

Policy Title: Real Estate Acquisition and Disposal of Interests in Real Property

Policy Number: 05-04-01

Section: Property and Facilities

Effective Date: May 25, 2023

Approved by:

Leadership Team

Subsection: Real Property Management

Last Review Date: June, 2023

Owner Division/Contact:

Realty Services, Corporate Business Services Division, Corporate Services Department

1.0 Policy Statement

1.1 The City acquires and disposes of Real Property interests for municipal purposes consistent with City mandated programs, projects, policies and strategic plans. In doing so, the City ensures its best interests are satisfied and acts in a transparent, fair and open manner.

2.0 Purpose

2.1 The purpose of this policy is to establish a consistent and equitable framework for the Acquisition and Disposal of Real Property interests that support Council approved projects, programs, policies and strategic plans.

3.0 Applicability of the Policy

3.1 This policy applies where Real Property interests are acquired and disposed of by the City, and pertains to any right, interest or benefit in land, including but not limited to fee simple Acquisitions, Disposals, Easements, Encroachments, Leases and Limited Interest Agreements, as defined hereinafter.

3.2 This policy applies to all City staff and any agents authorized to transact in Real Property on behalf of the City.

4.0 Non-Applicability of this Policy

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

- a) Real Property dedicated to the City through the Development Agreement approval process pursuant to the *Planning Act, R.S.O 1990*

- b) Real Property acquired by the City through vesting by reason of tax arrears pursuant to the *Municipal Act, 2001, S.O. 2001* (the “Municipal Act”)
- c) Real Property acquired by the City pursuant to the *Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c. 33*, and
- d) Real Property governed by the Easement Protocol Agreement with the Regional Municipality of Peel, authorized through By-law 0296-2007, as amended

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

- a) The sale of Real Property for municipal tax arrears purposes pursuant to the Municipal Act
- b) Encroachments on City’s Real Property pursuant to the Encroachments By-law 57-04, as amended
- c) Real Property governed by the Easement Protocol Agreement with the Regional Municipality of Peel, authorized through By-law 0296-2007, as amended, and
- d) Real Property dedicated or transferred to the City through the Development Agreement approval process, where the applicable Development Agreement describes the terms under which the City’s Disposal of the Real Property is to occur

5.0 Related Policies

04-07-01 - Rents Receivable

04-07-02 - Invoicing and Collections

04-02-03 - Collection of Outstanding Property Taxes

04-12-01 - Tangible Capital Asset Accounting and Reporting

6.0 Legislative Requirements

- 6.1 All Real Property transactions shall be conducted in accordance with applicable federal and provincial legislation, including but not limited to, the *Municipal Act*, the *Planning Act*, R.S.O. 1990, c. P.13, the *Expropriations Act*, R.S.O. 1990, c. E.26 (the “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 “Assessment Act”), 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.

7.0 Definitions

- 7.1 For the purposes of this policy, the following definitions shall apply:

