granted from a property owner to the City in order to protect the heritage aspect(s) of the property, granted pursuant to the *Heritage Act* of Ontario.

“Interests in Real Property” include, but are not limited to, fee simple; temporary or permanent easement; leasehold; licence; consent to enter; management and operations agreement; and encroachment.

“Lease” means the granting of a leasehold interest in land or a portion of a building granted by the landlord to the tenant providing the tenant with exclusive occupancy of the leased premises.

“Limited Interest Agreements” means a document relating to Real Property that establishes a contractual relationship between two parties including, but not limited to, a licence, management and operating agreement, consent to enter, etc.

“Manager” means the Manager, Realty Services, Facilities and Property Management, Corporate Services Department, or his/her designate.

“Market Value” means the highest price a willing buyer would pay and a willing seller would accept, both parties being fully informed.

“Real Property” means land and all buildings and structures constructed thereon.

“Surplus Property” means municipally-owned Real Property that has been declared surplus to the City’s requirements as approved by Council, in accordance with applicable by-laws.

Legislative Requirements

All Real Property transactions are to be conducted in accordance with applicable federal and provincial legislation, including but not limited to the *Municipal Act, 2001*, *Planning Act*, *Expropriation Act* and *Tenant Protection Act*.

Accountability

Commissioner of Corporate Services and Chief Financial Officer

The Commissioner of Corporate Services and Chief Financial Officer is responsible for:

- Rendering decisions where the interpretation of this policy by Realty Services is disputed, and
- Approving the terms and conditions of the debt instrument if Council has approved issuance to finance the Acquisition of Real Property

Director, Facilities and Property Management, Corporate Services Department

The Director, Facilities and Property Management, Corporate Services Department is responsible for:

- Ensuring all applicable managers/supervisors are aware of this policy and of any subsequent revisions, and

- Ensuring compliance with this policy

Manager

The Manager is responsible for:

- Ensuring all applicable staff are aware of this policy and of any subsequent revisions
- Ensuring that all applicable legislative requirements have been met
- Ensuring compliance with this policy and that the City acts at all times in the best interest of the general public, with a view to transparency and fairness of process, and
- Ensuring all required information that may affect value or use is obtained from appropriate staff prior to approval of Real Property transactions

Environmental Services Section

The Environmental Services Section, Transportation and Infrastructure Planning Division, Transportation and Works Department, is responsible for:

- Providing technical support and recommendations to Realty Services in determining if Real Property should be subject to an environmental investigation prior to Acquisition or Disposal
- Coordinating environmental investigations, as required, and assessing potential environmental liabilities and associated risk, and
- Ensuring compliance with PSAB 3260, in accordance with Corporate Policy and Procedure – Accounting for Liability for Contaminated Sites

Legal Services

Legal Services, City Manager's Department, is responsible for providing legal support to Realty Services, as required.

Authority to Enter into Real Property Transactions

Unless authorized by the Real Estate Delegation of Authority By-Law 0375-2008, as amended, all Real Property transactions require the approval of the Council for the City. Where Council approval is required, the transaction may be considered at a closed session of Council if permitted under the *Municipal Act, 2001*.

Fiscal Accountability

The principle of fiscal accountability means that the City will:

- Endeavour to acquire, maintain, preserve, dispose of and otherwise manage Real Property assets to the maximum long term economic advantage of the City
- Endeavour to retain and maintain Real Property, only when the Real Property interest:
 - has adequate returns in terms of revenue or amenity
 - is not easily replaced with a more efficient interest
 - can be operated within existing budget parameters
 - adequately fulfills the function for which it was acquired or

- has been identified as having “strategic hold” value for future use
- Endeavour to minimize costs while realizing revenue from the Disposal or Lease of non-essential, under-utilized properties
- Obtain the best value when acquiring Real Property, giving due consideration to Market Value and to entitlements under the *Expropriations Act*, where applicable, and
- Dispose of Real Property on the basis of Market Value, unless otherwise approved by Council

Consistency with Corporate Objectives

The principle of consistency with corporate objectives means that the City will acquire, retain, maintain, renovate and improve properties only when those properties clearly align with the goals and objectives of the City’s Strategic Pillars for Change, Official Plan, Capital Budget and departmental approved business plans 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.

