

Resolution

NO. _____

A RESOLUTION ADOPTING RULES FOR THE ADMINISTRATION OF THE CITY OF FORT WORTH RELOCATION ASSISTANCE PROGRAM

WHEREAS, Senate Bill 18 of the 82nd Legislature amended Chapter 21 of the Texas Property Code to require municipalities to provide relocation benefits and services compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to eligible displacees in all City projects;

WHEREAS, upon passage of SB 18, various City of Fort Worth (“City”) departments, including the Department of Transportation and Public Works, adopted, by practice, Rules for Administering the Relocation Assistance Program, whereby, the City provided standardized relocation benefits and services to qualifying residents, businesses, and other qualifying entities in conformance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

WHEREAS, Section 21.046(c) of the Texas Property Code requires municipalities to adopt rules relating to the administration of the Relocation Assistance Program; and

WHEREAS, this resolution serves to formally adopt the City’s Rules for the Administration of its Relocation Assistance Program and acknowledges that the City’s prior use of the Rules, as adopted by practice, was in compliance with the Senate Bill 18 requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

That the Rules for the Administration of the City of Fort Worth Relocation Assistance Program attached hereto as Exhibit “A” are hereby adopted by the City as a guideline for providing relocation benefits and services in appropriate cases. The City Council hereby finds and determines that its Relocation Assistance Program is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as required by Section 21.046 of the Texas Property Code.

Adopted this _____ day of _____ 2015.

ATTEST:

By: _____

Mary Kayser, City Secretary



EXHIBIT A

City of Fort Worth Relocation Assistance Rules



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Section I. Purpose

To provide rules for a relocation advisory service for a Person, Business, Farming or Ranching Operation, or a Nonprofit Organization that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended,¹ in accordance with Senate Bill 18 enacted by the 82nd Texas Legislature.²

Section II. Scope of Rules

- (a) A relocation advisory service will be made available as a cost of acquiring real property if a Person, Business, Farming or Ranching Operation, or a Nonprofit Organization is displaced in connection with the acquisition of real property for a public use.
- (b) The provisions of these rules shall apply only to City projects and shall be carried out by the City Manager or such employees or contractors of the City as designated.
- (c) Qualification for any payment under these rules is determined beginning on the date of Initiation of Negotiations as defined in these rules.
- (d) Costs within the purview of these rules shall not be considered elements of market value or damage and shall not be recoverable in any eminent domain proceeding or other claim or litigation instituted by or against the City.³
- (e) If a Person moves or discontinues the Person's Business, moves Personal property, or moves from the Person's Dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the Person is considered to be displaced because of the acquisition of real property.⁴
- (f) Consistent with state and federal law, payments under these rules are not subject to judicial review and may not exceed the limits established by Texas Property Code Section 21.046(d).⁵

¹ 42 U.S.C. §§ 4601-4655 (2010); 49 C.F.R. §§ 24.1-24.603 (2011).

² Tex. S. B. 18, 82nd Leg., R.S. (2011); TEX. PROP. CODE ANN. §§ 21.001-21.065 (West 2004 & Supp. 2011).

³ *Will-Tex Plastics Mfg., Inc. v. Dep't of Hous. & Urban Dev.*, 346 F. Supp. 654 (E.D. Pa. 1972); *Rubin v. Dep't of Hous. & Urban Dev.*, 347 F. Supp. 555 (E.D. Pa. 1972); *Martinez v. Dep't of Hous. & Urban Dev.*, 347 F. Supp. 903 (E.D. Pa. 1972); 42 U.S.C. § 4602(a) (2010).

⁴ TEX. PROP. CODE ANN. § 21.046(e) (West 2004 & Supp. 2011).

⁵ 42 U.S.C. § 4602 (2010).

