

**CONSTITUTIONAL TAKINGS ISSUES****Section 2701—Policy Considerations for Constitutional Takings – Purpose:**

As required by §63-90a-3 Utah Code Annotated, 1953, as amended, this Chapter is provided to establish guidelines to assist the City in identifying actions involving the physical taking of private real property that may have constitutional takings issues.

As provided by this Chapter it is the policy of the City to carefully consider 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 to lawfully regulate 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, while preserving the ability of the City to lawfully regulate real property and fulfill its duties and functions.

**Section 2702—City's Liability:**

The guidelines adopted and decisions rendered pursuant to the provisions of this Chapter shall not be construed to expand or limit the scope of the City's liability for a constitutional taking.

**Section 2703—Review of Takings Application Required:**

An owner of private real property who claims there has been a constitutional taking of private real property by an action of a Land Use Authority may request a review of the decision of the Land Use Authority by filing an Application with the Appeal Authority, as applicable and identified by Chapter 26 herein, and containing all the information, required herein.

## **Section 2704—Review of Decision – Procedures:**

An owner of private real property who claims there has been a constitutional taking of private real property by an action of a Land Use Authority shall request a review of the decision by the Appeal Authority, as applicable.

The following are specific procedures established for such review:

1. The person requesting a review must have obtained a decision from a Land Use Authority.
2. Within thirty (30) calendar days from the date of the decision that gave rise to the concern that a constitutional taking may have occurred, an Application for Review of a Constitutional Takings Claim shall be filed in the Office of the City Recorder.
3. The Appeal Authority shall immediately set a time to review the decision giving rise to the constitutional takings claim.
4. an Application for Review of a Constitutional Takings Claim shall contain the following information:
  - 4.1. Name of the Applicant.
  - 4.2. Name and business address of the current owner of the property, form of ownership (whether sole proprietorship, for-profit or non-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.
  - 4.3. A description of the grounds for the claim that there has been a constitutional taking.
  - 4.4. A description of the property alleged to have been taken.
  - 4.5. Evidence and documentation as to the value of the property alleged to have been taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of the property before and after the alleged constitutional taking, the name of the party from whom purchased, if applicable, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired.
  - 4.6. The nature of the property interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest.
  - 4.7. 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.

- 4.8. 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.
- 4.9. The assessed value of and ad valorem taxes paid on the property for the previous three (3) years.
- 4.10. 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.
- 4.11. All listings of the property for sale or rent, prices asked and offers received, if any, within the previous three (3) years.
- 4.12. Any studies commissioned by the Applicant, or agents of the Applicant, within the previous three (3) years concerning feasibility of development or utilization of the property.
- 4.13. Itemized income and expense statements from the property for the previous three (3) years.
- 4.14. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.
5. The Appeal Authority may request additional information identified to be necessary to arrive at a conclusion concerning whether there has been a constitutional taking.
6. An application shall not be deemed to be complete until the City Recorder determines the Application complete, as required by Section 2606.
7. The Appeal Authority shall hear all the evidence related to and submitted by the Applicant and the City.
8. A decision on a review of a constitutional takings claim shall be rendered within fourteen (14) calendar days from the date the Application is determined complete by the City Recorder. The decision of the Appeal Authority regarding the results of the review shall be given in writing to the Applicant and the Land Use Authority that rendered the decision-giving rise to the constitutional takings claim.
9. If the Appeals Authority fails to hear and decide the review within fourteen (14) calendar days, the decision of the Land Use Authority appealed shall be presumed to stand and the constitutional takings claim denied by the Appeal Authority.

**Section 2705—Reviewing Guidelines:**

The Appeal Authority shall review the facts and information presented by the Applicant to determine whether the action by the Land Use Authority constitutes a constitutional taking as defined by the Act and in doing so shall consider:

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 Land Use Authority.
3. Whether the requirement or condition imposed by the Land Use Authority is roughly proportionate and reasonably related, both in nature and in extent, to the impact caused by the activities that are the subject of the decision being reviewed.

**Section 2706—Results of Review:**

After completing the review, the Appeal Authority shall make a determination regarding the constitutional takings issues raised. Where determined to be necessary and appropriate, the Appeal Authority shall modify the decision of the Land Use Authority, giving rise to the constitutional takings claim, limited only to the extent necessary to avoid a constitutional taking of private real property.