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19.1 Purpose

State Code requires local governments to adopt guidelines relating to potential Constitutional Taking issues. The following guidelines are meant to instruct and inform Huntsville Town, its officials, employees, boards, commissions and councils, of the standards for a Constitutional Taking and a process for review of such actions. The guidelines neither expand nor limit the scope of any political subdivisions liability for a Constitutional Taking, nor impose any liability upon a political subdivision for failure to comply with the guidelines.

19.2 Enactment and Policy Considerations

There is an underlying policy in Huntsville Town to carefully consider 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 United States Constitution and interpretations of the Constitution by Rulings and Decisions of the United States Supreme Court. 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 Huntsville Town to lawfully regulate real property and fulfill its other duties and functions.

19.3 Definitions

- A. "Constitutional Taking" means actions by Huntsville Town involving the physical taking or exaction of private real property that might require compensation to a private real property owner because of:
 - 1. The Fifth or Fourteenth Amendment to the Constitution of the United States;
 - 2. Article I, Section 22, of the Utah Constitution;
 - 3. Any court ruling governing the physical taking or exaction of private real property by a government entity;
- B. Actions by Huntsville Town involving the physical taking or exaction of private real property is not a Constitutional Taking if the physical taking or exaction:
 - 1. Bears an essential nexus to a;
 - 2. Legitimate governmental interest; and,
 - 3. 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.

19.4 Guidelines Advisory

The guidelines adopted and decisions rendered pursuant to the provisions of this Title are advisory, and shall not be construed to expand or limit the scope of Huntsville Town 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 19.3.

19.5 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 Huntsville Town, 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 Huntsville Town Clerk, a request for review of that decision. A copy shall also be filed with the Huntsville Town Attorney.
- C. The Huntsville Town Council, or an individual, or body designated by the Huntsville Town Council shall immediately set a time to review the decision that gave rise to the Constitutional Takings claim.
- 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;
 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 party from whom 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 the 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 liens or encumbrances affecting the property; and
 15. The Huntsville Town 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.

- E. 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 Huntsville Town. The reviewing body/ official shall promptly notify the applicant of any incomplete application.
- F. The Huntsville Town Council or an individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, Huntsville Town, or any other interested party.
- G. 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 Huntsville Town Clerk. The decision of the Huntsville Town 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.
- H. If the Huntsville Town Council fails to hear and decide the review within fourteen (14) days, the decision appealed from shall be presumed to be approved.

19.6 Reviewing Guideline

The Huntsville Town Council shall review the facts and information presented by the applicant to determine whether or not the action by Huntsville Town 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 by Huntsville Town.
- 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?

19.7 Results of Review

After completing the review, the reviewing (person/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 Takings claim.

This Building Codes Ordinance shall take effect upon approval by the Huntsville Town Council.

PASSED and ADOPTED this 3rd day of August 2006.

Mayor, James C. McKay

ATTEST:

Dated this 3rd day of August 2006.

Clerk/Recorder, Gail Ahlstrom

Vote of the Town Council	yea	nay
Council Member Gault	___	___
Council Member Sorenson	<u>excused</u>	___
Council Member Stevenson	___	___
Council Member Truett	<u>excused</u>	___
Mayor McKay	___	___