

CHAPTER 3-18: PRIVATE PROPERTY PROTECTION

- 3-18-010. Purpose and Intent.**
- 3-18-020. Definitions.**
- 3-18-030. Guidelines.**
- 3-18-040. Appeals.**
- 3-18-050. Limitations.**

3-18-010. Purpose and Intent.

The purpose of this Chapter is to provide advisory guidelines to assist the City in identifying and reviewing actions by officials, employees, boards, commissions and councils of the City which may involve the physical taking or exaction of private real property without just compensation.

3-18-020. Definitions.

(a) As used herein "constitutional taking" means actions involving the physical or regulatory taking of private real property by any official, employee, board, commission or council of the City that might require compensation to a private real property owner under:

- (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 or regulatory taking 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;
- (2) To a legitimate governmental interest; and
- (3) 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.

3-18-030. Guidelines.

The following guidelines should be considered by any official, employee, board, commission or council of the City when taking any action that might result in the physical or regulatory taking of private real property without just compensation.

(a) Identification. The acting body should review the following items to determine and identify whether a proposed governmental action raises constitutional taking issues.

- (1) Does the action result in a permanent 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 deprive the property owner of all economically viable uses of the property?

(4) Does the action have a severe impact on the property owner's economic interest?

(5) Does the action deny a fundamental attribute of ownership?

(b) Analysis. If the acting body determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed further to determine appropriate action. In reviewing the proposed action, the following factors may be analyzed:

(1) The affect 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;

(5) The governmental interest involved and its nexus to the potential taking; and

(6) The proportionality and relationship between the proposed governmental action and the proposed development.

3-18-040. Appeals.

(a) Application. Any owner of private property 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 by any official, employee, board, commission or council of the City, may appeal the acting body's decision or action by filing a written notice of appeal and statement of the grounds for the appeal with the City Recorder within thirty (30) days from the date of the acting body's decision or action. Additional information regarding the claim, such as property valuation and ownership, may be required in conjunction with the application as deemed necessary by the City for proper review of the action.

(b) Review. The City Council or its designee shall hear all evidence regarding the appeal and determine whether or not the action by the City constitutes a constitutional taking as defined herein. The reviewing body shall render its decision and findings in writing within fourteen (14) days from the date the appeal was filed. The decision of the reviewing body shall be given to the applicant and the official, employee, board, commission or council that rendered the final decision giving rise to the appeal. 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 giving rise to the appeal.

(c) 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.

3-18-050. Limitations.

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.