



EMINENT DOMAIN CODE FOR
ALLEGHENY COUNTY

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*Allegheny Institute Report #99-14
November 1999*

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SECTION ONE

PROPERTY OWNERS BILL OF RIGHTS

ONE Whereas it has become common for government to abuse it's eminent domain power to promote private redevelopment which tends to favor one business over another and to promote an unhealthy corporate statism which tends to ignore the dictates of the market and to unduly burden the taxpaying citizenry, it is specifically the legislative purpose of this section to confine the exercise of governmental eminent domain power within the foundational limits enumerated by the Constitution of the United States of American and the constitution of the Commonwealth of Pennsylvania.

TWO: The right of private ownership of property is recognized as a foundational freedom and a protected human right enshrined in the Fifth Amendment to the Constitution of the United States; "No person shall be deprived of property, without due process of law, nor shall private property be taken for public use, without just compensation," and in the Constitution of the Commonwealth of Pennsylvania, Article I; Section I, "All men have certain inherent and inalienable rights, among which are those of acquiring, possessing and protecting property," and Article I, Section 10, "nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured." As such, private real property rights are considered fundamental to the liberties and economic freedoms of the citizens of Allegheny County.

THREE The constitutional grants of eminent domain power as delimited in the aforesaid constitutions are to be strictly interpreted as requiring any and all private property condemned, seized and taken by the government, whether directly or indirectly, to be done so for public use only and then only with just and appropriate compensation.

FOUR As it is not the province of government to facilitate, represent, implement, or vindicate private interests or public-private investment takings, and as it is fundamental that a free market is the foundation and guarantor of economic freedom, the practice of governmental eminent domain condemnation, or threat of the same, for the gain of one or more private property owner at the expense of others is expressly prohibited and condemned as a practice violative of the Fifth and Fourteenth Amendments of the United States Constitution, and of Article I of the Constitution of the Commonwealth of Pennsylvania, regardless of whether just compensation is rendered to the affected property owner.

FIVE Private property owners have the right to be free of governmental

coercion to sell or alienate their property and shall not be so subjected or coerced by the government of Allegheny County, nor by any political subdivision, or any lesser political entity of any such political subdivision operating within Allegheny County in whole or in part, unless a compelling public interest affecting all of the citizens of the county requires the use of the county's eminent domain powers for a public necessity.

SIX The use of governmental eminent domain taking of private property for legitimate and traditional public ends such as bridge, roads, sewer, sanitation, public easements, parks, rail and air corridors, bus lines, and other necessary public infrastructure needs is recognized and respected, albeit, the constitutional requisite of just compensation shall not be infringed.

SEVEN: The citizens of Allegheny County have the right to expect that the government of Allegheny County will, as a matter of policy, respect their rights to private property ownership and will restrain itself and limit its coercive use of condemnation power through a system of checks and balances.

EIGHT: The citizens of Allegheny County are entitled to just compensation for takings indirectly and unintentionally worked by inverse condemnations or regulatory takings which may occur as the result of any officially sanctioned Allegheny County policy.

NINE: The citizens of Allegheny County are entitled to security in their property ownership and in the knowledge that every due consideration will be given to the private real property implications of every taking.

SECTION TWO

SHORT TITLE

2.1 This chapter may be cited as the Allegheny County Eminent Domain Code.

SECTION THREE

STATEMENT OF PURPOSE AND POLICY

3.1 The purpose and policy of this chapter shall be:

3.1(A) To promote the continued trust and confidence of the citizens of Allegheny County in the mission of public officials, employees and appointees of Allegheny County to protect the private property rights; and

3.1(B) To protect and safeguard and vindicate the property rights guaranteed to the citizens of Allegheny County by the Fifth and Fourteenth Amendments to the United States Constitution, and by Article I of the Constitution of the Commonwealth of Pennsylvania; and

3.1(C) To maintain a policy of liberally construing this chapter.

SECTION FOUR

DEFINITIONS

4.1 The words used in this chapter shall have their normal, accepted meanings except as set forth hereinafter in this subsection:

4.2 Private Real Property Rights Guidelines: The Eminent Domain and Condemnation Board of Allegheny County shall promulgate, or cause to be promulgated, a set of Private Real Property Rights Guidelines so as to define and identify actions or proposed or threatened actions carried out or contemplated by covered governmental entities as hereinafter defined, which actions may or may not be considered takings as contemplated by this Chapter.

