



## INFORMATION MEMO

# Purchase and Sale of Real Property

*Understand the statutory authority of cities to acquire and dispose of real estate, including by sales, purchases, and alternatives such as gifts, leases, dedication, contract for deed, lease-purchase and others. Be alert to common issues in transactions such as environmental considerations, deed restrictions, trust land, permissions to buy and sell, and more.*

### RELEVANT LINKS:

[Minn. Stat. § 412.211.](#)

[Minn. Stat. § 465.29.](#)

[Minn. Stat. § 412.221, subd. 2.](#) See Part I - I - Contracts for deed

## I. Acquisition of land

All statutory cities have authority to acquire real estate for various purposes. These cities may acquire real property either within or outside their corporate limits. Statutory cities may acquire real estate in any of the following ways:

- Purchase. A city can acquire the title to land by simply buying it.
- Gifts of land. A city can accept gifts of land.
- Dedication. A city can require developers to dedicate land for parks, streets, and utility purposes as a condition of subdivision approval.
- Devise. A city may receive real estate in a person's will.
- Eminent domain (condemnation). This is a required sale of land to a government entity for public use or public purpose.
- Tax-Forfeiture. A city may acquire tax-forfeited land through outright purchase for the land's appraised value or may acquire the land at no cost if the city agrees to use the land for a public purpose.

Most real estate is acquired through an outright purchase of all right and title to the land. This type of purchase is known as a purchase of fee simple rights and is represented by a deed document. However, cities can also acquire other types of interest in land using:

- Contract for deed. A city can purchase real property using a contract for deed if certain conditions are met.
- Lease-purchase. A city can rent real estate with the option to buy.
- Leases. A city can acquire an interest in real estate through rental agreements.
- Easements. A city often acquires easements over property for such things as streets and utilities. Sometimes these easements are acquired by purchase or condemnation; other times the owner of the property may give them to the city.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

[Minn. Stat. § 410.33.](#)

[Minn. Stat. § 412.211.](#)

[Minn. Stat. § 117.52.](#)  
See Part I - E - Eminent domain.  
[Minn. Stat. § 282.01, subd. 2.](#)

[Minn. Stat. § 13D.05, subd. 3.](#)  
See Part III – I - Open Meeting Law.

[Minn. Stat. § 465.03.](#)

[Minn. Stat. § 465.03.](#) Also see Part III - A – Environmental.  
*Housing and Redevelopment Authority of City of South St. Paul v. United Stockyards Corp.*, 309 Minn. 331, 332, 244 N.W.2d 275, 276 (1976).

- **Use Deed.** When a city acquires tax-forfeited property at no cost, the use of the land will be restricted to specific public purposes specified on the deed document itself for a certain period of time. When the city ceases to use the land for the specified purposes, the land may revert to the state of Minnesota.

Home rule charter cities may have special requirements in their charters. These cities should check their charters for additional restrictions. However, if the charter is silent in this area, the city may follow the same rules that apply to statutory cities.

## A. Purchase

Statutory cities have the power to purchase real property within or outside of their corporate limits. Home rule charter cities generally have similar authority in their charters.

A city may have a responsibility to pay relocation costs to persons who are displaced from their homes, farms, or businesses as a result of the purchase. This law may apply even when the eminent domain process is not used to require the sale of the land. Most cities include a waiver in the final contract if these costs have been included in the price or if the sale is a negotiated one.

If a city is developing an offer or counteroffer to purchase real property, it may close a meeting.

## B. Gifts of land to cities

Any city may accept a grant or devise real property and maintain such property for the purpose of its citizens in accordance with the terms prescribed by the donor. The city council must do the following in order to accept the land:

- The council must pass a resolution by a two-thirds majority. This is a two-thirds vote of the entire council, not just the members who are present.
- The resolution must express the terms of acceptance in detail.

Before accepting a grant of land, however, a city should carefully consider whether the conditions of the grant are ones it can follow. For example, a city could not agree to use the property for religious or sectarian purposes. Additionally, a city should investigate the history of the land to make sure the land is not contaminated before accepting such a gift.

## RELEVANT LINKS:

[Minn. Stat. § 500.20, subd. 2a.](#)

*Hiller v. County of Anoka*, 529 N.W.2d 426 (Minn. Ct. App. 1995).

[Minn. Stat. § 462.358, subd. 2b.](#)

See LMC Information Memo [Subdivision Guide for Cities](#).

[Minn. Stat. § 462.358, subd. 2c\(a\).](#)

[Minn. Stat. § 462.358, subd. 2b\(a\).](#)

[Minn. Stat. § 462.358, subd. 2b\(b\).](#)

See Part III - C - Land held in trust.

[Minn. Stat. § 462.358, subd. 2b.](#)

[Minn. Stat. § 462.358, subd. 2b.](#)

See LMC Information Memo, [Subdivision Guide for Cities](#).

[Minn. Stat. § 462.358, subd. 2b.](#)

The Minnesota Supreme Court has held that the language in a deed that donated property to a city and limited the use to municipal or park purposes automatically expired 30 years after the date of the conveyance.

## C. Dedication

Interest in land can also be acquired through dedication for parks, streets, and utility purposes. This is most often done through a city's subdivision regulations. The principle behind such dedications is to ensure that a new development will contain enough space for parks, streets, and utilities required as a result of the new development.

There must be an essential nexus or logical connection between the land dedication and the purpose sought to be achieved by the dedication. The dedication must bear a "rough proportionality" to the need created by the proposed subdivision or development. The basis for calculating the amount to be dedicated must be established by ordinance.

If a city adopts an ordinance requiring dedication, it must adopt a capital improvement budget and have a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan.

Cities should keep in mind that land acquired through dedication is often held in trust by the city for a specific purpose. This can sometimes restrict the city from using the land for another purpose or from selling it.

### 1. Parks, trails and recreational land

Cities may acquire land through park dedication. A city may adopt subdivision regulations that require a reasonable amount of build-able land to be set aside for park, recreational facilities, playgrounds, trails, wetlands, and/or open space purposes when land subdivisions occur.

