

**LAND ASSEMBLY AND FINANCING
FOR COMMUNITY RENEWAL PROJECTS**

A Handbook

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INTRODUCTION

This handbook describes the basic elements of Washington State's Community Renewal law as recently amended by Chapter 218, Laws of 2002. It covers the creation of community renewal areas, the acquisition of land (including eminent domain) and financing for community renewal projects.

This outline is divided into three main sections:

- **Washington's Community Renewal Law:** Formation of community renewal areas and exercise of city community renewal powers.
- **Acquisition and Disposal of Real Property** in community renewal areas, including condemnation of property.
- **Financing Land Assembly and Redevelopment** in community renewal areas.

WASHINGTON'S COMMUNITY RENEWAL LAW

Adopted in 1957 and periodically revised, Washington's Community Renewal Law (Chapter 35.81 RCW) provides cities and counties with a powerful array of tools for land assembly and economic redevelopment in depressed areas.

Some Definitions

The Community Renewal Law empowers cities "to undertake and carry out community renewal projects."

"Community renewal projects" are defined as "undertakings . . . for the elimination and for the prevention of the development or spread of blight," and may involve job creation or retention, **"redevelopment"** and **"rehabilitation"** in a **"community renewal area."** RCW 35.81.010(18)

Under RCW 35.81.010(14), **"Redevelopment"** may include:

- Acquisition of blighted areas,
- Demolition,
- Construction of streets, utilities, parks, playgrounds and other improvements necessary to carry out community renewal,
- Making land available for development or redevelopment "by private enterprise or public agencies" (including the City), including sale or lease, or
- Making loans or grants for job creation or retention.

Under RCW 35.81.010(15), **"Rehabilitation"** may include the restoration and "renewal of a blighted area in accordance with a community renewal plan" by:

- Carrying out a program of voluntary or compulsory repair and rehabilitation,
- Acquisition of property and demolition of buildings to eliminate unsafe or unsanitary conditions, lessen density, reduce traffic hazards, eliminate blight-causing, obsolete uses or other uses detrimental to the public welfare, or to provide land for public facilities,
- Construction of streets, utilities, parks, playgrounds and other improvements, and
- Disposition and sale of property.

The City's identification and delineation of **"blighted areas"** is critical because community renewal areas are meant to be exercised primarily within those areas.

Under RCW 35.81.010(2), a “**blighted area**” is defined as an area that “substantially impairs or arrests the sound growth of the city” or “retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals . . .” because of any of a number of factors, including:

- Substantial physical dilapidation, deterioration or obsolescence,
- Overcrowding,
- Unsanitary or unsafe conditions,
- Dangerous or unhealthful conditions,
- Hazardous soils or substances,
- Inappropriate or mixed uses of land or buildings,
- Defective or inadequate street layout or lot layout, improper subdivision or obsolete platting,
- Excessive land coverage,
- Persistent and high levels of unemployment or poverty,
- Diversity of ownership, or
- Tax or special assessment delinquencies.

If we examine the different types of “blight” listed above, we immediately notice that there are two distinct categories. The first category consists of blight that causes public health and safety problems, *i.e.*, physical dilapidation, overcrowding, dangerous, unsafe and unhealthy conditions. The second type of blight, starting with the sixth item listed above, presents more of an economic or land use problem, *i.e.*, the use of property far below its highest and best use, obsolete platting or poor street layout, unemployment and poverty, or diversity of ownership so that effective development is constrained.

Public health and safety blight is the type that we associate with the “slums” featured in Westside Story and which were the target of massive community renewal projects in the late-1950s and early-1960s. The second type of blight does not necessarily cause immediate health and safety problems, but chronically blocks economic vitality and the social and economic health of a city.

The distinction between the two types of blight is significant because, as discussed in more detail below, a city or county has significantly more powers when it is acting to eliminate “public health and safety” blight than when it is focusing principally on “economic” blight.

Building A Community Renewal Plan

The “Community Renewal Plan” is the core of an community renewal program. It needs to carefully detail the focus area, the existence of “blight” and the problems to be solved, the preferred outcomes and uses, and the tools to be used to achieve success. The Plan should carefully mesh with the applicable GMA Plan.

Under RCW 35.81.010(18), a community renewal plan must:

- Conform to the City’s overall Comprehensive Plan,
- Indicate with some specificity what land is to be acquired, buildings demolished or redeveloped, or what improvements are to be carried out,
- Indicate what changes are contemplated in zoning, land use, densities or building requirements,
- Outline the Plan’s relationship to appropriate land uses, improved traffic and transportation, public utilities, recreational and community facilities and other public improvements, and
- Address the need for replacement housing.

A Community Renewal Plan may be adopted according to steps outlined in RCW 35.81.060:

Step 1: The Community Renewal Plan is drafted, consistent with the planning provisions of the Growth Management Act (Chap. 36.70A. RCW).

