

## **Chapter 12.27**

### **Vesting and Protection of Private Property**

12.27.1 Vested Rights & Constitutional Takings Issues

12.27.2 Temporary Regulations

#### **12.27.1 Vested Rights & Constitutional Takings Issues**

In order to provide certainty and predictability in the development approval process, the City Council may develop a procedure for considering and evaluating vested rights claims made under Utah law as amendments are made to this ordinance from time to time. This procedure may include the processing of consent agreements for the settlement of disputes pertaining to vested rights or other legal claims arising from this ordinance.

The City Council strongly favors the careful consideration of matters involving Constitutional Takings 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 and the public's right to require the dedication or exaction of property consistent with the Constitution must be preserved. Consistent with this policy, it is desired that a procedure be established for the review of actions that involve the issue of a Constitutional Taking. These provisions are to assist the City in considering decisions that may involve Constitutional Takings. It is intended that a procedure for such a review be provided, as well as guidelines for such considerations. It is further intended and shall be construed to objectively and fairly review claims by citizens, that a specific City 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.

Any owner of 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 specific procedures are established for such a review:

1. 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.
2. 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.
3. 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.

In addition to the items listed above, any applicant for a Constitutional Takings review shall submit the following information:

1. The form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture, or other. If owned by a corporation, partnership or joint venture the applicant shall submit the name and address of all principle owners.
2. A detailed description of the grounds for the claim that there has been a Constitutional Taking.
3. A detailed description of the property that has been taken.
4. Evidence and documentation of the value of the property taken, including the date and cost on the date the property was acquired. This should include any evidence of the value of the property before and after the alleged Constitutional Taking.
5. The nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership or leasehold interest.
6. The terms (including sales 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.
7. 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.
8. The assessed value of and ad valorem taxes on the property for the previous three (3) years.
9. 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.
10. All listings of the property for sale or rent, prices asked and offers received, if any, within the previous three (3) years.
  11. All studies commissioned by the applicant within the previous three (3) years concerning feasibility of development or utilization of the property.
  12. For income producing property, itemized income and expense statements from the property for the previous three (3) years.
  13. Information from a title policy or other source, showing all recorded liens or encumbrances affecting the property.
  14. The City Council, or designee, may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a Constitutional Taking.

The application shall not be deemed complete until the reviewing body or official certifies to the applicant that all the material and information required above has been received by the City.

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 applicant shall be notified in writing. If the City Council or designee fails to make a determination with fourteen (14) days, the request for review shall be considered denied. In making such a determination, the City Council or designee shall consider the following:

1. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.
2. Whether legitimate governmental interest exists for the action taken by the City.
3. 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.

After completing the review, the City Council or designee shall make a determination regarding these 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.

#### **12.27.2 Temporary Regulations**

In accordance with § 10-9-404 of the Utah Code Annotated 1953, as amended, the City Council may, without a public hearing, enact ordinances establishing temporary zoning regulations for any part or all of the area within the municipality.

The City Council shall establish a period of limited effect for the temporary regulations, not to exceed six (6) months.