In determining what amount of land should be dedicated, the regulations should give due consideration to the open space, recreational, or common areas and facilities open to the public that the developer proposes to reserve for the subdivision.

### 2. Streets and rights of way

Cities may adopt subdivision regulations that require a reasonable portion of the build-able land in a proposed subdivision be dedicated to the public for streets and roads.

## RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 2b.](#)

[Minn. Stat. § 412.211. Minn. Stat. § 465.03.](#)

[Minn. Stat. § 465.01. Minn. Stat. ch. 117.](#)

[Kelo v. City of New London, 125 S. Ct. 2655 \(2005\).](#)

[Minn. Stat. § 117.012, subd. 2.](#)

[Minn. Stat. § 117.025, subd. 11.](#)

### 3. Utilities

A city's subdivision regulations may also require a reasonable portion of the buildable land of a proposed subdivision be dedicated to the public for the following type of utilities:

- Sewers.
- Electric facilities.
- Gas facilities.
- Storm water drainage areas or ponds.
- Other similar utilities and improvements.

### D. Devise

Sometimes people will leave real property to cities in their wills. Every city has authority to accept real property that is devised to it. As with gifts of land, a city should be certain it could comply with any deed restrictions or conditions attached to the land. It is also important to consider the appropriate environmental aspects that could be a concern. A city should consult an attorney if real property is devised to it.

### E. Eminent domain (condemnation)

Cities can acquire real property or easements through eminent domain (also known as condemnation). Essentially, eminent domain is a means to require that an owner sell his or her land to a city. This procedure requires a formal court action, and a city must pay an owner for the value of the land or the damages to the land - if the city is taking only part of it, such as for an easement.

In *Kelo v. City of New London, Conn.*, the United States Supreme Court held that taking property for economic development is a valid public purpose and that if a city seeks to exercise its power of eminent domain for economic development purposes, it should do so in conjunction with a well thought out economic development plan.

In response to the *Kelo* decision, the Minnesota Legislature limited a city's power of eminent domain to a public use or public purpose. A public use or public purpose is defined as:

- the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies.
- the creation or functioning of a public service corporation.
- the mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of public nuisances.

## RELEVANT LINKS:

[Minn. Stat. § 315.42. \*City of Jordan v. Church of St John the Baptist\*, 764 NW 2d 71 \(Minn. Ct. App. 2009\).](#)

[U. S. Const. Amend. V. Minn. Const. art. I § 3. \*Lucas v. South Carolina Coastal Council\*, 505 U.S. 1003, 112 S. Ct. 2886 \(1992\). \*Penn Cent. Transp. Co. v. City of New York\*, 438 U.S. 104, 98 S. Ct. 2646 \(1978\). \*Wensmann Realty, Inc. v. City of Eagan\*, 734 N.W.2d 623 \(Minn. 2007\).](#)

See [Handbook, Chapter 14](#).

[42 U.S.C. §§ 4601-4655.](#)

[Minn. Stat. § 117.52 .  
Minn. Stat. § 117.52, subd. 1a.  
49 C.F.R. §24.304.](#)

[Minn. Stat. § 117.52.](#)

The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

State law limits the ability of cities to condemn land owned by religious corporations without their consent.

A city can also be compelled to condemn land by a court order in an inverse condemnation action. A property owner can bring this claim when a city's action has had the effect of depriving the property owner of some or all of their interest in the property.

The eminent domain procedure is rather complex and will not be discussed in detail in this document. A city council that is considering using eminent domain to acquire land or an easement should consult with its city attorney for guidance.

## 1. Relocation assistance

Both state and federal law protect property owners and tenants who are required to move because of eminent domain. Relocated persons must be paid relocation costs.

Federal law provides that the condemning authority must pay certain benefits to people who are displaced from their homes, farms, or businesses as a result of a federally funded project.

Minnesota law also requires the payment of relocation benefits when eminent domain is used, even if no federal funding is involved. The nature and amount of these benefits is the same as if federal funds were involved.

For purposes of relocation benefits paid by a city under state law, federal law is applicable to the reimbursement of reestablishment expenses for nonresidential moves, except that a city must reimburse the displaced business for expenses actually incurred up to a maximum of \$50,000.

Even if the sale of real estate to a city is negotiated, a city may have a responsibility to pay relocation costs. In such situations, most contracts include a specific waiver of additional relocation costs, because these costs are usually already included in the contract price, or specify the amount of the relocation benefits to be paid.

## RELEVANT LINKS:

See Part IV - Real estate professionals.

[Minn. Stat. § 282.01, subd. 1.](#)

## 2. Land values

The value of real estate is not always obvious. When considering a land purchase, a city may want to check the following:

- The property's value for the most recent property tax levy.
- The property's value for the most recent special assessment.
- The value that the land and its buildings (if any) are insured for fire damage, etc.
- Any recent occurrences that could affect the land's value, such as new neighboring land developments or contamination.

In addition to considering these elements, a city should also have the land professionally appraised. (Section IV of this memo discusses appraisers.)

## F. Tax Forfeiture

Land held by private parties may be forfeited to the state due to failure to pay property taxes. When this occurs, state policy is to promote the "best use" of tax-forfeited lands, recognizing that some lands in public ownership should be retained for the benefit of the public while other lands should be returned to private ownership. Reflecting this understanding, tax-forfeited land is classified in two ways – either as conservation land or non-conservation land when it is obtained by the state.

### 1. Land classified as non-conservation land

Cities may obtain tax-forfeited land classified as non-conservation land in two ways. Cities may:

- Pay the appraised value of the land and receive full, clear title to the land.
- Receive the land for free for certain specified uses with an agreement that the lands may only be used for a specified public use for a certain amount of time.

