

ORDINANCE NO. 14-_____

AN ORDINANCE AMENDING PART 18 (ACQUISITION AND DISPOSITION OF REAL PROPERTY INTERESTS) OF ARTICLE 7 (SUBDIVISION REGULATIONS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS, 2001, AS AMENDED, BY THE ADDITION OF NEW SECTIONS 1808 (RESTRICTIONS UPON THE USE OF EMINENT DOMAIN) AND 1809 (PROCEDURES TO AUTHORIZE USE OF EMINENT DOMAIN) THERETO, PERTAINING TO EXERCISE OF AND RESTRICTIONS UPON THE USE OF THE POWER OF EMINENT DOMAIN TO ACQUIRE PROPERTY

WHEREAS, the United States Supreme Court in *Kelo v. City of New London*, 545 U.S. 469 (2005), has held that the power of eminent domain may be used for the public purpose of promoting private economic development in addition to more traditional public purposes; and

WHEREAS, *Kelo* recognizes that States may choose to place further restrictions on their exercise of takings power; and

WHEREAS, under Article XX of the Colorado Constitution, home rule municipalities have the power to condemn property within or outside of territorial limits for any lawful public and municipal purpose, and such power cannot be denied or curtailed by the Colorado General Assembly (*Town of Telluride v. San Miguel Valley Corp*, 185 P. 3d 161 (Colo. 2008)); and

WHEREAS, Council has determined that use of the power solely for public or private economic development impermissibly transcends the boundary between public and private takings, and that such use primarily benefits private economic interests and should not be allowed; and

WHEREAS, this Ordinance No. 14-[__] is intended to protect private property owners in the event that City Council considers the potential exercise of eminent domain authority to acquire property from an unwilling seller. It is not intended to govern any other aspect of the urban renewal plan approval process indicated in Colorado Revised Statute § 31-25-107;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Part 18 (Acquisition and Disposition of Real Property Interests) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby amended by the addition of new Sections 1808 (Restrictions Upon the Use of Eminent Domain) and 1809 (Procedures to Authorize Use of Eminent Domain) to read as follows:

7.7.1808: RESTRICTIONS UPON THE USE OF EMINENT DOMAIN:

A. City Council may authorize exercise of the power of eminent domain to acquire interests in real property only for a public use. Public use means exclusively:

(1) the City, its enterprise or entity acquiring property or a property interest for or on behalf of the City or its enterprise or entity will own the property or property interest, and

(2) the property or property interest is acquired to be used to meet any traditional governmental or utility functions authorized by Article XX of the Colorado Constitution, as further defined and limited by this Section, and

(3) the property or property interest shall not be dedicated, sold, leased in substantial part or otherwise transferred to a private person, private partnership, private corporation or any other private entity for at least ten (10) years unless: (a) the acquisition was to remediate blight or to address an abandoned property; or (b) the City, through City Council, has determined that though the property or property interest was to be used at the time of acquisition to meet a traditional governmental or utility function, the property or property interest is no longer needed for such purpose and the City or other authorized acquiring entity first offers to sell the property to the owner(s) from whom it was acquired, if the owner(s) can be located, at a price not more than that paid by the City or other authorized acquiring entity and the owner(s) have declined the offer, in which event the waiting period shall be (3) three years, and

(4) the public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not constitute a public use for purposes of the exercise of eminent domain by the City or its entities or enterprises.

B. City Council shall not authorize exercise of the power of eminent domain to acquire interests in real property where the private property sought to be taken is intended or may be used for the purpose of private economic development or for development providing only an incidental public benefit through enhancement of tax revenue or general economic stimulus.

C. City Council shall not authorize exercise of the power of eminent domain to acquire any interest in real property where the private property sought to be taken is intended for the purpose of open space, trails, or parks.

D. Nothing in this section shall be construed to prohibit or restrict the use of eminent domain by the City or its enterprises for any of the following:

- (1) acquisition of any property interest for any of the following lawful, public and municipal purposes: streets; highways; municipally owned airports; public utilities including electric, gas, water and sanitary sewer facilities;**
- (2) the remediation of a blighted property as defined in this section;**
- (3) or the possession of an abandoned property as defined in this section.**

E. "Blighted property" means a structure:

(1) that was inspected by the Regional Building Department and cited for one or more enforceable housing, maintenance, or building code violations that

(a) poses a direct, imminent risk to safety of the occupants or the public, and

(b) involve one or more of the following:

