

To: Bryan City Secretary
From: Councilmembers Southerland and Pena
Subject: Agenda Item Titled:



Policies and Procedures for Voluntary Buyouts

This agenda item placement is in accordance with the Bryan City Charter (j) (1) a. 2. (a) “Council agenda. 1.The City Council shall identify items to place on the City Council meeting agenda and shall establish the order of the agenda. 2.Any two City Council members desiring a particular item to be placed on the City Council agenda shall notify the City Secretary in writing. The item shall be placed on the agenda as requested. 3.This section of the charter supersedes any city Code of Ordinances with which it conflicts.”

Also the Texas Attorney General Opinion Number DM-228 (1993) states no policy can preclude a councilmember from placing an item on the agenda for public discussion.

Therefore, any changes to this agenda item must be approved in writing by both under signs prior to posting to the agenda.

Place the following item on the Bryan City Council Regular agenda of the Oct 11, 2016 meeting:

Discussion, consideration, and possible action to:

Direct the City Staff to take the necessary action(s) to allow the Bryan City Council to adopt the Draft “Policies and Procedures for Voluntary Buyouts” to be effective Nov 1, 2016 with the exception that on page 2, General Eligibility Requirements, item 1. is deleted and any reference to a requirement for FEMA loss claims.

Presentations: Councilmembers Pena and Southerland

Date: 10/04/2016

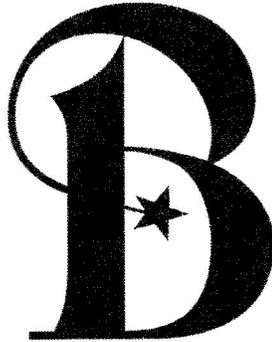
Rafael Pena, Councilmember District 2, apena@bryantx.gov, 979 402 9164

Date: 10/04/2016

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Attachment: Draft “Policies and Procedures for Voluntary Buyouts”

**DRAFT CITY OF BRYAN FLOOD MITIGATION
VOLUNTARY BUYOUT PROGRAM**



CITY OF BRYAN
The Good Life, Texas Style.™

**POLICIES AND PROCEDURES
For
VOLUNTARY BUYOUTS**

Effective November 1, 2016

Benefits of Voluntary Buyout

1. Relocates families to higher ground out of harm's way.
2. Eliminates future flood damages and health and safety risks for owners and rescuers.
3. Reduces repetitive subsidized flood insurance payments and federal disaster assistance.
4. Restores floodplain to its natural and beneficial function for stormwater storage.
5. Creates open space with the potential for community amenities (i.e. parks, gardens, playing fields, etc.).

It is important to note that, although some grant funds are made available after a disaster declaration, these buyout grants do not provide immediate flood recovery assistance. These programs typically take eight to twelve months after the flood event to even get started, and then may take place over a period of many years following a flood event. Buyouts are intended to prevent future flood damages.

General Eligibility Requirements

In general, to be eligible to participate in the City of Bryan flood buyout program, all conditions listed below must be met:

1. The property must have a current flood insurance policy.
2. The property must be an owner occupied primary residential home (no vacation homes, clubhouses, rental properties or businesses).
3. The property must be located in a community that participates and is in good standing in the National Flood Insurance Program (NFIP) and has a FEMA-approved Hazard Mitigation Action Plan.
4. The property's purchase must be cost beneficial. A property is considered cost beneficial if the cost of acquiring and demolishing the property is less than the cost of the estimated future flood damages to the property over its useful life (as determined by the FEMA Benefit Cost Analysis Program).

Priorities of Buyout Program

1. Residential properties on the original 2015 HMGP application (Presidential Disaster Declaration DR-4223).
2. Residential properties on the City's Severe Repetitive Loss list. Severe Repetitive Loss properties are defined as residential properties that are covered under an NFIP flood insurance policy and:
 - 1) That have at least four (4) flood related damages claims payments (including building and contents) over \$5,000 each, and the cumulative amount of such claims payments exceeds \$20,000; or
 - 2) For which at least two (2) separate claims payments (building payments only) have been made, with the cumulative amount of the building portion of such claims exceeding the market value of the building.