Cities may obtain land for free land designated as non-conservation land for the following specified uses:

## RELEVANT LINKS:

[Minn. Stat. § 282.01, subd. 1c.](#)

[Minn. Stat. § 282.01, subd. 1d. \*City of St Paul v State\*, 754 NW 2d 386 \(Minn. Ct. App. 2008\). A.G. Op. 425-c-11 \(May 27, 1964\).](#)

[Minn. Stat. § 282.01, subd. 1d.](#)

- a road, or right-of-way for a road.
- a park that is both available to, and accessible by, the public that contains amenities such as campgrounds, playgrounds, athletic fields, trails, or shelters.
- trails for walking, bicycling, snowmobiling, or other recreational purposes, along with a reasonable amount of surrounding land maintained in its natural state.
- transit facilities for buses, light rail transit, commuter rail or passenger rail, including transit ways, park-and-ride lots, transit stations, maintenance and garage facilities, and other facilities related to a public transit system.
- public beaches or boat launches.
- public parking.
- civic recreation or conference facilities.
- public service facilities such as fire halls, police stations, lift stations, water towers, sanitation facilities, water treatment facilities, and administrative offices.

When a city receives non-conservation land without payment, the city will receive a specialized type of deed that specifies the uses for which the city may use the land for a certain period of time. This is known as a use deed. For example, if the city wishes to use the land for park land, the use deed will state that the land may only be used for park purposes.

When the city has acquired land under a use deed, it must put the land to its specified use within three years or the land will revert to the state. If the city later abandons the specified use before the time periods discussed below, the land will also revert to the state. If the city abandons the public use for which it holds only a use deed, it may not convey the land to private parties.

State statute allows cities to petition to change specified uses in a use deed. Cities that wish to covert public uses from one use to another (for example from park land to parking land) must seek approval for the change from the commissioner of revenue and the county board in which the land is located. If the change is approved, the city will be issued a new use deed stating the changed use.

Non-conservation land obtained by a use deed on or after January 1, 2007, may be acquired outright by the city after 15 years from the date of the conveyance when certain conditions are met. To acquire the property without use restriction, the city must:

## RELEVANT LINKS:

- make an application to the Commissioner of Revenue.
- demonstrate that the property has been put to the use for which it was originally conveyed by use deed.
- demonstrate that the city has no current intention to change the use for which the property was conveyed by the original use deed.
- demonstrate that the county wherein the property is located has not failed to file any objection to the issuance of a new deed after 60 days notice.

Non-conservation land obtained by a use deed before January 1, 2007, may be released from the use restriction and possibility of reversion on January 1, 2022, if the county board wherein the property is located records a resolution requesting release on behalf of the city. The county board may authorize the county treasurer to deduct the amount of the recording fees from future settlements of property taxes to the city.

In the alternative, where county consent is not forthcoming, all non-conservation lands obtained by a use deed before January 1, 2007 are automatically released from the use restriction and revert on the later of:

- January 1, 2015.
- 30 years from the date the deed was acknowledged.
- final resolution of any appeal to district court where a lis pendens has been recorded in the office of the county recorder or registrar of titles, prior to January 1, 2015 pursuant to Minn. Stat. 282.01.

## 2. Land classified as conservation land

Cities may obtain land for free land designated as conservation land for the following specified uses:

- creation or preservation of wetlands.
- drainage or storage of storm water under a storm water management plan.
- preservation, or restoration and preservation, of the land in its natural state.

When a city receives land designated as conservation land for these purposes the deed must contain a restrictive covenant limiting the use of the land to one of these purposes for 30 years or until the property is reconveyed back to the state in trust. At any time, the governmental subdivision may reconvey the property to the state in trust for the taxing districts.

[Minn. Stat. § 282.01.](#)



## RELEVANT LINKS:

[Minn. Stat. § 412.211.](#)

[Minn. Stat. § 410.33.](#)

[Minn. Stat. § 471.64, subd. 1.](#)

See Part II - B - Liability issues.

[Minn. Stat. § 465.71.](#)

[Minn. Stat. § 465.71.](#)

[Minn. Stat. § 465.71.](#) Also see Part III - F - Competitive bidding and Part II - B – Leases.

## G. Leases

Statutory cities may also acquire an interest in real estate through rental agreements. Although a city will not have ownership of the land in this case, it will have temporary possession of the land for use in accordance with the lease.

Home rule charter cities often have similar provisions in their charters. These cities should check their charters for authority. If the charter does not address the matter, a home rule city may use the authority given to statutory cities.

Any city may enter into a contract with the United States government for lease, sale, or purchase of real property. Cities contracting under this statute need not follow any procedure that is normally required by charter provision or state statute. However, the United States government may have special procedures that must be followed.

Cities should carefully consider liability elements when leasing land and buildings from or to another entity. These issues are discussed in more detail in a later section of this memo.

## H. Lease-purchase agreements

All cities have the power to use a lease-purchase agreement to lease real property with an option to buy. With a lease-purchase agreement, the title is retained by the seller or assigned to a third party as security for the purchase price.

If the amount of the contract is less than \$1 million, this obligation is neither included in the calculation of net debt for the purpose of the bond laws nor shall it constitute debt under any other statute.

Although a city is not required to use competitive bidding to enter into the lease-purchase agreement, if it does so the amount of the contract must include the total of all the lease payments for the entire term of the lease. A city must have the right to terminate the lease purchase agreement at the end of any fiscal year during its term.

Although not specifically required by statute, cities should include a non-appropriation clause in the contract. Such a clause allows a city to terminate the lease-purchase agreement if the council does not appropriate sufficient money to make the required payments. This ability may be important because if a city is required to make lease payments without regard to an annual (or biannual) appropriation, the lease might appear to be a debt of a city and it could be required to meet the statutory requirements for debt instruments.

## RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 2.](#)

[Minn. Stat. § 412.221, subd. 2.](#)

[Minn. Stat. § 412.221, subd. 2.](#)

Also see LMC Information Memo [City Special Elections](#).

[Minn. Stat. § 410.33.](#)

A city should consult with its attorney before entering into any lease-purchase agreement to ensure that all of the city's concerns have been addressed.

## I. Contracts for deed

Statutory cities may purchase real property under a contract for deed. The payments must be payable over a period not to exceed five years. Under the contract, the seller must be limited to the remedy of the recovery of the property in the case of nonpayment of all or part of the purchase price.

