

CHAPTER 177

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**GOVERNMENT - LOCAL**

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**SENATE BILL 99-218**

BY SENATORS Anderson, Andrews, Congrove, Epps, Evans, Hillman, Lamborn, Musgrave, Owen, Powers, and Tebedo;  
also REPRESENTATIVES Stengel, Lee, McPherson, Paschall, Piffner, Spence, and T. Williams.

**AN ACT**

CONCERNING PROCEDURES TO ALLEVIATE REGULATORY IMPAIRMENT OF PROPERTY RIGHTS.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 20 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2  
REGULATORY IMPAIRMENT OF PROPERTY RIGHTS**

**29-20-201. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) THE RIGHT TO OWN AND USE PRIVATE PROPERTY IS A FUNDAMENTAL RIGHT, ESSENTIAL TO THE CONTINUED VITALITY OF A DEMOCRATIC SOCIETY;

(b) GOVERNMENTAL REGULATION OF CONDUCT, WHILE EQUALLY ESSENTIAL TO PUBLIC ORDER AND THE PRESERVATION OF UNIVERSALLY HELD VALUES, MUST BE CARRIED OUT IN A MANNER THAT APPROPRIATELY BALANCES THE NEEDS OF THE PUBLIC WITH THE RIGHTS AND LEGITIMATE EXPECTATIONS OF THE INDIVIDUAL; AND

(c) THIS PART 2 APPROPRIATELY AND NECESSARILY UNDERSCORES AND REINVIGORATES THE FEDERAL CONSTITUTIONAL PROHIBITION AGAINST TAKING PRIVATE PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION AND THE STATE CONSTITUTIONAL PROHIBITIONS AGAINST TAKING OR DAMAGING PRIVATE PROPERTY FOR PUBLIC OR PRIVATE USE.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT AN INDIVIDUAL

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

PRIVATE PROPERTY OWNER SHOULD NOT BE REQUIRED, UNDER THE GUISE OF POLICE POWER REGULATION OF THE USE AND DEVELOPMENT OF PROPERTY, TO BEAR BURDENS FOR THE PUBLIC GOOD THAT SHOULD MORE PROPERLY BE BORNE BY THE PUBLIC AT LARGE.

(3) THE GENERAL ASSEMBLY INTENDS, THROUGH THE ADOPTION OF SECTION 29-20-203, TO CODIFY CERTAIN CONSTITUTIONALLY-BASED STANDARDS THAT HAVE BEEN ESTABLISHED AND APPLIED BY THE COURTS. THE FAIR, CONSISTENT, AND EXPEDITIOUS ADJUDICATION OF DISPUTES OVER LAND USE IN STATE COURTS IN ACCORDANCE WITH CONSTITUTIONAL STANDARDS IS A MATTER OF STATEWIDE CONCERN.

**29-20-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "LAND-USE APPROVAL" MEANS ANY FINAL ACTION OF A LOCAL GOVERNMENT THAT HAS THE EFFECT OF AUTHORIZING THE USE OR DEVELOPMENT OF A PARTICULAR PARCEL OF REAL PROPERTY.

(2) "LOCAL GOVERNMENT" HAS THE SAME MEANING AS SET FORTH IN SECTION 29-20-103 (1).

**29-20-203. Conditions on land-use approvals.** (1) IN IMPOSING CONDITIONS UPON THE GRANTING OF LAND-USE APPROVALS, NO LOCAL GOVERNMENT SHALL REQUIRE AN OWNER OF PRIVATE PROPERTY TO DEDICATE REAL PROPERTY TO THE PUBLIC, OR PAY MONEY TO A PUBLIC ENTITY IN AN AMOUNT THAT IS DETERMINED ON AN INDIVIDUAL AND DISCRETIONARY BASIS, UNLESS THERE IS AN ESSENTIAL NEXUS BETWEEN THE DEDICATION OR PAYMENT AND A LEGITIMATE LOCAL GOVERNMENT INTEREST, AND THE DEDICATION OR PAYMENT IS ROUGHLY PROPORTIONAL BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE PROPOSED USE OR DEVELOPMENT OF SUCH PROPERTY. THIS SECTION SHALL NOT APPLY TO ANY LEGISLATIVELY FORMULATED ASSESSMENT, FEE, OR CHARGE THAT IS IMPOSED ON A BROAD CLASS OF PROPERTY OWNERS BY A LOCAL GOVERNMENT.

(2) NO LOCAL GOVERNMENT SHALL IMPOSE ANY DISCRETIONARY CONDITION UPON A LAND-USE APPROVAL UNLESS THE CONDITION IS BASED UPON DULY ADOPTED STANDARDS THAT ARE SUFFICIENTLY SPECIFIC TO ENSURE THAT THE CONDITION IS IMPOSED IN A RATIONAL AND CONSISTENT MANNER.

**29-20-204. Remedy for enforcement against a private property owner.**

(1) (a) WITHIN THIRTY DAYS AFTER THE DATE OF A DECISION OR ACTION OF A LOCAL GOVERNMENT IMPOSING A CONDITION IN GRANTING A LAND-USE APPROVAL, THE OWNER OF SUCH PROPERTY MAY NOTIFY THE LOCAL GOVERNMENT IN WRITING OF AN ALLEGED VIOLATION OF SECTION 29-20-203.

