

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.](#)

19.24.01. Policy Considerations.

1. There is an underlying policy in the City of Saratoga Springs (“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 and the public’s right to require the dedication or exaction of property consistent with the U.S. Constitution and the Utah State Constitution must be preserved.
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 the City 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 the City’s 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.

(Ord. 17-17, Ord. 11-9)

19.24.02. Definitions.

1. **“Constitutional Taking”** means actions by the City involving the physical taking, regulatory 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, regulatory taking, or exaction of private real property by a government entity.
2. **“Final Decision”** means a final, written, and authoritative determination from the City’s Land Use Authority relative to a City land use application.

(Ord. 20-35, Ord. 17-17, Ord. 11-9)

19.24.03. Guidelines Advisory.

The guidelines adopted and decisions rendered pursuant to the provisions of this Chapter are advisory, and shall not be construed to expand or limit the scope of the City's liability for a constitutional taking, except with the respect to the requirement to exhaust administrative remedies and the doctrine of laches. The City shall not be required to make any determination under this Chapter except pursuant to Section 19.24.04.

(Ord. 11-9)

19.24.04. Review of Decision.

Anyone who owns or has the right to develop private real property and who claims there has been a constitutional taking of such real property shall request a review of the final decision of the City by the City's Hearing Examiner. The following are specific procedures established for such a review:

1. The person requesting a review must have obtained a final decision for the City's land use authority.
2. Within thirty days from the date of the final decision, 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 Recorder shall immediately set a time for the Hearing Examiner 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 and name of the current owner of the property.
 - b. The address of the applicant and current owner of the property.
 - c. If owner is an entity, the form of ownership, whether sole proprietorship, corporation, limited liability company, not-for-profit corporation, partnership, joint venture, or other, and if owner is a corporation, partnership, or joint venture, the name and address of all principal shareholders, members, or partners.
 - d. A detailed description of the grounds for the claim that there has been a constitutional taking.
 - e. A detailed description of the property taken.
 - f. 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.
 - g. The nature of the protectable interest claimed to be affected, such as fee simple ownership, leasehold interest, etc.

- h. 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.
 - i. 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.
 - j. The assessed value of and ad valorem taxes on the property for the previous three years.
 - k. 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.
 - l. All listings of the property for sale or rent, the price asked therefore, and any offers received, all within the previous three years.
 - m. 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.
 - n. For income producing property, itemized income and expense statements from the property for the previous three years.
 - o. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.
 - p. Such other information as may be requested by the Hearing Examiner which is reasonably necessary, in its opinion, to arrive at a conclusion concerning whether there has been a constitutional taking.
5. An application will not be accepted until the applicant submits all of the materials and information required by this Chapter. The City will not accept for processing any incomplete application. The City may—but is not require to--notify the applicant of any missing information or material, but it is always the applicant's responsibility for verifying whether the application is complete.
 6. The Hearing Examiner 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 Hearing Examiner 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 Hearing Examiner fails to hear and decide the review within thirty days, the decision appealed shall be presumed to be denied.

(Ord. 20-35, Ord. 17-17, Ord. 13-16, Ord. 12-9, Ord. 11-9)

19.24.05. Reviewing Guidelines.

The Hearing Examiner 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, he or she shall consider the criteria for an exaction under the Utah Code § 10-9a-508, as well as applicable state and federal statutory and common law.

(Ord. 17-17, Ord. 13-16, Ord. 11-9)