Section III. Applicable Law

When required by law due to federal funding such as Community Development Block Grant Programs, HOME Investment Partnerships Grant programs, Emergency Solutions Grant programs or other United States Department of Housing and Urban Development programs or Texas Department of Transportation designated programs, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, for federal and federally assisted programs will be followed.⁶ For all other projects requiring the acquisition of real property for public use, these **City of Fort Worth Relocation Assistance Rules** will be followed, which are deemed by the Fort Worth City Council to be compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.⁷

Section IV. Definitions

For the purposes of these rules, the following words and phrases shall be defined as stated below or as defined by federal law if required:

Aggrieved Party means any Person, Business, Farming or Ranching Operation, or Nonprofit Organization (that moves from real property or moves personal property from real property as the result of the acquisition of the real property, in whole or in part, or as the result of a written notice from the City to vacate the real property needed for a City project) that exercises their right to appeal a decision made by the City regarding the relocation services provided under these rules.

Appeal Officer means the City Manager or his designee that presides over appeals of the relocation services provided in these rules, pursuant to the procedures outlined in Section IX – Appeals.

Business means any lawful activity, excepting a Farming or Ranching operation, conducted primarily:

- (a) for the purchase, sale, lease and rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities or any other personal property;
- (b) for the sale of services to the public;
- (c) by a Nonprofit Organization; or
- (d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

⁶ 42 U.S.C. §§ 4601-4655 (2010).

⁷ See 42 U.S.C. §§ 4601-4655 (2010); 49 C.F.R. §§ 24.1-24.603 (2011); Tex. Prop. Code § 21.046 (West 2004 & Supp. 2011).

City means the City of Fort Worth, a home-rule municipality in the State of Texas.

City Manager means the city manager of the City or his designee appointed to administer these rules.

Comparable Replacement Dwelling means a comparable replacement dwelling which is:

- (a) decent, safe and sanitary as defined below;
- (b) functionally equivalent and substantially the same as the acquired dwelling with respect to:
 - (1) area of living space;
 - (2) type of construction;
 - (3) age; and
 - (4) state of repair;
- (c) fair housing—open to all persons regardless of race, creed, color, sex, religion, disability, age, national origin, familial status, sexual orientation, transgender, gender identity or gender expression and consistent with the requirements of Title VIII of the Civil Rights Act of 1968 and Section 17-1 of the Fort Worth City Code;⁸
- (d) located in areas not generally less desirable than the dwelling to be acquired with regard to:
 - (1) public utilities; and
 - (2) public and commercial facilities;
- (e) adequate to accommodate the Displaced Person;
- (f) in an equal or better neighborhood;
- (h) available on the market to the Displaced Person; and
- (g) within the financial means of the displaced Family or individual.

Displaced Person(s) means:

- (a) Any Person, Business, Farming or Ranching Operation, or Nonprofit Organization that moves from real property or moves personal property from real property as the result of the acquisition of the real property, in whole or in part, or as the result of a written notice from the City to vacate the real property needed

⁸ Fair Housing Act, 42 U.S.C. §§ 3601-3619 (2010).

for a City project. In the case of partial acquisition, the City shall determine if a Person is displaced as a direct result of the acquisition.

- (b) Any Person who moves or discontinues the Person's Business, moves personal property, or moves from the Person's dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the Person is considered to be displaced because of the acquisition of real property.

Dwelling means any single family house, a single family unit in a multi-family building, a unit of a condominium or cooperative housing project, a mobile home, or any other residential unit.

Existing Patronage means the annual average dollar volume of business transacted during the two taxable years immediately preceding the taxable year in which the business is relocated.

Family(ies) means two or more individuals, one of whom is the head of a household, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of a household, they shall be treated as one family for replacement housing payment purposes.

Farming Operation means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Initiation of Negotiations (for the parcel) means the date the City makes the first written offer to the Owner (or his designated representative) of the parcel or property to be acquired.

Mortgage means such classes of liens as are commonly given to secure advances on real property or the unpaid purchase price of real property under the laws of the State of Texas, together with the credit instruments, if any, secured thereby.