For both instances, at least two (2) of the reference claims must have occurred within any ten-year period, and must be greater than 10 days apart. Multiple losses at the same location within 10 days of each other are counted as one loss, with the payment amounts added together.

3. Residential properties on the City's Repetitive Loss list. Repetitive Loss properties are defined as any insurable building for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling ten (10) year period, since 1978. A Repetitive Loss property may or may not be currently insured by the NFIP.
4. Future residential properties for buyouts will be given consideration based on:
 1. Frequency of inundation;
 2. Proximity to the creek;
 3. Elevation of primary structure relative to Base Flood Elevation - Location and depth within the floodplain. The property must be located deep within a mapped floodplain and subject to repetitive flooding;
 4. Cost effectiveness as a solution to the property's flooding problem. In shallow floodplains other types of flood reduction projects, such as detention basins, storm sewer improvements or channel modifications may be more beneficial. Buyouts are ideal for structures hopelessly deep in the floodplain;
 5. Potential for future floodplain preservation and/or flood damage reduction projects. The property must be strategically located for potential or future flood damage reduction projects and/or floodplain preservation;
 6. Compatibility with community and natural values. Community support for buyout is important. Alternatives may need to be considered if the community is opposed.
5. Pursuit of Federal Funds for voluntary buyouts - The level of activity in the voluntary buyout program is influenced heavily by the availability of federal funds to leverage the City's limited funds that are used as matching funds. The Federal Emergency Management Agency (FEMA), through the Texas Governor's Division of Emergency Management (TDEM) and the Texas Water Development Board (TWDB), has provided substantial federal funding for the purchase of flood-prone homes through various programs which include the following:
 - a. FEMA's Flood Mitigation Assistance program (FMA) -- funds for projects that reduce or eliminate risk of flood damage to buildings that are insured under the NFIP. 75% federal participation. 90% federal participation for RL properties and 100% for SRL properties. Evaluation criteria place priority on RL and SRL properties and cumulative amount of insurance claims versus market value of structure. Available funding for entire US in 2016 was \$199M. Application cycle is annual and usually Spring.
 - b. Hazard Mitigation Grant Program (HMGP) -- long term hazard mitigation measures following a Presidential disaster declaration. Project must provide long term solution to problem and project potential benefits must be more than the cost of implementing (Benefit Cost Ratio). The higher the Benefit Cost Ratio the higher the project ranks.
 - c. Pre-Disaster Mitigation program (PDM) -- provides funds for hazard mitigation planning and projects and provides opportunities for raising public awareness about reducing future losses before disaster strikes. 75% federal participation. Evaluation criteria place priority on small impoverished communities and those without HMGP funding available. Available funding is typically lower than FMA, being \$90M for entire US in 2016. Application cycle is annual and usually in Spring.

By pursuing FEMA grants, the City leverages each dollar it spends into as much as two to four dollars to acquire and demolish homes that are at high risk of flooding in the future. Federal funding for home buyout has historically required local matching funds of at least 25%, although some grant programs are now paying up to 100% of eligible costs. The City's local match will be a not to exceed amount, if project costs exceed estimates the difference is made up by the home owner.

Open Space Assurance Statement

The City of Bryan, through adoption of this Policy, does hereby provide the necessary assurance that all property acquired through the Hazard Mitigation Grant Program will be deed restricted, dedicated and maintained in perpetuity for uses outlined below in 44 CFR 206.434(e). Highlights of the requirements include:

Restrictive covenants shall be conveyed in the deed to any property acquired, accepted, or from which structures are removed requiring:

1. Property to be dedicated and maintained in perpetuity for uses compatible with open space, recreational or wetlands management practices. These uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, previous parking lots, and buffer zones.
2. No new structure(s) will be built on the property except as indicated below:
 - a. Public facility that is open on all sides and functionally related to a designated open space or recreational use
 - b. Restroom
 - c. A structure that is compatible with open space, recreational or wetlands management usage and property floodplain management policies and practices which is specifically approved in writing prior to construction from federal grant administrator.
 - d. Any structure constructed shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
3. After completion of the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

General Buyout Policy

1. The buyout of a single residential structure must encompass no more than one (1) acre or less. Any survey fees will be paid for by the City with grant funds.
2. Garages and outbuildings must be located on the same property and be considered as a part of the residential package.
3. The City will conduct a title search to determine the rightful owner(s) of the property prior to making an offer to buy. The cost for the title search will be paid for by the City with

grant funds.