If the purchase price of a contract for deed exceeds 0.24177 percent of the market value of the city, the city must do ALL of the following in order to purchase the land using a contract for deed:

- Publish a resolution. The city must publish a council resolution in its official paper. The resolution must indicate that the city intends to purchase the property using a contract for deed.
- Wait for 10 days. The city cannot enter into the contract until at least 10 days after it publishes the council resolution. If a petition is submitted during these 10 days, there are additional requirements, which are discussed below.
- Make the contract for deed. If no petitions are submitted, the council may enter the contract for deed. But if a petition is submitted, there are other additional requirements.

A city has other responsibilities if it receives a valid petition from its citizens during the 10 days after the resolution is published. A “valid” petition must meet ALL of the following criteria:

- It must be a petition that asks for an election on whether the purchase should be made.
- It must be signed by registered voters.
- It must have at least the number of signatures that is equal to 10 percent of the total number of people who voted in the last regular city election.

A city must hold an election in order to purchase land using a contract for deed if a valid petition is submitted asking for an election on whether the purchase should be made. A city cannot purchase the real estate using a contract for deed until a majority of the voters give it permission to do so.

Home rule charter cities should check their charters for authority to purchase land using a contract for deed. If the charter is silent on the matter, the city may use the authority of statutory cities.

## RELEVANT LINKS:

[Minn. Stat. § 507.235.](#)

See LMC Information Memo [Subdivision Guide for Cities](#) for more information on dedication.

[Minn. Stat. § 412.221.](#)

[Minn. Stat. ch. 117.](#)

[Minn. Stat. § 465.03.](#)

Also see League Information Memo, [Acquisition and Maintenance of City Streets.](#)

See Part I - F – Tax Forfeited Lands.

[Minn. Stat. § 412.211.](#)

[Minn. Stats. § 412.211.](#) [Minn. Stat. §410.33.](#)

A contract for deed must be recorded with the county recorders or county registrar of title's office. It must be recorded within four months of being signed. The buyer is responsible for the filing.

## J. Easements

A city can acquire an interest in land when it acquires an easement. A city can obtain easements in a variety of ways. The more common ways are:

- Dedication.
- Purchase.
- Eminent domain, if the property owner does not want to relinquish the easement.
- Gift.

Easements are often used for streets or for city public utilities, including sewer and water.

## K. Use Deeds

When a city acquires tax-forfeited land without paying full value, the city is granted a use deed for the property. Use deeds specify the uses for which the city may use the land. If the city changes or abandons the use specified in the use deed, the land may revert to the state. The city may not sell land held by only a use deed to private parties. After using the property for the use specified in the use deed for a certain period of time, the city may obtain the property without restriction if it meets certain requirements.

## II. Disposition of land

Statutory cities may dispose of land that it does not hold in trust for a specified public use. Such disposition may be done in any of the following ways:

- Sale. A city can sell land it does not need.
- Lease. A city can rent land or building space that it no longer needs for city use.
- Gifts or sale for nominal consideration. There are only a few limited situations under which a city may give away land or sell it for a nominal amount of money.

## A. Sale

Statutory cities have the power to sell land or buildings they no longer need to anyone, other than elected officials. Home rule charter cities generally have similar authority in their charters. If a city's charter is silent with regard to the matter, it may use the authority that statutory cities have.

## RELEVANT LINKS:

See Part III – Common issues in land sales and purchases, sections B, C, F, and G.

[Minn. Stat. § 471.64.](#)

See Part III - G - Getting permission to buy or sell land.  
[Minn. Stat. § 13D.05, subd. 3\(c\).](#)

Contact the [League research department](#) for sample community center use policies.

[Minn. Stat. § 412.211.](#) [Minn. Stat. §410.33.](#)

*Anderson v. City of Montevideo*, 137 Minn. 179 (1917).

*Penn-O-Tex Oil Co. v. City of Minneapolis*, 207 Minn. 307 (1940).

See Part III - G - Getting permission to buy or sell land.

[Minn. Stat. § 471.64.](#)

Generally, a city does not need to get permission from anyone in order to sell land. In some instances, however, a city may need to notify people or get approval prior to the sale. Sales of land are usually not required to use the competitive bidding process.

All cities have the power to contract with any of the following public entities and sell real property to it:

- The United States.
- Any United States agency.
- Any state agency.
- Any other political subdivision of Minnesota.

Housing Redevelopment Authorities and Economic Development Authorities must hold a public hearing before selling most land.

A public body may close a public meeting to determine the asking price for real or personal property to be sold by the city, to review confidential or nonpublic appraisal data, and to consider offers or counteroffers for the sale of real property.

## B. Leases

Cities often lease unneeded property and buildings to others for their use. Sometimes these agreements are long-term leases. Other times it may be an afternoon rental of a room in a community center. Many cities have adopted policies regarding the rental and use of their community centers.

### 1. Authority

Statutory cities have the power to lease land and buildings that are no longer needed for city purposes. Home rule charter cities often have similar authority in their city charters. Home rule cities whose charters are silent on this matter may use the authority given for statutory cities.

A city has the right to let outside parties use city buildings so long as the use does not interfere with the city's purposes.

A city can charge rent for the use of unneeded facilities because the income can "lighten the burden of the taxpayers."

Housing Redevelopment Authorities and some Economic Development Authorities must hold a public hearing before leasing most land.

All cities can lease land to the United States, its agencies, any state agency, and other political subdivisions of the state.

## RELEVANT LINKS:

[Minn. Stat. § 272.01, subds. 2\(a\) and \(c\).](#)

See LMCIT Information Memos, [Community Centers – Liability and Loss Control Issues](#), [Insurance Issues for Use of City Facilities](#).

## 2. Property Taxes

Although city property is generally exempt from property taxes, it loses its exemption when it is leased to a private individual, association, or organization that is in business to make a profit. Even though state law makes those who lease land from a city responsible for paying the property tax, cities should address the responsibility for paying the property taxes in the lease.

## 3. Liability issues

Whether a long-term lease or an afternoon rental, a city should consider the liability exposure that it may have through the lease agreement. Ownership of a building is one basis for possible liability if a person has a claim related to the building.