Nonprofit Organization means a corporation engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying federal income taxes under section 501 of the Internal Revenue Code.⁹

Owner means the Person or Persons:

- (a) owning, legally or equitably, the fee simple estate, a life estate, a 99-year lease or other proprietary interest in the property; or
- (b) who has succeeded to any of the foregoing interests at the time of Initiation of Negotiations by devise, bequest, inheritance or operation of law.

⁹ 26 U.S.C. § 501 (2010).

Person(s) means any individual, partnership, corporation or association.

Ranching Operation means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including livestock such as herds of cattle, sheep or horses, for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Section V. Standards for Decent, Safe and Sanitary Housing

Decent, safe and sanitary (DS&S) housing is housing that meets all of the following minimum requirements:

- (a) Conforms to local housing codes of the City. Conforms to all applicable provisions governing existing structures that have been established under City building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.
- (b) Water. Has a continuing and adequate supply of potable safe water.
- (c) Kitchen requirements. Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided if required by City ordinances or custom. When these facilities are not so required by codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.
- (d) Heating requirements. Has adequate gas or electric connections available to maintain a minimum temperature of 70° in the living area under local climatic conditions. Bedrooms are not included in the "living area" as referred to in this paragraph.
- (e) Bathroom facilities. Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.
- (f) Electric system. Has an adequate and safe wiring system for lighting and other electrical services.
- (g) Structurally sound. Housing appears structurally sound, weather tight, in good repair and adequately maintained.

- (h) Egress. Each building used for Dwelling purposes shall have a safe unobstructed means of egress leading to open space at ground level. Each Dwelling unit in a multi-Dwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In multi-Dwelling buildings of three stories or more, the common corridor on each story must have at least two means of egress.
- (i) Habitable floor space. Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile homes) of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the Family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries and unfurnished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.
- (j) Rental of sleeping rooms. The standards for DS&S housing as applied to rental of sleeping rooms shall include the minimum requirements contained in Subsections (a), (d), (f), (g) and (h) of this Section as well as the following:
 - (1) Habitable floor space. At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant; and
 - (2) Bathroom facilities. Lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

Section VI. Relocation Assistance

- (a) Eligibility for participation.
 - (1) Reimbursement requirement. Payment will be made only for the cost of relocating those Persons in occupancy at the time of Initiation of Negotiations, and no payment will be made to any subsequent occupants. Relocation payments to eligible Persons will be made:
 - (A) When a Displaced Person has removed all personal property from the acquired property; and
 - (B) Upon execution of a minimum 1-year lease or purchase contract to occupy an approved DS&S replacement property.

- (2) Interest acquired. The type of interest acquired does not affect the eligibility of relocation costs for reimbursement provided the interest acquired is sufficient to cause displacement.
 - (3) Losses due to negligence. Losses due to negligence of the Displaced Person, his agent or employees are not eligible for payment or reimbursement.
 - (4) Refusal of assistance. A Displaced Person can refuse relocation services and still be eligible for payments. There is no requirement that he accept the services if he wants to relocate on his own. However, he must meet the DS&S requirements and make application within the time limits to qualify for replacement housing payments.
 - (5) Ineligible or Loss of Eligibility. An occupant will not be considered eligible for relocation assistance if properly served a notice of eviction by the Owner prior to the time a notice of eligibility is given by the City.
- (b) Organization requirements for administration of relocation assistance programs.
- (1) Organization and procedures. The relocation assistance program shall provide as a minimum that:
 - (A) Responsibility assigned on project basis. Each project as defined by the City, where relocations will occur, shall have assigned to it one or more individuals or contractors whose primary responsibility is to provide relocation assistance; and
 - (B) Information to be maintained on a project basis. The following shall be maintained and provided for each project:
 - i. lists of replacement Dwellings available to persons without regard to race, creed, color, sex, religion, disability, age, national origin, familial status, sexual orientation, transgender, gender identity or gender expression drawn from various sources, suitable in price, size and condition for Displaced Persons to the extent they are available;
 - ii. lists of comparable commercial properties and locations for displaced businesses; and
 - iii. current data regarding property costs and security deposits, closing costs, typical down payments, interest rates and terms.

