

Title 2

CHAPTER 5- ACQUISITION, CONVEYANCE, LICENSE AND USE OF DISTRICT PROPERTY

Table of Contents:

- 2-5-1 Purpose and Policy Objectives**
- 2-5-2 Definitions**
- 2-5-3 Land Acquisitions**
- 2-5-4 Conveyances**
- 2-5-5 Licenses**
- 2-5-6 Easements and Rights-of-way**
- 2-5-7 Vacations**
- 2-5-8 Annexation**
- 2-5-9 Eminent Domain**
- 2-5-10 Resolution of Encroachments**
- 2-5-11 Required Review Factors; Procedure**
- 2-5-12 Supplemental Mitigation Measures and Public Amenities and/or Benefits**
- 2-5-13 No Net Loss of Land Over Time; Annual Reporting**

Title 2

CHAPTER 5- ACQUISITION, CONVEYANCE, LICENSE AND USE OF DISTRICT PROPERTY

2-5-1: - PURPOSE AND POLICY OBJECTIVES.

A. Statutory Authority:

1. The Cook County Forest Preserve District Act, 70 ILCS 810/0.01 *et seq.*, as amended (the “Enabling Act”), authorizes, among other things, the creation of forest preserves and grants the District “the power to acquire in fee simple or by easements in land ... and hold lands containing one or more natural forests or parts thereof or land or lands connecting such forests or parts thereof, or lands capable of being forested, for the purpose of protecting and preserving the flora, fauna and scenic beauties within such district, and to restore, restock, protect and preserve the natural forests and such lands together with their flora and fauna, as nearly as may be, in their natural state and condition, for the purpose of the education, pleasure, and recreation of the public.” 70 ILCS 810/7.
2. Pursuant to the Enabling Act, the District may also “grant licenses, easements and rights-of-way for the construction, operation and maintenance upon, under or across any property of the District of facilities for water, sewage, telephone, telegraph, electric, gas or other public service, subject to such terms and conditions as may be determined by the District.” 70 ILCS 810/8. In addition, the

District may by ordinance issue licenses for any activity reasonably connected with the purpose for which the District has been created. 70 ILCS 810/13.

3. In 1923, the Enabling Act was amended to delete the District's express statutory authority to sell its lands. Except as specifically authorized in the Enabling Act, the District has no express statutory power to convey or lease its lands to a private party. Legislative action is required from the General Assembly in the rare circumstance the District identifies land to be conveyed outside of its statutory authorization.
 4. Pursuant to the Local Government Property Transfer Act (the "LGPTA"), 50 ILCS 605/0.01 *et seq.*, the District may transfer all of its right, title and interest in and to selected District parcels, or may lease selected District parcels, or any interest therein, for any term not exceeding 50 years, to certain other public bodies in the making of any public improvement or for any public purpose, upon compliance with the provisions of the LGPTA and this Chapter.
- B. *District Policies, Procedures, Standards and Regulations Governing the Authorized Acquisition, Conveyance, Licensing and Use of District Lands:*
1. The District maintains a world-class preserve system within a major metropolitan area, with species and natural communities of global conservation value, which contribute to climate resilience, provide essential clean air and water, elevate the quality of life for the public, improve stormwater mitigation and reduce urban heat.
 2. It is the policy of the District that the use of District lands should support the District's land preservation and nature-based recreation mission. District lands are not to be viewed as unused land that could be put to a "higher and better use" or repurposed for more intensive recreational uses that are more commonly provided by other units of local government. It is acknowledged, however, that due to the substantial amount of District land holdings within Cook County, there may, in some cases, be no other viable alternatives on which to locate essential infrastructure as described in Sections 2-5-5 (Licenses) and 2-5-6 (Easements and Rights-of-Way), or on which to locate other improvements necessary for public health, safety and welfare. Except as otherwise required by State or federal law, the use of District land for these purposes shall be approved at the sole discretion of the Board and is subject to rigorous review criteria as described in Sections 2-5-11, 2-5-12 and 2-5-13. Other uses of District land for purposes unrelated to the District's mission are also subject to the restrictions within the District's Enabling Act and subject to approval of the Board. All such requests for use of District lands

are subject to rigorous review criteria (as described in Sections 2-5-11, 2-5-12 and 2-5-13) to ensure that, on balance, the proposal results in a benefit to the public and to the District.

