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Section 7-100 Municipal Improvement District Act

See U.C.A. 10-16-1 et seq.

Section 7-200 Contracts For Public Improvements

Section 7-210 Bids on public Improvements

Section 7-211 Bid Required - Lowest Responsible Bidder - Exemptions - Preferred Bidders

See U.C.A. 10-7-20 for bids on municipal improvements. See U.C.A. 63-2-50 as to "Preferred Bidders."

Section 7-222 Claims for Labor Or Materials

See U.C.A. 14-1-6.

Section 7-223 Liability of Governing Body on Failure to Require Bond

See U.C.A. 14-1-7.

Section 7-300 Municipal Resources

Section 7-310 Municipal Resource Development Board

See U.C.A. 10-7-79 through 10-7-84.

Section 7-800 Public Improvements, Installation and Financing

Section 7-801 Definitions

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For the purposes of this Section that words set out in this section shall have the following meanings:

A. Capital Facilities Plan means the Capital Facilities Plan adopted by the Kanab City Council and as amended by the City Council from time to time.

B. City means Kanab City, a Utah municipal corporation.

C. Development activity means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land that creates additional demand and need for public facilities and public improvements.

D. Development approval means any written authorization from the City that authorizes the commencement of development approval.

E. Impact fee means a payment of money imposed upon development activity as a condition of development approval.

F. Project improvements means site improvements and facilities that are:

(i) Planned and designed to provide service for development resulting from a development activity; and

(ii) Necessary for the use and convenience of the occupants or users of development resulting from a development activity. "Project Improvements" does not mean system improvements.

H. Public improvements means those improvements installed which are intended to extend, expand or improve the water, power, storm drainage, sewer, roads and/or parks systems and facilities.

I. Systems Improvements means:

(i) Existing public facilities that are designed to provide services to service areas within the community at large; and

(ii) future public facilities identified in and included as part of the Capital Facilities Plan that are intended to provide services to service areas within the community at large. "System Improvements" does not mean project improvements.

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Section 7-802 Installation of Public Improvements

Subject to City ordinances and where authorized and approved by the City, developers may construct and install public improvements for new developments located within the City. No development activity shall be approved or commence unless all project and system improvements are provided to and within the development activity proposed, unless expressly exempted from a particular requirement by the City Council.

Section 7-803 Reimbursement for Oversizing Public Improvements

Where public improvements are installed which are intended to extend, expand or improve the City's public improvements beyond the public improvements required to service or benefit the subdivision or development activity proposed by the developer, the City in its discretion may enter into a written reimbursement agreement with the developer who installs the public improvement. The amount and source of the reimbursement to the developer shall be determined pursuant to a reimbursement schedule adopted by the City Council after receiving recommendations from the City Engineer. The reimbursement amount (s) for the oversized portion of the public improvements shall not exceed the actual, reasonable costs incurred in installing the oversized portion of the public improvements.

Section 7-804 Financing System Improvements

Any system improvements required, shall not paid by the City, or by a credit against the impact fees to be paid by the developer. Nothing in this Section, however, shall require the City to make system improvements except as set forth in the Capital Facilities Plan and unless and until the City Council had determined to do so. Any developer seeking to commence development activity prior to the City's commitment to participate in a project or to a provide the required system improvements may construct all of the project and system improvements and may, with the approval and at the discretion of the City Council, enter into a written

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system improvements reimbursement agreement with the City for the repayment of the actual, reasonable cost of the system improvements installed by receiving credits toward development impact fees or reimbursement from current or future impact fees as determined by the City Council.

Section 7-805 Impact Fee Assessment and Collection

The City will assess and collect adopted impact fees on all development activity on lands within the service area (s) to which the fees pertain. The City will collect adopted impact fees prior to the issuance of building permits on buildings and structures located within the project. In the event any law or decision hereafter prohibits, modifies, limits or eliminates impact fees, the City will have no obligation to assess or collect any impact fee other than those properly adopted and authorized under the then existing law and/or applicable court decisions.

Section 7-806 Credit for System Improvements

In consideration for the construction and installation be the developer of system improvements which are required by the City as a condition of approving the development activity, the City Council may in its sole discretion grant developer a credit against applicable impact fees assessed on development within developer's project as determined by the City after receiving the recommendations of the City Engineer. No credits will be granted for project improvements.

Section 7-807 Reimbursement for System Improvements

A. Pursuant to a written system improvements reimbursement agreement, reimbursement for system improvements for impact fees may, in City's sole discretion, be made to developer by the City on such basis and at such times as determined by the City, but not more often than quarterly, for the actual, reasonable costs incurred by the developer and the City. No interest shall be paid on any reimbursement amounts.

