



## REGULAR AGENDA ITEM

**Council Meeting Date: May 13<sup>th</sup>, 2014**

**To: President and Members of City Council**

**cc: Mayor Steve Bach**

**FROM: Councilmember Joel Miller (Council-proposed ordinance)**

**Subject Title: Proposed Ordinance to Limit the Use of Eminent Domain in Colorado Springs**

**Summary:**

The proposed ordinance will limit the use of City Council's powers of eminent domain to the acquisition of property only for traditional public uses such as the acquisition of land rights for public streets and highways and other traditional public facilities, such as a water facility.

The ordinance also spells out how and when the public use of "eliminating blight" can be used to exercise eminent domain. Additionally, the ordinance allows eminent domain for the use of "abandoned property," when stringent conditions are met.

In cases where a public purpose is established, a thorough public process is defined in which owners of property or property interests are afforded the benefit of a standard, public process and allowed to state their case publicly. In the case of blight designation, property owners are afforded the opportunity to remedy the specific conditions for which their property has been designated as blighted.

Furthermore, the City or its entities are prohibited from communicating any threat or potential use of eminent domain to property owners without express City Council approval to do so.

**Previous Council Action:**

At the January 13, 2014 Council Work Session meeting, Council directed City Attorney Staff to work with Councilmember Miller on the ordinance.

At the April 8<sup>th</sup> Regular Meeting of Council, a motion to approve the ordinance was superseded by a motion to table consideration until May 13<sup>th</sup>. The motion to table passed with votes from Councilmembers King, Snider, Martin, Bennett and Gaebler. Council further directed what they deemed as additional stakeholder input.

On April 11<sup>th</sup>, Councilmember Miller solicited City Council for suggested stakeholder lists. In response to this request, he received one suggested stakeholder.

**Background:**

In 2005, the U.S. Supreme Court ruled in *Kelo vs. the City of New London* that local governments can use eminent domain to acquire private property for private development if government officials determine that the new private development would benefit the public. With this ruling and additional interpretation of the Fifth Amendment of the Constitution, the U.S. Supreme Court effectively allows local government to take private property through eminent domain for the benefit of another private party for the development of a commercial use, if the new use is projected to generate a secondary

public benefit. It should be noted, though, that the Supreme Court included this statement to their opinion: "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power."

In 2006, in response to the Supreme Court's decision, the Colorado General Assembly passed House Bill 1411 which states that any condemning entity must establish with a preponderance of evidence that the taking of private property is for a public use, unless the condemnation is for the eradication of blight, in which case the urban renewal authority must demonstrate that using eminent domain is necessary for the eradication of blight by "clear and convincing evidence." The designation of blight has been a cloak for using eminent domain for economic development purposes.

Many United States cities also strengthened their eminent domain laws in an effort to responsibly govern and protect the foundational rights to life, liberty and property.

In Colorado Springs, threats of eminent domain are well-documented and continue to this day. The protections afforded by state law are inadequate as evidenced by multiple cases in Denver, Longmont, Fort Collins, Summit County and Boulder County. The City is embarking down the path of many new and revised potential Urban Renewal Areas, to include a new Southwest Downtown Urban Renewal Area Plan, a Railroad Loft Urban Renewal Plan and potential plans for South Academy and North Nevada. In addition, the notion of "infill development" has been suggested to be used as a basis for the Comprehensive Plan. All of these projects, which could cover thousands of parcels of private property, must be undertaken with assurances to property owners that their private property rights will be respected and that the City's power of eminent domain will not be used inappropriately.

**Financial Implications:** None

**Board/Commission Recommendation:** N/A (Council-initiated ordinance)

**Stakeholder Process:**

In the original drafting of the ordinance, I responded to input from dozens of stakeholders, including Colorado Springs property owners who had been threatened with eminent domain or who had grave concerns about potential use of eminent domain on their property for city-sanctioned development projects. I also received suggestions from nationally recognized experts who serve to protect citizens from eminent domain abuse. The City Attorney's Office provided language and format for the initial draft of the ordinance, but served only as scrivener until after the April 8<sup>th</sup> meeting. Since the April 8<sup>th</sup> meeting at which the ordinance was tabled, Britt Haley from the City Attorney's office has provided assistance in refining the ordinance to meet the legislative intent and make modifications based on stakeholder suggestions.

Following Council direction to obtain additional "stakeholder" input, I have received input and met with the Regional Business Alliance (RBA) and the Housing and Builders Association (HBA). Although both organizations oppose the ordinance, neither provided specific feedback on the ordinance itself—only that it was unnecessary. Meetings were conducted with the "Blight to Bright" organization and I spent hours with Mr. David Neville, the Chairman of the Colorado Springs Urban Renewal Authority Board. In addition, I have communicated with many more citizens, including more who have been threatened by the use of eminent domain. A collection of letters of support is offered as an attachment.

To re-emphasize, the biggest stakeholder in this process is the citizen property owner. The process I have documented is through numerous emails, website contacts, social media contacts, phone calls, personal meetings and letters. On behalf of these stakeholders, I contacted the Institute for Justice's "Castle Coalition" and received pro-bono legal advice on the crafting of the ordinance. The Institute for

Justice represented Susette Kelo in the historic *Kelo vs. the City of New London* case at the US Supreme Court. Institute for Justice attorneys were instrumental in suggesting provisions of the ordinance and reviewing staff critique.

**Staff Input:**

Leading up to the consideration of the April 8<sup>th</sup> Regular Council Meeting, the City Attorney's staff circulated the draft ordinance to City and Utility Staff for comment. Where the input did not detract from the legislative intent of the ordinance, changes were made. However, many inputs were philosophical in terms of the need for the ordinance and having the desire to maintain eminent domain as a "tool" at the disposal of City government. Such input was rejected. Input was received from Public Works, Planning, Colorado Springs Utilities, as well as several outside legal counsel and outside consulting experts who have been used by the City to assist in the use of eminent domain in the past.

Comments were received from Mr. Wysocki of the Planning Department, Mr. Pifher of CSU, and Mr. Lethbridge of Public Works. I evaluated all feedback, made some changes that did not affect the premise of protecting property rights, and in all cases consulted with attorneys. There was also policy feedback given from Mr. Florczak about philosophical opposition. The policy opinions can be summed up from the following statements:

Though I fully respect your right to propose laws consistent with your perspective on protecting private property rights, I had also expressed to you that the **provisions of the ordinance would make the exercise of eminent domain much more difficult for the City ...**

**... the right to trial by jury or commissioners already provides property owners with substantial procedural and substantive protections.**

...Adding additional public hearings, delays, and the requirement for super-majority Council approval amounts to an **unwarranted and unneeded** impediment to property acquisition...

**Alternatives:** None.

**Recommendation:**

Approve the draft ordinance in an effort to prevent future eminent domain abuse for Colorado Springs citizens and business owners and to serve as an example for the rest of Colorado.