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| Title of Policy: | **Eminent Domain** | **Pg 1-3** |
| Section #: | Section 13 |  |
| Approval Date: | **February 9, 2021** |  |
| Revision Date: |  | Policy 13.1 |

**BACKGROUND AND PURPOSE**

Utility districts, counties and municipalities with the power to provide utility services have the power to condemn property needed to provide utility services. This power to condemn property is called the Power of Eminent Domain.

When a Utility must acquire an easement, personal property, or real property to provide service to its Customers, condemnation should be a last resort to acquire such property. Tennessee law provides more than one procedure which can be followed to condemn an easement or a piece of property. After the Utility determines that a condemnation petition must be filed, the Utility should consult with its attorney about the best procedure to following each individual case.

**RECORD RETENTION**

When an easement or piece of real property is acquired by condemnation, the Utility shall make a certified copy of the order condemning the easement or property as a permanent record. The condemnation order is the instrument which vests the Utility with the easement or property condemned and should be placed with the Utility’s other deeds and easements.

**POLICY**

1. Normally, the City Manager will determine that KWD must acquire an easement or property.
2. Unless the City Manager has already been given specific authority to negotiate for the acquisition of the easement or property, the City Manager should advise KWD’s Governing Board of the need for the easement or property.
3. The Board should give the City Manager or some other designee the power to negotiate for the acquisition of the easement or property setting forth the purchase price and other parameters which the City Manager or his designee shall use to negotiate for the acquisition.
4. If possible, the City Manager or the Board’s designee shall communicate personally with the property owner to describe KWD’s need for the easement or property.
5. The City Manager or the Board’s designee should have the written easement or contract to purchase the read property ready to present to the property owner for execution before the first communication with the property owner.
6. The City Manager or the Board’s designee shall negotiate for the easement or property within the parameters set by the Board.
7. In the event the City Manager or the Board’s designee successfully negotiates the acquisition of an easement, the City Manager or the Board’s designee shall have the property owner sign the easement. In the event the City Manager or the Board’s designee successfully negotiates the purchase of property, the City Manager shall have the owner execute the agreement and shall deliver to the Board the original contract for its execution.
8. The Board may delegate to one of its members, the City Manager, or other designee the power to execute any instruments to convey the property to the utility.
9. In the event the City Manager or the Board’s designee is not able to negotiate for the easement or property within the parameters set by the Board, the City Manager or the Board’s designee shall report to the Board on the progress of the negotiations.
10. The Board may establish new parameters for the acquisition of the easement or property and permit the City Manager or its designee to negotiate within these new parameters or determine that the easement or property be condemned.
11. Before the condemnation petition is filed, the City Manager or the Board’s designee shall write the property owner to advise him/her that the easement or property must be condemned and to encourage the property owner to accept KWD’s final offer to avoid the expense of litigation.
12. In the event the Board determines that the easement or property should be condemned, the Board shall pass a resolution authorizing the condemnation.
13. The Board, The City Manager, or the Board’s designee shall contact KWD’s attorney and advise him or her to file the condemnation petition and shall provide the attorney all the information needed to file the petition.
14. When time is of the essence and circumstances do not permit KWD to follow these procedures to condemn an easement or piece of property, KWD should consult its attorney to determine the appropriate course of action when expedited procedures are necessary.

**Sample Letter to Property Owner**

Date:

Property Owner

Address:

Re: condemnation of Easement (or property)

Dear Property Owner:

 I have previously communicated with you regarding Kingston Water Department’s need to acquire an easement (or Real Property) from you. The City of Kingston Water Board has authorized me to make a final offer of $\_\_\_\_\_\_\_\_\_\_\_\_ to acquire this easement (or Property) from you.

 In the event you decide not to accept this final offer, the Kingston Water Department will have no alternative except to file a petition to condemn the easement across your property (or the Property). Under Tennessee law, the Kingston Water Department has the power to condemn the easement (or Property) and the only question in dispute would be the value of the easement (or Property) being taken. The filing of the condemnation petition will require both you and the Kingston Water Department to hire legal counsel to file the petition and defend the petition. In addition, both parties will be required to hire expert appraisers to support their valuation of the property. Therefore, litigation of the taking of the easement (or Property) will be expensive for both parties and seems unnecessary.

Sincerely yours,

Kingston City Manager

Enclosure