3. It is the purpose of this Chapter to establish procedures, standards and regulations governing the authorized acquisition, conveyance, licensing and use of District lands consistent with State law, the District's land preservation and nature-based recreation mission, and applicable District policies, including but not limited to the following:
 - the Racial Equity, Diversity, and Inclusion (REDI) Position Paper;
 - the Acquisition and Disposition of Land Position Paper;
 - the Next Century Conservation Plan;
 - the Natural and Cultural Resources Master Plan; and
 - any amendments thereto or successor policies regarding same.
4. The Board finds that such procedures, standards and regulations are required in order to:
 - a. Protect and preserve the property, natural areas, forests, trees, vegetation, wildlife, scenic beauties, natural resources, flora and fauna, facilities and improvements of the District;
 - b. Ensure that District lands remain in the District and are maintained in accordance with the District's mission, including recreation that is compatible with nature;
 - c. Strictly limit uses of District lands that are unrelated to the District's mission;
 - d. Ensure non-mission-related uses of District lands result in a benefit to the public and the District by evaluating the impacts of the use on ecological and cultural assets, the availability of other viable alternatives, mitigation measures and the public amenities and/or benefits of the use;
 - e. Eliminate over a reasonable period of time existing uses of District lands which are no longer appropriate or are unrelated to the District's mission; and
 - f. Ensure there is no net loss in District lands over time and require tracking and annual reporting of, among other things, the total acreage of land holdings by the District and the total acreage of District lands in a natural state.
- C. *Applicability*: This Chapter shall apply to all persons, firms, partnerships, companies, corporations, associations, municipalities, municipal corporations, special districts, school districts, units of local government, the Federal Government, and the State of

FPCC BOARD ITEM NO. 24-0313

Illinois, that desire to use, or seek conveyance of, any lands of the District, except as follows:

1. Those permits issued for one-time use, including, but not limited to, weddings and other special events, meetings, and commercial filming (see Section 2-4-2; Events Requiring Permits);
2. Mission-related business licenses and permits, including but not limited to concession permits under Title 6 (Business, License and Permit Provisions);
3. Land use and construction access permits (see Section 6-1-1; Application for Permits);
4. Occupancy by Resident Watchmen (see Section 1-9-3; Fees and Occupancy of District Lands);
5. Use by the Chicago Horticultural Society and Chicago Zoological Society pursuant to operating agreements approved by the Board;
6. Where otherwise limited by State or Federal law; and
7. Other permits and approvals issued pursuant to Title 6 and Title 7 of this District Code not specifically addressed in 1-6 above.

2-5-2: – DEFINITIONS.

“Encroachment” shall mean (1) an unauthorized intrusion onto District land through the creation or extension of a physical structure (including, without limitation, backyard decks, ice skating rinks, garages, porches, and buildings) above or below the surface of land; or (2) an unauthorized modification of the District’s landscape.

“Surplus Parcel” shall mean a parcel of land for which the following criteria must be found to have been met:

- A. The parcel is generally smaller than one acre. Parcels larger than one acre may be considered, although it is anticipated that instances where parcels larger than one acre are found to be surplus will be exceedingly rare and unusual; and
- B. The parcel is either:
 1. not physically connected to existing District land; or
 2. is physically connected to existing District land but infeasible to manage effectively as part of a natural ecosystem; and
- C. At least one (1) of the following three (3) factors is present:
 1. The parcel has low ecological value with minimal suitability or feasibility for restoration or has low recreation value with minimal suitability or feasibility for improvement;

FPCC BOARD ITEM NO. 24-0313

2. The parcel requires inordinate costs to manage relative to its contribution to the District's mission; or
3. The parcel presents the high potential of serious liability to the District if retained in an unmanaged state.

2-5-3 - LAND ACQUISITIONS.

- A. *Appraisals Required:* All land recommended for acquisition shall be appraised by a competent real estate appraiser. Where the purchase price exceeds \$50,000.00, no real estate shall be purchased by the District unless two written independent fee appraisal reports have first been obtained and presented to the District's Board of Commissioners and the proposed purchase has been presented to the Real Estate Committee. At least one such appraisal shall be an M.A.I. appraisal.
- B. *Negotiations:* All negotiations with the respective owners of lands sought to be acquired by purchase, exchange or condemnation shall be carried out by the Chief Attorney or another legal representative of the District, assisted by the Real Estate Agent, who shall give a full report to the Board with recommendations.
- C. *Titles to Land:* The title to all land authorized to be acquired by the Board shall be examined and passed upon by the Legal Department of the District before the purchase price is paid.
- D. *Acquiring Land:* In addition to confirming title, the Legal Department shall examine and confirm the following: (i) the name of the party or parties in which title in fee simple has been found, (ii) the name or names of other parties in interest, if any, (iii) the acreage of the land, (iv) the purchase price decided upon by the Board, and (v) compliance with all the conditions imposed by the Board. When the Legal Department recommends the payment of the purchase price, then the District shall pay the purchase price, to the grantor or grantors upon the delivery of property instruments, in such manner as may be recommended by the Legal Department and approved by the Chief Financial Officer or Comptroller.
- E. *Eminent Domain:* Any power granted under the Enabling Act to acquire property by condemnation or eminent domain is subject to, and shall be exercised in accordance with, the Eminent Domain Act, 735 ILCS 30/1-1-1 *et seq.*

2-5-4: - CONVEYANCES.

