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### **CONSTITUTIONAL TAKING ORDINANCE for the Town of CEDAR FORT**

BE IT ORDAINED by the Town Council of the Town of Cedar Fort, Utah County, Utah, that an ordinance establishing a procedure for the review of actions by the Town of Cedar Fort that may involve Constitutional Taking issues be enacted as follows:

WHEREAS, recent changes in the Utah State Code require local governments to consider and adopt guidelines relating to potential Constitutional Taking Issues; and

WHEREAS, in light of these statutory requirements, the Town of Cedar Fort deems it to be in the best interest of it's citizens to adopt guidelines and establish a procedure for review of actions by it's officers, employees, boards, commissions, or councils that may involve the issue of a physical taking or exaction of private real property without just compensation; and

WHEREAS, said guidelines are meant to instruct and inform the Town of Cedar Fort, it's officials, employees, boards, commissions, and councils, of the standards for a Constitutional Taking and the process for review of such actions; and

WHEREAS, the guidelines are intended neither to expand nor limit the scope of any political subdivision's liability for a Constitutional Taking, nor impose any liability upon a political subdivision for failure to comply with the guidelines;

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR FORT THAT AN ORDINANCE PERTAINING TO CONSTITUTIONAL TAKING ISSUES BE ENACTED AS FOLLOWS:

#### **1.0 Policy Considerations**

There is a policy in the Town of Cedar Fort, 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 must be preserved and the public's right to require the dedication or exaction of property must be consistent with the Constitution.

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 the Town in considering such decisions, as well as guidelines for such considerations, and a review to be provided.

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 Town of Cedar Fort to lawfully regulate real property and fulfill its other duties and functions.

## **2.0 Definitions**

2.1 "Constitutional Taking" means actions by the Town of Cedar Fort involving the physical taking or exaction of private real property that might require compensation to a private real property owner because of:

2.1.1 The Fifth or Fourteenth Amendment to the Constitution of the United States;

2.1.2 Article I, Section 22, of the Utah Constitution;

2.1.3 Any court ruling governing the physical taking or exaction of private real property by a government entity;

2.2 Actions by the Town of Cedar Fort involving the physical taking or exaction of private real property is not a Constitutional Taking if the physical taking or exaction:

2.2.1 Bears an essential nexus (connection) to a legitimate governmental interest; and

2.2.2 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.

## **3.0 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 Town of Cedar Fort's 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 4.

## **4.0 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:

4.1 The person requesting a review must have obtained a final and authoritative determination, from the Town of Cedar Fort, relative to the decision from which they are requesting review.

4.2 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 Town Recorder, a request for review of that decision. A copy shall also be filed with the Town of Cedar Fort attorney.

4.3 The Town Council, or an individual, or body designated by the Town Council shall immediately set a time to review the decision that gave rise to the Constitutional Takings claim.

4.4 In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:

- 4.4.1 Name of the applicant requesting review;
- 4.4.2 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;
- 4.4.3 A detailed description of the reasons for the claim that there has been a Constitutional Taking;
- 4.4.4 A detailed description of the property taken;
- 4.4.5 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;
- 4.4.6 Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
- 4.4.7 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;
- 4.4.8 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;
- 4.4.9 The assessed value of and ad valorem taxes on the property for the previous three years;
- 4.4.10 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;

- 4.4.11 All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;
- 4.4.12 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;
- 4.4.13 For income producing property, itemized income and expense statements from the property for the previous three years;
- 4.4.14 Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and
- 4.4.15 The 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.

4.5 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 Town of Cedar Fort. The reviewing body/official shall promptly notify the applicant of any incomplete application.

4.6 The Town Council or an individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, the Town of Cedar Fort, or any other interested party.

4.7 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 Town Recorder. The decision of the Town Council regarding the results of the review shall be given in writing to the applicant and to the officer, employee, board, commission or council that rendered the final decision that gave rise to the Constitutional Takings claim.

4.8 If the Town Council fails to hear and decide the review within fourteen (14) days, the original decision of the Town shall be presumed to be approved.

