

PDC

PORTLAND DEVELOPMENT COMMISSION

DATE: May 11, 2011
TO: Board of Commissioners
FROM: Patrick Quinton, Executive Director
SUBJECT: Report Number 11-33
Amend Relocation Policies and Procedures

EXECUTIVE SUMMARY

BOARD ACTION REQUESTED

Adopt Resolution No. 6868

ACTION SUMMARY

This action is intended to amend PDC's Relocation Policies and Procedures to align them with developments in state law by exempting from the policy i) sellers who sell their property voluntarily, without threat of condemnation, and ii) non-residential tenants whose leases expire according to their contractual terms.

A red-lined copy of the two sections being amended is included as Attachment A to this Report. The updated Relocation Policies and Procedures incorporating these amendments and being approved by this action are attached to the Resolution as Exhibit A.

PUBLIC BENEFIT

This action will support the following PDC goals:

- Strong Economic Growth and Competitiveness
- Sustainability and Social Equity
- Healthy Neighborhoods
- A Vibrant Central City
- Effective Stewardship over our Resources and Operations, and Employee Investment

PUBLIC PARTICIPATION AND FEEDBACK

There have been no specific public participation activities undertaken regarding this action, but the public will have the opportunity for comment at the Board meeting.

COMPLIANCE WITH ADOPTED PLANS AND POLICIES

This Amendment is being recommended to align an existing policy with state law.

FINANCIAL IMPACT

This action may reduce PDC's cost of property acquisition.

RISK ASSESSMENT

There is no known risk to adopting this Resolution.

WORK LOAD IMPACT

This action may reduce employee work load by not requiring PDC staff to provide relocation services and resources to entities that are not legally entitled to such services or resources by state law.

ALTERNATIVE ACTIONS

The Board could choose to retain the Relocation Policies and Procedures in its present form.

CONCURRENCE

This Action is recommended by the Executive Director and General Counsel.

BACKGROUND

On October 26, 2005, the PDC Board adopted a comprehensive policy to provide relocation assistance to persons and businesses displaced by PDC acquisitions of real property (Resolutions 6302 and 6303). The policy was expressly adopted to comply with the requirements of state law.

Oregon has enacted laws requiring public bodies to provide relocation assistance to property owners and tenants whose places of business had to move due to real property acquisitions by government entities accomplished under the express or implied threat of condemnation. In 2007, Oregon voters passed Measure 39. This initiative effectively eliminated the authority of public bodies to acquire property by eminent domain for the purpose of transferring the property to a private party for further development. As a result, all acquisitions by PDC that contemplate such a transfer are voluntary, and thus do not create displacement under the law.

In addition, a decision by the Oregon Court of Appeals has clarified the law to say that non-residential tenants a lease that expires in accordance with its contractual terms are not considered displaced for the purposes of state relocation law.

PDC's existing Relocation Policies and Procedures do not reflect these developments in state law. This proposed amendment aligns PDC's Relocation Policies and Procedures with state law by exempting from the policy i) sellers who sell their property voluntarily, without threat of condemnation, and ii) non-residential tenants whose leases expire according to their leases' contractual terms.