(b) UPON THE FILING OF SUCH WRITTEN NOTICE, THE LOCAL GOVERNMENT SHALL INFORM EACH MEMBER OF THE GOVERNING BODY IN WRITING THAT THE NOTICE HAS BEEN FILED. THE LOCAL GOVERNMENT SHALL RESPOND TO SUCH NOTICE WITHIN THIRTY DAYS AFTER THE DATE OF SUCH NOTICE BY INFORMING THE PROPERTY OWNER WHETHER SUCH APPLICATION OR ENFORCEMENT WILL PROCEED AS PROPOSED, WILL BE MODIFIED, OR WILL BE DISCONTINUED. THE FILING OF SUCH NOTICE SHALL BE A

CONDITION PRECEDENT TO THE OWNER'S RIGHT TO PROCEED UNDER SUBSECTION (2) OF THIS SECTION.

(2) (a) WITHIN SIXTY DAYS AFTER THE DATE THE LOCAL GOVERNMENT IS REQUIRED TO RESPOND UNDER PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THE PROPERTY OWNER MAY FILE A PETITION IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE SUBJECT PROPERTY IS LOCATED SEEKING RELIEF FROM THE ENFORCEMENT OR APPLICATION OF THE LOCAL LAW, REGULATION, POLICY, OR REQUIREMENT ON THE BASIS OF AN ALLEGED VIOLATION OF SECTION 29-20-203. FAILURE TO FILE SUCH A PETITION WITHIN SAID SIXTY-DAY PERIOD SHALL BAR RELIEF UNDER THIS SECTION.

(b) (I) WITHIN THIRTY DAYS AFTER SERVICE ON THE LOCAL GOVERNMENT OF A PETITION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE LOCAL GOVERNMENT SHALL ASSEMBLE AND FILE WITH THE CLERK OF THE DISTRICT COURT ALL DOCUMENTS IN ITS POSSESSION CONCERNING THE ENFORCEMENT OR APPLICATION OF THE LOCAL LAW, REGULATION, POLICY, OR REQUIREMENT, INCLUDING THE RECORD OF ANY HEARING OR PROCEEDING CONCERNING SUCH ENFORCEMENT OR APPLICATION. IF THERE ARE NO CONTESTED FACTUAL ISSUES AND IF THE COURT DETERMINES THAT THE FACTS AS REFLECTED BY THE DOCUMENTS AND RECORD FILED ARE SUFFICIENT TO DETERMINE THE CASE, THE COURT SHALL PROCEED TO DETERMINE THE CASE IN THE MOST EXPEDITIOUS MANNER AND SHALL ISSUE APPROPRIATE PROCEDURAL ORDERS TO FACILITATE SUCH DETERMINATION.

(II) IF THERE ARE CONTESTED ISSUES OF FACT, OR IF THE COURT DETERMINES THAT ADDITIONAL EVIDENCE IS NECESSARY TO DETERMINE THE CASE, THE COURT MAY ORDER THE PARTIES TO PROVIDE SUCH ADDITIONAL FACTS AND INFORMATION AS THE COURT MAY DEEM APPROPRIATE. THE COURT SHALL ORDER A HEARING AS SOON AS ITS DOCKET PERMITS TO RESOLVE SUCH ISSUES OF FACT OR HEAR SUCH ADDITIONAL EVIDENCE.

(c) WHEN IT HAS BEEN ESTABLISHED THAT A REQUIRED DEDICATION OF REAL PROPERTY OR PAYMENT OF MONEY AS DESCRIBED IN SECTION 29-20-203 (1) HAS BEEN OR WILL BE IMPOSED, THE BURDEN SHALL BE UPON THE LOCAL GOVERNMENT TO ESTABLISH, BASED UPON SUBSTANTIAL EVIDENCE APPEARING IN THE RECORD, THAT SUCH DEDICATION OR PAYMENT IS ROUGHLY PROPORTIONAL TO THE IMPACT OF THE PROPOSED USE OF THE SUBJECT PROPERTY.

(d) IN DETERMINING WHETHER THE PROPERTY OWNER SHOULD BE GRANTED RELIEF FROM THE LOCAL GOVERNMENT'S ENFORCEMENT OR APPLICATION OF THE LOCAL LAW, REGULATION, POLICY, OR REQUIREMENT, THE COURT SHALL INCLUDE THE FOLLOWING CONSIDERATIONS:

(I) WHETHER SUCH ENFORCEMENT OR APPLICATION HAS BEEN ACCOMPLISHED PURSUANT TO A DULY ADOPTED LAW, REGULATION, POLICY, OR REQUIREMENT;

(II) WHETHER SUCH ENFORCEMENT OR APPLICATION ADVANCES A LEGITIMATE LOCAL GOVERNMENT INTEREST;

(III) WHETHER ANY REQUIRED DEDICATION OF REAL PROPERTY OR PAYMENT OF MONEY AS DESCRIBED IN SECTION 29-20-203 (1) REQUIRED BY SUCH ENFORCEMENT

OR APPLICATION IS ROUGHLY PROPORTIONAL TO THE IMPACT OF THE PROPOSED USE OF THE SUBJECT PROPERTY;

(IV) WHETHER THERE ARE ADEQUATE LEGISLATIVE STANDARDS AND CRITERIA TO ENSURE THAT THE LOCAL LAW, REGULATION, POLICY, OR REQUIREMENT IS RATIONALLY AND CONSISTENTLY APPLIED.