- (c) Contracting procedures. Where the City Manager elects to have the relocation services administered by a contractor, the City shall enter into a written contract. The contract shall be submitted to the city council for approval or rejection in accordance with the City's standard procedures.
- (d) Program information. In order to ensure that the Displaced Person has adequate knowledge of the relocation program, City staff shall make available a relocation assistance handbook or brochure outlining relocation guidelines to each Displaced Person.
- (e) Relocation assistance advisory services.
 - (1) General. The City Manager hereby establishes a relocation assistance advisory service program in order to provide assistance to Persons required to relocate. The services shall be provided by personal contact. If such personal contact cannot be made, the City shall document the file to show that reasonable efforts were made to achieve the personal contact.
 - (2) Eligibility. Relocation assistance advisory service shall be offered to all Displaced Persons.
 - (3) Advisory services. The City's relocation assistance advisory service shall:
 - (A) include discussion and explanation of services available, relocation payments and eligibility requirements, and assistance in completing any applications required;
 - (B) provide current information on the availability, prices and rentals of comparable DS&S sales and rental housing, and of comparable commercial properties and locations for displaced businesses; and
 - (C) supply information concerning any federal and state housing programs offering assistance to Displaced Persons.

The amount of the advisory services and extent shall be administered on a reasonable basis commensurate with the Displaced Person's needs.

- (f) Written notices. The following written notices must be furnished to each Displaced Person to insure that he is fully informed of the benefits and services available to him:
 - (1) Notice at Initiation of Negotiations. At the time of Initiation of Negotiations for acquisition of the parcel the following applies:

(A) Owner-occupants of 180 days or more. Simultaneous with the fair market value offer, Owner-occupants of 180 days or more shall be furnished:

- i. a statement which specifies the maximum amount to which he is entitled for the purchase of a replacement Dwelling; and
- ii. an explanation of the eligibility requirements to receive payments for replacement housing, increased interest costs, incidental expenses, and of his option to rent replacement housing unless such explanations are adequately covered in the brochure; and

(B) Owner-occupants of 90 days or more, but less than 180 days. Simultaneous with the fair market value offer, Owner-occupants of 90 days or more, but less than 180 days, shall be furnished:

- i. a statement which specifies the maximum down payment to which he is entitled for the purchase of a replacement Dwelling; and
- ii. an explanation of his option to receive a down payment and incidental expenses to purchase replacement housing and the requirement therefore, and of his option to rent replacement housing unless such explanations are adequately covered in the brochure; and

(C) Tenants. After Initiation of Negotiations for the parcel, tenants shall be personally contacted and furnished in writing:

- i. the date of Initiation of Negotiations for the parcel; and
- ii. a statement which specifies the amount of the rental replacement payment to which he is entitled.

(2) 90-day notice to vacate.

(A) The 90-day notice may be given on or after the Initiation of Negotiations for the parcel and shall include a statement that the Displaced Person will not be required to move from a Dwelling, or to move his Business, Farming, or Ranching Operation before 90 days from the date of the notice. Such notice shall inform the Displaced Person that he will be given a 30-day notice specifying the date by which the property must be vacated. This date may be extended when conditions warrant, but any extension must be in

writing and must give another specific date by which the property must be vacated.

(B) The 30-day notice shall not be given until such time as the City has possession of the property.

(C) A notice is not required if an occupant moves on his own volition or is served a proper notice of eviction by the landlord prior to the time the 90-day notice is given. An occupant becomes ineligible to receive relocation assistance under such circumstances.