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- a) “Acquisition” means obtaining an interest in Real Property through a purchase or other means.
 - b) “Appraisal Report” means a written opinion on the current Market Value of Real Property, including the conditions and limitations applicable at the time of the opinion.
 - c) “Approver” means City Council or City staff to whom City Council has delegated its authority.
 - d) “City” means The Corporation of the City of Mississauga.
 - e) “Community Group” means a group currently registered with the City pursuant to Corporate Policy and Procedure – 08-01-01 - Community Group Registry Program.
 - f) “Development Agreement” means 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.
 - g) “Disposal” means the transfer, sale, conveyance, exchange or grant by the City of an interest in Real Property, which may include a Lease (including any renewals or extensions of the term provided for in the lease) where the term exceeds 50 years.
 - h) “Easement” means an easement interest in Real Property transferred between the City and another party, consisting of the right to use or control the land, or an area above or below it, for a specific, limited purpose.
 - i) “Encroachment” means any type of managed 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 includes any aerial, surface or subsurface Encroachments. The City may also encroach on the property of other parties.
 - j) “Expropriation” means the Acquisition of a Real Property interest by the City pursuant to the Expropriations Act of Ontario.
 - k) “Fee Simple” means 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.
 - l) “Lease” means the granting of a leasehold interest in Real Property or a portion of a building by a landlord to a tenant providing the tenant with exclusive occupancy of the leased premises.
 - m) “Limited Interest” means an ownership of Real Property 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 Real Property, said rights typically conveyed by way of agreement.
- n) “Limited Interest Agreement” means any agreement signed in order to convey limited interest rights including but not limited to a license agreement, Encroachment agreement, Easement agreement, management and operating agreement, a consent to enter, or a joint use agreement.
 - o) “Market Value” means the highest price a willing buyer would pay, and a willing seller would accept, both parties being fully informed.
 - p) “Municipal Capital Facility” or “MCF” means lands, buildings, equipment and infrastructure used to deliver City programs and services, including but not limited to facilities used for cultural, recreational, tourism and parking purposes.
 - q) “Not-for-Profit Organization” means an incorporated entity under the *Ontario Not-for-Profit Corporations Act, 2010, S.O. 2010, c.15* or the *Canada Not-for-profit Corporations Act (S.C. 2009, c. 23)*.
 - r) “Real Property” includes:
 - i. Interests in land including, but not limited to, fee simple, temporary or permanent Easement, leasehold, licence, consent to enter, management and operations agreement and Encroachment, and
 - ii. All buildings and structures constructed thereon.
 - s) “Surplus” Real Property means municipally-owned Real Property that has been deemed no longer required by the City for the purposes for which it was acquired.

8.0 Accountability

8.1 The Commissioner of Corporate Services is responsible for the following matters:

- a) Ensuring the City acts with transparency and fairness of process
- b) Rendering final decisions where there are interpretation issues relating to this policy, as amended, and
- c) Approving the terms and conditions of any grant and/or security instrument, if City Council has approved the issuance of the same, in relation to Real Property

8.2 The Director, Corporate Business Services Division, Corporate Services Department is responsible for the following matters:

- a) Ensuring the City acts with transparency and fairness of process, and

- b) ensuring all applicable managers/supervisors in Realty Services are aware of and comply with this policy, as amended

8.3 The Manager of Realty Services is responsible for the following matters:

- a) Ensuring the City acts with transparency and fairness of process
- b) Ensuring all applicable staff are aware of and comply with this policy, as amended
- c) Ensuring that all applicable legislative requirements have been satisfied, and
- d) Ensuring all required information that may affect value or use is provided to the Approver for consideration prior to the approval of any Real Property transaction

8.4 Staff with the Environmental Services Section of the Infrastructure Planning and Engineering Services Division of the Transportation and Works Department are responsible for the following matters:

- a) Providing technical support and recommendations to Realty Services and Legal Services in determining if Real Property should be subject to an environmental investigation prior to its Acquisition or Disposal
- b) Coordinating environmental investigations, as required, and assessing potential environmental liabilities and associated risk
- c) Making recommendations to Realty Services and Legal Services on all remediation issues and costs, and
- d) General compliance with the *Environmental Protection Act, R.S.O. 1990, c. E.19*

8.5 The City Solicitor or their designate is responsible for the following matters:

- a) Providing 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) Drafting and negotiating the form and content of all legal agreements and documents required to complete transactions related to the Acquisition or Disposal of any Real Property interest by the City (including Leases and other Limited Interest Agreements), and
- d) Completing transactions related to the Acquisition or Disposal of any Real Property interest by the City and providing a final reporting letter to the clients and other relevant City staff, where appropriate

9.0 Authority to Enter Into Real Property Transactions

- 9.1 Unless authorized by the Real Estate Delegation of Authority By-law, the Encroachment By-law, or the Easement Protocol Agreement with the Regional Municipality of Peel, as amended from time to time, all Real Property transactions for which this policy applies require approval of City Council, as evidenced by a resolution or a by-law and pursuant to a report submitted by the Commissioner of Corporate Services.

