

DRAFT – FOR DISCUSSION PURPOSES ONLY

CITY OF LAKEWOOD

WEST CORRIDOR LIGHT RAIL

BUSINESS RELOCATION POLICY

1. PURPOSE

The City of Lakewood (the “City” or “Lakewood”) adopts this Policy which provides for voluntary, supplemental financial assistance to Lakewood businesses displaced by the acquisition of property by the Regional Transportation District (“RTD”) for its West Corridor Light Rail project. This Policy sets forth the eligibility criteria for receiving Relocation Benefits from the City and defines eligible and ineligible categories of expenses. This Policy may be amended by the City from time to time, including amendments designed to respond to the needs of relocated businesses or to reflect changes in the resources available to the City.

2. SCOPE

A. Relationship to RTD Policy. This Policy is separate and distinct from, and supplemental to, any relocation policy or program offered by RTD. Qualification for relocation assistance from RTD shall be a prerequisite to participation in the City’s Policy.

B. Voluntary Payments. The Relocation Benefits provided for in this Policy are administrative in nature and are part of a voluntary program created and administered by the City of Lakewood. No federal or state funds are being utilized by the City to make relocation payments.

C. No Contract. Nothing in this Policy shall be construed as a right or entitlement for any person or entity to receive Relocation Benefits or as a contractual or promissory obligation on the part of the City to pay Relocation Benefits to any person or entity.

D. Limit on Benefits. No Business shall be eligible to receive more than \$100,000.00 in Relocation Benefits from the City.

3. DEFINITIONS

The following definitions shall be used by the City in interpreting this Policy.

Business. A commercial establishment (a) offering products or goods for sale to the general public; or (b) offering services, including repair, copying, support, education, instruction, and transport or delivery of products or goods.

As used in this Policy, “Business” shall not include: (1) outdoor advertising displays not related to the principal business on the Premises but which are intended to be acquired as part of the real property by RTD; (2) owners and operators of public utilities such as cable, electrical, gas and telephone lines and related service facilities; or (3) owners of property whose sole business with regard to the property is the rental of such property to others.

Displaced Business. Any Business that moves its personal property from real property which is acquired as a result of the exercise of RTD’s eminent domain authority for the West Corridor Light Rail project, if such Business is (a) lawfully occupying such real property on the date designated by the City by resolution on which Businesses are eligible for relocation benefits; (b) otherwise eligible for relocation expense benefits; and (c) otherwise in compliance with this Policy. “Displaced Business” does not include a business that has been unlawfully occupying the Premises, a business that occupied the Premises primarily for the purpose of obtaining relocation benefits as determined in the sole discretion of the City, or a business that occupies the Premises for a period subject to termination when the property is needed for the Project.

Notice to Relocate. The written notice from RTD to an Owner or Business that it must move from its current location. Relocation shall not be required upon less than thirty (30) days’ notice and shall not be required until RTD either owns or has legal possession pursuant to contract or court order of the real property from which the Owner or Business must move. Negotiations concerning relocation may occur at any time prior to RTD taking title to or possession of real property.

Owner. Any person who owns fee simple title or a life estate in real property to be acquired by RTD for the West Corridor Light Rail line or who holds any other interest which in the City’s judgment constitutes ownership.

Premises. The location that must be vacated by the Displaced Business pursuant to RTD’s eminent domain authority. For purposes of this Policy, the size of the Premises shall be determined by measurement of areas occupied by essential functions of the Business, including ancillary office and storage areas, which storage areas must be occupied by inventory, supplies and equipment actually in use by the Business.

Project. RTD's West Corridor Light Rail line project.

Property, Personal. Tangible property which is classified by the City as personalty under Colorado law, is located on Real Property to be acquired by RTD, and is not purchased by RTD in the acquisition of such Real Property.

Property, Real. Property which is classified by the City as realty under Colorado law, including fixtures that cannot be moved at a reasonable cost. Relocation benefits shall not be paid for fixtures and other items of Real Property that have been purchased by RTD in connection with its acquisition of the Premises from which a Displaced Business is moving.

Relocation Benefits. Voluntary payments made by the City to help a Displaced Business defray the expenses of relocation. In no event shall any Displaced Business be eligible to receive more than \$100,000 in Relocation Benefits.

Relocation Committee. The Committee which shall have primary responsibility for determining eligibility for Relocation Benefits, administering the payment of Relocation Benefits, and coordinating relocation activities in accordance with this Policy. The Relocation Committee shall consist of one representative from the City's Department of Community Planning and Development and one representative of the City's Finance Department, as appointed by the Directors of the respective Departments. No payment of Relocation Benefits may be made without the signature of the City Manager verifying the existence of funds budgeted, appropriated and available for this purpose.