(3) Notice of right to appeal. All eligible Displaced Persons shall be furnished a notice of their right to appeal any decision made by the City regarding the relocation services provided under these Relocation Assistance Rules.

Section VII. Moving Expenses

(a) Each Displaced Person shall receive payment for the reasonable expenses of moving his personal property when:

- (1) he is in occupancy at the Initiation of Negotiations for the acquisition of the real property in whole or in part;
- (2) he moves from the real property or moves his personal property from the real property subsequent to the date established in (1) above; and
- (3) the real property is subsequently acquired.

If the move occurs after a written order to vacate is issued the occupant is eligible even though the property is not acquired.

(b) Displaced Persons shall receive payment for only one move.

(c) Reimbursement or payment of moving expenses shall not be made for a move in excess of 50 miles. In the event a Displaced Person desires to move a distance in excess of 50 miles he shall be paid only the reasonable cost of a move up to 50 miles. A Person is not entitled to these relocation costs if they are recoverable under another law. If a Person is entitled to these costs, the costs cannot exceed the market value of the property being moved.¹⁰

(d) By signed, written prearrangement between the City, acting through the City Manager or his designee, and the Displaced Person, the Displaced Person may present an unpaid moving bill to the City for direct payment.

¹⁰ TEX. PROP. CODE ANN. § 21.043 (West 2004 & Supp. 2011).

- (e) The City Manager or his designee, acting for the City, may enter into a contract with independent movers on a schedule basis, as set forth in Section VII(k)(2)(ii) herein, and furnish the Displaced Person with a list of movers from which he may choose one to move his property. In such instances, direct payment shall be made to the mover.
- (f) When an actual expense basis, as set forth in Section VII(k)(2) herein, is used and the City Manager determines that it is necessary for a Displaced Person to store his personal property for a reasonable period of time not to exceed 6 months, the cost of such storage may be included as a moving expense. The property shall not be stored on the property being acquired or on other property owned or controlled by the Displaced Person.
- (g) The cost of insurance premiums covering loss and damage of personal property while in storage or transit shall be treated as moving expenses to the extent that the coverage acquired does not exceed the reasonable replacement value of the personal property. Where insurance is not attainable at a reasonable cost, the reasonable replacement value of personal property lost, stolen or damaged (not caused by the fault or negligence of the Displaced Person, his agent or employee) in the process of moving shall be paid to the Displaced Person upon his assigning his rights of recovery against any third party who may be responsible to the City.
- (h) Removal and reinstallation expenses.
 - (1) The expenses of removal, reinstallation and reestablishment of machinery, equipment, appliances and other items that are not personal property are eligible for reimbursement.
 - (2) Delivery of payment checks. The person or persons who establish the moving cost payment shall not deliver the payment to the Displaced Person.
- (i) Claims. In order to obtain a moving expense payment, a Displaced Person must file a written claim with the City within a reasonable time limit determined by the City. The moving expense payment should be made only after the move has been accomplished except as set out above, and after a fully executed release has been delivered to the City, if required.
- (j) Exclusions on moving expenses and losses. The following expenses are considered ineligible for participation as actual moving expenses:
 - (1) Additional expenses incurred because of living in a new location;
 - (2) Cost of moving structures, improvements or other real property in which the Displaced Person reserved ownership;

- (3) Improvements to the replacement site, except when required by law;
- (4) Interest on loans to cover moving expenses;
- (5) Loss of goodwill;
- (6) Loss of business and/or profits;
- (7) Loss of trained employees;
- (8) Personal injury;
- (9) Cost of preparing the application for moving and related expenses; or
- (10) Modification of personal property to adapt it to replacement site except when required by law.

(k) Moving payments to individuals and Families qualifying as a Displaced Person.

(1) General. An individual or Family qualifying as a Displaced Person is entitled to receive a payment for moving his personal property, himself and his Family. The Displaced Person has the option of payment on the basis of actual reasonable moving expenses or a moving expense schedule.

