



## CONSTITUTIONAL TAKINGS

**Section 2901—Policy Considerations for Constitutional Takings—Purpose:**

There is a policy of Roy City, 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 the City 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, this Chapter establishes a procedure for the review of actions that may involve the issue of constitutional takings, as well as providing guidelines for such considerations. This chapter 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, while preserving the ability of the City to lawfully regulate real property and fulfill its duties and functions.

**Section 2902—Guidelines Advisory:**

The guidelines adopted and decisions rendered pursuant to the provisions of this Chapter are advisory only, and shall not be construed to expand or limit the scope of the City's liability for a constitutional taking.

**Section 2903—Review of Takings Application Required:**

Any owner of private real property who claims there has been a constitutional taking of private real property by an action of the City shall request a review of a final decision of the City by filing an application, containing all the information required herein.

**Section 2904—Review of Final City Decision—Procedures:**

Any owner of private real property who claims there has been a constitutional taking of private real property by an action of the City shall request a review of a final decision of the City. The following are specific procedures established for such review:

- 1) The person requesting a review must have obtained a decision from a Land Use Authority.
- 2) Within thirty (30) days from the date of the decision that gave rise to the concern that a constitutional taking may have occurred, the person requesting the review shall file, with the City Manager, a written request for review of that decision. A copy shall also be filed with the City Attorney.
- 3) The Council, or designee of the 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 the following information:
  - a) Name of the applicant requesting review.
  - b) Name and business address of the current owner of the property, form of ownership, whether sole proprietorship, for-profit or non-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 description of the property alleged to have been taken.
  - e) Evidence and documentation as to the value of the property alleged to have been taken, including the date and

- cost at the date the property was acquired. This should include any evidence of the value of the property before and after the alleged constitutional taking, the name of the party from whom purchased, if applicable, 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 property interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest.
  - g) Terms (including sale price) or any previous purchase or sale of a full or partial interest in the property in the three (3) 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 (3) years prior to the date of application.
  - i) The assessed value of and ad valorem taxes paid on the property for the previous three (3) 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, prices asked and offers received, if any, within the previous three (3) years.
  - l) All studies commissioned by the applicant, or agents of the applicant, within the previous three (3) years concerning feasibility of development or utilization of the property.
  - m) Itemized income and expense statements from the property for the previous three (3) years.
  - n) Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.
  - o) The Council, or their designee, may request additional information identified to be 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” until the Council, or designee, certifies to the applicant that all the materials and information required above, have been received by the City. The Council, or designee, shall notify the applicant of any missing information and identifying the materials and information necessary to correct the incomplete application.
  - 6) The Council, or designee, shall hear all the evidence related to and submitted by the applicant and the City.
  - 7) A decision on a review of a constitutional takings claim shall be rendered within fourteen (14) days from the date the complete application for review has been received by the City Manager. The decision of the Council, or designee, regarding the results of the review shall be given in writing to the applicant and the officer, employee, Board or Commission that rendered the decision that gave rise to the constitutional takings claim.
  - 8) If the Council, or designee, fails to hear and decide the review within fourteen (14) days, the decision appealed from shall be presumed to be approved and the constitutional takings claim denied by the Council, or designee.

### Section 2905—Reviewing Guidelines:

The Council, or the Council’s authorized designee, 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 Ordinance. 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, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed?

### Section 2906—Results of Review:

After completing the review, the Council, or designee, 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 or Commission that made the decision that gave rise to the constitutional takings claim.