- 1. a roof and roof framing element;**
- 2. support walls, beams, and headers;**
- 3. foundation, footings, and subgrade conditions;**
- 4. ventilation;**
- 5. fire protection, including egress;**
- 6. internal utilities, including electricity, gas, and water;**

(2) and in which the cited housing, maintenance, or building code violations have not been remedied within six months after the last of two notices sent by certified mail to cure the noncompliance;

(3) and that the satisfaction of those enforceable, cited and uncured housing, maintenance, and building code violations would cost more than 50 percent of the assessor's taxable market value for the

property, for property taxes payable in the year in which the condemnation is commenced;

(4) and all determinations of whether a property is blighted property shall be done on the basis of an individual parcel of property meeting the definition in this subdivision.

(5) The determination that a parcel is blighted property shall not be a factor in determining that another adjacent or adjoining parcel is blighted property.

F. "Abandoned property" means property:

(1) that has been substantially unoccupied or unused for any commercial or residential purpose for at least two years by a person with a legal or equitable right to occupy the property; and

(2) has not been maintained and such lack of maintenance has resulted in three or more City Code Enforcement Division citations related to maintenance; and

(3) for which property taxes have not been paid for at least three years.

G. Administrative warrant. For the purposes of establishing the basis for the use of eminent domain for the remediation of a blighted property or possession of an abandoned property, the City is authorized to seek from a judge or magistrate an administrative warrant to gain access to inspect a specific building. The City must show probable cause that a code violation has occurred, that the violation has not been cured, and that the owner has denied the local government access to the specific building. Items of evidence that may support a conclusion of probable cause include recent fire or police inspections, exterior evidence of deterioration, or other similarly reliable evidence of present violations of the Regional Building Code in the specific building.

H. The provisions of this Section and Section 1809 shall apply to acquisition of property interests by the City and its enterprises, including the Utility Enterprise, and to approval by City Council of the use of eminent domain as part of an urban renewal plan or substantial modification thereof.

**7.7.1809: PROCEDURES TO AUTHORIZE THE USE OF EMINENT
DOMAIN:**

A. Authorization by City Council to exercise the power of eminent domain shall require an informational presentation of the matter at a duly noticed special public meeting of Council, followed by passage of an ordinance which approves the use of the power. The Acquiring Entity/or City must notify each owner of property or property interest that may be acquired in writing by certified and regular mail of the special public meeting on the proposed taking, post the special public meeting information on the City's website, and publish notice of the special public meeting in a newspaper of general circulation in the City's jurisdiction. Notice shall be provided at least 30 days but not more than 60 days before the special public meeting. The owner(s) of the property or property interest shall be afforded the opportunity to speak at such hearing and to designate another individual to speak on their behalf. The owner(s) of the property may waive the special public meeting requirement by providing City Council with written notice of the waiver at least three (3) days prior to the scheduled special public meeting. If the subject property has more than one owner, no waiver of the

special public meeting requirement shall be effective unless all owners request in writing to waive the special public meeting.

B. At the next regular meeting of the City Council that is at least 30 days after the public hearing, the City Council shall vote on the question of whether to authorize the City, its enterprises or the Urban Renewal Authority or other entities to use eminent domain to acquire the property.

C. The ordinance authorizing the taking of private property may not be approved as an emergency ordinance, and shall be effective only if passed at each reading upon a vote of at least six (6) Council Members voting in favor thereof.

D. During the course of property acquisition negotiations, no representative of the City, its enterprises, or of any entity that has received a delegation of authority to exercise the power of eminent domain from the City Council, including but not limited to employees, contractors, developers, or agents is permitted to communicate to a private property owner in writing, electronically, by telephone or by any other means to threaten, imply or otherwise advise of the potential use of eminent domain authority to acquire their property unless such

**communication is expressly approved by a Resolution adopted
by a majority of the members of the City Council.**

Section 2. This ordinance shall be in full force and effect
from and after its final adoption and publication as provided by
charter.

Section 3. Council deems it appropriate that this
ordinance be published by title and summary prepared by the City
Clerk and that this ordinance shall be available for inspection and
acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered
published this ____ day of _____, 2014.

Finally passed: _____

Keith

King, Council President

Mayor's Action:

- ☐ Approved: _____
- ☐ Disapproved: _____, based on the
following objections:

Steve

Bach, Mayor

Council Action:

- ☐ Finally adopted on a vote of _____, on
_____.
- ☐ Amended and resubmitted _____.

King, Council President

ATTEST:

Keith

Sarah B. Johnson, City Clerk