(2) Actual reasonable moving expenses.

(A) Commercial moves.

i. An individual or Family qualifying as a Displaced Person may be paid the actual, reasonable cost of a move accomplished by a commercial mover. Such expense will be supported by receipted bills and is subject to Section VII(d) herein.

ii. The City Manager may contract with independent movers on a schedule basis and furnish the Displaced Person with a list of movers he may choose from to move his property. In such instances the City would pay the mover.

(B) Self-moves. In the case of a self-move the individual or Family qualifying as a Displaced Person may be paid his actual moving costs, supported by receipted bills or other evidence of expenses incurred but such payment may not exceed the estimated cost of moving commercially. The estimated cost may be prepared by a commercial moving company or by a qualified City employee.

- (C) Cost of transportation. The costs of transportation of individuals and Families qualifying as a Displaced Person to the new location are also eligible. Such costs may be on mileage basis, not to exceed the rate allowed by City travel policy as published by the United States General Services Administration for privately owned vehicles,¹¹ or reasonable actual fees if commercial transport is used and may include special services such as the cost of an ambulance to transport invalid Displaced Persons. The actual reasonable costs of meals and lodging, when the City Manager determines that such costs are required because of unforeseen circumstances or practical necessities of the moving operation, are also eligible.

- (3) Moving expense schedule. An individual or Family qualifying as a Displaced Person is eligible to receive a moving expense allowance based on the "Fixed Moving Expense" used by the Texas Department of Transportation¹² that is in effect on the date the individual or Family is considered a Displaced Person as defined in these rules.
 - (1) Moving payments to Businesses.
 - (1) General.
 - (A) The Owner of an eligible displaced Business is entitled to receive a payment for actual reasonable moving and related expenses which include:
 - i. actual reasonable expenses in moving his Business or other personal property; and
 - ii. actual reasonable expenses in searching for a replacement Business location.
 - (2) Actual reasonable moving expenses.
 - (A) Commercial moves. The Owner of a Business may be paid the actual reasonable cost of a move accomplished by a commercial mover. Such expense will be supported by receipted bills.

¹¹ U.S. General Services Administration, Privately Owned Vehicle (POV) Mileage Reimbursement Rates, <http://www.gsa.gov/portal/content/100715> (last updated to be effective Jan. 1, 2015).

¹² Texas Department of Transportation, Section 4: Fixed Moving Expense Payments, http://onlinemanuals.txdot.gov/txdotmanuals/rel/fixed_moving_expense_payments.htm (last visited March 27, 2015).

(B) Self-moves.

- i. In the case of a self-move, the Owner of a displaced Business may be paid an amount to be negotiated between the City Manager and the Business not to exceed the lower of two firm bids obtained by the City from qualified moving firms; or
- ii. If such bids or estimates cannot be obtained, the Owner may be paid his actual, reasonable moving costs supported by receipted bills or other evidence of expenses incurred.

(3) Actual reasonable expenses in searching for a replacement Business location. The Owner of a displaced Business may be reimbursed for the actual reasonable expenses in searching for a replacement Business location, not to exceed \$500. Such expenses may include transportation expenses, meals, lodging away from the displaced Business Owner's home and the reasonable value of time actually spent in search, including the fees of real estate agents or real estate brokers. All expenses claimed except value of time actually spent in search must be supported by receipted bills.

(4) Small Business reestablishment expense. A Business with less than 500 employees at the site to be acquired is a small Business. A small Business is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing the small Business. Reestablishment expenses must be reasonably necessary as determined by the City.