4. RELOCATION ASSISTANCE ADVISORY SERVICES

The City may, in its discretion, elect to make available relocation assistance in the form of any of the following types of services for any Displaced Business:

- A. Assistance with identifying real estate brokers and other consultants to help locate and negotiate the purchase or lease of potential relocation sites;
- B. Assistance with identifying services for moving, packing, storage and insurance;
- C. Assistance with the City's Business Relocation procedures and submittals for Relocation Benefits; and
- D. Assistance with locating information concerning federal, state, and local programs that may offer financial and/or technical assistance to Displaced Businesses.

5. RELOCATION BENEFITS – ELIGIBILITY

A. General Requirements.

1. No Duplication of Payments. No Displaced Business shall receive any Relocation Benefits from the City which, in the opinion of the City, would (a) substantially duplicate the compensation which was received or which an Owner or Displaced Business is eligible to receive under the state law of eminent domain or under any other local, state or federal law or regulation; or (b) which a Displaced Business is eligible to receive as a result of the termination of its lease.

2. Documentation. If requested, any claim for Relocation Benefits shall be submitted to the City on the appropriate form and supported by such documentation as may reasonably be required by the City to establish accurately the expenses incurred, such as bills, statements, certified prices, appraisals, or other evidence of such expenses, as well as such documentation necessary to establish the amount of relocation benefits paid to a Displaced Business by RTD.

3. Offsets for Claims. The City may withhold any part or all of any Relocation Benefits to a Displaced Business to satisfy any monetary obligation that the Displaced Business owes to the City, including but not limited to sales and use taxes, license fees and permit fees.

4. Burden of Proof. Claimants shall have the burden of demonstrating eligibility for any Relocation Benefits claimed hereunder.

B. Specific Criteria. To be eligible to receive Relocation Benefits from the City, a Business must:

1. Have been either a tenant or an owner of Real Property at the time when the Real Property is acquired in its entirety by RTD for the West Corridor Light Rail Project, directly resulting in the displacement of the Business from the Premises; the acquisition by RTD of less than all of the Premises shall not make a Business eligible for Relocation Benefits;

2. Relocate to another location within the City of Lakewood; and

3. Have entered into an agreement with RTD to relocate the Business rather than cease operating.

C. Determination of Eligibility. The Relocation Committee shall have primary responsibility for establishing eligibility for and the amount of any Relocation Benefits claimed in accordance with this Policy. The decision of the Relocation Committee,

subject to the signature of the City Manager verifying the availability of funds for the payment of Relocation Benefits, shall be final and not subject to administrative or judicial appeal.

D. Ineligible Businesses. The following Businesses shall not be eligible for Relocation Benefits:

1. One which does not occupy real property in Lakewood being acquired by RTD as of the effective date of this Policy;
2. Any Business which moves from the Premises before receiving a notice to relocate from RTD. Notwithstanding the foregoing, if a Business moves before receiving a notice to relocate, the City's Relocation Coordinator may agree to provide relocation assistance to the Business if the Relocation Coordinator finds, in his or her sole discretion, that the relocation of the Business was undertaken in reasonable anticipation of receiving a notice to relocate.
3. A subtenant of a tenant, unless such subtenant demonstrates, with documentation satisfactory to the City, that it is a separate legal entity from the tenant and otherwise satisfies the eligibility requirements of this Policy.
4. Any Business which the City's Relocation Coordinator determines, in his or her sole discretion, had prior plans to relocate for reasons independent of the West Corridor Light Rail project.
5. Outdoor advertising displays unrelated to the principal business on the Premises and/or public utilities which are relocated as a result of the West Corridor Light Rail project.
6. Any Displaced Business which is operating in violation of applicable law, including but not limited to any Business operating without a required license or in violation of applicable land use laws and regulations.
7. Any national or regional Business having more than two locations within the Denver metropolitan area, except that local individual owners of national franchises may be eligible for relocation assistance. The intent of the City in adopting this Policy is to provide assistance only to locally owned businesses and not to corporate chains, which frequently have access to other forms of business incentive packages.
8. Any Business which accepts a final settlement from RTD and ceases operating.

Multiple lease agreements for different leasehold areas shall not be considered multiple tenancies if the Relocation Coordinator determines, in his or her sole discretion, that the leasehold areas are being operated as a single business.

E. Owner's Obligation to Notify New Tenants. No Owner shall lease Premises to a tenant, or otherwise allow a person or Business to occupy Premises, after the Owner's receipt of RTD's notice of intent to acquire the property unless the Owner first gives written notice to such tenant that the property is being acquired by RTD and that such tenant may not be eligible for relocation benefits from the City. A copy of the Owner's notice to the tenant shall be delivered to the City.

