

## AGENDA ITEM SUMMARY

City Council



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### STAFF

Tim Sellers, Project Manager  
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Ryan Malarky, Legal

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### SUBJECT

**Second Reading of Ordinance No. 065, 2023, Authorizing the Acquisition by Eminent Domain Proceedings of Temporary Easements on Certain Lands Necessary to Construct Public Improvements for the Eastern Segment of the Laporte Corridor Improvement Project.**

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### EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 18, 2023, authorizes the use of eminent domain, if deemed necessary, to acquire temporary construction easements needed for constructing improvements for the Laporte Corridor Project.

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### STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

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### BACKGROUND / DISCUSSION

Laporte Ave is a two lane east-west arterial roadway that serves as a route to school for Poudre High School students and as an important connection to northwestern Fort Collins. Most of the roadway within the Project lacks adequate bicycle and pedestrian facilities including sidewalks, bike lanes, curb and gutter. The roadway experiences heavy bicycle and pedestrian traffic especially with Poudre High School and many residential neighborhoods and businesses being located adjacent to the Project limits. Several near misses and at least one serious vehicle-pedestrian accident have occurred within the Project limits. The corridor currently experiences a higher-than-expected volume of traffic accidents due to the lack of adequate infrastructure. Laporte Avenue is master planned to be on the City's low-stress bicycle network.

Staff, following recommendations in the Active Modes Plan, has initiated the Laporte Corridor Project, CDOT Project No. TAP M455-133 (the "Project"), to construct protected bike and pedestrian facilities along Laporte from Fishback Ave. in the east to Sunset St. in the west. Initial outreach and planning began in 2019, and the Project is funded through design and partial construction via various federal grant programs, including Transportation Alternatives, Multi-modal Options Fund, and Revitalizing Main Streets, as well as local funding. The property interests to be acquired for the Project are set forth more particularly in the attached Vicinity Map. All the property interests are temporary construction easements, which are necessary for access during construction of the Project and for minor adjustments to pavement and grade on private property.

Project construction is planned in two segments: the “East Segment”, which is east of Grandview Avenue, and the “West Segment”, which is west of Taft Hill Rd. The East Segment is fully funded and targeted to have design completed and construction beginning by the fall of 2023. At this time, staff is seeking authorization for eminent domain authority to be used in any subsequent condemnation proceedings for the temporary easements located only in the East Segment. Staff will return for authorization for the West Segment once its design has progressed and its funding is in place. CDOT has been involved in the discussions of and planning for this manner of separation and completion of the Project and takes no exception to this delivery method.

The entire acquisition process will be conducted according to federal and state eminent domain requirements, which must be followed for all property interests throughout the entire acquisition process. The process will be done in coordination with CDOT because of the federal funding component. Staff intend to negotiate in good faith with the affected property owners and will work with them to address individual site considerations and project specifications.

City staff are currently engaged in pre-negotiation activities, such as preliminary due-diligence and finalization of design and construction elements. Staff have been meeting with the affected property owners to discuss the project design and the potential impacts to their respective properties. Prior to the first reading of this Ordinance, the property owners have been notified by mail of this request to Council for eminent domain authorization. The adoption of this Ordinance will permit the City to officially begin negotiations with the property owners by issuing the Notice of Intent letters, discussed below.

Eminent domain authorization is necessary to ensure that the Project can proceed on schedule in the event the City is unable to obtain voluntary conveyances from all Property Owners. Staff are optimistic that all property negotiations can be completed prior to the start of construction on the Project. However, staff anticipates that a voluntary agreement may not be reached in a timely manner with one or more of the property owners and that the use of eminent domain may be necessary.

### **How and When City Staff Uses Eminent Domain**

When a large capital improvement project is planned, it must determine whether the City will need to acquire private property if an agreement cannot be reached with a landowner. If so, staff will request Council to authorize the use of eminent domain for the potential acquisition of such property by the subsequent initiation of condemnation proceedings, if necessary. Once an ordinance is adopted, the team continues to coordinate with the impacted property owners to finalize the project plans. Once plans are finalized, the City sends the property owner a Notice of Intent letter, which explains what property interests must be acquired. The City then must determine the fair market value of the property, which will require the review and evaluation of one or more appraisals and/or waiver valuations. For higher valued properties, the owners will usually be entitled to reimbursement for their appraisal costs. Once the City determines fair market value and makes an offer, the parties will negotiate to reach an agreement to buy the necessary property interests.

Only if a voluntary agreement cannot be reached may the City exercise its eminent domain authority by filing condemnation proceedings in a court of competent jurisdiction. The filing of such an action will permit the City to seek the immediate use and possession of the property so that the project may proceed on schedule. Prior to obtaining possession of the property, the City must deposit the estimated fair market value into an escrow account for the benefit of the landowners. The primary issue the court will determine at trial is what constitutes just compensation for the property interests acquired. Even though most condemnation cases are dismissed after the parties reach a settlement agreement, it must be anticipated that some cases will proceed to trial.

Staff recommends that Council authorize the use of eminent domain for this Project to provide a fair and equitable process that will allow the City to meet project design and construction deadlines while still ensuring all property owners are fairly compensated for their property interests. Condemnation will only be

used as necessary if the City is unable to reach an agreement with a property owner through good faith negotiations.

Obtaining eminent domain authority will:

- Allow staff to develop project timelines with more certainty;
- Help keep a planned property acquisition schedule, reducing the risk and cost of unexpected future delays; and
- Ensure consistent messaging to affected property owners.

## **CITY FINANCIAL IMPACTS**

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This action will not authorize any new funding for the project but will only authorize acquisition of the identified parcels. The existing funding in place for the design, acquisition and construction of the improvements is as follows:

<b>Funds Appropriated in Prior Actions</b>	
Transportation Alternatives (TA) Grant	\$ 750,000
Multimodal Transportation and Mitigation Options Fund (MMOF) Grant	\$ 250,000
Revitalizing Main Streets (RMS) Grant	\$ 1,437,500
Transportation Capital Expansion Fee (TCEF)	\$ 389,142
Transportation Fund	\$ 858
Community Capital Improvement Program - Pedestrian Sidewalk	\$ 300,000
<b>Total Appropriations in Prior Actions</b>	<b>\$ 3,127,500</b>

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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City staff presented this project to the Council Finance Committee on August 11, 2021. The Laporte Project was also presented to the Transportation Board as well as the Bicycle Advisory Committee in 2020.

## **PUBLIC OUTREACH**

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Staff discussed the project with the adjacent property owners, current business owners, and prospective developers immediately abutting the project improvements. In addition, staff and an outside acquisition consultant have met or conversed individually with property owners on multiple occasions regarding design and construction details.

## **ATTACHMENTS**

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First Reading attachments not included.

1. Ordinance for Consideration