



Legislation Text

File #: 14-0032, **Version:** 1

An Ordinance Adding New Sections to the Code of the City of Colorado Springs Pertaining to Exercise of and Restrictions Upon the Use of the Power of Eminent Domain to Acquire Property

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.

It also spells out how and when the public use of "eliminating blight" can be used, and 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.

Previous Council Action: At the January 13, 2014 Council Work Session meeting, Council directed City Attorney staff to work with me on the ordinance.

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.

Financial Implications: None.

Board/Commission Recommendation: N/A

Stakeholder process: The City Attorney's Office initially worked to place the language in the proper

legal framework. After the first such meeting on January 21, 2014, Mr. Florczak, the primary assigned attorney, ideologically disagreed with the legislative intent of the ordinance. Ms. Britt Haley agreed ideologically with the intent of the ordinance and provided a later review, but I was denied a request to work with Ms. Haley on the ordinance. Outside Council was sought by the City Attorney's Office to seek problems with the ordinance-not to seek help in furthering the legislative intent. Staff also sought an outside consultant to critique the draft ordinance.

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 putting together the ordinance and reviewing staff critique.

The City Attorney's staff circulated the draft ordinance to City and Utility Staff for comment.

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 from the Institute for Justice. There was also feedback given from Mr. Florczak about his philosophical opposition. The opposition 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...

Alternative: None

Recommendation:

Approve the draft ordinance in an effort to strengthen property rights for Colorado Springs citizens and business owners and to serve as an example for the rest of Colorado.

Proposed Motion: Approve ordinance as presented.