If a city will be leasing a building to someone for an extended period of time, it should make sure to have a written lease that outlines the responsibilities of the parties. Similarly, if a city is renting a room or location to someone for a short term, such as a day or several hours, it should have a permit application procedure with rules regarding the use of the facility and a formal written agreement.

The following elements should be considered in any written lease or rental agreement:

- Repairs. The agreement should address who will be responsible for making repairs and who will pay for the cost of repairs.
- Maintenance. The agreement should address who will maintain the building and the surrounding areas such as sidewalks and parking lots.
- Supervision of activities. The agreement should address who will be responsible for supervising the activities that will be occurring in the building.
- Cancellation. The agreement should allow the city to end the lease, with reasonable notice, if the building or land is needed for a public purpose.
- Liability. The agreement should spell out how liability will be handled and include a defense and indemnification provision to reflect the relationship. The lessor should be required to defend the city for any claims against the city arising from rental of the building.

## RELEVANT LINKS:

See LMCIT Information Memos, [Community Centers – Liability and Loss Control Issues](#), [Insurance Issues for Use of City Facilities](#).

*Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2125 (1971).

Also see LMC Information Memo, [Public Purpose Expenditures](#).

*Good News Club v. Milford Central School*, 533 U.S. 98, 121 S. Ct. 2093 (2001).

5 McQuillin Municipal Corporations § 19.25 (3rd ed. Revised 1995).

- Insurance. The agreement should address whose insurance will cover the different risks involved. There are a number of different types of insurance that could be involved, including the following:
  - Property. This addresses damage to the building.
  - Personal property. This addresses damage to the contents of the building.
  - Liability. This addresses personal injuries.
  - Workers' compensation. This addresses injuries to employees.

A city should require the renter to name it as an additional insured. Additionally, a city should require a copy of the certificate of insurance to verify this has been done and the amount of insurance coverage.

## 4. Policies on use of a city building

Cities often have policies regarding use of their buildings or facilities. However, it is important that a policy not unlawfully discriminate against whom it allows to use the building or facility. The following are some common areas of concern for use of a city building:

- Religious use. A city should allow religious groups access to city buildings on the same basis as other types of groups. If religious groups are not allowed to rent these facilities in the same manner as non-religious groups, a city could be accused of religious discrimination. Moreover, a city should also be careful not to support one religion over another (i.e., endorse a particular religion) by either having too many connections with a particular religious group or charging lower rent to a religious group than it does to another group.
- Commercial use. A city can allow a commercial organization to use a city building that is not needed for city purposes. If a city lets commercial organizations use the building for free, such free use might constitute an unlawful "gift" by the city.
- Free speech use. Once a city allows non-city use of a public building, it cannot refuse to allow a group to use it because of the content of the speech or activity.
- Resident and non-resident use. Generally speaking, a city may charge higher fees for non-residents to use city buildings and facilities so long as there is a rational basis to support the different treatment, such as that the residents also pay other taxes that support the facility. Some cities may give residents first choice in the use of the building. A complete ban of non-residents could be problematic if it has an unlawful discriminatory effect.

## RELEVANT LINKS:

[Minn. Stat. § 465.025.](#)

[Minn. Stat. § 465.035.](#)

[A.G. Op. 469-a-9 \(May 5, 1967\).](#)

[Minn. Stat. § 469.185.](#)

[Minn. Stat. §§ 116J.993.](#)  
[Minn. Stat. § 116J.994.](#)

[Minn. Stat. § 116J.993, subd. 3.](#)

[Minn. Stat. § 116J.994, subd. 5.](#)

- Financial responsibility. A city may use this as a basis for restricting use of a city building if the financial criteria are reasonably related to the city's costs or liabilities for the building or activity. For instance, the city may require a user to show proof of dram shop insurance if liquor will be served and refuse to rent the facility to a person who does not show proof of this insurance.

## C. Gifts or sale for nominal considerations

Generally, a city may not give away land or sell it for a nominal amount. However, there are a few limited exceptions to this general rule.

Any city may give lands to the state if the land meets the following criteria:

- The land is no longer needed for municipal purposes.
- The land is owned by the city in fee simple.
- The land is not restricted by a grant or dedication.

Any city, county, school district, or town may lease or convey land without consideration or for nominal consideration or any agreed upon consideration to any of the following:

- The state of Minnesota.
- Any governmental subdivision.
- The United States.
- Any federal government agency.
- Any other public corporation.
- The Minnesota state armory building.

The Attorney General has determined that a city was not permitted to give or lease land for a nominal consideration to a nonprofit corporation.

To encourage and promote industry and to provide employment opportunities for its citizens, cities may convey real property for nominal consideration. A city must own the land in fee simple and not otherwise be restricted by grant or dedication.

“Business subsidies,” including the sale of real property, may not be awarded until the grantor city has adopted eligibility criteria (including a specific wage floor) after a public hearing.

Pursuant to statute, a conveyance for redevelopment, when the recipient's investment in the purchase of the site and site development is 70 percent or more of the assessor's current estimated market value, is not considered a business subsidy.

Before granting a specific business subsidy that exceeds \$100,000, a city must provide notice and hold a public hearing.

#### RELEVANT LINKS:

[A.G. Op. 476-b-2 \(Mar. 2, 1961\).](#)

[Minn. Stat. § 469.012, subd. 1\(e\).](#) [Minn. Stat. §469.026.](#)

[42 U.S.C. §§ 9601-9675.](#)

[Minn. Stat. ch. 115B.](#)

The Attorney General has determined that the “promotion of industry” requires more than the construction of a nonprofit athletic facility.

A Housing and Redevelopment Authority (HRA) may give, sell, transfer, convey, or otherwise dispose of real property. This power, however, is subject to the provisions of another statute that deals with the acquisition of buildings for the purpose of low-rent housing.

### III. Common issues in land sales and purchases

There are many things for cities to consider when buying or selling land. This section addresses some of the more common issues.

#### A. Environmental

If a city acquires real estate that is contaminated, it can end up being responsible for all or part of the cost of cleaning up the land. Likewise, if a city buys a building that contains hazardous materials such as asbestos, it, as the owner, could have additional costs in order to remove the asbestos before the building is remodeled or torn down.