Sustainability

The principle of sustainability means that the City will endeavour to retain Real Property only when:

- Returns in terms of revenue/amenity are cost neutral or better
- Service need is constant or growing, and
- The condition of the Real Property is such that it can be used and maintained on a low-maintenance and low-risk basis

Social Responsibility

The principle of social responsibility means that the City:

- Has a duty to provide service and support, where there is no other viable service provider, and where there is a clearly articulated City desire to fill a need, or to foster and promote programs of inclusion and accessibility. The City’s social responsibility may form the basis for Real Property transactions of a nature other than Market Value, provided they are ancillary to Council-approved programs
- Will endeavour to provide safe, healthy and accessible facilities for occupants, and
- Will endeavour to protect and preserve the environmental value and/or cultural heritage of the property

Transparency

The principle of transparency means that:

- The City is committed to using consistent, transparent and equitable processes in acquiring and disposing of Real Property

- The City's Real Property is managed along clearly defined lines of delegated authorities and levels of accountability, with semi-annual reporting to Council, and
- Risk is managed responsibly and Council is informed as considered appropriate by the Manager

Real Property Management Principles and Objectives

In making its recommendations, Realty Services shall have regard to the following principles:

- Fiscal Accountability
- Consistency with Corporate Objectives
- Sustainability
- Social Responsibility
- Transparency
- Environmental Responsibility

Environmental Responsibility

The principle of environmental responsibility means that the City will consider:

- The environmental condition of Real Property and any potential remedial costs, and
- If the environmental condition of Real Property presents any potential risk to the City

Acquisitions

Responsibility for Acquisitions

The Manager is responsible for Real Property Acquisitions. All Acquisitions of Real Property interests are to be undertaken by Realty Services staff. Realty Services staff will conduct their responsibilities in accordance with the Real Property Management Principles and Objectives and the Acquisition Considerations outlined in this policy.

Acquisition Process

Realty Services staff will initiate an Acquisition process upon receipt of a written request from any City department. All such requests should be supported by a departmental needs assessment explaining the rationale for the Acquisition, a form of Council authority or proof of approval through the current or capital budget process.

A budget for the program or project should be identified, where applicable, inclusive of the cost to acquire the necessary property component and setting out the operational budget impacts prior to Realty Services conducting the Acquisition. Where Council has approved the issuance of a debt instrument to finance the Acquisition of Real Property, the terms and conditions of the debt instrument must be approved by the Commissioner of Corporate Services and Chief Financial Officer or his/her designate.

Realty Services will investigate the market to determine suitable alternatives to meet the end user's needs. The final decision on the site selection rests with the end user department.

Assessment of Property

Before acquiring any Real Property, Realty Services will consult with other City departments and may coordinate an assessment by appropriate staff or an external consultant as to the property's physical, structural and environmental condition, cultural heritage, existing restrictions, encumbrances, liabilities, tax implications or any other important characteristic which may impact on value or use.

Appraisal

All Acquisitions must be accompanied by a current Market Value Appraisal.

Agreement of Purchase and Sale

Upon selection of a site by an end user department and successful negotiations, Realty Services shall instruct the Legal Services Division to prepare and/or review an appropriate agreement. When the agreement has been fully executed, it is transferred to the Legal Services Division for completion of the transaction.

Land inventory

The City will maintain a public register which lists all of the Real Property owned by the municipality. The following classes of Real Property are not listed in the public register:

- Highways and roads
- Open road allowances
- Stopped-up highways and roads
- Reserves of 0.3 metres (1 foot) or less in width, and
- Easements

Acquisition Considerations

Real Property Acquisitions will be conducted with consideration of the following:

Acquisition Required For Municipal Purposes

Real Property Acquisitions are restricted to Acquisition of land and interests which are required for municipal purposes or in support of Council-approved programs, projects and policies.

Acquisition at Market Value

Realty Services staff will acquire Real Property at the lowest possible negotiated cost and greatest economic advantage to the City. When the Acquisition is part of an unsolicited purchase in support of a City-mandated program (e.g. for a road widening) land may be acquired on the basis of Market Value and entitlements, as defined by the *Expropriations Act*.

Environmental Investigations

The Manager, in consultation with Environmental Services, Transportation and Works Department, and the client department, may require that Real Property being considered for acquisition, regardless of the method of Acquisition, be subject to an environmental investigation, which must be completed prior to completion of the transaction. All such investigations are to be completed in accordance with any applicable Ministry of the Environment and Climate Change standards and undertaken in such manner and of sufficient level, so as to meet the requirements of the City's insurer.