10.0 The Acquisition Process

- 10.1 Realty Services staff are responsible for providing business advice associated with the Acquisition of Real Property, following the receipt of a written request from any City department. All such requests will be supported by a departmental needs assessment explaining the rationale for the Acquisition, along with proof of approval through the current or capital budget process (i.e. identification of the funding source).
- 10.2 A current Appraisal Report must be prepared by an individual holding a valid accreditation with the Appraisal Institute of Canada and may be either a Realty Services staff member or an external appraiser. The form and content of the report shall be at the discretion of the Manager of Realty Services. Based on the findings of the report, Realty Services staff will recommend to the client department a range of values between which Realty Services staff will negotiate with the owner of the property. The client department will approve the range to ensure sufficient budget is in place before any negotiations commence with a property owner. Where Real Property is acquired by Expropriation, the Appraisal Report must be prepared pursuant to the requirements of the Expropriations Act.
- 10.3 Realty Services will recommend to the client department that an environmental investigation report be obtained from the Environmental Services Section of the Infrastructure Planning and Engineering Services Division of the Transportation and Works Department (at a minimum a Phase One Environmental Site Assessment Report). If approved by the client department, Realty Services will obtain the report and provide a copy to the client department for sign-off, which may include consultation with Environmental Services staff. The client department must be satisfied with environmental condition of the Real Property prior to the transaction proceeding to close.
- 10.4 Where the City requires the use of third party owned Real Property to meet a short term or long-term need, the City may enter into a Lease or other Limited Interest Agreement. A budget for the requirement should be identified, inclusive of the cost to lease the necessary property and operational budget, with the assistance of Realty Services staff, as required. Realty Services staff will initiate negotiations upon receipt of a written request from any City department with all such requests supported by a departmental

needs assessment explaining the rationale for the agreement and proof of approval through the current or capital budget process.

- 10.5 Realty Services will consult with the client department and Finance to make a determination on the appropriate funding source for the Acquisition of Real Property closing costs, including but not limited to the purchase price, HST (if applicable), disbursements and Land Transfer Tax.

11.0 Charitable Donations

- 11.1 The City may accept a donation (i.e. a voluntary gift of Real Property given without compensation or consideration) if an appropriate municipal purpose has been identified for the property and upon City Council's approval.
- 11.2 Realty Services staff will advise the Commissioner of Corporate Services as to the appropriateness of accepting a proposed donation.

12.0 Expropriation

- 12.1 The City has the authority to expropriate Real Property 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.
- 12.2 Where appropriate, Realty Services, in collaboration with the client department, will develop a report to City Council to secure authorization to initiate Expropriation proceedings. The report will identify:
- a) Justification for the Expropriation
 - b) Efforts undertaken to date to negotiate the acquisition, and
 - c) An account number from which all Expropriation-related expenses will be paid
- 12.3 The Expropriation process may be initiated in parallel with negotiations for an Agreement of Purchase & Sale, if Realty Services 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.

13.0 Sale of Fee Simple and Easement Interests in Land

- 13.1 Realty Services staff will consult with all City departments as appropriate/required in identifying Fee Simple and Easement interests in Real Property owned by the City that may be subject to the Disposal process.
- 13.2 Prior to the Disposal of a Fee Simple Interest in Real Property, Realty Services shall ensure that such Real Property is declared Surplus to the requirements of the City and

provide notice to the public in accordance with the City's Notice By-law 0215-08, as amended.