4.2(A) The Private Real Property Rights Guidelines are to be promulgated by the Eminent Domain and Condemnation Board of Allegheny County and from time to time amended in a manner not inconsistent with this chapter. No

eminent domain or condemnation action is to be undertaken by any entity, agency, commission, board, or authority of Allegheny county Pennsylvania unless and until the requisites of the Private Real Property Rights Guidelines have been met.

4.3 Requisite elements of takings: The following factors shall be considered requisite elements of takings and shall at all times be factors considered in The Private Real Property Rights Guidelines to be promulgated by The Eminent Domain and Condemnation Board of Allegheny County, and in any subsequent actions undertaken by the Eminent Domain and Condemnation Board of Allegheny County:

4.3(A) A taking must concern real property or air and water rights involving real property; and

4.3(B) For a taking to be found there must be an action, or a proposed action, by a governmental entity within the confines of Allegheny county, or the County itself which threatens a taking or an implied taking which substantially threatens or impairs the private real property rights of an individual, company, corporation, religious, educational or eleemosary institution having a vested real property interest in any threatened parcel; and

4.3(C) The threatened individual, company, corporation, religious, educational or eleemosary institution must have a vested real property interest in the threatened parcel which is cognizable and not de minimis; and

4.3(D) The proposed taking must be one about to be accomplished by a covered governmental entity as hereinafter defined; and

4.3(E) A taking may be present if the proposed action to be undertaken by the governmental entity is described in section Governmental Actions Covered; and

4.3(F) For a taking to be present the proposed governmental action result in a burden on real private property

4.4 Governmental entities regulated by this Article: Private real property means an interest in real property recognized by common law, including a groundwater or surface water right of any kind, that is not owned by the federal government, the Commonwealth of Pennsylvania, the County of Allegheny, or any political subdivision within the County of Allegheny.

4.5 Governmental entity: A board, commission, council, department, agency, authority, legislative body, municipal council, board of supervisors, etc, that is created by constitution or statute and given legislative powers

whether limited or unlimited.

4.6 Covered governmental actions: The adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure which has the force of law; or

4.6(A) An action that imposes a physical invasion or requires a dedication or exaction of private real property; or

4.6(B) Enforcement of a governmental action of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure which has the force of law, whether the action is accomplished through the use of permitting, citations, orders, judicial or quasi judicial proceedings, or similar measures; or

4.7 Governmental measures exempt from the Board: The following actions by covered governmental entities shall be considered exempt from consideration as takings.

4.7(A) A lawful forfeiture or seizure of property as evidence of a crime or violation of the law; or

4.7(B) An action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by state or County law; or

4.7(C) The discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property; or

4.7(D) An action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by the background principals of nuisance and property law in the Commonwealth of Pennsylvania; or

4.7(E) An action taken out of a reasonable good faith that the action is necessary to prevent a grave, real, substantial and immediate threat to life and or property or to public health and safety; or

4.7(F) A formal exercise of the power of eminent domain consistent with the rules, regulations and guidelines in this Chapter; or

4.7(G) A rule, administrative action or proclamation of this county or

an political subdivision thereof adopted for the purposes of regulating and ensuring the general public safety and welfare, to regulate construction sites, traffic patterns, carry out police measures, ensure law enforcement, and regulate sewage facilities; or

4.7(H) Appraisal of property for the purposes of taxation.

SECTION FIVE

ESTABLISHMENT OF THE EMINENT DOMAIN AND CONDEMNATION BOARD OF ALLEGHENY COUNTY

5.1 This Article establishes and empowers the Eminent Domain and Condemnation Board of Allegheny County, Pennsylvania. In this body shall be vested numerous plenary powers to review, enjoin, direct, modify, and if necessary obviate as appropriate with full due process application, any and all exercises of proposed or actual eminent domain and condemnation proceedings and of governmental actions resulting in or promising to result in a taking of private real property within Allegheny County, in whole or in part, which is threatened by any political subdivision, agency, board, commission, authority, of Allegheny County itself. It is not the purpose of this Article, in creating said Board, to bring a halt to all uses of eminent domain and condemnation proceedings in Allegheny County. This Article expressly contemplates innumerable circumstances under which a traditional exercise of eminent domain authority by governmental action, consistent with constitutional property rights and the laws and constitutions of The United States and the Commonwealth of Pennsylvania can occur. It is, rather, expressly the legislative purpose of this Article to prevent governmental abuse of eminent domain powers, restore a necessary foundational system of checks and balances to the eminent domain process, and to ensure that any takings by governmental action within Allegheny County are carried out only after full vindication of the constitutional rights of the citizens of Allegheny County.