Both federal and state laws impose liability for the cost of cleaning contaminated property. The federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) contains the statutes that deal with responsibility to clean up contaminated property – also known as the “Superfund” Act. These laws were later amended in the Superfund Amendments and Re-Authorization Act (SARA).

Minnesota’s “Superfund” law is the Minnesota Environmental Response and Liability Act (MERLA). It gives the Minnesota Pollution Control Agency (MPCA) the power to clean up hazardous waste sites and to make responsible parties pay for the associated clean-up costs.

Generally, both CERLA AND MERLA impose liability for clean-up costs of contaminated land upon the following people:



## RELEVANT LINKS:

- Owner/operator liability. Anyone who owned or operated a facility that dealt with a contaminant or hazardous substance can be held responsible for the cost of cleaning up the land if it is contaminated.
- Generator liability. Anyone who owned or possessed a hazardous substance, pollutant, or contaminant and arranged for disposal or treatment can be held responsible for the cost of cleanup.
- Transporter liability. Anyone who knew or should have known that waste accepted for transport contained a hazardous substance, pollutant, or contaminant and either selected the facility to which it was transported or disposed of it in a manner contrary to law can be held responsible for the cost of clean-up.

Because of this possible responsibility, cities should check carefully to determine if land has been contaminated before acquisition. Although it is not always apparent that a piece of real estate has been polluted, a great deal can be learned by investigating the land's chain of title. A quick check of the county land records can reveal who has owned the land in the past.

If a business once owned the land, the land may have been exposed to any chemicals that were used by the business. Similarly, a history of old railroad sites, gasoline stations, underground storage tanks, and electrical transformers can indicate a possibility of exposure to contamination.

A city that will be acquiring land, whether by purchase or gift, may want to consider hiring a consultant to conduct an environmental property assessment. There are two types of assessments. The first, a Phase I Audit, consists of a site history and walk-over inspection. If any questions are raised as a result of the Phase I Audit, a Phase II audit can be arranged. A Phase II Audit consists of soil borings and other tests for chemicals.

Although there are some limited circumstances under state law where a city will not be held responsible for clean-up costs, these are exceptions to the general rule that an owner of property is responsible for clean-up costs. Further, an exemption from responsibility under state law does not mean a city would be exempt from these costs under federal law. A city should consult its attorney to verify any exemption from clean-up costs before acquiring title to any contaminated property.

## B. Deed restrictions

Deed restrictions, also known as restrictive covenants, are conditions placed on the use of land by a previous owner. These restrictions are imposed on the future owners of the property and if a new owner does not meet the conditions, the previous owner can pursue court action to enforce the condition or recover the land.

[Minn. Stat. § 115B.03, subds. 3-9.](#)

## RELEVANT LINKS:

[Minn. Stat. ch. 462.](#)

[A.G. Op. 469-a-15 \(Feb. 18, 1955\).](#)

[Minn. Stat. § 505.01.](#)

[Larson v. Sando, 508 N.W.2d 787 \(Minn. App. 1993\).](#)

A city should carefully consider whether a deed restriction that the seller will impose is one with which the city could comply. A city should also investigate the county land records to see if there are any prior deed restrictions from previous owners before acquiring the property. Deed restrictions are usually uncovered during the title search.

Deed restrictions generally run with the land. This means once a deed restriction is in place, the only person who can remove it is the person who imposed the restrictions. For instance, if a city wants to build a new city hall on property with a deed restriction that prohibits this type of use, the city must find the previous owner and request that the restriction be removed. While this may be possible if the city is buying the land from the person who imposed the deed restriction, it can be difficult if the person who created the restriction is not available or cannot be located. Likewise, if there are several deed restrictions that have been imposed by different owners, it may be difficult to track down all of the previous owners.

Cities do not enforce deed restrictions that exist on property owned by others. Generally, a deed restriction is a private contractual matter between the buyer and the seller of a piece of property.

The Attorney General has determined that a city could not place a restrictive covenant in a deed to require that any home built on the land be of a certain value.

## C. Land held in trust

It is somewhat unclear whether a city can sell land that it holds in trust for a specific purpose. The answer depends upon the specific facts of a given situation. A city should check with its attorney before attempting to sell any land held in trust.

Land that is held in trust is designated for a particular use. A common example is when land is given or dedicated to a city for park purposes. Generally, a city that holds park land in trust must use it for park purposes. If the city uses it for some other purpose, the previous owner can pursue a court action to regain ownership of the land or prohibit the city from using it for a different purpose.

Under Minnesota law, land that has been donated to the public on a plat that is recorded must be held in trust for its intended purpose.

Dedication occurs when a private party transfers land to a government entity for a particular purpose. Once land is formally dedicated with a condition, the government does not own the land in fee simple with the right to sell it.

## RELEVANT LINKS:

*Headley v. City of Northfield*, 35 N.W.2d 606 (Minn. 1949).  
*Kronschnabel v. City of St. Paul*, 137 N.W.2d 200 (Minn. 1965). *Buck v. City of Winona*, 135 N.W.2d 190 (Minn. 1965).

*In re Everett's Trust*, 116 N.W. 2d 601 (Minn. 1962).

*Buck v. City of Winona*, 135 N.W.2d 190 (Minn. 1965).

*City of Zumbrota v. Strafford Western Emigration Co.*, 290 N.W.2d 621 (Minn. 1980).

A.G. Op. 59-a-40 (June. 15, 1950). A.G.Op. 59-a-40 (Nov. 8, 1955). A.G. Op. 59-a-40 (Dec. 16, 1947). A.G. Op. 59-b-11 (Nov. 20, 1957). A.G. Op. 469-a-15 (Jul. 30, 1945). A.G. Op. 469-a-15 (Nov. 18, 1948).

Minn. Stat. § 15.054.  
Minn. Stat. § 471.87- 89.  
See also LMC Information Memo [Official Conflict of Interest](#).

Minn. Stat. § 471.88, subd. 5.  
Minn. Stats. § 471.345, subd. 2. Also see Part I - H - Lease-purchase agreements.