Heritage Properties

When acquiring Real Property that may have cultural heritage value, the unit/division responsible for the acquisition will consult with Heritage Planning staff, Culture Division, Community Services Department, to understand the implications of the property's heritage status.

The unit/division responsible for the property will be responsible for:

- Confirmation of the City program(s) to be implemented at the property
- Identification of the desired long-term use of the property
- Assessment of the impact on the City of the operational costs of the property, and
- Development of an asset management plan, which forecasts the capital renewal and reinvestment requirements to preserve the property, including actual or potential funding sources

Methods of Acquisition

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

- Negotiated agreements
- Land exchanges
- Charitable Donations
- Expropriation
- Transfers from another level of government
- Competitive bid request

Negotiated Agreements

Negotiation is the preferred method of obtaining Real Property and will be completed in consultation with Legal Services.

Land Exchanges

When an Acquisition is pursued in support of Council approved programs, projects and policies 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 Market Value of the respective Real Properties, pursuant to this policy.

Charitable Donations

The City may accept a Donation of Real Property if an appropriate municipal purpose has been identified for the property and upon City Council's approval.

Realty Services staff will advise the Commissioner of Corporate Services and Chief Financial Officer as to the appropriateness of accepting the Donation.

Expropriation

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

The Mayor and applicable ward councillor shall be informed of any contemplated Expropriations prior to the report recommending approval to Give Notice of Application to Expropriate is brought to Council.

Transfers from another Level of Government

The City may acquire Real Property as the result of a transfer of jurisdictional authority from one level of government to another (e.g. transfer of highways, boat launches, etc.).

Disposal of Property

Responsibility for Disposal of Properties

The Manager is responsible for Real Property dispositions, including the selection of the appropriate Disposal method for the property. All Disposals of Real Property are to be undertaken by Realty Services staff. Realty Services staff will conduct their responsibilities in accordance with the Real Property Management Principles and Objectives and the Disposal Considerations outlined in this policy. Where applicable, the transaction will be approved and executed according to the Real Estate Delegation of Authority By-Law. Where the By-Law indicates Council approval is required, a corporate report will be brought seeking authorization for the transaction.

Disposal Process

Realty Services staff, in consultation with other City departments, will identify potential properties for Disposal and:

- Ensure that the property is declared surplus
- Initiate an Appraisal to estimate the property's Market Value
- Initiate an environmental investigation, where deemed applicable, in consultation with Environmental Services, Transportation and Works Department, and the client department and undertake remediation as may be required, and

- Initiate such other investigations and commission such other reports as may be deemed appropriate by the Manager, in consultation with other City departments

Declaration of Property as Surplus Property

Real Property may not be disposed of unless it has been declared surplus to the requirements of the City and included in a corporate report to City Council, which will include notice of the City's intention to dispose of the Surplus Property.

Note: The requirement to declare surplus prior to disposal does not apply to the following:

- Grant of Easement interests, including Easements to be transferred to the Region of Peel pursuant to the existing Easement Protocol Agreement
- Disposal of one foot reserves
- Re-conveyance to the owner, or successor in title, who conveyed the land gratuitously by virtue of the terms of a Development and Servicing Agreement, provided all costs to recover the lands are borne by the owner
- Lease of Real Property for less than 21 years, and
- Lease of a portion of a City-owned building for more than 49 years

Prior to a declaration of Surplus Property, clearances to dispose of the property are obtained from all appropriate City departments and designated affordable housing providers and may include circulation to several other outside agencies. Realty Services may also direct a circulation to the various utilities to determine whether or not Easement protection is warranted prior to the sale of the property.

Notice of Sale of Real Property

Notice of the proposed sale of Surplus Property will be posted in accordance with the City's Notice By-Law 215-08, as amended.

Status Report on City Surplus Property

Realty Services will report to City Council identifying the status of all properties that have been previously declared surplus by City Council. Reporting will be every 18 months or as directed by City Council.