F. Time Limit for Submission of Claims. No request for relocation assistance will be granted unless all claims and documentation are submitted to the City within six (6) months of the date on which the Displaced Business completes its move.

G. Credit for Lease Cancellation Payment. If a Business is eligible under its existing lease for a lease termination settlement, the Business shall not also receive relocation assistance, but may choose between either the lease settlement or the relocation benefits.

6. ELIGIBLE EXPENSES

A. GENERAL PROVISIONS.

1. Inspections and Inventory. To be eligible for payment under this section, the Displaced Business shall:

a. Permit the City to make reasonable and timely inspections of the personal property at the existing Premises and replacement sites, including making photographs and other documentation of the existing and replacement sites.

b. Provide an inventory of all personal property expected to be moved within thirty (30) days after receiving a Notice to Relocate from RTD and, if the Business is a tenant, a list of all real property improvements made by the Business which are affixed to the real property and belong to the owner.

2. Documentation. Reimbursement of actual reasonable expenses requires submission of all receipts and review by the City to determine the reasonableness of the expenses. Reasonableness of expenses shall be based on industry customary and standard moving costs on a per square foot basis as established by the City, by a professional moving company or other vendors of moving, storage, relocation or similar services as applicable to the situation. A Displaced Business that is leasing Premises must provide a copy of any written lease to the City.

3. Confidentiality Waiver. In order to be eligible for Relocation Benefits, a Displaced Business must execute a waiver of confidentiality in a form sufficient to allow the City to inspect the documents and information referenced in 6.A.2, above.

4. Other Project Incentives The City may establish other benefits and incentives on a case-by-case basis, including incentives for a Business to relocate within the City.

5. Limit on Business Relocation Expenses. Eligible expenses for the relocation of any single Displaced Businesses under this Policy shall not exceed a total of one hundred thousand dollars (\$100,000.00).

B. MOVING FROM EXISTING PREMISES. A Displaced Business may apply for the following Relocation Benefits related to moving from the existing Premises:

1. Actual reasonable expenses incurred in moving the Displaced Business, including packing, crating, moving, unpacking and uncrating personal property;

2. Actual reasonable expenses incurred in identifying and securing a new location within the City, including professional services such as architects, brokers, planners, attorneys, engineers, and consultants hired to provide assistance in finding a new location, negotiating the lease or purchase of the new location, and planning the move of the personal property. Professional fees incurred in connection with representing the Displaced Business in preparing a relocation claim or in contacts or proceedings before the City shall not be eligible for reimbursement.

3. Liability or casualty insurance in connection with the move and any temporary storage.

4. Actual reasonable transportation expenses for the relocation.

C. INTERIM EXPENSES. A Displaced Business may apply for the following Relocation Benefits arising during the interim between vacation of the existing Premises and re-establishment at the new location within the City, including but not limited to actual reasonable costs to temporarily store personal property during the interim, provided that the period of storage does not exceed six (6) months, and provided that replacement premises have been leased or contracted for purchase by the Displaced Business.

D. RE-ESTABLISHMENT AT NEW PREMISES. A Displaced Business may apply for Relocation Benefits relating to its replacement premises as follows:

1. Actual cost of disconnecting, dismantling, removing, reassembling, and installing relocated and/or substitute machinery, equipment and other personal property (“Equipment”), including connection of Equipment to utilities at the new site and modifications necessary to adapt Equipment to the new site. A Displaced Business shall be eligible for payment of these expenses only if it provides to the City a list of Personal Property that is to be disconnected and reinstalled at the replacement location by the date set for submission of the list by the City.

2. Actual cost of tenant finish, upon receipt of evidence acceptable to the City of an executed binding lease or purchase contract for new premises.

3. Actual reasonable expenses related to:

a. Any license, permit or certification required by the Displaced Business at the replacement location; and

b. Advertising, relettering signs and printing materials such as stationery and business cards reflecting the new address of the Business.

c. Actual costs of substitute Personal Property if a Displaced Business elects to replace Personal Property used at the previous location rather than move the Personal Property to the new location, if the City determines that replacement of the Personal Property is more cost-effective than relocating it.

4. No Relocation Benefits will be paid for the added cost of upgrading Personal Property to comply with health or building codes or other applicable regulations.

5. A Displaced Business shall not receive Relocation Benefits for loss of real property fixtures installed on the Premises to be vacated unless the Business provides evidence satisfactory to the City that the Business installed the fixtures and that the Business, not the Owner of the Premises, owns the fixtures.