- 13.3 Pursuant to Section 270 (1) 1 of the Municipal Act, City staff shall apply the following procedure to declare a property Surplus to the City's needs:
- a) Realty Services will circulate an e-mail to all City departments to determine if there is any interest in retaining the Real Property, including for affordable housing purposes, and will solicit comments and/or conditions that may be applicable to the proposed disposition. If the proposed disposition is not supported by staff, the property will be retained by the City.
 - b) Realty Services will request the Geospatial Solutions Section of the Digital Services Division of the Corporate Services Department to make enquiries with all relevant public utilities to determine if Easement protection is required for existing infrastructure. If necessary, Easement protection will be granted to the public utility prior to the disposition of the proposed Surplus Real Property.
 - c) At the discretion of the Manager of Realty Services, Realty Services may circulate a notice of the City's intent to declare a property Surplus to the Federal Government of Canada, the Province of Ontario, the Regional Municipality of Peel, local school boards, and other recognized authorities to determine if there is interest in purchasing the proposed Surplus Real Property.
 - d) If the City has no interest in retaining the Real Property, Realty Services will report to Council to recommend declaring the Real Property Surplus, subject to retention of any applicable Easement interest(s).
- 13.4 The following Real Property interests do not have to be declared Surplus prior to their Disposal:
- a) Transfer of an Easement interest
 - b) Conveyance of lands forming part of a 0.3 metres (1 foot) reserve, and
 - c) Land acquired pursuant to the Expropriations Act where there is an obligation to re-convey the lands pursuant to the Act
- 13.5 An Appraisal Report must be prepared for all Fee Simple and Easement interests in Real Property prior to Disposal, save and except for the following categories of Real Property:
- a) Reserves of 0.3 metres (1 foot) or less in width

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- b) Fee Simple and Easement interests in Real Property previously acquired under Section 42 of the Expropriations Act, if being sold to an owner from whom the land was taken
 - c) Where the value of the Fee Simple and Easement interests in Real Property is anticipated by the Manager of Realty Services to be less than the cost to secure an independent Appraisal Report, and
 - d) Abandoned cemeteries
- 13.6 In the event multiple levels of government or organizations have expressed an interest in acquiring Fee Simple and Easement interests in Real Property that has been declared Surplus, the City will deal with them in the following order of priority, provided that the City is in receipt of an expression of interest from every level of government or organization that has expressed an interest:
- a) First priority to the Government of Canada and its crown agencies
 - b) Second priority to the Government of Ontario and its crown agencies
 - c) Third priority to the Regional Municipality of Peel
 - d) Fourth priority to the school boards operating in the City of Mississauga, and
 - e) Fifth priority to other recognized authorities
- 13.7 A party agreeing to purchase Fee Simple and Easement interests in Real Property from the City shall pay the following sums of money in addition to the purchase price, on or before the closing date:
- a) All applicable fees and charges recoverable under the City's Fees and Charges By-law, as amended, unless waived by Council
 - b) Any other fees, costs and expenses incurred by the City in completing the Disposal of the Fee Simple and Easement interests in Real Property including, but not limited to, surveys, reference plans, and Appraisal Reports, regardless of the purchase price, and
 - c) The Approver of the transaction shall have the discretion to waive the fees, charges and expenses save and except for fees and charges included in the Fees and Charges By-law, as amended and legal fees and disbursements, which shall remain within the authority of the City Solicitor
- 13.8 Any sale of Fee Simple and Easement interests in Real Property at a purchase price less than the Market Value established by an Appraisal Report, must have the prior approval of City Council, and the associated Corporate Report must address any

potential “granting of bonuses” as set out in Section 106 of the Municipal Act, unless the purchaser is another level of government, a governmental agency or public utility, in which case the consideration may be any amount below Market Value.

- 13.9 Any Disposal of Fee Simple and Easement interests in Real Property to City staff or an elected City official must be authorized by City Council and not through any delegated authority by-law.
- 13.10 The Disposal of an Easement interest shall be in accordance with the value established by an Appraisal Report, save and except for Easements granted to another level of government, or to a utility for existing equipment located within the property 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. Easements transferred to the Region of Peel are governed by the Easement Protocol Agreement, authorized through By-law 0296-2007, as amended.
- 13.11 Realty Services will consult with the Finance Division to make a determination on how to appropriately direct the proceeds from the Disposal of Surplus Real Property.

