

Chapter 19.24. Procedures for Reviewing Constitutional Taking Claims.

Sections:

- 19.24.01. Policy Considerations.**
- 19.24.02. Definitions.**
- 19.24.03. Guidelines Advisory.**
- 19.24.04. Review of Decision.**
- 19.24.05. Reviewing Guidelines.**
- 19.24.06. Results of Review.**

19.24.01. Policy Considerations.

1. There is an underlying policy in the City of Saratoga Springs 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 law suits 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 U.S. Constitution and the Utah State Constitution.
2. 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.
 - a. These provisions are to assist governments in considering decisions that may involve constitutional takings.
 - b. It is intended that a procedure for such a review be provided, as well as guidelines for such considerations.
 - c. 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.
3. Notwithstanding Subsections 1. and 2., the City preserves the ability to lawfully regulate real property and fulfill its other duties and functions.

19.24.02. Definitions.

1. **“Constitutional Taking”** means actions by the City involving the physical taking or exaction of private real property that might require compensation to private real property owners because of:
 - a. the Fifth or Fourteenth Amendment to the Constitution of the United States;
 - b. Article I, Section 22, of the Utah Constitution; or
 - c. any ruling by a court with binding authority over the City with respect to 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 legitimate governmental interests; and
- b. 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.

19.24.03. 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 19.24.04.

19.24.04. 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 the 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 days from the date of the final decision that gives 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.
3. The City Council shall immediately set a time to review the decision that gave rise to the constitutional taking claim.
4. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:
 - a. The name of the applicant requesting review.
 - b. The name and business address or current owner of the property, form of ownership, whether sole proprietorship, corporation, not-for-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.
 - 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 allegedly taken, including the date and cost at the date the property was acquired. This shall include any evidence of the value of that same property before and after the alleged constitutional taking and the name of the party from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired.

- f. The nature of the protectable interest claimed to be affected, such as fee simple ownership, leasehold interest, etc.
 - g. The 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 the right of purchasers to assume the loan.
 - k. All listings of the property for sale or rent, the price asked therefore, and any offers received, all 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.
 - o. Such other information as may be requested by the City Council which is reasonably necessary, in its 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 or official certifies to the applicant that all the materials and information required have been received by the City. The reviewing body or official shall promptly notify the applicant of any incomplete application.
 6. The City Council shall hear all the evidence related to and submitted by the applicant, the City, or any other interested party.
 7. A final decision on the review shall be rendered within fourteen 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 thirty days, the decision appealed from shall be presumed to be denied.

19.24.05. 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 and Utah law. 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. whether the property and exaction taken is 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; and
4. applicable Utah law.