7. INELIGIBLE EXPENSES

A Displaced Business is not entitled to Relocation Benefits for:

A. Cost of moving any improvement other than Personal Property. If a Business chooses to relocate fixtures, it shall do so at its own expense.

B. Interest on a loan to cover moving or storage expenses.

C. Loss of good will, lost profits, business interruption expenses or other indirect or intangible expenses.

- D. Hiring and/or training of new employees.
- E. Personal injury.
- F. Taxes.
- G. Any expense or payment for which the Business receives reimbursement or compensation from another source or pursuant to any other law, rule or regulation.
- H. Any expenses or benefits in excess of a total of one hundred thousand dollars (\$100,000.00).

8. **RELOCATION AGREEMENTS**

No Business may receive Relocation Benefits from the City unless and until the Business executes a Relocation Benefits Agreement in a form satisfactory to the City. Each Relocation Benefits Agreement shall be tailored to address the specific facts and circumstances of the particular Displaced Business, and may include, but not be limited to, the following provisions:

- A. Acknowledgement of the total amount of the Relocation Benefits to be paid by the City to the Displaced Business;
- B. A category-by-category breakdown of the types of Relocation Benefits and the amount of Benefits to be paid in each category;
- C. Verification from a representative of the Displaced Business that he or she is authorized to bind the Business, that the Displaced Business is eligible to receive Relocation Benefits under Section 5 of this Policy, and that all information provided by the Business in support of its request for Relocation Benefits is true, complete and accurate;
- D. A date by which the Displaced Business will complete the relocation so as to be eligible to receive Relocation Benefits;
- E. An itemization of all offsets, if any, to be deducted from the Relocation Benefits pursuant to Section 5.A.4 of this Policy;
- F. In all cases in which the Displaced Business is to purchase the Real Property to which it is relocating, an acknowledgement and commitment by the Displaced Business to allow the City to record a lien against the Real Property, in an amount equivalent to the amount of Relocation Benefits paid by the City, for a period of three (3) years after the completion of the relocation;

G. In all cases in which the Displaced Business is to lease but not purchase the Real Property to which it is relocating, an acknowledgement and commitment by the Displaced Business to allow the City to record with the Office of the Secretary of State of Colorado a security interest in the Personal Property owned by the Displaced Business, in an amount equivalent to the amount of Relocation Benefits paid by the City, for a period of three (3) years after the completion of the relocation.

9. SALE OR DISCONTINUATION OF BUSINESS AND/OR REAL PROPERTY

The City's desire to assist Lakewood Businesses displaced by RTD's acquisition of Real Property for the West Corridor Light Rail project is matched by its interest in protecting Lakewood taxpayer funds. In an effort to ensure that Relocation Benefits are paid only to Businesses that intend to continue operating in Lakewood for the long term, the distribution of Relocation Benefits pursuant to this Policy shall be subject to the following limitations.

A. Real Property. In all cases in which the Displaced Business is to purchase the Real Property to which it is relocating, the payment of Relocation Benefits to the Business shall be secured by a lien on the Real Property, recorded with the office of the Jefferson County Clerk and Recorder, in an amount equivalent to the amount of Relocation Benefits paid by the City. All such liens shall remain in place for a period of three (3) years after the completion of the relocation unless before the expiration of three years:

1. The Business is sold;
2. The Real Property is sold; or
3. The Business is terminated or ceases operating for a period of one hundred eighty (180) consecutive days.

In any of the foregoing scenarios, the City shall have the right to use all available legal processes to recover the Relocation Benefits paid to the Business.

B. Personal Property. In all cases in which the Displaced Business is to lease but not purchase the Real Property to which it is relocating, the payment of Relocation Benefits to the Business shall be secured by a security interest in the Personal Property, in an amount equivalent to the amount of Relocation Benefits paid by the City, evidence of which shall be recorded with the Office of the Secretary of State of Colorado, which security interest shall remain in place for a period of three (3) years after the completion of the relocation unless before the expiration of three years:

1. The Business is sold;
2. The Business moves from the Real Property to which it had located immediately following the acquisition of the Premises by RTD; or
3. The Business is terminated or ceases operating for a period of one hundred eighty (180) consecutive days.

In any of the foregoing scenarios, the City shall have the right to use all available legal processes to recover the Relocation Benefits paid to the Business.

10. GENERAL PROVISIONS

A. Time. Any deadline or time period in this Policy may be modified in a written agreement signed by the City and a Displaced Business.

B. Variations. The City may, in its sole discretion, agree to a payment arrangement in variance from this Policy upon a showing of necessity by the Displaced Business, so long as the modified payment arrangement reserves payments or otherwise provides assurance that the Displaced Business will vacate the Premises and relocate within the City of Lakewood according to the schedule required by the City.