4. If a title search is not conclusive regarding true ownership, it will be the sole responsibility of the reported property owner to prove ownership. The City will not pay for any legal costs necessary to prove ownership or provide clear title. If clear title cannot be provided by the property owner, the property will be withdrawn from the project.
5. The title to the property must be clear of all liens before the city will take title to the property. If the lien amounts cannot be satisfied prior to the closing, all lien amounts due will be deducted from the buyout proceeds at the time of closing
6. All properties will be appraised by a State of Texas board certified, licensed appraiser. This process is outlined in more detail on page 5. The cost for the appraisal will be paid for with grant funds.
7. All property owners must sign a statement recognizing that this program is voluntary and therefore are not entitled to any relocation assistance under the Uniform Relocation Assistance Act. By signing the statement, the property owners also indicate their understanding that the City will not invoke any power of eminent domain to take the property as part of the grant program, if the property owner chooses to withdraw from the project.
8. Property owners will be given two (2) weeks from the date of offer to decide if they will accept or reject the City's offer to purchase.
9. Property owners will be required to vacate the premises entirely prior to closing. All personal property remaining on or in the structure(s) will be considered public property after closing.
10. Property owners are not allowed to remove structural items from the home or any outbuildings after the appraisal is completed. If a property owner wishes to remove an item that would normally remain in a real estate transaction (for example, light fixtures, windows, doors, hot water heaters, furnace etc.) the appraisal must be reduced by the current market value of the removed item.
11. Once a property has been acquired by the City, any items within the structure must be disposed of in a public manner. The City may choose to remove usable items and store them until a public auction can be held or bids received by all interested citizens. **Or, salvage rights may be granted to the demolition contractor, in which case, citizens then would contact the demolition contractor if interested in select items.** Any Program Income generated by the project will be documented.
12. Current property owners are responsible for the property taxes on the structure from the first of the year through the date of the closing on a pro-rated basis.
13. Demolition costs and liability expenses for the buyout structure will be the responsibility of the City upon transfer of title. Until the title is transferred, the property owner remains solely responsible for the property.
14. No structure may be demolished until the Texas Historical Commission and the Federal Emergency Management Agency have determined that the property is not historically

significant or that historically significant properties have been recorded and documented sufficiently to enable the city to demolish the structure.

15. The Date of Negotiations for the City of Bryan is the day the City provides written notification to potential buyout participants that grant funding **has been provided** to the City for a voluntary buyout program.

Fair Market Value Determination

1. All offers to property owners will be based on the pre-flood occurrence fair market value established by a State of Texas board certified, licensed appraiser minus any Duplication of Benefits; unless the purchase is subject to post-flood occurrence purchase guidelines (see below – Buyout Categories – Post Flood Owner Purchase)
2. The City, in compliance with local procurement procedures, will hire a State of Texas board certified, licensed appraiser to complete the appraisals. The cost for the appraisal will be paid for by the grant funds.
3. The City’s grant administrator will coordinate when the property will be appraised with each owner. The City encourages each property owner to be present during the site inspection by the appraiser to aid the appraiser in properly identifying property boundary lines and outbuildings etc.
4. If the property owner has an appraisal that was completed within the last twelve (12) months prior to flooding occurrence by a State of Texas board certified, licensed appraiser, he/she may submit that appraisal to the City for review. (NOTE: property owners are not required to submit the appraisal.) If the City determines that the appraisal was completed in accordance with the City’s buyout program guidelines, this appraisal may be used to establish the fair market value of the property. The City will not reimburse property owners for appraisal costs they incurred when this appraisal was completed.
5. The appraisal completed by the City is the official fair market value. If a property owner is in disagreement with the value indicated, he/she may hire a State of Texas board certified, licensed appraiser, at his/her own expense, and provide an original appraisal to the City for review. The City will then forward both the City of Bryan and owner appraisal to the Texas Department of Emergency Management (TDEM). The State’s independent licensed appraiser will review both appraisals and determine the final fair market value. The State’s decision is final.
6. All property appraisals will be completed with the following special buyout provisions:
 - The pre-flood occurrence appraisal must clearly indicate the value of the entire buyout package **and**
 - 1) the value of the residential structure only
 - 2) the value of the underlying real property and outbuildings only
 - Appraisals will be based on comparable sales for properties located in a flood hazard area. If properties **not** located in a flood hazard area are used as comparable sales, a location adjustment must be reflected in the appraisal.

