

**CHAPTER 31**

**REVIEW OF CONSTITUTIONAL TAKING ISSUES**

(Amended 11/13/18)

- Section 31.010. Policy Considerations.
- Section 31.020. Guidelines Advisory.
- Section 31.030. Review of City Decision– Procedures.
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**Section 31.010. Policy Considerations.**

There is an underlying policy in the City which strongly favors 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 lawsuits alleging such issues. At the same time, the legitimate role of the City in lawfully regulating real property must be preserved as well as the public's right to require the dedication or exaction of private real property for public purposes in accord 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; it shall also preserve the ability of the City to lawfully regulate real property and fulfill its other duties and functions. This chapter is enacted pursuant to Utah Code Ann. 63L-4-101 et seq.

**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 Section 31.040.

**Section 31.030. Review of City Decision - Procedures.**

A. Any owner of private real property who claims there has been a Constitutional Taking of private real property may request a review of a final decision of the City as described in this section.

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

C. Within 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.

D. 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.

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

1. the name of the applicant requesting review;
2. the name and business address of current owner of the property, form of ownership such as sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership or joint venture, the 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, including any evidence of the value of the same property before and after the alleged Constitutional Taking, the name of the party from whom purchased, and the relationship, if any, between the person requesting a 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 or leasehold interest;
7. the terms, including sale price, or any previous purchase or sale of a full or partial interest in the property in the three 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 years prior to the date of application;

9. the assessed value of the property and ad valorem taxes on the property for the previous three years;

10. all information concerning current mortgages or other loans secured by the property, including the 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 years;

12. all studies commissioned by the petitioner or agents of the petitioner within the previous three 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 years;

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

15. additional information as requested by the City Council or their designee reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a Constitutional Taking.

F. An application shall not be deemed to be complete or submitted until the reviewing body or official certifies to the applicant that all the materials and information required by this section have been received by the City. The reviewing body or official shall notify the applicant of any incomplete application.

G. 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.

H. A final decision on the review shall be rendered within 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.

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

**Section 31.040. Reviewing Guidelines.**

The City Council, or designee 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; and

C. whether the property and exaction taken is 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 designee shall make a determination regarding the considerations of Section 31.040, 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.