A.G. Op. 469-a-12 (Aug. 30, 1961). A.G. Op. 90-a-1 (Sep. 28, 1955).

The general rule regarding dedications of land for park purposes is that the city holds the property in trust for the public and has no power to divert the land from the uses and purposes of the original dedication.

Neighboring property owners can also pursue court action to prohibit a city from using land for purposes other than those for which it was dedicated. In a 1962 decision, the Minnesota Supreme Court found that abutting property owners own appurtenant rights and have a right to enforce public uses of land dedicated to a specific public use.

The Supreme Court also found that taxpayers have a standing to object to a city's attempt to relinquish an easement for park purposes. In this case, however, the city had failed to comply with the requirements of its city charter.

In a more recent decision, the Minnesota Supreme Court looked at a similar situation. In this instance, a city tried to sell dedicated land that it held in trust to a developer to build a senior citizen residence, but the land was dedicated for use as a public square. The abutting homeowners sought to stop the sale to the developer, claiming the development would make it impossible to maintain the public square and also result in the general public being excluded from the land. The court found the city could not sell land that it held in trust because the city had only such use of the property as was needed to fulfill the property's use as a public square.

The Attorney General has repeatedly found that cities that hold land in trust that was dedicated for park purposes may not use the land for other purposes or sell the land.

## D. Real estate contracts with a city official

A city is specifically prohibited from selling city land to one of its officials. Likewise, conflict of interest statutes do not appear to allow a city council to contract for the purchase land from one of its council members.

One exception to the conflict of interest law is for contracts that are not required to be competitively bid. This exception applies only to contracts for goods and services, and real estate does not fall into these categories. Therefore, this exception does not apply.

The attorney general has also concluded that cities may NOT contract to purchase land from or sell land to their city council members.

## RELEVANT LINKS:

See Part I - E - Eminent domain.

Minn. Stat. § 471.345, subd. 2.

A.G. Op. 469-a-15 (Feb. 18, 1955). A.G. Op. 469-a-15 (Jul. 16, 1947). A.G. Op. 59-a-40 (Nov. 19, 1946). A.G. Op. 59-a-40 (Nov. 26, 1946). A.G. Op. 622-j-3 (Jun. 3, 1975). A.G. Op. 59-b-14 (May 1, 1967).

Minn. Stat. § 475.58, subd. 1.

Minn. Stat. § 462.356, subd. 2.

Minn. Stat. § 412.221, subd. 2. Also see Part I - I - Contracts for deed.

If a city must acquire land from one of its council members, it may need to exercise its power of eminent domain. Cities should contact the League and their city attorneys for further information on eminent domain.

## E. Title encumbrances

Cities should thoroughly investigate land it will be acquiring for any possible title encumbrances (such as liens, deed restrictions, special assessments, unpaid taxes, etc.). A title search or title opinion will usually uncover these encumbrances.

## F. Competitive bidding

Real estate sales and purchases are not included in the definition of “contract” for the purpose of the competitive bidding law. Accordingly, buying and selling real estate usually does not require competitive bidding.

The Attorney General has repeatedly concluded that competitive bidding is not required for the sale of real property, but has not considered the issue of land purchases.

Some home rule charters may have competitive bidding requirements for land transactions. These cities may need to follow these provisions in order to sell real property. Home rule charter cities should check their city charters for such requirements.

## G. Getting permission to buy or sell land

Generally, a city does not have to get permission from anyone, including residents, in order to buy or sell land. However, there are a few exceptions to this general rule. In some instances, a city may need to consider notifying people or getting approval before making the purchase. Such situations include the following:

- Bond issues. If the city will be issuing general obligation bonds for the purchase, it must hold a special election to get permission to borrow money.
- Comprehensive plans. If the city has a comprehensive plan, the planning commission must review the transaction to determine if it is consistent with the plan.
- Contracts for deed. If a statutory city will be buying land using a contract for deed, it must publish a resolution indicating the intent to purchase land. If voters submit a petition, the city must hold a special election to get permission to buy the land.

## RELEVANT LINKS:

[Minn. Stat. § 469.029, subd. 2.](#) [Minn. Stat. § 469.065, subd. 2.](#) [Minn. Stat. § 469.105, subd. 2.](#)

[Minn. Stat. § 475.58, subd. 1.](#)

[Minn. Stat. § 475.52, subds. 1 and 2.](#)

[Minn. Stat. § 469.060, subds. 1 and 5.](#)

See League Information Memo, [City Special Elections](#).

[Minn. Stat. § 462.356, subd. 2.](#)

For more information on the role of the planning commission in purchase and sale of city property see the LMC Information Memo [Planning Commission Guide](#).

[Minn. Stat. § 462.356, subd. 2.](#)

- Lease or sale of HRA, EDA, or Port Authority land. A Housing and Redevelopment Authority (HRA), Economic Development Authority (EDA), and some Port Authorities must hold a public hearing before selling or leasing most land.
- Charter provisions. Some city charters may contain provisions restricting the council's authority to buy or sell land.

These situations are discussed in further detail below.

## 1. Bond issues

If the city will be issuing general obligation bonds to raise money for the land purchase, it must hold a special election to get permission from the voters. This permission gives the city the ability to borrow money for the purchase.

Any statutory city may issue revenue bonds or other obligations for the acquisition of buildings, parks, playgrounds, stadiums, sewers, streets, and sidewalks. Home rule charter cities may also issue bonds for these purposes if not restricted by their charters.

There are some limited circumstances where a Port Authority may issue bonds with prior council approval.

The League has a research memo that discusses special elections in further detail, as well as information on municipal bonds.

## 2. Cities with comprehensive plans

If a city has a comprehensive plan, it may not acquire or dispose of any property until the city's planning commission has reviewed the proposed acquisition and reported on whether it will comply with the city's comprehensive plan. The planning commission's report must be in writing.

If the planning commission fails to provide the written report within 45 days, the council need not wait any longer to make the purchase. The city council does not need to follow this requirement if it passes a resolution finding that the acquisition has no relationship to the comprehensive municipal plan. However, the resolution must be passed by a two-thirds vote of the council.