14.0 Leases and Limited Interest Agreements on City Real Property

- 14.1 Where Real Property is not required for the City’s immediate use or is under-utilized but is (or may be) required to meet the City’s long-term needs, the City may enter into a Lease or a Limited Interest Agreement allowing for the use of the Real Property by another party.
- 14.2 When the City elects to enter into a Lease or Limited Interest Agreement allowing for the use of Real Property by another party, Realty Services will lead the process to identify and secure an appropriate tenant and shall:
- a) Ensure that the process for securing a tenant is transparent, fair and open, and
 - b) Follow a standardized procedure, which includes:
 - i. Providing notice to the public of the opportunity
 - ii. Receiving applications from interested parties
 - iii. Evaluating applications received
 - iv. Selecting a successful applicant(s), where appropriate, and
 - v. Executing an appropriate Lease or Limited Interest Agreement, with the support of Legal Services, as required

Note: The City has no obligation or duty to accept the highest, “best” or any offer and may, in its sole and absolute discretion, accept or reject any or all offers.

- 14.3 The City shall not enter into any Lease or a Limited Interest Agreement with City staff or an elected City official unless such agreement has been authorized by City Council and not through any delegated authority by-law.
- 14.4 Subject to the requirements for seeking authority to enter into Real Property Transactions set out in Section 9 of this policy, a party entering into a Lease or a Limited Interest Agreement with the City shall be required to pay rent or monthly/annual fees in accordance with values established by an Appraisal Report. However, in the following circumstances, the Commissioner of Corporate Services may agree to a nominal fee or reduction in the market rent or monthly/annual fees otherwise payable:
- a) The Lease or Limited Interest Agreement is with another level of government
 - b) The Lease or Limited Interest Agreement is connected to a reciprocal or shared use agreement
 - c) The Lease or Limited Interest Agreement is with a Not-for-Profit Organization or Community Group that actively provides services which supplement City services or are aligned with the City’s strategic goals, as determined by the Commissioner of Corporate Services or their designate, in consultation with the applicable commissioner
 - d) The Lease or Limited Interest Agreement is with a Not-for-Profit Organization or Community Group for use of City owned Real Property for parking purposes, provided that such Not-for-Profit Organization or Community Group occupies property adjoining the City owned Real Property.
 - e) The Lease or Limited Interest Agreement is a component of an agreement of purchase and sale wherein the vendor requires that they remain in occupation of the Real Property for a specified time following the transfer of ownership of the property to the City, provided that all carrying costs are borne by the vendor including, but not limited to, property taxes, utilities and maintenance, and
 - f) Where the City acquires Real Property subject to a life estate interest (i.e. an interest in property for the duration of a specific person’s life) held by another party
- 14.5 A party agreeing to enter into a Lease and/or Limited Interest Agreement with the City shall pay the following sums of money in addition to the fees payable under the agreement:

- a) All applicable fees and charges recoverable under the City's Fees and Charges By-law, as amended
 - b) Such other fees, costs and expenses incurred by the City in completing the Lease and/or Limited Interest Agreement
 - c) The Approver of the transaction shall have the discretion to waive the fees, charges and expenses save and except for fees and charges included in the Fees and Charges By-law, as amended and legal fees and disbursements, which shall remain within the authority of the City Solicitor.
 - d) Additional rent, which may include, but is not limited to, operating costs such as stormwater charges, utility charges and property taxes (see the Municipal Property Assessment Corporation and Property Taxes section for additional information on property taxes), and
 - e) Any brokerage fees/commissions incurred in connection with the transaction unless the City entered into an agreement with the broker
- 14.6 The Manager of Realty Services may require a party entering into a Lease or a Limited Interest Agreement to provide an indemnifier or a guarantor if there is a concern about the financial stability of the party entering into the agreement or the ability to pay rent when due. At a minimum, a credit check will be conducted, at the tenant's expense, prior to entering into any agreement. In the event that City staff or an elected City official wishes to act as a guarantor, authorization to enter into the agreement must be by City Council and not through any delegated authority by-law.

