

TITLE 28. ZONING AND REAL PROPERTY

- Chapter 1. Zoning Code, 28-1-1 to 28-1-2.**
Chapter 2. Constitutional Taking Issues, 28-2-1 to 28-2-7.

Chapter 1. Zoning Code

- 28-1-1. Zoning Ordinance Adopted by Reference.
 28-1-2. Penalties.

28-1-1. Zoning Ordinance Adopted by Reference.

The zoning ordinance, adopted as Ordinance no. 84-1Z and as the same has been and may be from time to time amended and superseded, three (3) copies of which have been filed in booklet form in the office of the recorder for use and examination by the public, is hereby incorporated by reference into this code and shall become the subdivision code applicable to the city.

History: 9/84

28-1-2. Penalties. A violation of the zoning code is a class C misdemeanor.

History: 9/84, 05/99

Chapter 2. Constitutional Taking Issues

- 28-2-1. Policy Considerations.
 28-2-2. Definitions.
 28-2-3. Guidelines Advisory.
 28-2-4. Review of Decision.
 28-2-5. Reviewing Guidelines.
 28-2-6. Results of Review.
 28-2-7. Severability.

28-2-1. Policy Considerations. There is an underlying policy in the city strongly favoring 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 government in lawfully regulating 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, it is desired that a procedure be established for the review of actions that may involve the issue of a Constitutional Taking. These provisions are to assist governments 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. This ordinance 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, yet preserve the ability of the city to lawfully regulate real property and fulfill its other duties and functions.

History: 9/95

28-2-2. Definitions. (1) "Constitutional Taking" means actions by the city involving the physical taking or exaction of private real property that might require compensation to a private real property owner because of:

- (a) The Fifth or Fourteenth Amendment to the Constitution of the United States;
- (b) Article I, Section 22, of the Utah Constitution;
- (c) Any court ruling governing the physical taking or exaction of private real property by a government entity;

(2) 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:

- (a) Bears an essential nexus to a;
- (b) Legitimate governmental interest; and,
- (c) 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.

History: 9/95

28-2-3. Guidelines Advisory. The guidelines adopted and decisions rendered pursuant to the provisions of this section 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 ordinance except pursuant to Section 28-2-4.

History: 9/95

28-2-4. Review of Decision. Any owner of private real property who claims there has been a Constitutional Taking of their private real property shall request a review of a final decision of any officer, employee, board, commission, or council. The following are specific procedures established for such a review:

- (1) The person requesting a review must have obtained a final and authoritative determination, internally, within 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 also be filed with the City Attorney.
- (3) The city 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.
- (4) In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:
 - (a) Name of the applicant requesting review;
 - (b) Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners;
 - (c) A detailed description of the grounds for the claim that there has been a Constitutional Taking;
 - (d) A detailed description of the property taken;
 - (e) Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of that same property before and after the alleged Constitutional Taking, the name of the property from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired;
 - (f) Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
 - (g) Terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three years prior to the date of application;
 - (h) 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;
 - (i) The assessed value of and ad valorem taxes on the property for the previous three years;
 - (j) All information concerning current mortgages or other loans secured by the property, including 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;
 - (k) All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;
 - (l) All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning the feasibility of development or utilization of the property;
 - (m) For income producing property, itemized income and expense statements from the property for the previous three years;
 - (n) Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and
 - (o) The City Council or their designee may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a Constitutional Taking.
- (5) An application shall not be deemed to be "complete" or "submitted" until the reviewing body/official certifies to the applicant, that all the materials and information required above, have been received by the City. The reviewing body/official shall promptly notify the applicant of any incomplete application.
- (6) The City Council or an individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, City, or any other interested party.
- (7) 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 decision of 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.

(8) If the City Council fails to hear and decide the review within fourteen (14) days, the decision appealed from shall be presumed to be approved.

History: 9/95

28-2-5. Reviewing Guidelines. The City Council 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 chapter. In doing so, they 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 City.

(3) Is the property and exaction taken, roughly proportionate and reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

History: 9/95

28-2-6. Results of Review. After completing the review, the reviewing person/body shall make a determination regarding the above issued 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.

History: 9/95

28-2-7. Severability. The paragraphs, sentences, clauses, and phrases, of this chapter are severable, and if any of the foregoing shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining provisions contained in this ordinance, since the same would have been enacted by the Clinton City Council without the incorporation in this chapter of any such unconstitutional or invalid provisions.

History: 9/95

Chapter 3. Disposition of Capital Assets and Supplies

28-3-1. Acquisition and Disposition of Real Property

28-2-2. Disposition of Significant Parcel of Real Property

28-2-3. Methods of Disposal

28-3-1 Acquisition and Disposition of Real Property. The Clinton City Council may purchase, receive, hold, sell, lease, convey, and dispose of real property for the benefit of the City, whether the property is within or without the City's corporate boundaries.

28-3-2 Disposition of a Significant Parcel of Real Property. (1) Before the City Council disposes of a significant parcel of real property, the Council shall:

a) Provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment thereon; and,

b) Allow opportunity for public comment on the proposed disposition.

(2) All real property, which was acquired without the intent to further convey it, constitutes a significant parcel of real property for purposes of this Section. Land acquired with the intent to further convey it, such as land in excess of the portion needed for City uses or land acquired for economic development or redevelopment purposes, is not a significant parcel of real property.

(3) A meeting of the City Council constitutes the opportunity for public comment for purposes of this Section.

(4) Posting notice in at least three (3) public places within the City and/or publishing notice in a newspaper of general circulation in the city constitutes reasonable notice for purposes of this Section.

28-3-3. Methods of Disposal. Any sale of real property shall be by sealed bid or public auction, except as otherwise approved by the Council after determining that alternative action is in the best interest of the City. Notice of the sale or auction shall be given by publication in a newspaper of general circulation in the City at least fourteen (14) days prior to the opening of bids or the date of the auction.

History: 4/04