SECTION SIX

COMPOSITION OF THE EMINENT DOMAIN AND CONDEMNATION BOARD OF ALLEGHENY COUNTY

6.1 Composition: The Eminent Domain and Condemnation Board of Allegheny County will consist of eleven voting members, including the

Chairman.

6.2 Chairman: The County Executive shall appoint the Chairman of the Eminent Domain and Condemnation Board subject to the confirmation of County Council by a full majority. The term of the Chairman shall be ten years, or ten years plus any unexpired term of a predecessor Chairman's uncompleted term. The Chairman of the Eminent Domain and Condemnation Board shall serve only one full term. In no case shall a Chairman of the Eminent Domain and Condemnation Board serve more than fifteen years. A successor Chairman of the Eminent Domain and Condemnation Board may have served a previous term, or terms, as a member of the Eminent Domain and Condemnation Board. The Chairman of the Board of the Eminent Domain and Condemnation Board may be removed from his or her position for cause shown should a full majority of members of County Council deem such action to be necessary and appropriate as hereinafter specified in this Article

6.3 Members: The ten regular members of the Eminent Domain and Condemnation Board shall be appointed by County Council, subject to the approval, or veto, of the County Executive.

6.4 Voting powers: Each member of the Eminent Domain and Condemnation Board, including the Chairman, shall be a voting member.

6.5 Terms: Each regular member of the Eminent Domain and Condemnation Board shall serve a term of four years. At the conclusion of a four year term a regular member of the Eminent Domain and Condemnation Board may be reappointed to a second term in accordance with the provisions of his or her original appointment. In no case shall a regular member of the Eminent Domain and Condemnation Board serve more than two full terms. A regular member of the Eminent Domain and Condemnation Board may be removed from the Board for cause shown should a full majority of members of County Council deem such action to be necessary and appropriate as hereinafter specified in this Article. The terms of the initial members shall be staggered in the following manner:

6.5(A) Five of the original members, as selected by County Council, shall serve for two years, and then shall be eligible to be reappointed to a full four year term, and shall be eligible to be appointed to a second four year term, and shall be permitted to serve a total of ten years on the Eminent Domain and Condemnation Board.

6.5(B) Five of the original members, as selected by County Council shall commence full four-year terms, and shall be eligible to be appointed to a second four-year term.

6.6 Criminal conviction disqualification: Any individual person convicted

of a felony or a misdemeanor within the Commonwealth of Pennsylvania or elsewhere at any time shall be ineligible to serve on the Eminent Domain and Condemnation Board

6.7 Residency and registration requirements: At all times while serving on Eminent Domain and Condemnation Board of Allegheny County, the individual appointees shall be registered voters and residents within Allegheny County.

6.8 Compensation and reimbursement: The members of the said Eminent Domain and Condemnation Board shall serve without pay during their time on the Commission, but nothing in this Article shall prohibit any member from submitting recognized expense vouchers for reimbursement for any reasonable expenses incurred by a member while on the legitimate business of the Eminent Domain and Condemnation Board so long as said expense has a cognizable connection to the business of the Board.

6.9 Quorum: Seven members of the Eminent Domain and Condemnation shall constitute a quorum for the transaction of business and a majority vote of those present at any meeting is sufficient for any official action, except as otherwise provided herein.

6.10 Special Meeting: The Chair of Eminent Domain and Condemnation Board or any eight (8) members of the Board may call a special meeting of the commission.

SECTION SEVEN

VACANCY, REMOVAL, RELINQUISHMENT

7.1 Vacancy: A vacancy in the office of member of said Eminent Domain and Condemnation Board shall be filled in the same manner as used in the making of the original appointment. A person appointed to fill a vacancy serves for the remainder of the term. Vacancies shall be filled by County Council, or, in the case of a vacancy in the office of Chairman, by the County Executive, with all deliberate speed.

7.2 Removal: At any time, by majority vote of the County Council, any members of the Accountability, Conduct and Ethics Commission may be dismissed from office for such good cause as may be deemed sufficient, including but not limited to, engaging in conduct which tends to cast disrepute upon Allegheny County, engaging in prohibited political activity, conflict of interest, conviction of a crime, violation of any provision of Allegheny County's code, and such other reasons and misdemeanors which County Council

finds inconsistent with the ethical standards or the laws of the Commonwealth of Pennsylvania or the United States.

7.3 Absenteeism: Absence without excuse from three (3) successive meetings of the said Eminent Domain and Condemnation Board shall constitute a voluntary relinquishment of office and create a vacancy which shall be filled in the same manner as used in the making of the original appointment.