Appraisals of Surplus Property

All Disposals will be subject to an Appraisal except:

- Subject to the discretion of the Manager, sales involving the following classes of property:
 - reserves of 0.3 metres (1 foot) or less in width
 - stopped-up highways and walkways
 - landlocked properties if being sold to an abutting owner
 - property acquired under Section 42 of the *Expropriations Act*, if being sold to an owner from whom the land was taken

- Abandoned cemeteries
- Sales to public bodies (Boards of Education, the Regional Municipality of Peel, Alectra Utilities, Ontario Hydro, Conservation Authorities and the Provincial and Federal Government), and
- Sales to private bodies where the deemed value of the Surplus Property is less than \$50,000, as determined by the Manager

Priority of Offerings

The City shall have the right to convey the Surplus Property at Market Value to the party having the greatest priority. For the purpose of assigning priorities, the order shall be as follows:

1. Federal Government
2. Provincial Government
3. Regional Municipality
4. Local School Boards
5. Recognized Authorities

Agreement of Purchase and Sale

When an acceptable offer for the Surplus Property has been received, Realty Services shall instruct the Legal Services Division to prepare and/or review an agreement. When the agreement has been fully executed, it is transferred to the Legal Services Division for completion of the transaction.

Cost of Disposal of Surplus Property

All applicable fees and charges recoverable under the City's Fees and Charges By-Law shall be recovered from the purchaser on or before the closing date. All other reasonable fees, costs and expenses incurred by the City, even if the property is sold at a nominal value, shall be recovered from the purchaser on or before the closing date, unless the sale was initiated by the City and the costs have been waived by the approver of the transaction.

Proceeds from Disposal of Surplus Property

Proceeds from the Disposal of Surplus Property will be credited to one of the following accounts:

- Capital Reserve Fund
- A departmental account from where the original acquisition of the property was funded, as directed by the Commissioner of Corporate Services and Chief Financial Officer, or
- As otherwise directed by Council

Disposal Considerations

The Disposal of Real Property will be carried out with consideration for the following:

Market Value

All Disposals of Real Property must be at least at 90 per cent of Market Value, unless an exception is provided in this policy and Council has approved the transaction.

Reports to Council recommending Disposals at less than 90 per cent of Market Value must:

- Clearly state the Market Value of the Surplus Property to be transferred and not realized and the reasons for such a decision
- Identify the purchaser, and
- In the event of a Lease of 21 years or more, fully disclose all important or financial terms and conditions therein

Transfers to Another Level of Government

Where an offer is received from another level of government, board or authority and the City disagrees with the Market Value determined by the other level of government, the City may agree to either:

- Elect to have the Market Value estimated by a third party Appraisal, negotiate and amend the offers accordingly, or
- Start negotiating with the next purchaser, in priority order:
 1. Federal Government
 2. Provincial Government
 3. Regional Municipality
 4. Local School Boards
 5. Recognized Authorities

Disposal of Land Acquired through Gratuitous Dedication or Donation

Where the City has acquired Real Property through a gratuitous dedication as a condition of a development application or through a Donation, and the Real Property becomes Surplus Property, the City may consider the following options:

- A potential transfer to another level of government, local school board or recognized authority, or
- Re-conveyance to the owner, or successor in title, who conveyed the land gratuitously, provided, at a minimum, all costs to recover the lands are borne by the owner, or
- The Disposal of the Surplus Property at Market Value

Environmental Investigations

The Manager, in consultation with Environmental Services, Transportation and Works Department, may require an environmental site investigation prior to property disposition to assess any potential liability to the City in disposing of the property.

Natural Areas

Natural or environmentally sensitive areas identified by the City as being worthy of protection will be transferred exclusively to appropriate organizations, such as conservation authorities or other levels of government. These sensitive lands will be identified through the Planning and Building Department and the Community Services Department.

Public Highways

Any public highway that is stopped-up, closed and declared surplus shall be offered for sale pursuant to a value established by an Appraisal.

It is preferred that the entire portion of the public highway should be sold at one time so as not to leave the City owning portions of the closed public highway. Should one of the adjacent owners choose not to purchase the closed public highway, it may be offered in whole to the other adjacent owner at the same or higher price. Should neither owner wish to purchase the closed road allowance, the City may offer it to any other interested purchaser.

In the event the closed road is of sufficient size to be considered a viable property on its own, the City shall have the option, in its sole discretion, of marketing the property as a stand-alone property, with no obligation to offer it to the adjacent owners. However, notice will be provided to the adjacent owner(s) that the property is to be placed for sale on the open market.

Sale of Property to City Staff/Elected Officials

Surplus Property may be sold to City employees or elected officials, or to members of their families, provided the requirements of all by-laws, policies and procedures regarding the sale of Surplus Property are satisfied and provided the sale is approved by Council.