## **5.0 Reviewing Guidelines**

The Town Council shall review the facts and information presented by the applicant to determine whether or not the action by the Town of Cedar Fort, constitutes a Constitutional Taking as defined in this chapter. In doing so, they shall consider:

5.1 Whether the physical taking or exaction of the private real property bears an

essential nexus (connection) to a legitimate governmental interest.

- 5.2 Whether a legitimate governmental interest exists for the action taken by the Town of Cedar Fort.
- 5.3 If the property and exaction taken is 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.

**6.0 Results of Review**

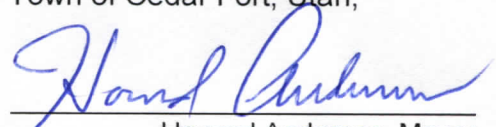
After completing the review, the reviewing person/body shall make a determination regarding the above issues and where determined to be necessary and appropriate, shall make a recommendation to the officer, employee, board, commission or council that made the decision that gave rise to the Constitutional Takings claim.

**7.0 Severability**

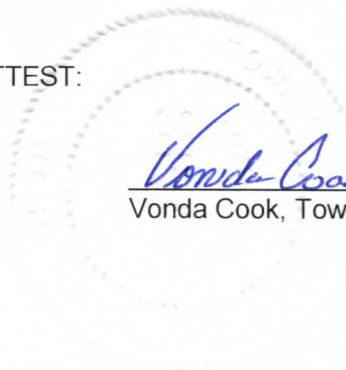

If any part of this ordinance is declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration will not affect the remaining parts, which will remain in effect.

**8.0 Effective Date**

PASSED AND ADOPTED by the Town Council of The Town of Cedar Fort, Utah,  
this 24<sup>th</sup> day of May 2016.

  
Howard Anderson, Mayor

ATTEST:

  
  
Vonda Cook, Town Clerk


Councilmember Howard Anderson	Voted <u>yea</u>
Councilmember Ellen Cibula	Voted <u>yea</u>
Councilmember Larry Mohler	Voted <u>yea</u>
Councilmember Chris Murphy	Voted <u>yea</u>
Councilmember Richard Stark	Voted <u>YEA</u>

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF UTAH                )

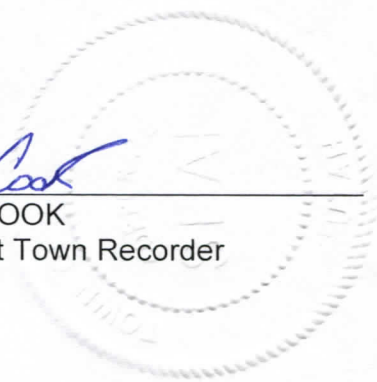
I, VONDA COOK, Town Recorder of Cedar Fort Town, Utah, do hereby certify and declare that the above and foregoing is a true, full, and correct copy of an ordinance passed by the Town Council of Cedar Fort Town, Utah, on the 24<sup>th</sup> day of May 2016, entitled

**“CONSTITUTIONAL TAKING ORDINANCE for the Town of CEDAR FORT “**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Cedar Fort Town Utah this 24<sup>th</sup> day of May 2016.

  
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VONDA COOK  
Cedar Fort Town Recorder

(SEAL)



**AFFIDAVIT OF POSTING**

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF UTAH                )

I, Vonda Cook, Town Recorder of Cedar Fort Town, Utah, do hereby certify and declare that I posted in three (3) public places the following summary of the ordinance which was passed by the Cedar Fort Town Council on the 24<sup>th</sup> day of May 2016 and herein referred to as:

**“CONSTITUTIONAL TAKING ORDINANCE for the Town of CEDAR FORT “**

**SUMMARY:**

The above named ordinance was enacted to define and describe the procedure, requirements, limitations and process of submitting and reviewing a constitution taking by the Town of Cedar Fort.

The three places are as follows:

1. Post Office
2. Town Hall
3. Cedar Valley Store

  
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Vonda Cook  
Cedar Fort Town Recorder

Date of Posting 25 May 2016