SECTION EIGHT

CONDITIONS OF SERVICE ON THE EMINENT DOMAIN AND CONDEMNATION BOARD;
RESTRICTIONS ON POLITICAL ACTIVITIES; DISCLOSURE OF CONFLICT OF INTEREST;
GENERAL POWERS

8.1 General powers: The Eminent Domain and Condemnation Board of Allegheny County shall have the power and the responsibility at all times to adopt rules and regulations of procedures of operations to ensure the efficacious operation of the said Board, so long as the same rules, regulations and procedures are not inconsistent with the expressed intent of this Article, and do not contravene any other portions of the Allegheny County Code, and are duly ratified by the County Council and the County Executive.

8.2 Duty to exercise fair, independent and impartial judgment: Any individual selected to serve as a member, or as Chairman, or as an employee, or appointee of the Eminent Domain and Condemnation Board of Allegheny County shall be required to be sworn into office with an oath of fealty to the ethics code of Allegheny County and to the Constitutions of the United States and of the Commonwealth of Pennsylvania, and shall be required to uphold the most stringent standards of ethics while so serving. Each member, chair or employee of the Eminent Domain and Condemnation Board is expected to maintain sufficient standards of personal probity and respectful conduct toward others that the integrity of the Eminent Domain and Condemnation Board shall be maintained.

8.3 Protection of constitutional rights: Any individual selected to serve as a member, or as Chairman, or as an employee, or appointee of the Eminent Domain and Condemnation Board of Allegheny County is expected to bear himself, or herself, in office as to at all times exercise clear, independent judgment toward the discharge of his or her duties and toward protecting the constitutional rights of the citizens of Allegheny County.

8.4 Requirement of disclosure of pecuniary interest and financial statements:

At all times the members, employees and appointees of the Eminent Domain and Condemnation Board of Allegheny County shall be cognizant of the overweening public need for confidence in the workings of County Government and so will comply with the Accountability, Conduct and Ethics Code of Allegheny County by complying with all required ethics filings and disclosing any and all necessary financial information and business connections as would conceivably render the member, employee, or appointee unable to impartially discharge his or her duties.

8.5 Internal ethics rules: The Eminent Domain and Condemnation Board of Allegheny County in its discretion may, from time to time adopt Its own ethics disclosure rules native to the Eminent Domain and Condemnation Board, such as those mandated in this chapter, which may be even more stringent, but may not be less so, than those adopted by the Accountability and Conduct and Ethics Commission of Allegheny County.

8.6 Requirement of Avoidance of Conflict of Interest: In addition to compliance with the Accountability, Conduct and Ethics Code of Allegheny County, at all times the members, employees and appointees of the Eminent Domain and Condemnation Board of Allegheny County are required, as a minimum to report to the Eminent Domain and Condemnation Board and to the Accountability, Conduct and Ethics Commission, when the member, employee, or appointee, or a member of his or her immediate family holds a position in any entity, business, company, corporation engaged in any transaction with the County, whether as contractor or vendor or property owner, or leaseholder, and shall disclose the name of the person or family member holding the affected position, and shall disclose the name and address of the entity, and, if known, the name of each County agency with which the entity is involved.

8.7 Real property ownership disclosure: In addition to compliance with the Accountability, Conduct and Ethics Code of Allegheny County, at all times the members, employees and appointees of the Eminent Domain and Condemnation Board of Allegheny County are required, as a minimum to report to the Eminent Domain and Condemnation Board and to the Accountability, Conduct and Ethics Commission, disclosing addresses and legal descriptions of all real property in the County in which the member, employee and appointee or a member of the member's, employee's and appointee's immediate family held a direct financial interest, including the disclosure of limited partnerships and other partnerships in real property and disclosure of the names and addresses of partners in real property.

8.8 County contractor disqualification: At all times the members, employees and appointees of the Eminent Domain and Condemnation Board of Allegheny County are ineligible to serve as an employee of any business, corporation, company or entity which either directly or indirectly operates as a

contractor doing business with Allegheny County.

8.9 Lobbyist disqualification: Members, employees and appointees of the Eminent Domain and Condemnation Board of Allegheny County are ineligible to serve as a lobbyist with any business entity doing business or serving as a contractor with Allegheny County for one year following separation from the Board.

