

CHAPTER 2A-05. CONSTITUTIONAL TAKING ISSUES

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2A-05-010. Purpose and Intent.

The purpose of this Chapter is to provide advisory guidelines to assist the City in identifying and reviewing actions of the City which may involve the physical taking or exaction of private real property that may have Constitutional taking issues in accordance with the advisory provisions of *Utah Code Ann.* §63L-4-101, *et seq.* This Chapter does not apply when the City formally exercises its power of eminent domain.

2A-05-020. Constitutional Taking.

(a) As used herein "Constitutional taking issues" means actions involving the physical taking or exaction of private real property by the City that might require compensation to a private real property owner because of:

- (1) the Fifth or Fourteenth Amendment of the Constitution of the United States;
- (2) Article I, Section 22 of the Utah Constitution; or
- (3) any recent court rulings governing the physical taking or exaction of private real property by a governmental entity.

(b) Actions by the City involving the physical taking or exaction of private real property is not a Constitutional taking if the physical taking or exaction:

- (1) bears an essential nexus to a legitimate governmental interest; and
- (2) is roughly proportionate and reasonably related, on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest.

2A-05-030. Guidelines and Procedures for Review.

Any owner of private real property who claims there has been a Constitutional taking of the owner's private real property by the City shall request a review of the final decision of any official, employee, board, commission or council of the City implicating such Constitutional taking. The following guidelines and procedures shall be followed in the event such review is requested.

(a) **Final Decision.** The person requesting a review must have obtained a final and authoritative determination, internally, within the City, relative to the decision from which they are requesting review.

(b) **Time for Filing.** The person requesting a review shall file his or her request in writing to the office of City Recorder within thirty (30) days from the date of the final decision that gave rise to the concern that a Constitutional taking has occurred.

(c) Date for Review. The City Council or its designee shall immediately set a time to review the decision that gave rise to the Constitutional taking claim.

(d) Additional Information. In addition to the written request for review, the applicant shall submit prior to the date of review the following information. An application shall not be deemed "complete" or "submitted" until the reviewing body certifies to the applicant that all the materials and information required herein has been received. The reviewing body shall promptly notify the applicant of an incomplete application.

- (1) name of the applicant requesting review;
- (2) name and business address of current owner of the property, form of ownership, and name and address of all principal shareholders or partners if a business entity is involved;
- (3) a detailed description of the grounds for the claim that there has been a Constitutional taking;
- (4) a detailed description of the property alleged to have been taken;
- (5) evidence and documentation as to the value of the property alleged to have been taken, including any evidence of the value of the property before and after the alleged taking, the name of the party from whom the property was purchased and the relationship if any between the person requesting review and the party from whom the property was acquired;
- (6) the nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold, etc.;
- (7) terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three (3) years prior to the date of application;
- (8) all appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three (3) years prior to the date of application;
- (9) the assessed value of and the ad valorem taxes on the property for the previous three (3) years;
- (10) all information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of loan and other significant provisions, including but not limited to, right of purchasers to assume the loan;
- (11) all listings of the property for sale or rent, price asked and offers received, if any, within the previous three (3) years;
- (12) all studies commissioned by the applicant within the previous three (3) years concerning feasibility of development or utilization of the property;
- (13) itemized income and expense statements from the property for the previous three (3) years for income producing property;
- (14) information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and

(15) any other additional information requested by the City which is reasonably necessary in its opinion to arrive at a conclusion concerning whether there has been a Constitutional taking.

(d) Review. The City Council or its designee shall hear all the evidence related to and submitted in connection with the request for review to determine whether or not the action by the City constitutes a Constitutional taking as defined herein, including consideration of the following:

(1) whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest;

(2) whether a legitimate governmental interest exists for the action taken by the City;
and

(3) whether the taking or exaction is roughly proportionate and reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

(e) Decision. The City Council or its designee shall render a final decision on the review within fourteen (14) days from the date the complete application for review was submitted to the City Recorder. The decision of the City Council or its designee regarding the results of the review shall be given in writing to the applicant and the official, employee, board, commission or council that rendered the final decision that gave rise to the Constitutional taking claim. When determined to be necessary and appropriate, the reviewing body shall make a recommendation to the official, employee, board, commission or council that made the decision that gave rise to the Constitutional taking claim.

(f) Failure to Render Decision. If the City fails to hear and decide the appeal within fourteen (14) days, the acting body's decision or action is presumed to be approved.

2A-05-040. Limitations.

The guidelines set forth herein, and any decision rendered pursuant to the provisions of this Chapter, are advisory only and shall not be construed to expand or limit the scope of the City's liability for a Constitutional taking. The City shall have no legal liability to any person, firm or entity of any nature whatsoever and a court may not impose liability upon the City for failure to comply with the provisions of this Chapter.