- Property previously purchased by the City of Bryan as part of the flood buyout program may not be used as comparable sales for other buyout appraisals.
7. All property appraisals (whether completed by the City's appraiser or submitted by a property owner) will be forwarded to the Texas Department of Emergency Management prior to an offer being made when Federal funds are involved.

Duplication of Benefits (DOBs)

Financial payments paid to homeowners for structural repairs to the flooded property will be deducted from the pre-flood appraisal if not used for the intended purpose. Each property owner participating in a FEMA flood buyout **must sign an affidavit** disclosing any benefits received from **any sources** in conjunction with any event leading to the buyout project.

Some examples when a DOB may occur include the following:

1. The property owner has received insurance, loans, repair grants, compensation in compliance with a court order, or other assistance available to them to help address damages to the structure regardless of whether such benefits were sought or received. This is because payment of full pre-flood fair market value (FMV) compensates the owner for the loss of value that has occurred;
2. Legal claims are appropriate or legal obligations arise in connection to the property that may provide a benefit to the property owner. Parties involved in pending legal disputes must take reasonable steps to recover benefits available to them;
3. Relocated tenants receive relocation assistance and rental assistance but have received payments for the same purpose as part of the disaster assistance provided by any agency or payments from any other source. Any buyout-related assistance provided to tenants must be reduced accordingly. However, tenant-related DOB deductions do not affect amounts available to the property owner.

Property owners who have an SBA loan will have to repay the loan or roll it over to a new property at closing as part of the settlement. Note, premiums paid for up to five years prior to the disaster event to the National Flood Insurance Program as reported by FEMA will be reimbursed where applicable.

When property owners retain receipts for any repairs made, the property owner may submit them through the City to TDEM. TDEM then submits the receipts to FEMA for review and approval to offset some or all of the DOBs. **(Note: Receipts must be from bonafide businesses recognized by local governments. The labor of property owners, friends, family, or volunteers for cleanup and repair is not eligible to offset the DOBs.)**

Buyout Categories

The appraised value of a property will determine what type of buyout offer a participant will receive. The criteria for each type of offer is as follows:

General Buyout

Criteria:

1. Home and underlying real property is owned by the same owner
2. Property is occupied by the owner of the property (at time of flooding occurrence)

A property and property owner meeting the criteria listed above will be acquired at the pre-flood occurrence fair market value established by a qualified appraisal less any Duplication of Benefits.

Example: Pre-flood property appraised at \$40,000
Duplication of Benefits are \$5,000
Property owner will be offered \$35,000

Land Plus Owner Relocation Payment

Criteria:

1. Home and underlying real property is owned by the same owner as a primary residence
2. Property is occupied by the owner of the property (i.e., owner-occupied)
3. Meet all requirements as outlined below per the *Hazard Mitigation Assistance Unified Guidance*

For a property owner to receive a supplemental payment for Owner Relocation, the City must demonstrate that all of the following circumstances exist:

- Decent, safe, and sanitary housing of comparable size and capacity is not available in non-hazard prone sites within the community at the anticipated acquisition price of the property being vacated; and/or
- The project would otherwise have a disproportionately high adverse effect on low- income or minority populations because project participants within those populations would not be able to secure comparable decent, safe, and sanitary housing; and
- Funds cannot be secured from other more appropriate sources, such as housing agencies or voluntary groups

A "Replacement Housing Benefit Worksheet" will need to be completed for each qualifying property.