8.10 Conflict of interest reviews: The County Solicitor and or Counsel for the Accountability, Conducts and Ethics commission may conduct special reviews of potential conflicts of interest among the members, employees and appointees of the Eminent Domain and Condemnation Board of Allegheny County and may issue advisory, and cautionary opinions as a prophylactic measure. Such reviews shall be governed by the rules and regulations set forth in the article pertaining to the Accountability, Conduct and Ethics Code of Allegheny County.

SECTION NINE

PROHIBITION ON POLITICAL ACTIVITY AND LOBBYING, AND PROHIBITION ON OUTSIDE PUBLIC INTEREST ACTIVITY

9.1 Prohibition of political activity: At no time during full time employment with Allegheny County, shall any individual appointee, employee or office holder:

9.1(A) Serve or have served as an employee, public office holder, or appointee, of any municipal or governmental entity, or any authority, or governmental board, or commission, with the exception of other governmental or academic ethics boards or commissions; nor

9.1(B) Serve or have served as an employee of any business, corporation, company or entity which either directly or indirectly operated as a contractor doing business with Allegheny County; nor

9.1(C) Hold or campaign for elective office; nor

9.1(D) Serve as an office holder or official of any kind in any partisan political organization, or any political party, or any political committee, or participate as an official in any capacity in any partisan political campaign; nor

9.1(E) Campaign for or have campaigned for partisan public office of any kind, paid or unpaid, official or unofficial, including the position of

delegate to any national or state party convention; nor

9.1(F) Permit his or her name to be used, or make contributions in support of or in opposition to any candidate or proposition or initiative or ballot question or referendum; nor

9.1(G) Participate in any election campaign in any way, including donating space on any part of any property owned for the purpose of installation or erection of political signs; nor

9.1(H) Participate in any committee that provides ratings of candidates for office; nor

9.1(I) Own or run a PAC, or serve as an officer of a PAC, nor make or receive or solicit PAC contributions, nor

9.1(J) Lobby or contract to or with a lobbyist, or assist a lobbyist, or be paid by a lobbyist.

9.2 As it is possible that any landowning or leaseholding entity of any kind, private or public, could conceivably be involved in a landowning and regulatory dispute, at no time while serving on or for the Eminent Domain and Condemnation Board of Allegheny County, shall any individual appointee, member, or employee serve as an employee, public officeholder, or appointee of any municipal or governmental board, authority, agency or commission, or serve as any officeholder, or appointee of any private educational, charitable, or religious institution.

SECTION TEN

POWERS AND DUTIES OF THE EMINENT DOMAIN AND CONDEMNATION BOARD

10.1 The Eminent Domain and Condemnation Board of Allegheny County shall have all reasonable powers at law to fulfill its mandate to preserve and protect individual constitutional rights in eminent domain and condemnation actions to provide foundational checks and balances, to publish and enforce its findings, rulings and sanctions, including but not limited to:

10.1(A) Authority to conduct preliminary investigations subject to a request for a Takings Impact Assessment, to call and conduct public hearings, to administer oaths and affirmations, to make and file transcripts of all proceedings, to conduct all proceeding under oath; and

10.1(B) Temporary injunctive authority to order a governmental subdivision, entity, town, municipality city, or any authority, board or commission or agency of any political subdivision to refrain from pending action which has preliminarily certified to warrant a Takings Impact Assessment; and

10.1(B) Investigative and discovery powers, which include the power to secure production of documents, papers, letters, accounts, books, records, software and hardware, and to compel discovery and testimony and attendance of persons by subpoena; and

10.1(C) To make findings as warranted, to make reports, findings of fact, issue Takings Impact Assessments, and publish advisory opinions and the conclusions and orders of the Board, and

10.1(D) To sue and be sued, to commence any and all necessary legal action in a court of appropriate jurisdiction to enforce any order or injunction or finding of and by the Board, either preliminary or final, to vindicate and ensure the mandate of the Board, and

10.1(E) To retain, as deemed necessary and prudent, expert and consultative services and make such expenditures as are consistent with this section.

10.2 Staff: The Board shall have the power to employ staff attorneys and such subsidiary paralegal or investigative personnel as deemed necessary and as authorized by the County council and the County Executive to be proper and appropriate.

10.3 Records: The Eminent Domain and Condemnation Board of Allegheny County shall keep and maintain all records and communications pertaining to the business of the commission.

10.4 Open meetings compliance: At all times the operation of the Eminent Domain and Condemnation board, its staff, employees, investigators appraisers and consultants shall comply with the open records and meetings laws of the Commonwealth of Pennsylvania, with the exception that the normal routine of business and the initial review of complaints may be kept confidential as hereinafter provided under this section.

