TITLE 30. PROCEDURE FOR REVIEW OF CONSTITUTIONAL TAKING ISSUES[1]

CHAPTER 30.01. IN GENERAL.

30.01.010. Policy Considerations.

There is an underlying policy in Brigham 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 law suits alleging such issues. At the same time, the legitimate role of government in lawfully regulating real property must b 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 Title 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 Brigham City to lawfully regulate real property and fulfill its other duties and functions.

30.01.020. Definitions.

"Constitutional Taking" means actions by Brigham 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.

Actions by Brigham City involving a 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 legitimate governmental interest; 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.

30.01.030. 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 Brigham City's liability for a Constitutional Taking. The reviewing body or person, shall not be required to make any determination under this Title except pursuant to Section IV.

30.01.040. 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:

A. The person requesting a review must have obtained a final and authoritative determination, internally, within Brigham City, relative to the decision from which they are requesting review.

B. 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.

C. 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 Taking claims.

D. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:

1. Name of the applicant requesting review;
2. 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;
3. A detailed description of the grounds for the claim that there has been a Constitutional Taking;
4. A detailed description of the property taken;

---

[1] *Complete Title adopted from Ordinance 95-01, 3/1/95.*

5. 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 part from who purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired.

6. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;

7. 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;

8. 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;

9. The assessed value of and ad valorem taxes on the property for the previous three years;

10. 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;

11. All listings of the property for sale or rent, price asked and offers received, if any, within previous three years;

12. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property;

13. For income producing property, itemized income and expense statements from the property for the previous three years;

14. Information from a title policy or other source showing all recorded lines or encumbrances affecting the property; and

15. 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.

D. 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 above, have been received by Brigham City. The reviewing body or official shall promptly notify the applicant of any incomplete application.

E. The city council or an individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, Brigham City, or any other interested party.

F. 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 Taking claim.

G. 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.

30.01.050. Reviewing Guidelines.

The city council shall review the facts and information presented by the applicant to determine whether or not the action by Brigham City constitutes a Constitutional Taking as defined in this chapter. In doing so, they shall consider:

A. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.

B. Whether a legitimate governmental interest exists for the action taken Brigham City.

C. 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.

30.01.060. Results of Review.

After completing the review, the reviewing person or body shall make a determination regarding the above 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 Taking claim.