Excerpt from Relocation Policies and Procedures; Sections 3.1 and 3.2

3. DEFINITIONS AND LIMITATIONS

- 3.1. **Displaced Person.** Any person who moves, or is required to move, his or her residence and personal property located on the premises, or his or her business, nonprofit organization or farm operation and personal property located on the premises as a result of:
 - 3.1.1. Acquisition of real property, in whole or in part, by the Commission; or
 - 3.1.2. Such person's receipt from the Commission of a written order to vacate the property for public use.
- 3.2. **Persons Not Eligible for Relocation Assistance Under These Relocation Policies.** A residential occupant, business, farm operation or nonprofit organization, or other entity is not a "displaced person" and does not qualify for relocation benefits if any of the following factors or conditions exist:
 - 3.2.1. **Eviction.** The person or entity has been evicted for serious or repeated violation of the terms of the occupancy agreement, violation of applicable law or other good cause, and the Commission determines the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.
 - 3.2.2. **Unlawful Occupant.** The person or entity has no legal right to occupy the property (e.g. squatter).
 - 3.2.3. **New Tenant.** The person or entity moves into the property after the date of acquisition by the Commission or after the date on which the Commission's possessory interest is established by judicial order or other legally binding manner. The Commission shall provide written notice informing such person or entity that the person or entity is not eligible for relocation assistance or payments. A new tenant who, prior to signing a rental agreement or lease and before commencing occupancy, receives written notice of the Commission's acquisition of the property or established possessory interest, and moves into property after either of the qualifying dates will not be eligible for relocation assistance or payments. The notice must state that the tenant may be displaced, may need to move temporarily, or may incur a rent increase (unless rent increases are restricted by a valid lease) based on the Commission's acquisition of the property or as a result of the possessory interest becoming an ownership interest, and that the tenant will not qualify for relocation assistance or payments.
 - 3.2.4. **No Displacement.** The person or entity will not be required to move and no unreasonable change in the character or use will be made to the property or improvements. The Commission must provide notice to the person or entity that the person or entity will not be required to move, and also of the terms and conditions for continued occupancy. The terms and conditions offered shall be reasonable and comparable to terms and conditions in the general market.
 - 3.2.5. **Temporary Move.** The residential occupant or business is only required to move temporarily (not more than one year), provided that the residential occupant or business is reimbursed for reasonable additional out-of-pocket expenses and increased housing or rental costs. The terms of the temporary move must be reasonable, and the Commission must provide the residential occupant or business notice as required in section 3.2.4. For residential temporary moves, Appendix A, "Residential Anti-Displacement Policy and Agreement" contains additional information and alternative requirements that meet the requirements of this section. If a temporary move extends beyond one year, the Commission must contact the residential occupant and offer the person all permanent relocation assistance and payments. The person may decline such offer of permanent benefits if the person continues to prefer retaining his/her rights as provided by the temporary move conditions; otherwise the person will be offered permanent benefits.

~~3.2.6. Non-Residential Tenants Moving as a Result of Contractual Lease Termination. A non-residential tenant who vacates real property as a result of the termination or expiration of a lease in accordance with the lease terms.~~

~~3.2.5-3.2.7. Displacement as a Result of Voluntary Acquisition. The owner occupant of real property acquired by the Commission is not eligible for relocation assistance in cases of a voluntary sale, provided that the Commission shall. A voluntary sale must meet all the following conditions:~~

- ~~A. In the specific situation, the Commission's public benefit objective does not require the acquisition of the real property at issue, but only to acquire real property generally.~~
- ~~B. The property to be acquired is not part of any Commission program or project and is not within an urban renewal area.~~
- ~~C. The owner of the real property is informed in writing:~~
 - ~~1. Prior to making an offer for the property, clearly advise the owner that the Commission is unable to, or will not, apply the powers of eminent domain if negotiations are unsuccessful and will not otherwise acquire the property if negotiations fail to result in a mutually satisfactory agreement regarding the purchase of the property; and~~
 - ~~2. Inform the owner in writing of the value that the Commission believes to be designates as the market value of the property.~~

~~3.2.6.1 Tenant Eligibility for Relocation Assistance. Tenants that occupy and are displaced from property that the Commission purchases from the owner in a voluntary acquisition are eligible for relocation assistance except as provided in Section 3.2.3.~~

~~3.2.6-3.2.8. 3.2.7. Alien Not Lawfully in the U.S. The person is an alien not lawfully present in the United States. Such person is not eligible for relocation assistance and payments unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent or child.~~

~~3.2.7-3.2.9. 3.2.8. Personal Property Only. The person is not required to move from a dwelling, or move a business or nonprofit organization. However, if a person is required to move only personal property from a site acquired by the Commission, the person will be entitled to the reasonable actual cost of moving such personal property for a distance not to exceed 50 miles. The costs eligible for compensation will be limited to those described in sections 7.2.1 through 7.2.5 and in 7.3.~~

ATTACHMENTS:

- A. Red-lined excerpt (Sections 3.1 and 3.2) of current Relocation Policies and Procedures highlighting proposed changes