SECTION ELEVEN

EXECUTIVE DIRECTOR AND STAFF OF THE EMINENT DOMAIN AND CONDEMNATION BOARD

11.1 Executive Director: The Eminent Domain and Condemnation Board shall, subject to confirmation by County Council, appoint a full time

Executive Director, and such subordinate personnel as warrants, whose executive functions, and duties shall be to supervise the day-to-day operations of the Eminent Domain and Condemnation Board, and who shall, under the supervision of the Board, enforce and implement Board policy and edict, prepare a budget for the approval of County Council including supervise and recommend staff, conduct educational efforts, coordinate investigative efforts and direct litigation..

11.2 Solicitor: The Eminent Domain and Condemnation Board shall, subject to confirmation by County Council, appoint a full time solicitor, who may from time to time employ such assistant counsel, investigators, appraisers, expert witnesses and consultants as are reasonably necessary to enable investigations and the preparations and publications of Takings Impact Assessments, and to prepare, file, litigate, publish, enforce, appeal, defend and secure compliance with findings, injunctions, and orders of the Eminent Domain and Condemnation Board.

SECTION TWELVE

PROCEEDINGS, PRELIMINARY INVESTIGATIONS, TAKINGS IMPACT ASSESSMENTS AND HEARINGS BEFORE THE EMINENT DOMAIN AND CONDEMNATION BOARD

12.1 Initiation of eminent domain review: The review and activity and authority and jurisdiction and fact finding and injunctive power of the Eminent Domain and Condemnation board shall be invoked upon the occurrence of one or more of the following events:

12.1(A) Upon receipt of a request for relief or a complaint from a property owner, or adjacent or contiguous property owner threatened or reasonably believed to be threatened in the secure ownership of his land and aggrieved by the action or proposed action of a governmental entity, political subdivision, agency, board, commission or authority of the same within, Allegheny County in whole or in part, and including Allegheny County,

12.1(B) Upon own motion review and initiative, staff counsel for the Eminent Domain and Condemnation Board may conduct a preliminary inquiry into the facts and circumstances of an actual or proposed excessive taking by the action or proposed action of a governmental entity, political subdivision, agency, board, commission or authority of the same, within Allegheny County in whole or in part, and including Allegheny County,

12.1(C) Upon receipt of a request for relief or a complaint from a public official who reasonably believes an actual or proposed excessive taking by

the action or proposed action of a governmental entity, political subdivision, agency, board, commission or authority of the same, within Allegheny County in whole or in part, and including Allegheny County, may be an excessive taking which warrants investigation.

12.1(D) Upon receipt of a request for relief or a complaint from a citizen or citizen group with standing, who reasonably believes an actual or proposed excessive taking by the action or proposed action of a governmental entity, political subdivision, agency, board, commission or authority of the same, within Allegheny County in whole or in part, and including Allegheny County, may be an excessive taking which warrants investigation.

12.2 Preliminary inquiry: Upon receipt of such complaint, request for relief, or other inquiry, the Executive Director of the Eminent Domain and Condemnation Board shall direct counsel and staff to conduct a preliminary investigation to determine if a Takings Impact Assessment recommendation is warranted.

12.2(A) Staff Counsel and the Commission shall keep information, complaints, records, conversations and proceedings relating to a preliminary inquiry confidential.

12.2(B) Staff Counsel shall complete the preliminary inquiry within sixty (60) days of its initiation.

12.2(C) During the preliminary inquiry the Staff Counsel has the authority to assign investigative tasks to conduct interviews with involved parties, including the complainant and the alleged violator, to examine records kept in the normal course of business by any office or agency of Allegheny County. The Counsel cannot compel testimony or issue subpoenas at this stage.

12.3 If a preliminary investigation fails to establish a need for a Takings Impact Assessment report, the Executive Director shall certify that no further action need be taken and the Eminent Domain and Condemnation Board shall notify all parties that the investigation has been terminated.

12.4 The Board may issue, adopt and publish advisor opinions based upon such findings that a certain circumstance investigated did not rise to the level of a Takings Impact Assessment.

12.5 Takings Impact Assessment: If a preliminary inquiry establishes probable cause to believe that an or excessive taking may be threatened against a private real property owner and that a Takings Impact Assessment is appropriate, the legal staff and the Executive Director of the Eminent Domain and Condemnation board shall certify to the full body of the Eminent Domain and Condemnation board that a putative taking appears imminent and individual

constitutional rights of private real property ownership are threatened. The Eminent Domain and Condemnation Board may, by majority vote, initiate a full investigation to determine if a Takings Impact Assessment is required.