Post-Flood Owner Purchase

If for some reason, the property was acquired after the disaster event, the offer to the current property owner is (1) the documented purchase price plus any verifiable repairs or (2) the current fair market value, **whichever is less**. A property owner who did not own the property at the time

of the relevant event is not eligible for a purchase offer based on pre-event market value of the property. The relevant event is typically the event associated with the events under which funds were made available.

Note, the property owner is responsible for providing documentation verifying the purchase price and verifiable repairs, i.e. receipts, etc.

Replacement Housing

Replacement Housing (aka Owner Relocation) Payment

1. Maximum owner relocation payment a buyout participant may receive is \$31,000 (limited by Uniform Relocation Act, Replacement Housing for Homeowners, as modified by Moving Ahead for Progress in the 21st Century or Map-21, Section 1521).
2. Individuals and families entitled to a replacement housing payment are those that:
 1. Own and occupy the dwelling participating in the buyout program as a primary residence, and
 2. Owned and occupied the dwelling participating during the incident period for the disaster, and
 3. Meets all other requirements as listed under the *Buyout Categories* section of this document.
 - The property owner must purchase a replacement dwelling outside the Special Flood Hazard Area. Rental, lease, or other occupancy of a replacement dwelling does not qualify for a replacement housing payment.
 - The replacement housing payment is determined by the purchase price of the replacement dwelling minus the Fair Market Value of the flood damaged dwelling.
 - It is the responsibility of the homeowner to locate a new replacement home and provide all required documentation to the City's grant administrator.
 - Mobile homes are eligible replacement dwelling units provided that the mobile home has been purchased and transported to a dwelling site outside the Special Flood Hazard Area prior to any replacement housing payment being made.
 - The City will not make a replacement housing payment until the buyout site is vacated and the new dwelling purchased and occupied. The City's grant administrator will coordinate property closings to ensure that the property owner is provided with the replacement housing payment in the most expedient manner possible.
 - The owner may choose between a straight buyout **or** a replacement housing payment offer, whichever creates a better financial assistance payment to the property owner.

NOTE: All criteria listed above must be met and verified to be eligible for a replacement housing (owner relocation) payment.

Example:

Fair Market Value of Replacement Home	\$35,000
Fair Market Value of Flood-Damaged Home	\$21,000
Cost of new home:	\$35,000
Less: value of flood-damaged home:	<u>(\$21,000)</u>
Replacement Housing Payment:	\$14,000 CANNOT EXCEED \$31,000
Homeowner receives	\$21,000
Plus:	<u>\$14,000</u>
Total Buyout Offer:	<u>\$35,000*</u>

*This amount is subject to a deduction for Duplication of Benefits as outlined previously in this document, if applicable.

Environmental Considerations

Participants in the buyout program must sign a Sales Contract plus all Exhibits which, by signing, represents and warrants to the City that:

1. There are no abandoned wells, agricultural drainage wells, solid waste disposal areas or underground storage tanks located in, on or about the property;
2. There is and has been no hazardous waste stored, generated, treated, transported, installed, dumped, handled or placed in, on or about the property;
3. At no time have any federal or state hazardous waste cleanup funds been expended with respect to any of the property;
4. There has never been any solid waste disposal site or underground storage tank located in, on or about the property, nor has there been any release from any underground storage tank on real property contiguous to the property which has resulted in any hazardous substance coming in contact with the property;
5. The seller has not received any directive, citation, notice, letter or other communication, whether written or oral, from the Environmental Protection Agency, the Texas Commission of Environmental Quality, any other governmental agency with authority under any Environmental Laws, or any other person or entity regarding the release, disposal, discharge or presence of any hazardous waste on the property, or any violation of any Environmental laws; and
6. To the best of property owner's knowledge, neither the property nor any real property contiguous to the property nor any predecessors in title to the property are in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any removal or remedial obligations under Environmental Laws.

Special Considerations

Any scenarios that have not been covered by the approved City of Bryan Buyout Policy will be reviewed by TDEM and the City of Bryan City Council. In the event of disputes, differences of interpretation, or disagreements over these guidelines, the decision of the City, acting by and through the City Council shall be final and in all cases shall be the determining factor, after consultation with the TDEM.