- A. *Authority.* No person shall assert any right to District lands without appropriate legal authorization from the District's Board of Commissioners, and, where required, the Illinois General Assembly.

FPCC BOARD ITEM NO. 24-0313

- B. *Appraisal.* No District lands shall be conveyed unless two written independent fee appraisal reports have first been obtained and presented to the District's Board of Commissioners and the proposed conveyance has been presented to the Real Estate Committee. At least one such appraisal shall be an M.A.I. appraisal. The grantee may be required to pay the cost of such appraisals as a condition of conveyance of the property.
- C. *Conveyance to Private Party.* Where the Board determines a parcel of District Property to be a "surplus parcel" as defined in Section 2-5-2 above, the Board may recommend, by a two-thirds vote of the members of the Board then holding office, to the Illinois General Assembly, that the District be granted authority to sell such surplus parcel whenever the Board determines the sale to be advantageous to the District. Such recommendations should be made only in rare and extreme instances and are subject to the sole discretion of the Board. Following authorization by the General Assembly, the Board shall approve the conveyance by a two-thirds vote of the members of the Board then holding office.
- D. *Conveyance to a Governmental Entity.* Where the Board determines a parcel of District property to be a "surplus parcel," as defined in Section 2-5-2 above, and a municipality as defined in the LGPTA has, pursuant to the LGPTA, declared by ordinance that it is necessary or convenient for it to use, occupy or improve the parcel in the making of any public improvement or for any public purpose, the conveyance or lease of the parcel to a transferee municipality may be considered and approved by a two-thirds vote of the members of the Board then holding office. Such approvals should be made only in rare and extreme instances and are subject to the sole discretion of the Board. Notwithstanding the foregoing, the requirement that a property be determined to be a surplus parcel for purposes of this paragraph shall not apply in instances where the Board specifically anticipated the disposition of property in connection with any Board approved real estate transaction approved prior to 1/1/2025.

2-5-5: - LICENSES.

- A. Pursuant to the Enabling Act (70 ILCS 810/8, 70 ILCS 810/13), the District may, subject to such terms and conditions as may be determined by the District, grant a license for the construction, operation and maintenance upon, under or across District lands for:
1. Any activity reasonably connected with the purpose for which the District has been created; or
 2. Essential facilities for water, sewage, telephone, telecommunications lines or facilities, electric, gas or other public service (e.g. roadway improvements), where no other reasonable alternatives exist to locate such essential utilities,

infrastructure or other necessary improvements. Locating essential facilities on District lands simply because it is the least costly alternative does not, without more, mean that no other reasonable alternative exists. Instances where granting a license may be appropriate include, but are not limited to:

- a. Public health and safety projects such as new sidewalks, road or right-of-way improvements, driveways, multi-use paths, drainage structures, bridges or water line replacement, and projects related to flood or stormwater control;
 - b. The provision of essential utilities such as gas, electric or fiber optic lines serving communities within or adjacent to Cook County; and
 - c. Reconstruction or relocation of existing infrastructure on District land.
- B. The process for requesting and/or renewing licenses, including, without limitation, application of fees and mitigation requirements, is set forth in Title 5 of this Code.
- C. All licenses are subject to the provisions of Sections 2-5-11, 2-5-12 and 2-5-13.

2-5-6: - EASEMENTS AND RIGHTS-OF-WAY.

A. Pursuant to the Enabling Act (70 ILCS 810/8), the District may, subject to such terms and conditions as may be determined by the District, grant temporary or permanent easements or rights-of-way for the construction, operation, and maintenance upon, under or across District lands for essential facilities for water, sewage, telephone, telecommunications lines or facilities, electric, gas or other public service (e.g. roadway improvements), where no other reasonable alternatives exist to locate such essential utilities, infrastructure or other necessary improvements. Locating essential facilities on District lands simply because it is the least costly alternative does not, without more, mean that no other reasonable alternative exists. Instances where granting an easement or right-of-way may be appropriate include, but are not limited to:

1. Public health and safety projects such as new sidewalks, road or right-of-way improvements, driveways, multi-use paths, drainage structures, bridges or water line replacement, and projects related to flood or stormwater control;
 2. The provision of essential utilities such as gas, electric or fiber optic lines serving communities within or adjacent to Cook County; and
 3. Reconstruction or relocation of existing infrastructure on District land.
- B. The process for applying for permanent or temporary easements is the same process as for applying for licenses (See Section 2-5-5 (Licenses) and Title 5 (Public Utilities)) except instead of a license fee, the District shall charge fair market value or receive comparable benefits in the form of public benefits and/or amenities. The

FPCC BOARD ITEM NO. 24-0313

appropriateness and amount of public amenities and/or benefits are subject to Section 2-5-12, are to be determined on a case-by-case basis and are subject to the sole discretion of the Board.