12.5(A) The initiation of a Takings Impact Assessment shall be by a favorable majority vote of the members present and voting at a duly called and open meeting of the Eminent Domain and Condemnation Board. The Board shall thereby request the Executive Director to issue an injunctive notice for tendency of a Takings Impact Assessment, to the governmental entity which is the subject jurisdiction of the complaint of wrongful taking that an investigation has opened and request that said jurisdiction shall voluntarily refrain from taking any further action on the governmental taking action for a period of 90 days, during which a Takings Impact Assessment will be conducted and completed. Upon the issuance of the order The Eminent Domain and Condemnation board shall commence a full investigation by notifying the governmental unit, agency, political subdivision.

12.5(B) The constitutional protections of private property enumerated in the Constitutions of the United States of America and the Constitution of the Commonwealth of Pennsylvania shall not be deemed fully vindicated without the preparations of a takings impact assessment, and no eminent domain powers shall be exercised, no condemnation proceedings shall be commenced, and no property shall be encumbered nor the private real property rights of any citizen of Allegheny County, Pennsylvania be infringed unless and until a such a takings impact assessment shall have been completed as consistent with the standards set forth in this chapter.

12.5(C) Factors considered in the takings impact assessment shall include, but not be limited to the following:

12.5(C)(1) Whether engaging in the proposed governmental action will constitute a "taking"; and

12.5(C)(2) Whether the proposed covered governmental action significantly burdens private real property; and

12.5(C)(2)(a) Whether the proposed covered governmental action has or threatens a significant impact on the property owner's economic interest; and

12.5(C)(2)(b) Whether the proposed covered governmental action has or threatens to diminish the value of the property before and after the action; and

12.5(C)(2)(c) Whether the proposed covered governmental action results indirectly or directly in a permanent or temporary physical occupation of private real property; and

12.5(C)(2)(d) Whether the proposed governmental action requires a property owner to dedicate a portion of private real property or to grant an easement; and

12.5(C)(2)(d)(1) Whether the dedication is reasonably and specifically designed to prevent or compensate for adverse impacts of the proposed development; and

12.5(C)(2)(d)(2) Whether the magnitude of the burden placed on the proposed development is reasonably related to the adverse impacts created by the development; and

12.5(C)(2)(e) Whether the proposed covered governmental action deprives the owner of all economically viable uses of the property; and

12.5(C)(2)(f) Whether the covered governmental action decreases the market value of the affected private real property by 25% or more; and

12.5(C)(2)(g) Whether the proposed covered governmental action denies a fundamental attribute of ownership such as the right to exclude others, possess, and or to dispose of all or a portion of the property.

12.5(C)(3) Whether the burdens imposed on private real property are outweighed by the benefits to the community as a whole resulting from the proposed use of private real property; and

12.5(C)(3)(a) Whether the proposed covered governmental action benefits society as a whole; and

12.5(C)(3)(b) Whether the action in question substantially advance a public interest; and

12.5(C)(3)(c) Whether the governmental action serves the same purpose that would be served by directly prohibiting the use or action; and

12.5(C)(3)(d) Whether the condition imposed substantially advances a social purpose; and

12.5(C)(3)(e) Whether and how the proposed governmental action substantially advances its stated purpose.

12.5(C)(4) Whether the governmental entity has available to it reasonable alternative actions to the proposed governmental action that could accomplish the specified purpose; and

12.5(C)(4)(a) Whether the reasonable alternative actions would

accomplish or further the specified purpose; and

12.5(C)(4)(b) Whether an alternative action would constitute a taking

12.6 Authority to sue: The eminent domain and condemnation board will have the power to recommend to County Council that suit be brought by the County of Allegheny to halt any proposed taking by any subsidiary municipality in Allegheny County, or contiguous municipality which threatens a taking of any real property or parcel of the same where any portion of said property or parcel lies within the confines of Allegheny County. Such notice to the political subdivision, town borough, township, etc, shall advise said subdivision that the Eminent Domain and Condemnation Board has equitable powers to issue, seek and enforce injunctive powers to enforce its request for time to complete the takings Impact assessment. Service of the notice is complete upon mailing, which shall be by certified, or registered mail. The Board shall notify the governmental entity within seventy-two (72) hours of the commencement of an investigation.