Sale of Heritage Property

Any agreement of sale for a heritage property must contain any necessary special conditions to preserve its heritage status including, but not limited to, a Heritage Easement. Identification, correction or change to the zoning of the property will be completed by Development and Design, Planning and Building Department.

Easements

The City may grant an Easement interest:

- If considered appropriate to the relevant City department
- If the granting of the Easement does not render the retained City land no longer viable for the use for which the land was obtained
- If the granting of the Easement does not render the retained City land subservient to the Easement interest, and
- To utilities for existing plant and equipment at the time of Disposal

Easement interests are granted at Market Value as established in an Appraisal. However, Easements may be granted gratuitously to another level of government or to a utility for existing plant and equipment at the time of Disposal, if it is determined that the location of the Easement has limited or no impact on the future value or future City development of the lands over which the Easement is sought.

Notwithstanding the above noted policy respecting the granting of Easement interests, Easements transferred to the Region of Peel are governed by the Easement Protocol Agreement By-Law 0296-2007, as amended.

Methods of Disposal

The Manager will determine the appropriate means of Disposal of Surplus Property based upon criteria such as value, competition, property type and market conditions. The method of Disposal may include:

- Competitive bid process – offered by public bid process in accordance with criteria established by the Manager, with the assistance of the Manager of Materiel Management
- A direct sale to a specific party, as approved by Council
- Land exchange – lands to be exchanged for other lands deemed suitable or necessary for the City at the same or higher value, unless otherwise approved by Council, and
- Real estate multiple listing service – listed with a licensed real estate broker having the appropriate expertise

Leases and Limited Interest Agreements

When City property is not required for immediate use but may be required to meet the City's long term needs, the City may enter into a Lease or other Limited Interest Agreement allowing the use of the property by another party. Written clearances from all affected City departments are required to ensure that there are no municipal needs prior to the lands being used. For additional information on Lease financing agreements refer to Corporate Policy and Procedure – Corporate Administration – Leases.

The Manager is responsible for Leases or other Limited Interest Agreements. All such transactions are to be undertaken by Realty Services staff. Realty Services staff will conduct their responsibilities in accordance with the Real Property Management Principles and Objectives outlined in this policy.

Priority

Available Real Property is limited and therefore priority may be given to service clubs or groups affiliated with the City, in consultation with the appropriate departments.

In assessing which groups to recommend, consideration may be given to the following:

- Number of years in operation
- Area in which the group provides services
- Scope, magnitude and types of services offered
- Ability of the group to operate without financial assistance from the City, both in the short and long term
- Total costs and benefits to the City in assisting the group
- The degree to which the group participates in commercially oriented activities, or
- As otherwise recommended by the Manager

Method of Securing a Tenant

Realty Services staff shall determine the appropriate method of securing a tenant, which may include a public call for bids via tender or proposal, using a realtor or negotiating with a specific tenant.

Lease to City Employees/Elected Officials

City employees and elected officials may not Lease City property unless Council approval has been received.

Agreement

All tenants or licensees of City property will be required to execute an agreement prepared by Legal Services. Any additional licences, permits or approvals which may be required for the facility's operation must be obtained by the tenant or licensee.

Lease and Limited Interest Agreements at Market Rent

Leases and Limited Interest Agreements are generally entered into at market rent. A nominal rent (\$2.00) or a reduced rent may be applied when:

- The agreement is with another level of government, or
- A reciprocal or shared use agreement exists, or
- The agreement is with a not-for-profit organization that actively provides services which supplement City services, as determined by the Commissioner of Corporate Services and Chief Financial Officer or his/her designate, in consultation with the Commissioner of Community Services

Realty Services will consider the potential impact on the heritage nature of the structure, as well as any capital costs to facilitate the occupancy by the group before entering into any agreements at nominal value. Groups which occupy space at nominal rents and which do not fully utilize the space may be required to share the space with another group.

Private Buildings on Public Lands

The City may entertain proposals for public-private partnerships to erect a permanent structure on lands owned or Leased by the City, provided any such proposal received is reviewed and evaluated by the appropriate department with respect to design and construction details, including the provision for ongoing lifecycle maintenance, to be approved by the Director of Facilities and Property Maintenance. All proposals will require the approval of City Council.

Revision History

Reference	Description
Res.98-95 – 1995 03 29	
GC-08-03 – 2008 11 12	Major revision, combined policy with Renting City Property and Private Buildings on Public Lands
GC-0410-2017	Major revision to reflect current practices and note affordable housing