

Title 1

GENERAL PROVISIONS

Chapters:

1.01 Adoption

1.08 Introductory Title

1.10 Constitutional Taking

Chapter 1.01

ADOPTION

Sections:

1.01.010 Adoption.

1.01.020 Effective date.

1.01.010 Adoption.

All ordinances of a general nature now in force in the city of Cottonwood Heights, as revised, compiled and herein set forth in the volume entitled “Cottonwood Heights Code of Ordinances” or similar are adopted, passed, published and declared to be the Cottonwood Heights Code of Ordinances, and are passed by authority of the city council.

1.01.020 Effective date.

This code shall be effective on 14 January 2005.

Chapter 1.08

INTRODUCTORY TITLE

Sections:

1.08.010 Definitions—General.

1.08.020 Penalty for violation of code provisions.

1.08.030 Copies available for inspection.

1.08.010 Definitions—General.

In the construction of the ordinances set out in this code, and all ordinances amendatory thereof, the following definitions shall apply, unless such definitions would be inconsistent with the manifest intent of the city council, or repugnant to the context of the ordinance. Any reference in the ordinances set out in this code to a city division, department, branch, agency, or similar term that is not currently in existence, shall mean the city of Cottonwood Heights, Utah, or its contract providers as the context dictates. Any reference in this code to a department head, director, supervisor or the like that has not formally been granted such title shall mean any employee of the city of Cottonwood Heights, Utah, or of its contract providers as the context dictates, who has been, or is, assigned the subject rights, duties or responsibilities by the city's manager or city council.

A. "*Board of health*," "*health department*," or similar term means Salt Lake Valley Health Department.

B. "*Business*" means any activity, operation, enterprise or calling referred to in this code for which a license is required.

C. "*City*" means the city of Cottonwood Heights, Utah, and its contract providers as the context dictates.

D. "*City council*" means the city council of the city.

E. "*City attorney*" or "*attorney*" means the attorney of the city, or its contract providers as the context dictates.

F. "*City clerk*," "*clerk*" or similar term means the recorder or the director of community development as the context dictates.

G. "*City engineering department*," "*engineering department*," "*city engineer*," "*engineer*" or similar term means the engineering department of the city, or its contract providers as the context dictates.

H. "*City recorder*," "*recorder*" or similar term means the recorder of the city as the context dictates.

I. "*City treasurer*," "*treasurer*" or similar term means the treasurer of the city.

J. "*Code*" means this code of ordinances.

K. "*Community development*" or similar term means the city's community development department.

L. "*Consolidated fee schedule*," "*city's consolidated fee schedule*," "*fee schedule*" or the like shall constitute references to the then-current consolidated fee schedule of the city and the fees described therein, which was originally enacted by Ordinance 176, as thereafter amended, modified, superseded or re-enacted.

M. "*Fire department*" or similar term means the fire department of the city, or its contract providers as the context dictates, including, without limitation, the Unified Fire Authority.

N. "*Highway*," "*public highway*" or similar term means any road, street, lane, court, place, viaduct, culvert, bridge, alley, or other public way situated within the city, laid out or erected as such by the public, or dedicated, abandoned or open to the public, or made such in any action for the partition of real property, or such public property so designated by any ordinance or statute, and includes the entire area within the right-of-way.

O. "*His/her*," "*he/she*," or similar terms include the masculine, feminine or neuter form, and the singular of nouns, pronouns and verbs shall include the plurals and vice versa.

P. "*Knowingly*" imports only a

knowledge that facts exist that bring the act or omission within the provisions of these ordinances. It does not require any knowledge of the unlawfulness of such act or omission.

Q. “*Law*” means and denotes applicable federal law, the Constitution and statutes of the state of Utah, the ordinances of the city and when appropriate, any and all rules and regulations which may be promulgated thereunder.

R. “*License official*” or similar term means the director of the appropriate division within the city, or its contract providers as the context dictates.

S. “*Maliciously*” or “*malice*” means a person engages in conduct with respect to circumstances surrounding his conduct or the results of his conduct, when he is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

T. “*Manager*” means the city’s manager as the context dictates.

U. “*Misdemeanor*” means a class B misdemeanor unless another type of misdemeanor is specified.

V. “*Owner*” applied to a building or land, means and includes any person who owns any part of the building or land, wholly or as a joint tenant or tenant-in-common, or any less interest.

