

ARTICLE A. CONSTITUTIONAL TAKING ISSUES

1-9A-1: PURPOSE:

The purpose of this chapter is to provide advisory guidelines for the city to assist the city in identifying actions that involve physical taking or exaction of private real property that may have constitutional taking issues. (Ord. 05-20-03C, 5-20-2003)

1-9A-2: DEFINED:

As used herein, "constitutional taking issues" means actions involving the physical or regulatory taking of private real property by the city that might require compensation to a private real property owner under:

- A. The fifth or fourteenth amendment of the constitution of the United States;
- B. Article I, section 22 of the Utah constitution; or
- C. Any recent court rulings governing the physical or regulatory taking of private real property by a governmental entity. (Ord. 05-20-03C, 5-20-2003)

1-9A-3: GUIDELINES:

The following guidelines shall be considered by the city when taking any action that might result in the physical or regulatory taking of private real property. The city should review the following to determine and identify whether a proposed governmental action raises constitutional taking issues.

- A. Does the action result in a permanent physical occupation of private property?
- B. Does the action require a property owner to dedicate property or grant an easement to the city?

- C. Does the action deprive the property owner of all economically viable uses of the property?
- D. Does the action have a severe impact on the property owner's economic interest?
- E. Does the action deny a fundamental attribute of ownership? (Ord. 05-20-03C, 5-20-2003)

1-9A-4: ANALYSIS:

If the city determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed by the city to analyze the possible taking and to determine the action to be taken. In reviewing the proposed action, the following factors may be analyzed:

- A. The effect the potential taking would have on the use or value of the private property;
- B. The likelihood that the action may result in a constitutional taking;
- C. Any alternatives to the proposed action that would fulfill the city's lawful objectives and reduce the risk of a constitutional taking;
- D. The cost to the city for payment of compensation if a taking is determined;
- E. The governmental interest involved and its nexus to the potential taking; and
- F. If the action is roughly proportionate or reasonably related to the impact of any proposed development. (Ord. 05-20-03C, 5-20-2003)

1-9A-5: APPEALS:

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 of the city, may appeal the city's decision or action by filing a written notice of appeal and statement of the grounds for the appeal in the city recorder's office within thirty (30) days from the date of the city's decision or action. The city council or its designee shall hear all evidence regarding the appeal and render its decision and findings in writing within fourteen (14) days from the date the appeal was filed. If the city fails to hear and decide the appeal within fourteen (14) days, the city's decision or action is presumed to be approved. (Ord. 05-20-03C, 5-20-2003)

1-9A-6: 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. (Ord. 05-20-03C, 5-20-2003)