12.7 Time: The staff of the Eminent Domain and Condemnation Board shall, within 90 days of the initiation of a Takings Impact Assessment issue the Takings Impact Assessment, together with pertinent findings. Upon a by the solicitor for the Board of a need for the extension of this period, the Board may extend an investigation for no more than a second (90) day period, provided that the ninety (90) day extension shall be approved by a majority vote of Board members present. In no event shall Takings Impact Assessment be issued later than 180 days after initiation of an investigation. Any injunction issued by the Eminent Domain and Condemnation Board shall be void after 180 days unless a Takings Impact Assessment has been completed and a full hearing commenced.

12.8 Investigative powers: The staff of the Eminent Domain and Condemnation Board shall conduct a full investigation and shall have available to them the full powers of the Eminent Domain and Condemnation Board as set forth within this Article, and shall be empowered to employ such investigators, consultants, appraisers and auditors as needed to prepare a comprehensive and complete Takings Impact Assessment. Said Takings Impact Assessment shall include such valuation estimates and reports touching the private real property so as to furnish the Board with sufficient information to conclude if the property owner is receiving just recompense for his or her property.

12.9 Findings and Publication of Takings Impact Assessment: The, Eminent Domain and Condemnation Board, upon completion of the Takings Impact Assessment, shall issue and publish such Takings Impact Assessment as a public findings report with the formal recommendation for action and or inaction as supported by the pertinent findings of fact. The Board shall

issue an order based upon the Takings Impact Assessment and shall, in said order, either, approve, modify, or overrule the proposed governmental action which was alleged as a wrongful taking, or take and publish such other action and grant such relief, including injunctive relief as may otherwise be appropriate.

12.10 Hearings: Any aggrieved party with standing shall have the right to respond to the findings and Takings Impact Assessment and to request an evidentiary hearing before the Eminent Domain and Condemnation Board. The Board shall grant any request for a hearing. Any request for a full hearing and or a response to a Takings Impact Assessment shall fully set forth, by corresponding number and letter, the reasons assigned for dispute of the Takings Impact Assessment. Matters not specifically denied in the response shall be deemed admitted. The response shall be filed within thirty (30) days of the issuance of the Takings Impact Assessment unless the Board, for good cause shown, extends the time period. Hearings conducted by request shall be instituted within forty-five (45) days after the filing of the request for hearing or response to the Takings Impact Assessment.

12.10(A) Hearings conducted pursuant to this section shall be open to the public. Any person who appears before the Eminent Domain and Condemnation Board shall have all of the due process rights, privileges and responsibilities of a party or witness appearing before an administrative agency of the commonwealth of Pennsylvania. All witnesses summoned for hearing shall receive reimbursement for reasonable expenses in accordance with 42 PA.C.S.A. Section 5903 (relating to compensation and expenses of witnesses). At the conclusion of a Takings Impact Assessment hearing concerning an alleged violation, and in a timely manner, the Board shall deliberate on the evidence and shall issue its decision together with such action recommendations and orders it deems appropriate under the circumstances. The determination of the Board, in the form of a final order and findings of fact, shall be a matter of public record.

12.11 Orders: Within thirty (30) days of the receipt by the Eminent Domain and Condemnation Board of the hearing record, or, if no hearing was held, within thirty (30) days of the receipt by the Board of the Takings Impact Assessment, the Board shall issue an order and opinion which shall be final. Orders may:

12.11(A) Find that an unconstitutional taking has or was about to occur; or

12.11(B) Approve the taking and allow the taking to proceed; or

12.11(C) Permanently enjoin the taking; or

12.11(D) Modify the taking; and

12.11(E) Calculate and determine appropriate compensation.

12.11(F) Withhold any participation by Allegheny County in any Tax Increment Financing proposal extended by any other municipality within Allegheny County.

12.12 Required majority vote: Any vote of approval by the Eminent Domain and Condemnation Board of any taking, including conditional approval of a taking with modifications, shall be by vote of no less than seven (7) of the members of the Eminent Domain and Condemnation Board.

12.13 Appeal: Any person aggrieved by an opinion or order of the Eminent Domain and Condemnation Board which becomes final in accordance with the provisions hereof who has direct interest in the opinion or order shall have the right to appeal there from in accordance with law and general rules and the administrative procedure acts of the Commonwealth of Pennsylvania. The recommendations of investigations by the staff of the Eminent Domain and Condemnation Board into whether a Takings Impact Assessment should be undertaken, or the recommendations and conclusions of a Takings Impact Assessment shall be considered a decision within the investigatorial and administrative discretion of the Eminent Domain and Condemnation Board and therefore not appealable. The issuance of an injunctive order to cease and desist taking during the pendency of a Takings Impact Assessment is not appealable.