C. All easements are subject to the provisions of Sections 2-5-11, 2-5-12 and 2-5-13.

2-5-7: - VACATIONS.

As provided in the Enabling Act (70 ILCS 810/8):

- A. Whenever the Board determines that the public interest will be subserved by vacating any street, roadway, or driveway, or part thereof, located within a forest preserve, it may vacate that street, roadway, or driveway, or part thereof, by an ordinance passed by the affirmative vote of at least 3/4 of all the members of the Board.
- B. The determination of the Board that the nature and extent of the public use or public interest to be subserved is such as to warrant the vacation of any street, roadway, or driveway, or part thereof, is conclusive, and the passage of such an ordinance is sufficient evidence of that determination, whether so recited in the ordinance or not. The relief to the public from further burden and responsibility of maintaining any street, roadway or driveway, or part thereof, constitutes a public use or public interest authorizing the vacation.
- C. The Board is not authorized to vacate any street, roadway, or driveway, or part thereof, that is part of any state or county highway.
- D. When property is damaged by the vacation or closing of any street, roadway, or driveway, or part thereof, damage shall be ascertained and paid as provided by law.
- E. Except in cases where the deed, or other instrument dedicating a street, roadway, or driveway, or part thereof, has expressly provided for a specific devolution of the title thereto upon the abandonment or vacation thereof, whenever any street, roadway, or driveway, or part thereof, is vacated under or by virtue an ordinance approved by the Board, the title to the land in fee simple included within the street, roadway, or driveway, or part thereof, so vacated vests in the District.

2-5-8. - ANNEXATION.

- A. As provided in the Enabling Act (70 ILCS 810/8.3), land owned by the District is not subject to annexation without the express consent of the District.
- B. In the rare instance where a public agency may attempt to annex District lands without the express consent of the District, the District's Board of Commissioners shall resist rather than accede to such action, in court.

2-5-9: - EMINENT DOMAIN.

FPCC BOARD ITEM NO. 24-0313

As provided in the Enabling Act (70 ILCS 810/8.1.), lands owned by the District and lands in which the District is the grantee of a conservation easement or grantee of a conservation right as defined in the Real Property Conservation Rights Act (765 ILCS 120/0.01 *et seq.*) are not subject to eminent domain or condemnation proceedings.

2-5-10: - RESOLUTION OF ENCROACHMENTS.

Encroachments (as defined in Section 2-5-2) are not permitted on District property and shall be deemed to be a violation under Section 2-3-1 of this Code. Upon discovery of an encroaching use of District lands, the District shall contact the owner of the property to resolve the encroachment and shall file legal proceedings as necessary. Pursuant to the Enabling Act (70 ILCS 810/4), the District may sue and be sued in all courts and places where judicial proceedings are had, and take any action authorized by law, including, but not limited to, the issuance of citations as well as seeking the imposition of fines and restitution to the District as provided for in Sections 1-4-1 and 2-3-9(b) of this Code.

2-5-11: - REQUIRED REVIEW FACTORS; PROCEDURE.

- A. Various factors shall be considered by the District in reviewing a proposed use of District property, including the following:
1. Authority to allow the proposed use under the Enabling Act, either because (i) the use is consistent with the District’s mission, or (ii) the use is specifically allowed (e.g. utilities);
 2. Impacts on natural ecosystems and cultural assets described in the District’s Natural and Cultural Resources Master Plan, trees, trails and other recreational amenities and facilities, with special scrutiny given to impacts to high quality natural assets such as Illinois Nature Preserves, high value trees and wetlands, and important recreational facilities such as regional bicycle trails;
 3. Viable alternatives to avoid negative impacts on specific District assets and amenities and on the District’s overall holdings;
 4. The safety and general welfare of the public for the proposed use;
 5. Compliance with other land use provisions in the District’s Code of Ordinances (e.g. 2-5-5 (Licenses), 2-5-6 (Easements and Rights-of-way));
 6. Supplemental Mitigation Measures and Public Amenities and/or Benefits as specified in Section 2-5-12 below; and
 7. Other considerations included in the District’s adopted Racial Equity, Diversity, and Inclusion (REDI) Position Paper, other adopted policies, and such other factors as the District deems relevant to the particular case.