## RELEVANT LINKS:

See Part I - I - Contracts for deed.

Minn. Stat. § 469.029, subd. 2. Minn. Stat. § 469.065, subd. 2. Minn. Stat. § 469.105, subd. 2.

Minn. Stat. § 469.029, subd. 2.

Minn. Stat. § 469.105, subds. 2 and 3.

### 3. Contracts for deed

If a city is purchasing land using a contract for deed and the cost will exceed a certain amount, it must publish a resolution stating it will be making the purchase using a contract for deed. In addition, it must hold a special election to get permission from voters if a proper petition is submitted. Contracts for deed are discussed in detail at Part I-I.

### 4. Lease or sale of HRA, EDA, or Port Authority land

A Housing and Redevelopment Authority (HRA), Economic Development Authority (EDA), or Port Authority must hold a public hearing before selling or leasing most land.

A city should also check an authority's bylaws and enabling resolutions for any additional requirements, such as prior council approval of land sales or other notice and hearing requirements.

#### a) HRAs

Land belonging to a Housing Redevelopment Authority (HRA) may be sold or leased without public bidding, but only after holding a public hearing. Notice of the public hearing must be published at least once. The notice must be published at least 10 days, but not more than 30 days, before the hearing.

#### b) EDAs

An Economic Development Authority (EDA) may also sell its property after holding public hearing on the sale. The EDA must publish notice of the hearing in a newspaper with general circulation within the EDA's county and city. The notice must be published at least 10 days, but no more than 20 days, before the hearing. The notice must include the following:

- A description of the property to be sold.
- The time and place of the hearing.
- A statement allowing the public to see the terms and conditions of the sale at the EDA's office.
- A statement that the EDA will meet to decide if the sale is advisable.

## RELEVANT LINKS:

[Minn. Stat. § 469.065, subd. 1.](#)

[Minn. Stat. § 469.065, subd. 2.](#)

[Minn. Stat. § 469.065, subd. 3.](#)

[Minn. Stat. § 469.065, subds. 4 and 5.](#)

[Minn. Stat. § 469.065, subd. 5 and 6.](#)

[Minn. Stat. § 469.065, subd. 7.](#)

### c) Port Authorities

A Port Authority may sell or convey property it owns within a port or industrial district, but must hold a public hearing on the proposed sale. The Port Authority must publish notice of the hearing in a newspaper with general circulation within the Port Authority's county and port district. Notice must be published at least 10, but no more than 20 days, before the hearing. The notice must include the following:

- A description of the property to be sold.
- The time and place of the hearing.
- A statement allowing the public to see the terms and condition of the sale at the authority's office.
- A statement that at the hearing the authority will meet to decide if the sale is advisable.

A Port Authority must make a decision on whether the sale is advisable and enter its decision on its records within 30 days of the hearing. A taxpayer may appeal the decision in district court by serving legal notice on the secretary of the Port Authority. Such service must occur within 20 days after the Port Authority enters its decision on its records. The only basis for appeal, however, is that the action of the Port Authority was arbitrary, capricious, or contrary to law.

The terms and conditions of the sale of the property must include its intended and allowable use. A Port Authority may require the buyer to file a security to ensure the property will be given that use.

The purchaser must devote the property to its intended use or begin work on improvements to the property to devote it to that use. If the purchaser fails to do this, a Port Authority may cancel the sale and the title of the property will return to the Port Authority. It may extend the period of time to comply with a condition if the buyer has good cause.

A conveyance must not be made until the purchaser submits plans and specifications to develop the property that is being sold. A Port Authority must approve the plans and specifications in writing, and may require preparation of final plans and specifications before the hearing is held on the sale.

A city should also check an authority's bylaws and enabling resolutions for any additional requirements, such as prior council approval of land sales or other notice and hearing requirements.



## RELEVANT LINKS:

See [Handbook Chapter 4](#).

[Minn. Stat. § 287.21, subd. 1.](#)

[Minn. Stat. § 287.24.](#)

See LMC Information Memo  
[Meetings of City Councils.](#)  
[Minn. Stat. § 13D.01.](#)

[Minn. Stat. § 13D.05, subd. 3\(c\).](#)

### **d) Charter provisions**

Some city charters may contain provisions restricting the council's authority to buy or sell land. State law does not require bids or approval of the voters to sell land, but a charter may impose such restrictions.

## **H. State deed tax**

The state deed tax applies to every grant, assignment, transfer, or other conveyance of land by deed. Cities are not exempt from this tax and are responsible for paying it to the same extent as any other individual making a land transaction. The tax must be paid before the county will record the property transfer.

The seller is usually responsible for paying the state deed tax, although sometimes the buyer may contractually agree to pay the tax in exchange for other concessions by the seller.

## **I. The Open Meeting Law**

The Minnesota open meeting law generally requires that all meetings of public bodies be open to the public. The open meeting law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body.

Under the Open Meeting Law, a public body may close a meeting to: determine the asking price for real or personal property to be sold by the public body; review confidential or nonpublic appraisal data; develop or consider offers or counteroffers for the purchase or sale of real or personal property.

To close a meeting for these purposes, the following procedure should be done:

- Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
- The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.



## RELEVANT LINKS:

[Minn. Stat. § 82.19.](#)

[Minn. Stat. § 82B.03.](#)

Call the [Minnesota Department of Commerce](#) at (651) 296-6319 or 800-657-3978.

- A list of council members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
- The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.

## IV. Real estate professionals

Real estate brokers, salespersons, and closing agents are licensed by the state. Although there is no specific statutory authority for use of these professionals by cities, it is probably permissible for cities to retain such professionals if needed.

Real estate appraisers are licensed by the state. Only a licensed appraiser is allowed to do real estate appraisals. When choosing an appraiser, a city should ask for references. In addition, a city should request that the appraiser supply the following information:

- The appraiser's full name.
- The appraiser's license number.
- Whether the appraiser is exempt from licensing.
- The length of time the appraiser has been in business.

After getting the above information, a city should contact the Minnesota Department of Commerce. The Department of Commerce can verify the level at which the appraiser is licensed, and sometimes provide additional information on the appraiser's past performance.