(e) (I) IF THE COURT DETERMINES THAT LOCAL GOVERNMENT ENFORCEMENT OR APPLICATION OF THE LOCAL LAW, REGULATION, POLICY, OR REQUIREMENT TO A SPECIFIC PARCEL DOES NOT COMPLY WITH SECTION 29-20-203, THE COURT SHALL GRANT APPROPRIATE RELIEF TO THE PROPERTY OWNER UNDER THE FACTS PRESENTED. SUCH RELIEF MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, ORDERING THE LOCAL GOVERNMENT TO MODIFY ANY REQUIRED DEDICATION OF REAL PROPERTY OR PAYMENT OF MONEY AS DESCRIBED IN SECTION 29-20-203 (1) TO MAKE IT ROUGHLY PROPORTIONAL TO THE IMPACT OF THE PROPOSED USE OF THE SUBJECT PROPERTY IN A MANNER CONSISTENT WITH THE COURT'S ORDER.

(II) IF THE COURT DETERMINES THAT SUCH ENFORCEMENT OR APPLICATION IS NOT BASED ON A DULY ADOPTED LAW, REGULATION, POLICY, OR REQUIREMENT OR THAT THERE ARE NOT ADEQUATE STANDARDS AND CRITERIA TO ENSURE THAT SUCH ENFORCEMENT OR APPLICATION IS RATIONAL AND CONSISTENT, THE COURT SHALL INVALIDATE THE ENFORCEMENT OR APPLICATION OF THE LAW, REGULATION, POLICY, OR REQUIREMENT AS APPLIED TO THE SUBJECT PROPERTY.

(f) IN ANY PROCEEDING UNDER THIS SUBSECTION (2), THE COURT MAY IN ITS DISCRETION AWARD THE PREVAILING PARTY ITS COSTS AND REASONABLE ATTORNEY FEES.

(3) NOTHING IN THIS SECTION SHALL AFFECT:

(a) THE ABILITY TO BRING AN ACTION UNDER ANY STATE STATUTE RELATING TO EMINENT DOMAIN OR THE EXERCISE OF EMINENT DOMAIN POWERS BY THE STATE OR ANY LOCAL GOVERNMENTAL ENTITY IN FURTHERANCE OF SECTION 15 OF ARTICLE II OF THE STATE CONSTITUTION, NOR SHALL THESE PROVISIONS LIMIT ANY CLAIM FOR COMPENSATION OR OTHER RELIEF UNDER ANY OTHER PROVISION OF LAW PROHIBITING THE TAKING OR DAMAGING OF PRIVATE PROPERTY FOR PUBLIC OR PRIVATE USE.

(b) THE RIGHT OF AN OWNER OF PRIVATE PROPERTY TO FILE AN ACTION FOR JUDICIAL REVIEW UNDER RULE 106(a)(4) OF THE COLORADO RULES OF CIVIL PROCEDURE; EXCEPT THAT, IF A CLAIM UNDER THIS SECTION IS NOT INCLUDED IN SUCH RULE 106(a)(4) ACTION, IT MAY BE BROUGHT, IF AT ALL, ONLY BY AMENDMENT TO THE COMPLAINT IN THE RULE 106(a)(4) ACTION. IF THE LOCAL GOVERNMENT HAS ANSWERED THE RULE 106(a)(4) COMPLAINT, THE COURT MAY NOT DENY AMENDMENT OF THE COMPLAINT TO ADD A CLAIM UNDER THIS SECTION UNLESS THE TIME REQUIREMENTS OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION HAVE NOT BEEN MET.

**29-20-205. Limitation - scope of part.** NOTHING IN THIS PART 2 SHALL BE CONSTRUED TO AFFECT THE EXPRESSLY GRANTED LAND-USE AUTHORITY OF ANY LOCAL GOVERNMENT.

**SECTION 2.** 29-20-105 (2) (a), Colorado Revised Statutes, is amended to read:

**29-20-105. Intergovernmental cooperation.** (2) (a) Without limiting the ability of local governments to cooperate or contract with each other pursuant to the provisions of this ~~article~~ PART 1 or any other provision of law, local governments may provide through intergovernmental agreements for the joint adoption by the governing bodies, after notice and hearing, of mutually binding and enforceable comprehensive development plans for areas within their jurisdictions. This section shall not affect the validity of any intergovernmental agreement entered into prior to April 23, 1989.

**SECTION 3. Effective date.** This act shall take effect July 1, 1999, and shall apply to actions of local governments taken on or after said date.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 17, 1999