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The City will not have any obligation to make reimbursements to the developer for systems improvements until the designated impact fees are actually received by the City. Nothing herein shall require the City to reimburse the developer any amounts, at any time, until the date the City, would have installed the system improvements under the Capital facilities Plan in existence on the date of the reimbursement agreement. Developer will be obligated to hold City and its officers, employees, agents and representatives harmless from all claims and liability for any impact fee which for any reason are not collected, provided that the City has made a good faith effort to collect such impact fees. No reimbursement for system improvements will be due or paid until the system improvements have been fully installed, inspected and accepted by the City. Reimbursement will not be made by the City to the developer until developer has conveyed all required system improvements to the City by deed, bill of sale, or other instruments satisfactory to the City. The City may charge an administrative fee for actual and reasonable costs incurred by the City in administering the reimbursement agreement for system improvements and collections/disbursements thereunder. The City is free to use all impact fees collected as it deems fit, in accordance with applicable laws governing impact fees, and may, but need not, designate portions of individual impact fees to be used for reimbursement and portions for use in providing other system improvements identified in the Capital Facilities Plan.

B. The City's obligation to reimburse developers for system improvements from impact fees will expire on the date set forth in the reimbursement agreement or whenever developer's actual, reasonable costs, as approved by the City, are paid in full, whichever occurs first, unless extended in writing by the City Council.

Section 7-808 Limits On Reimbursement

Notwithstanding anything contained in this Section to the contrary, reimbursements will not be made by the City for exactions required by the City or for public improvements provided voluntarily by the developer or provided in exchange for other negotiated considerations granted to the developer or the development by the City. Unless otherwise specified

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in the reimbursement agreement, the City's obligation to make reimbursements shall terminate upon the expiration of ten (10) years from the date of the reimbursement agreement or the date the improvements would have been installed under the Capital Facilities Plan in place on the date of the reimbursement agreement, whichever is sooner. The City shall in all cases be immune and not liable for any payments to developer if reimbursement agreement is determined to be unenforceable. The reimbursement agreement shall not confer benefit upon any third party, by assignment or otherwise, and shall be in a form approved by the City Council. Responsibility to pay for all public improvements to service or benefit the subdivision or development activity proposed by the developer shall rest entirely with the developer.

Section 7-900 Procedure For The Review of Actions By Kanab City That May Have Constitutional Taking Issues

Section 7-901 Policy Considerations

There is an underlying policy in the City, strongly favoring the careful consideration of matters involving Constitutional Taking claims, in fairness the owner of private property bringing the claim and in view of the uncertainty and expenses 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 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 ordinance 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.

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Section 7-902 Definitions

1. "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:

- 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;

2. Actions by the City involving the physical taking or exaction of private real property is not Constitutional Taking if the physical taking or exaction:

- a. Bears an essential nexus to a.;
- b. Legitimate governmental interest; and,
- c. 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.

Section 7-903 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 the City's liability for a Constitutional Taking. The reviewing body or person, shall not be required to make determination under this ordinance except pursuant to Section IV.

Section 7-904 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

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of a final decision of any officer, employee, board, commission, or council. The following are specific procedures established for such a review:

1. The person requesting a review must have obtained a final and authoritative determination, internally, within the City, relative to the decision from which they are requesting review.
2. 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.
3. 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 Takings claim.
4. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:
 - a. Name of the applicant requesting review;
 - b. 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;
 - c. A detailed description of the grounds for claim that there has been a Constitutional Taking;
 - d. A detailed description of the property taken;
 - e. 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 party from whom purchased, including the relationship if any, between the person requesting a review, and the party from whom the property was acquired;

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- f. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
 - g. 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;
 - h. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to date of application;
 - i. The assessed value of and ad valorem taxes on the property for the previous three 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, price asked and offers received, if any, within the previous three years;
 - l. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility or development or utilization of the property;
 - m. For income producing property, itemized income and expense statements from the property for the previous three years;
 - n. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and
 - o. 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.
5. 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 the

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City. The reviewing body/official shall promptly notify the applicant of incomplete application.

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

7. 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 or designee regarding the results of review shall be given in writing to the applicant and the officer employee, board, commission or council that render the final decision that gave rise to the Constitutional Takings claim.

8. 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.

Section 7-905 Reviewing Guidelines

The City Council 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, 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, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject or the decision being reviewed.

Section 7-906 Results of Review

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After completing the review, the reviewing (person/body) shall make a determination regarding 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.