FPCC BOARD ITEM NO. 24-0313

Each situation and request are unique, and any action taken or permitted or authorized by the District pursuant to this Chapter is dependent upon the particular facts and circumstances of each case.

- B. The General Superintendent with the Planning and Development Department shall review any proposed conveyance, license, easement, or right-of-way, and prepare a report for the Board, who may refer the matter to the Real Estate Committee. The report shall review the proposal in terms of compliance with, as applicable, the Enabling Act and Sections 2-5-4 (Conveyances), 2-5-5 (Licenses), 2-5-6 (Easements and Rights-of-way), the factors outlined in Subsection A above, compliance with Section 2-5-12 (Supplemental Mitigation Measures and Public Amenities and/or Benefits) and compatibility with the mission of the District. No land proposal shall be acted upon by the Board without such report. The General Superintendent shall, on a regular basis, forward a list of the rejected proposals to the Board.
- C. Proposals deemed to meet the applicable criteria set forth in this Chapter shall be referred to the Board of Commissioners of the Forest Preserve District who may refer the matter to the Real Estate Committee or other committee of the District that the Board deems appropriate. The recommendations of such committee shall be forwarded to the full Board for action. No land proposal so referred shall be acted upon by the Board without recommendations of such committee. Committee meetings and Board meetings are both subject to the requirements of the Open Meetings Act (5 ILCS 120/1 *et seq.*) and the rules of those respective bodies.

2-5-12: - SUPPLEMENTAL MITIGATION MEASURES AND PUBLIC AMENITIES AND/OR BENEFITS.

- A. Subject to applicable law, including without limitation federal and State telecommunications laws, and after consideration of the review factors in Section 2-5-11, the District may, for conveyances or uses where approval is discretionary, recommend mitigation measures and public amenities and/or benefits that supplement payment of required compensation and mitigation fees.
- B. Supplemental mitigation measures and public amenities and/or benefits may vary from case to case, but should generally be proportionate to the level of impact of the proposed use, should be tailored to the needs of the impacted area(s) and should take into consideration:
 - 1. the quality of the impacted resource or amenities;
 - 2. restoration or improvement plans for impacted or adjacent forest preserves;
 - 3. long-term maintenance responsibility or avoidance thereof; and
 - 4. other mitigation measures or public amenities and/or benefits.

FPCC BOARD ITEM NO. 24-0313

Calculation of supplemental mitigation measures and public amenities and/or benefits exceeding the full, fair market value compensation for the property and any mandatory mitigation fees explicit in tables and formulas, should be proportionate to the level of unavoidable impacts.

- C. In accordance with District policy, revenue generation is an insufficient public benefit and/or primary justification for ongoing land uses that are not mission-related. The District may, however, issue permits for the short-term use of facilities and sites as specified in Subsection 2-5-1 C. above.
- D. A strong nexus is required between the location of the impact and where and how supplemental mitigation measures and public amenities and/or benefits are located and where mitigation funds are spent. Notwithstanding the above, tree mitigation funds shall be used in accordance with the District's Tree Mitigation Ordinance provisions (Sections 5-2A-5 and 5-2B-5) and Tree Mitigation Plan.

2-5-13: - NO NET LOSS OF LAND OVER TIME; ANNUAL REPORTING.

- A. In determining whether to convey or otherwise use lands for any purpose, the District shall, in all cases, endeavor to ensure that there is no diminishment in the aggregate amount of its land holdings over time (based on a three-year rolling average), and no diminishment, over time (based on a three-year rolling average), in the aggregate amount of lands which are in a natural state. The District shall further ensure that a minimum of eighty percent (80%) of the District's land holdings remain in a natural state over time, based on a three-year rolling average. The District shall ensure that any diminishment in total acreage or acreage in a natural state is replaced within a three-year time period on at least a 1:1 ratio.
- B. The General Superintendent with the Planning and Development Department shall submit an annual report (as a part of the more comprehensive annual Real Estate Report) to the Board on the status of District land acquisition and land use, including current year and three-year rolling average statistics for the following, as reasonably available: (a) the total acreage of District lands; (b) the total acreage of District lands in a natural state; (c) the percentage of holdings in a natural state; and (d) the total acreage of District lands sold, transferred or conveyed. The report should include a plan for overcoming any decline in total acreage and/or acreage of land in a natural state. The report shall be received by the Board at a public meeting that provides an opportunity for public comment and shall be published on the District's website.