

CHAPTER 31**REVIEW OF CONSTITUTIONAL TAKING ISSUES**

- Section 31.010. Policy Considerations.
 Section 31.020. Guidelines Advisory.
 Section 31.030. Review of City Decision–
 Procedures.
 Section 31.040. Reviewing Guidelines.
 Section 31.050. Results of Review.

Section 31.010. Policy Considerations.

There is an underlying policy in the City, strongly favoring the careful consideration of matters involving Constitutional Taking claims, in fairness to the owner of private property bringing the claim and in view of the uncertainty and expense involved in defending law suits alleging such issues. At the same time, the legitimate role of the City in lawfully regulating real property must be preserved and the public's right to require the dedication or exaction of property consistent with the Constitution. Consistent with this policy, this Chapter establishes a procedure for the review of actions that may involve the issue of Constitutional Takings, as well as providing guidelines for such considerations. This chapter is further intended and shall be construed to objectively and fairly review claims by citizens that a specific government action should require payment of just compensation, yet preserve the ability of the City to lawfully regulate real property and fulfill its other duties and functions.

Section 31.020. Guidelines Advisory.

The guidelines adopted and decisions rendered pursuant to the provisions of this Chapter are advisory, and shall not be construed to expand or limit the scope of the City's liability for a Constitutional Taking. The reviewing body or person, shall not be required to make any determination under this Chapter except pursuant to the Section 31.040.

Section 31.030. Review of City Decision - Procedures.

Any owner of private real property who claims there has been a Constitutional Taking of private real property shall request a review of a final decision of the City.

The following are specific procedures established for such a review:

A. The person requesting a review must have obtained a final and authoritative determination by the city, relative to the decision from which they are requesting review.

B. Within thirty (30) days from the date of the final decision that gave rise to the concern that a Constitutional Taking has occurred, the person requesting the review shall file in writing, in the office of the City Recorder, a request for review of that decision. A copy shall be filed with the City Attorney.

C. The City Council, or an individual or body designated by the City Council, shall immediately set a time to review the decision that gave rise to the Constitutional Takings claim.

D. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:

1. Name of the applicant requesting review.
2. Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership or joint venture, name and address of all principal shareholders or partners.
3. A detailed description of the grounds for the claim that there has been a Constitutional Taking.
4. A detailed description of the property taken.
5. Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of the same property before and after the alleged Constitutional Taking, the name of the party from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired.
6. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest.
7. Terms (including sale price) or 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 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 the 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, prices asked and offers received, if any, within the previous three (3) years.

12. All studies commissioned by the petitioner or agents of the petitioner within the previous three (3) years concerning feasibility of development or utilization of the property.

13. For income producing property, itemized income and expense statements from the property for the previous three (3) years.

14. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.

15. The City Council or their designee may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a Constitutional Taking.

E. An application shall not be deemed to be "complete" or "submitted" until the reviewing body/official certifies to the applicant, that all the materials and information required above, have been received by the city. The reviewing body/official shall notify the applicant of any incomplete application.

F. The City Council or an individual or body designated by the City Council, shall hear all the evidence related to and submitted by the applicant, City or any other interested party.

G. A final decision on the review shall be rendered within fourteen (14) days from the date the complete

application for review has been received by the City Recorder. The decision of the City Council, or individual or body designated by the City Council, regarding the results of the review shall be given in writing to the applicant and the officer, employee, Board, Commission or Council that rendered the final decision that gave rise to the Constitutional Takings claim.

H. If the City Council, or individual or body designated by the City Council, fails to hear and decide the review within fourteen (14) days, the decision appealed from shall be presumed to be approved.

Section 31.040. Reviewing Guidelines.

The City Council, or individual or body designated by the City Council, shall review the facts and information presented by the applicant to determine whether or not the action by the City constitutes a Constitutional Taking as defined in this Code. In doing so, they shall consider:

A. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.

B. Whether a legitimate governmental interest exists for the action taken by the City.

C. Is the property and exaction taken, roughly proportionate and reasonably related, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

Section 31.050. Results of Review.

After completing the review, the City Council, or individual or body designated by the City Council, shall make a determination regarding the above issues and where determined to be necessary and appropriate, shall make a recommendation to the officer, employee, Board, Commission or Council that made the decision that gave rise to the Constitutional Takings claim.