15.0 Municipal Capital Facilities (MCFs)

- 15.1 Section 110(6) of the Municipal Act establishes that City Council may exempt all or part of lands or facilities on which MCFs are located from taxes levied for municipal and school purposes if:
- a) The City will exclusively occupy and use the lands or facilities to deliver eligible municipal programs and services (as set out in O. Reg. 603/06), or
 - b) The City has entered into a lease or Limited Interest Agreement with an organization that will provide eligible programs and services (as set out in O. Reg. 603/06) on behalf of the City
- 15.2 Realty Services will consult with Legal Services and Revenue and Taxation, Finance Division, whenever there is a proposal to designate lands or facilities as a MCF.
- 15.3 When the City enters into a lease or Limited Interest Agreement with a third party where the City obtains exclusive use (for municipal purposes) of Real Property that is owned by

the third party, Realty Services will report to City Council to recommend declaring the Real Property a MCF for the duration of the agreement.

- 15.4 When the City enters into a lease or Limited Interest Agreement with a third party where the third party obtains exclusive use of Real Property that is owned by the City, Realty Services will consult with and obtain written direction from the applicable commissioner with respect to potentially reporting to City Council to recommend declaring the Real Property a MCF. Where appropriate, Realty Services will proceed to report to City Council to recommend declaring the Real Property a MCF for the duration of the agreement.
- 15.5 Where City Council designates Real Property as a MCF, Realty Services staff will advise the Assessment Review Unit of the Finance Division and affected third parties (i.e. Real Property owners or City tenants).
- 15.6 Where City Council designates Real Property as a MCF, the City Clerk will provide the associated by-law to MPAC, the Region of Peel and the local school boards.
- 15.7 Realty Services will report to City Council to secure authority to remove the MCF designation when the associated Lease or Limited Interest Agreement terminates.

16.0 Property Taxes and the Municipal Property Assessment Corporation

- 16.1 The Municipal Property Assessment Corporation (MPAC) assesses the value of lands and facilities in the Province of Ontario and provides the assessment values for all properties in Mississauga to the Revenue and Taxation Section of the Finance Division to facilitate the levying of property taxes.
- 16.2 Section 3 of the Assessment Act identifies the types of lands that are exempt from property taxes. Generally, lands and facilities owned by a municipality are exempt from property taxes.
- 16.3 When the City enters into a Lease or Limited Interest Agreement where a third party obtains exclusive possession or use of the City's Real Property, and City Council has not declared the property a MCF, Realty Services staff will send a copy of the agreement to Revenue and Taxation, Finance Division. Revenue and Taxation staff will then provide a copy to MPAC for review to determine if the City lands or facilities described in the agreement are subject to property taxes. Realty Services staff will advise the third party in writing of MPAC's decision once rendered.
- 16.4 When the City enters into a Lease or a Limited Interest Agreement, the agreement shall stipulate which party is responsible for payment of property taxes should they be assessed by MPAC pursuant to the third party's use or occupation of City Real Property.

16.5 The third party will pay to the City a security deposit as determined by the Manager of Realty Services, to be held by the City without interest as security for the obligations set out in the Lease or Limited Interest Agreement, including the potential assessment of property taxes. Where the third party fails to pay the property taxes, the City may, in addition to all other rights and remedies available to it, and without prior notice to the third party, apply the entire security deposit, or so much thereof as the City considers necessary, to pay the property taxes and maintain the account for property taxes in good standing. If there are no property taxes owing for the City lands or facilities by the end of the calendar year of the second anniversary of the expiry, or earlier termination of the Lease or Limited Interest Agreement as the case may be, the security deposit or any remaining portion thereof, shall be returned to the third party.

17.0 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
June 6, 2022	Scheduled review. Housekeeping changes to reflect corporate reorganization.
LT – 2023 05 25	Revision to clarify existing policy – no major changes in policy direction.