Step 2: The Council holds a public hearing on the proposed Plan after publishing notice in the newspaper and giving written notice to all property owners within the affected area.

Step 3: The Council may then adopt the Plan if it finds that:

- a) The Plan is “feasible”,
- b) The Plan conforms to the City’s Comprehensive Plan (which may be amended to accommodate the community renewal plan),
- c) The Plan involves private enterprise as much as feasible,
- d) The Community Renewal Project is financially sound, and
- e) The area concerned is “blighted.”

City and County Powers to Carry Out Community Renewal

Under RCW 35.81.070, the powers of a city or county (or a community renewal agency) to carry out the community renewal plan include the power to:

- Execute contracts and other instruments,
- Build and repair public facilities such as streets, utilities, parks and playgrounds,
- Buy, lease, condemn or otherwise acquire real property,
- Hold, clear or improve real property,
- Dispose of real property,
- Provide loans, grants or other assistance to property owners or tenants affected by the community renewal process,
- Borrow money and accept grants to carry out community renewal,
- Provide financial or technical assistance for job creation or retention,
- Relocate persons,
- Close, vacate or rearrange streets and sidewalks, and
- Form local improvement districts to finance improvements.

A Community Renewal Agency

A city or county may itself exercise community renewal powers, or it may create or designate a separate community renewal agency (which can include a public development authority, a housing authority, or a port). A separate agency created under RCW 35.81.160 has its own Board of Commissioners.

The separate community renewal agency may prepare the Community Renewal Plan, enter into contracts, buy, assemble, improve and sell property, and manage the Community Renewal Project in general.

However, the City Council alone has the power to declare blight and approve the Community Renewal Plan, and the City alone (not the agency) may exercise condemnation powers. Under certain circumstances a housing authority may be able to carry out condemnations when it serves as a community renewal agency.

Community renewal agencies typically are created either because the city concerned wants an independent, "take charge," single-purpose organization to push through the improvements, or because multiple jurisdictions are involved and those entities wish to create a common organization to carry out a joint community renewal project. In Washington State there is no legal magic to having a community renewal agency, and a city is itself vested with all of the legal tools needed to carry out community renewal. Hence, in instances where Washington cities have created independent or semi-independent community renewal agencies (such as the Model Cities agency in the City of Seattle), they have done so primarily for organizational and management reasons, or to make it easier to handle federal grants and loans.

ACQUISITION AND DISPOSAL OF COMMUNITY RENEWAL PROPERTY

Special rules govern a city's acquisition and disposal of real estate in connection with community renewal.

Eminent Domain – Condemnation. Under RCW 35.81.080, a city or county may use its condemnation powers to acquire property under the Community Renewal Plan.

- Property “already devoted to any other public use” (e.g., publicly owned or dedicated property) is subject to eminent domain. Under RCW 8.12.030, a city is authorized to “condemn land and property, including state, county and school lands and property.” When such public land is involved, service of process must be on the county auditor. In addition, if public land is owned by the state or is land in which the state has an interest, service of process also must be made upon the commissioner of public lands (RCW 8.12.080 and 8.28.010). In connection with the condemnation of school property by a city, see Roberts v. Seattle, 63 Wash. 573 (1911); Seattle School District v. Seattle, 63 Wash. 245 (1911); and Tacoma v. State, 121 Wash. 448 (1922).
- Generally, only a city or a county (not a separate community renewal agency that might be established) may exercise condemnation powers. A housing authority acting as a community renewal agency may be able to carry out eminent domain.
- Eminent domain proceedings are granted “precedence of all cases in court except criminal cases” under RCW 8.12.090. RCW 8.12.100 states that upon return of summons or as soon thereafter as the business of court will permit, the court shall proceed to the hearing of the petition and empanel a jury to determine just compensation. This means that both the termination of “public use and necessity” and the valuation of property can be handled in an expedited manner.

Property Disposal. Under RCW 35.81.090, purchasers of land assembled or held by the city for community renewal must agree to devote the property “only to the uses specified in the community renewal plan.”

The city, county or community renewal agency may carry out a competitive process to select one or more developers to whom the property may be sold for “adequate” consideration. Property may also be sold through a sealed bid process. Property sales may have “strings attached” to ensure that the property will be sold consistent with the community renewal plan. Property may also be sold through negotiation to a nonprofit corporation when HUD Community Development Block Grant funds are involved.

Within six years the city must sell or lease community renewal property it does not choose to retain for park, education, utility, transportation, public safety or public building purposes.