(5) In lieu of actual moving expenses. In lieu of the payments described above, an Owner of a discontinued or relocated Business is eligible to receive a payment equal to the average annual net earnings of the Business except that such payment shall be not more than \$20,000, providing the following requirements are met:

(A) City Manager must determine. For the Owner of a Business to be entitled to this payment, the City Manager must determine that:

i. The Business cannot be relocated without a substantial loss of its Existing Patronage. A determination of loss of Existing Patronage shall be made by the City Manager only after investigation and consideration of all pertinent circumstances, including but not limited to the following factors:

(aa) the type of Business conducted by the displaced concern;

- (bb) the nature of the clientele of the displaced concern; and
 - (cc) the relative importance of the present and proposed location to the displaced Business.
 - ii. The Business is not part of a commercial enterprise having at least one other establishment which is not being acquired by the City and which is engaged in the same or similar Business.
 - iii. The Business contributes materially to the income of the displaced Owner. A part-time individual or Family occupation in the home which does not contribute materially to the income of the displaced Owner is not eligible for this payment
- (B) Payment determination. The term "average annual net earnings" means one-half of any net earnings of the Business before federal income taxes, during the 2 taxable years immediately preceding the taxable year in which the Business is relocated. "Average annual net earnings" include any compensation paid by the Business to the Owner or the Owner's spouse or dependents during the 2-year period. Such earnings and compensation will be established by federal income tax returns filed by the Business and its owner and the Owner's spouse and dependents during the 2-year period. In the case of a corporate Owner of a Business, earnings shall include any compensation paid to the spouse or dependents of the Owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, wife, and any dependent children shall be treated as one unit.
- (C) In Business less than two years. If the Business affected can show that it was in Business 12 consecutive months during the 2 taxable years prior to the taxable year in which it is required to relocate, had income during such period and is otherwise eligible, the Owner of a Business is eligible to receive the "in lieu of" payment. Where the Business was in operation for 12 consecutive months or more but was not in operation during the entire 2 preceding taxable years, the payment shall be computed by dividing the net earnings by the number of months the Business was operated and multiplying by 12. A taxable year is defined as any 12-month period used by the Business in filing income tax returns.
- (D) Owner must provide information. For the Owner of a Business to be entitled to payment, the Business must provide information to

support its net earnings. Federal tax returns for the tax years in question will be accepted as evidence of earnings. Any commonly acceptable method could be accepted such as certified financial statements or an affidavit from the Owner stating net earnings, providing it grants the City the right to review the records and accounts of the Business. The Owner's statement alone will not be sufficient.

Section VIII. Replacement Housing Payments

- (a) General. Individuals and Families are entitled to a replacement housing payment, subject to the limits set out below, in addition to receipt of the fair market value of their property if they agree to a prompt voluntary sale of their property to the City and relocate into DS&S replacement housing, and meet other eligibility requirements as determined by these rules and law. If a Displaced Person requests alternate ownership or tenancy status, the City will make a reasonable effort to accommodate the request. The Displaced Person may relocate to any Dwelling, but the amount actually paid will be the lesser of the actual cost or actual rent of the replacement Dwelling or any housing supplement previously approved by the City.
- (b) Replacement housing payment for Owner-occupant for 180 days or more prior to the Initiation of Negotiations. As determined by the City, a displaced Owner-occupant of a Dwelling may receive a payment or payments, the combined total of which may not exceed \$22,500, for the additional cost necessary to purchase replacement housing, to compensate the Owner for the loss of favorable financing on the Owner's existing Mortgage in the financing of replacement housing, and to reimburse the Owner for incidental expenses incident to the purchase of replacement housing.
- (c) Replacement housing payment to Owner-occupant between 90 and 180 days prior to the Initiation of Negotiations. As determined by the City, a displaced Owner-occupant otherwise eligible except for having owned and occupied the Dwelling for less than 180 days but not less than 90 days prior to the Initiation of Negotiations may receive an amount, not to exceed \$5,250, to enable the Owner-occupant to make a down payment on the purchase of a replacement Dwelling and reimbursement for actual expenses incident to the purchase to the purchase of replacement housing.
- (d) Rental replacement payment to tenant-occupant for 90 days or more who rents prior to the Initiation of Negotiations. As determined by the City, a displaced tenant having occupied the Dwelling for 90 days or more prior to the Initiation of Negotiations is eligible for a rental replacement payment, not to exceed \$5,250.
- (e) Housing of last resort. As determined by City, whenever a project cannot proceed on a timely basis because Comparable Replacement Dwellings are not available

within the monetary limits for Owners or tenants, City may provide additional or alternative assistance.

