

CHAPTER 28. CONSTITUTIONAL TAKING ISSUES

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7-28-1. Purpose.

The purpose of this Chapter is to provide advisory guidelines and procedures to assist the City in identifying and analyzing actions that may involve the taking of private real property without payment of just compensation as required by the Constitutions of the United States and the State of Utah.

(Ord. 2003-07, 04-02-03)

7-28-2. Definition.

As used herein, the term "constitutional taking issues" means actions involving the physical or regulatory taking of private real property by the City that might require compensation to a private real property owner under:

(1) The Fifth or Fourteenth Amendments of the United States Constitution;

(2) Article I, Section 22 of the Utah Constitution; or

(3) Any recent court rulings governing the physical or regulatory taking of private real property.

(Ord. 2003-07, 04-02-03)

7-28-3. Guidelines.

When the City is proposing to take action that will affect private real property, the City shall determine whether the contemplated action may involve constitutional taking issues. A "Yes" answer to any of the following questions could raise the possibility of a taking of private real property for which just compensation may be required:

(1) Does the action result in a permanent or recurring physical occupation of private property?

(2) Does the action require a property owner to dedicate property or grant an easement to the City?

(3) Does the action create or otherwise impose a permanent or ongoing nuisance, originating on City property, that impacts neighboring lands so that their owners or occupants sustain a special and unreasonable interference with the quiet enjoyment of their property?

(4) Does the action interfere with a fundamental attribute of ownership such as the right to reasonable access, the right to light, air and view within the right-of-right way of an abutting public street, or the right to exclude others from private property?

(5) Does the action unreasonably interfere with a separately protected and vested right, such as the right to continue a nonconforming use; the right to have an application reviewed under the law that was in effect

when a complete application was submitted; the right to obtain legally issued subdivision plat approvals, building permits, or licenses; or other protected property interests?

(6) Does the action impose a severe economic burden that is inappropriately unfair when considered in light of (a) the burden placed on the property owner, (b) the nature of the government action and benefit, and (c) the property owner's investment-backed expectations?

(7) Does the action deprive the property owner of all economically viable use of the property in a situation where the proposed use does not constitute a nuisance or a severe threat to health and safety?

(8) Does the action limit the use of private property without substantially advancing a legitimate public interest?

(9) Can the City demonstrate by an individualized determination that any conditions, dedications or exactions imposed as a condition of approval of development applications place only fair and roughly proportionate burdens on development, offsetting the burdens that the proposed development places on public utilities, streets and other services but not imposing additional burdens on development that the community as a whole should bear?

(10) Does the action discriminate against property owners, imposing restrictions or burdens on one property owner that other similarly situated property owners do not bear?

(Ord. 2003-07, 04-02-03)

7-28-4. Analysis.

If the City determines that a proposed governmental action involves constitutional taking issues, the City shall review and analyze the possible taking to determine the course to be taken. In reviewing the proposed action, the following factors shall be considered:

(1) The effect the potential taking would have on the use or value of the private property;

(2) The likelihood that the action may result in a constitutional taking;

(3) Any alternatives to the proposed action that would fulfill the City's lawful objectives and reduce the risk of a constitutional taking;

(4) The cost to the City for payment of compensation if a taking is determined.

(Ord. 2003-07, 04-02-03)

7-28-5. Appeal.

Any private property owner whose interest in the property is subject to a physical or regulatory taking by the City, pursuant to a final and authoritative decision or action of the City, may appeal the City's decision or action by filing a written notice of appeal and statement of the grounds for the appeal in the City Recorder's Office within thirty (30) days from the date of the City's decision or action. The City Council or its designee shall hear all evidence regarding the appeal and render its decision and findings in writing within fourteen (14) days from the date the appeal was filed. If the City fails to hear and decide

the appeal within fourteen (14) days, the City's decision or action is presumed to be approved.
(Ord. 2003-07, 04-02-03)

7-28-6. Limitation.

The guidelines set forth herein are advisory only and shall not be construed to expand nor 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.

(Ord. 2003-07, 04-02-03)

7-28-7. Legal action.

A property owner's failure to appeal the City's action does not constitute, and may not be interpreted as constituting, a failure to exhaust administrative remedies or as a bar to bringing legal action.

(Ord. 2003-07, 04-02-03)