Basic Condemnation Rules

- Under RCW 8.12.030 and RCW 8.08.010, cities and counties, respectively, may acquire private property by condemnation for a public use so long as just compensation is paid.
- “Just compensation” is determined by a judge or jury through expert testimony by qualified appraisers.
- “Just compensation” is defined as the “fair market value” of the property, which can be determined by:
 - 1) The current cost of reproducing a property, less depreciation; or
 - 2) The value which the property’s net earning power will support, based on a capitalization of net income; or
 - 3) The value of comparable properties recently sold.
- The appraiser should value the property based on its “highest and best use.”
- The owner is not compensated based on expected “lost profits.”
- In a partial taking, the owner may be compensated for the impact of the taking on the value of the remaining property.
- Compensation awarded to the property owner is not supposed to be increased by virtue of the fact that the Community Renewal Project itself may increase property values. Absent early possession, or other agreement, the value of property being condemned is fixed as of the date of trial (see, e.g., RCW 8.12.190), although from time to time the courts have permitted an earlier valuation, before the value of the property has decreased because of the pendency of eminent domain proceedings. For the normal approach, see State v. Wilson, 6 Wn. App. 443, 447, 493 P.2d 1252 (1972).

Condemnation Procedure

The condemnation statutes outline some basic rules that a municipality should follow in carrying out its eminent domain powers. These are both legally required and sensible. The most significant elements are as follows:

- The city should determine whether residential displacement will occur from the condemnation. If so, the city should be prepared to comply with the relocation requirements of Chapter 8.26 RCW or to opt out of that statute’s relocation requirements.

- The city should hire an appraiser early, and have an appraisal performed.
- The city should carry out reasonable, good faith negotiations and offer at least the amount the city's appraiser says the property is worth.
- The city should adopt an ordinance and commence the condemnation proceedings, instead of waiting for the property owner to commence an "inverse condemnation" action.
- The city should look to obtain an "order of public use and necessity."
- If condemnation is necessary, the city should determine whether it needs "immediate possession." If so, the city must deposit "just compensation" with the court and give the owner 90 days' notice before being required to move.
- The city must make a written offer to the property owner at least 30 days before trial. If the condemnee has consented to early possession and if the judge or jury award exceeds the city's written offer by 10% or more, the city must pay for the property owner's consultant and lawyer fees.

Condemnation For Community Renewal

- Washington's community renewal statute expressly states that "condemnation for community renewal for blighted areas is . . . a public use." RCW 35.81.080.
- However, Washington's Supreme Court has cast doubt on the use of condemnation either for the primary benefit of a known, preselected developer or merely to assemble land and change ownership because property is "underutilized" or ownership is too dispersed. Real blight (e.g., physical dilapidation, unsanitary or unsafe conditions) is needed. See Miller v. Tacoma, 61 Wn.2d 374 (1963); Apostle v. Seattle, 70 Wn.2d 59 (1966); United States v. Town of Bellevue, 94 Wn.2d 827 (1980); In the Matter of Westlake Project, 96 Wn.2d 616 (1981). This does not mean that cities cannot assemble land in areas that are merely subject to "economic" blight, but cities may be constrained in their use of eminent domain for such land assembly.

FINANCING LAND ASSEMBLY AND REDEVELOPMENT IN COMMUNITY RENEWAL AREAS

Federal and State Finance Law

Federal tax law and the Washington State Constitution both limit the extent to which local governments can use bond proceeds and other public funds to finance land assembly and redevelopment. However, a number of useful tools do exist.

1. **State Law Parameters.** State law permits general obligation or revenue bonds to carry out community renewal. RCW 35.81.100-.115. However, it is important not to run afoul of the State's "lending of credit" constitutional provision. That provision bars gifts or loans of public funds to private institutions or individuals. In order to avoid a constitutional violation, a city selling community renewal land to a private person or entity must receive adequate consideration for the sale. Bonds issued to finance a community renewal project must clearly be issued to finance a project of general public benefit; any private benefit must, from a legal standpoint, be incidental in nature.
2. **Federal Tax Law Constraints.** Federal tax law permits "qualified redevelopment bonds" to be issued as a category of tax-exempt private activity bonds. Qualified redevelopment bonds may be issued only for acquisition of land and other real property in blighted areas, rehabilitation, or preparation of land for redevelopment. Qualified redevelopment bond proceeds may not be used for construction (other than rehabilitation) or for enlarging existing buildings. Such bonds must be general obligation bonds. Tax-exempt revenue bonds may not be issued for the purpose of purchasing private property for assembly and resale to other private persons. Furthermore, community renewal land assembly general obligation bonds must be for projects that cover either (i) 100 or more contiguous and compact acres, or (ii) 10 acres or more if no single person will obtain more than 25% of the land. If the land involved is less than 10 acres, the city either must increase the geographical size of the community renewal area or forego its ability to use tax-exempt bonds for land assembly purposes. It should be noted that the rule against a single person's obtaining more than 25% of the land in an community renewal area does not necessarily apply to the first owner, but instead to the ultimate owners of property. For example, tax-exempt community renewal bonds may be issued for the purpose of financing the assembly of land that will be transferred on a short-term interim basis to a single developer, so long as that developer is obligated to resell at least 75% of the property after completion of the land assembly and improvements. These constraints make tax-exempt qualified redevelopment bonds not particularly useful in Washington State projects of the required size and rates and most municipalities would be willing to use general obligation debt capacity for this purpose.