Section IX. Appeals

- (a) When the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, for federal and federally assisted programs does not apply to the relocation of Displaced Persons, this section will control the appeal process.
- (b) The City shall review all written appeals after receipt in accordance with applicable laws, regulations and the following rules. The City shall consider a written appeal regardless of form. An Aggrieved Party may file an appeal with the City, by submitting such appeal to the Appeal Officer, in any case in which the Aggrieved Party believes that the City has failed to:
 - (1) Properly determine that the Aggrieved Party qualifies, or will qualify (upon moving), as a Displaced Person who is eligible for relocation assistance;
 - (2) Properly determine the amount of any relocation payment. An Aggrieved Party's acceptance of a payment that is less than the full amount claimed does not limit the Aggrieved Party's right to appeal;
 - (3) Provide appropriate referrals to Comparable Replacement Dwellings or inspect the replacement Dwelling in a timely manner; or
 - (4) Waive the time limit for
 - (A) the filing of a claim or an appeal; or
 - (B) purchasing, renting or occupying a replacement Dwelling.
- (c) The time limit for an Aggrieved Party to file an appeal is 60 days after the Aggrieved Party received a written notification of the City's determination on the Aggrieved Party's claim. On a case-by-case basis, for good cause, the City, through the Appeal Officer, can extend such time limit.
- (d) An Aggrieved Party has a right to be represented by legal counsel or other representative in connection with his appeal, but solely at the Aggrieved Party's own expense.
- (e) The City shall permit an Aggrieved Party to inspect and copy all materials pertinent to his appeal. The City may, however, impose reasonable conditions on

the Aggrieved Party's right to inspect, consistent with the Public Information Act and with applicable laws. An Aggrieved Party does not have to submit a Public Information Act request to have the right to inspect and copy all materials pertinent to his appeal, unless the City believes that portions of the materials pertinent to the Aggrieved Party's appeal may contain information that may be exempt from disclosure under the Public Information Act, and then the City may require the Aggrieved Party to submit a request pursuant to the Public Information Act for only those portions of the materials that may be exempt from disclosure, and the Aggrieved Party may inspect and copy all other materials pertinent to his appeal.

- (f) The Appeal Officer will be the official to conduct the review of the appeal. The reviewing official shall not have been directly involved in the action appealed.
- (g) In deciding an appeal, the Appeal Officer shall consider all pertinent justification and other materials submitted by the Aggrieved Party and all other available information that is needed to ensure a fair and full review of the appeal.
- (h) Within 30 days after receipt of all information submitted by an Aggrieved Party in support of an appeal, the Appeal Officer shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the Aggrieved Party a copy. If the full relief requested is not granted, the Appeal Officer shall advise the Aggrieved Party of his or her right to seek judicial review of the City's determination on the appeal.
- (i) In the event that an Aggrieved Party's appeal is granted, and the claim is deemed payable by the City, it may be necessary to seek the approval of City Council for any additional funds to be paid to the Aggrieved Party. The City Attorney's Office should be consulted to determine if City Council approval is necessary.
- (j) Nothing in these procedures shall in any way preclude or limit an Aggrieved Party from seeking judicial review of the Aggrieved Party's appeal on its merits after the Aggrieved Party exhausts the administrative remedies described herein.

Section X. Modifications to Relocation Assistance Rules

City Council authorizes the City Manager to make minor modifications to the Relocation Assistance Rules for administration purposes so long as such revisions are not inconsistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.