O-2020-29

AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE SOUTH SIDE OF 1ST AVENUE FROM GARRISON STREET TO CREIGHTON MIDDLE SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian traffic to and from Creighton Middle School, the City of Lakewood (the “City”) desires to build a sidewalk along the south side of 1st Avenue, from Creighton Middle School to Garrison Street (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Improvements (the “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;

d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings 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 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 any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian traffic on 1st Avenue. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. 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”) identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by 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 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 and 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 hereunder.

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 is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further 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 are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally 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 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 this 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 was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

________________________________________
Adam Paul, Mayor

ATTEST:

______________________________
Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney

EXHIBIT A

Property Interests along 1st Avenue for the following addresses:
95 Hoyt Street
90 Hoyt Street
9390 W 1st Avenue
95 Garland Street
Parcel north of 95 Holland Street