

O-2024-29

AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTEREST IN PROPERTY FOR PUBLIC PURPOSES FOR DRAINAGEWAY STABILIZATION IN LAKEWOOD GULCH DOWNSTREAM OF WELCH STREET, AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND CONDEMNATION OF REAL PROPERTY INTERESTS (SUBJECT TO FURTHER COUNCIL APPROVAL)

WHEREAS, to stabilize the northern bank of Lakewood Gulch downstream of Welch Street and raise the channel flow line to prevent further erosion onto neighboring properties, the City of Lakewood (the "City") desires to implement the Lakewood Gulch Downstream of Welch Street Drainageway Stabilization Project (the "Project"), which will install stabilizing boulder walls on the northern bank, two drop structures at the downstream end of the project to tie it into the existing channel and other improvements needed to raise the existing profile of the gulch (the "Improvements");

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Project ("Property Interests");

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

- a. Declare the City's intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;
- b. Authorize negotiations for, and acquisitions of, the Property Interests;
- c. Accept the instruments of conveyance for the Property Interests; and
- d. Authorize the City Attorney to initiate condemnation proceedings (subject to further Council approval) to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or member of the City Council, supports, approves, rejects, or denies any particular proposal related to this proposal identified herein.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:

SECTION 1. The Lakewood Gulch Downstream of Welch Street Drainageway Stabilization Project (the "Project") will serve a public purpose by stabilizing the northern bank of Lakewood Gulch downstream of Welch Street and raising the channel flow line to prevent further erosion onto neighboring properties, and it is necessary to acquire certain Property Interests, further described in Section 2 herein, to advance such public purposes.

SECTION 2. It is the intent of the City of Lakewood to acquire the Property Interests in the form of (i) permanent easements; (ii) temporary construction easements; or (iii) any other interests as may be warranted for the Project, with any improvements contained herein. Throughout the process authorized herein, both before and after the easements are acquired, the City Manager, or designee, shall regularly communicate with the property owners to ensure they have timely, updated information regarding the improvements to the Lakewood Gulch. The City Manager or designee shall install the improvements in a manner that avoids unnecessary removal of shrubs and vegetation and preserves and protects the current ecosystem in the Lakewood Gulch.

The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the "City Manager") confirms that any or all of those parcels identified on Exhibit A are necessary for the Project, the City Manager shall give notice of intent to acquire such Property Interests in conformance with Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports acquired in conformance with Section 38-1-121, C.R.S. or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired pursuant to Section 3 above.

SECTION 5. The City's Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City Manager is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Manager shall bring to the City Council a resolution identifying the Property Interests to be acquired by condemnation, and the City Council shall thereby authorize or deny the exercise of the City's eminent domain power over such Property Interests pursuant to Section 14.4 of the City of Lakewood home rule charter.

SECTION 7. All interested parties are hereby advised that, in the event the City Council approves the exercise of the City's eminent domain power over one or more Property Interests identified in such resolution, the City Attorney, on behalf of the City, shall commence condemnation proceedings with respect to such Property Interests and shall be authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City's Chief Financial Officer and all other officers and agents of the City shall cooperate with the City Attorney in the condemnation action, make any deposits and payments as may be necessary for acquisition of the Property Interests, and pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney shall additionally be authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance and the aforesaid resolution, and the City's Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.

SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of the Ordinance are not determined by the court to be inoperable.

SECTION 10. This Ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance with introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 28th day of October, 2024; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 31st day of October, 2024; set for public hearing to be held on the 9th day of December, 2024 and, signed by the Mayor on the 10th day of December, 2024.



ATTEST:

Jay Robb, City Clerk

Wendi Strom, Mayor

APPROVED AS TO FORM:

Alison McKenny Brown, City Attorney

EXHIBIT A

Property Interests for the following addresses:

PROPERTY TABLE
12235 VIEWPOINT DRIVE PARCEL ID 49-054-04-006
12305 VIEWPOINT DRIVE PARCEL ID 49-054-04-019
12325 VIEWPOINT DRIVE PARCEL ID 49-054-04-018
12345 VIEWPOINT DRIVE PARCEL ID 49-054-04-009
12355 VIEWPOINT DRIVE PARCEL ID 49-054-04-010
12365 VIEWPOINT DRIVE PARCEL ID 49-054-04-011
12320 WEST RABBIT DRIVE PARCEL ID 49-054-04-017
12300 WEST RABBIT DRIVE PARCEL ID 49-054-04-013