3. **Other City-Issued Bonds for Redevelopment.** In addition to land assembly, cities may issue various types of tax-exempt bonds for infrastructure, recreation and housing improvements. These include:
- (1) voted general obligation bonds payable from an excess levy,
 - (2) nonvoted limited tax general obligation bonds within the City's nonvoted debt limit of one and one-half percent of the value of taxable property,
 - (3) revenue bonds payable from the facilities financed (e.g., parking facilities, swimming pools or the repayment of city loans to assist low-income housing),
 - (4) local improvement district bonds, and
 - (5) "excise tax increment bonds", which are nonvoted general obligation bonds backed, in part, by new excise taxes that might be generated in the community renewal area.

A recent amendment to the community renewal statute permits community renewal agencies to form local improvement districts. This takes some of the administrative burden off of the city or county legislative authority and their staff.

4. **Housing Authority Powers.** Housing authorities may borrow and may make loans to nonprofit and for-profit entities for low-income and moderate-income housing development. A housing authority also may lend money directly to low-income people for rehabilitation of dwellings they own, and housing authorities may use revenue bonds to finance publicly-owned rental housing payable from the rent stream or public subsidies. Generally speaking, any housing for very low-income people, whether it is owned by the private sector, by private nonprofit corporations or by public entities, must be subsidized in one way or another. The most common forms of subsidies are federal rent subsidies to the owners of housing, federal tax credits, low-interest loans or grants from state or local governments, community development block grant money, and private contributions. However, experience shows that housing authorities can successfully finance moderate-income housing (i.e., 60% to 80% of the median income) and housing authority-owned mixed-income housing (where at least half of the residents are at 80% of median or less and the other half are at any income level). Moderate-income and mixed-income projects can be a significant portion of a community renewal project that includes a residential component.
5. **Federal Block Grant-Backed Loans.** A city or county may be permitted to borrow from the Federal Government for community renewal purposes, with these loans "secured" by future CDBG funds the city is slated to receive. These are known as "Section 108 loans."

Selecting a Developer

In a number of unfortunate situations across the country during the past forty years, cities have engaged in urban renewal projects in which property was purchased, slums cleared and put on the market for resale, only to have no ready buyers. This resulted in bleak, empty spaces in the middle of communities that took years to redevelop. In some instances, redevelopment has yet to occur. Some portions of Seattle's Yesler-Atlantic urban renewal area were undeveloped for twenty years. One way to avoid such a problem is to have a developer selected and on board before land purchase and assembly occur. For example, the presence of the University of Washington as the major land developer made Seattle's urban renewal project on the north side of Portage Bay successful because there was a guaranteed purchaser of the property and that purchaser proceeded with significant improvements to the land.

However, as noted above, Washington's courts have been skeptical of the use of condemnation powers to take property from one owner in order to assemble and resell it to another, predetermined owner. Furthermore, community renewal property assembled by a city or county has in the past been required to be sold or leased at fair market value after a competitive process. These restrictions presented a challenge to a city that desired to select a developer at the beginning of the community renewal process in order to assure that the developer's expertise and financial resources are available and that the community renewal project will proceed successfully. The 2002 amendments to the Washington Community Renewal law permitted developers to be selected either before or after property assembly. Early identification of a developer enables a community renewal agency to pinpoint property acquisition and to avoid assembling larger parcels than are truly necessary.

The following approach provides a general framework for selecting a developer or developers to work with the city prior to the land assembly process. Although there is no absolute guarantee that this approach would be upheld, it has a reasonably high likelihood of succeeding.

- (1) Both the community renewal plan and any request for proposals from developers should make the city's vision for the property clear and should be quite specific as to the types of uses that the city desires to see in the community renewal area. The more the city details the types of improvements it wants, the less effective would be a legal challenge to the effect that the land assembly is being carried out for private purposes and for the benefit of a specific developer.
- (2) The developer selection process should be as competitive as possible; the municipality could have more than one private developer if that would be compatible with the community renewal plan. The request for proposals should expressly state that property within a land assembly area may be sold or leased to a developer; then, after the developer selection process, the requirement of RCW 35.89.090 that land be sold or leased after a competitive process will have been complied with.

- (3) The city or county should obtain strong and enforceable guarantees concerning the use of the property consistent with the community renewal plan, and those guarantees should be in the form of encumbrances that run with the land. The city should also retain a strong hand in the design and carrying out of privately-owned portions of the project by the developer in order to maintain the underlying public character of the community renewal project.