W. “*Person*” includes bodies politic and any individual, partnership, association, corporation, limited liability company, other entity or enterprise, or group of individuals, however styled or designated.

X. “*Personal property*” means and includes money, goods, chattels, things in action and evidences of debt.

Y. “*Police department*” “*police,*” “*law en-*

forcement authority” or similar term means the law enforcement authorities of the city, or its law enforcement contract providers as the context dictates.

Z. “*Property*” means and includes real and personal property.

AA. “*Public works department,*” “department of public works” or similar term means the department of public works of the city, or its contract providers as the context dictates.

BB. “*Real property*” means and includes lands, tenements and hereditaments.

CC. “*Sewer department,*” “*department of sewers,*” “*water department*” or similar term means the sewer department of the city, its contract providers or the applicable improvement district as the context dictates.

DD. “*State*” means the state of Utah.

EE. “*Tenant*” or “*occupant,*” applied to a building or land, mean and include any person who occupies the whole or any part of such building or land, either alone or with others.

FF. “*Willfully*” or “*willfulness,*” when applied to the intent with which an act is done or omitted, means and implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law or to injure another or to acquire any advantage.

GG. “*Writing*” or “*written*” means and includes any handwritten, typewriting, printing, electronic storage or transmission or any other method of recording information or fixing information in a form capable of being printed.

HH. “*Year*” means a calendar year unless specified otherwise.

1.08.020 Penalty for violation of code provisions.

When no other penalty is prescribed, any person convicted of violating any provision or provisions of an ordinance included in these ordinances or in any ordinances hereafter enacted, shall be deemed guilty of a misdemeanor and punishable by imprisonment in the

county jail not exceeding six months or by a fine in any sum less than \$1,000 or both, except that in all cases where a corporation is convicted of an offense for the commission of which a natural person would be punished as for a misdemeanor and there is no other punishment prescribed by the ordinance, such corporation is punishable by a fine not to exceed \$5,000.

1.08.030 Copies available for inspection.

Three copies of the ordinance or resolution imposing penalty for violating code provisions shall be on file for use and examination by the public in the offices of the city recorder.

Chapter 1.10

CONSTITUTIONAL TAKING

Sections:

- 1.10.010 Purpose.**
- 1.10.020 Definitions.**
- 1.10.030 Exclusion from chapter.**
- 1.10.040 Guidelines advisory.**
- 1.10.050 Review of decision.**
- 1.10.060 Reviewing guidelines.**
- 1.10.070 Results of review.**

1.10.010 Purpose.

The purpose of this chapter is to establish guidelines and a procedure for review of city actions that involve a physical taking or exaction of private real property that may have constitutional taking issues. 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, yet preserve the ability of the city to lawfully regulate real property and fulfill its other duties and functions.

1.10.020 Definitions.

A. “*Constitutional taking*” means actions by the city 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. Action by the city involving the physical taking or exaction of private real property is not a constitutional taking if the physical taking or exaction bears an essential nexus to a legitimate governmental interest; and is rough-

ly 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.

1.10.030 Exclusion from chapter.

This chapter shall not apply when the city formally exercises its power of eminent domain or when it regulates real property or requires payment of fees where there is no physical taking or exaction of the property.

1.10.040 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. The reviewing body or person shall not be required to make any determination under this chapter except pursuant to section 1.10.050.

1.10.050 Review of decision.

Any owner of private real property who claims there has been a constitutional taking of his private real property may 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 relative to the decision from which he is requesting review.

B. Within 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 its designee, shall immediately set a time to review the decision that gave rise to the constitutional taking

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 or 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 lend-

er, 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 city council or its designee may request additional information reasonably necessary, in its opinion, to arrive at a conclusion concerning whether there has been a constitutional taking and the amount of such taking.

E. A request for review 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 body/official above have been recorded by the city. The reviewing body/official shall promptly notify the applicant of any incomplete application.

F. The city council, or its designee, shall hear all the evidence related to and submitted by the applicant, city, or any other interested party.

G. A final decision on the review shall be rendered within 21 days from the date the complete application for review has been received by the city recorder. The decision of the city council, or its designee, 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.

H. If the city council, or its designee, fails

to hear and decide the review within 21 days, the decision appealed shall be presumed to be approved.

1.10.060 Reviewing guidelines.

The city council, or its 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 chapter. In doing so, the following shall be considered:

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 the city.

C. Whether the property and exaction taken is roughly proportionate or 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.

1.10.070 Results of review.

After completing the review, the reviewing 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.