

### MEE Question 1

A city ordinance required each downtown business to install high-powered halogen floodlights that would illuminate the property owned by that business and the adjoining sidewalks. A study commissioned by the city estimated that installation of the floodlights would cost a typical business about \$1,000, but that increased business traffic due to enhanced public safety, especially after dark, would likely offset this cost.

A downtown restaurant applied to the city for a building permit to construct an addition that would increase its seating capacity. In its permit application, the restaurant accurately noted that its current facility did not have sufficient seating to accommodate all potential customers during peak hours. The city approved the permit on the condition that the restaurant grant the city an easement over a narrow strip of the restaurant's property, to be used by the city to install video surveillance equipment that would cover nearby public streets and parking lots. The city based its permit decision entirely on findings that the increased patronage that would result from the increased capacity of the restaurant might also attract additional crime to the neighborhood, and that installing video surveillance equipment might alleviate that problem.

The restaurant has challenged both the ordinance requiring it to install floodlights and the easement condition imposed on approval of the building permit.

1. Under the Fifth Amendment as applied to the states through the Fourteenth Amendment, is the city ordinance requiring the restaurant to install floodlights an unconstitutional taking? Explain.
2. Under the Fifth Amendment as applied to the states through the Fourteenth Amendment, is the city's requirement that the restaurant grant the city an easement as a condition for obtaining the building permit an unconstitutional taking? Explain.

**1) Please type your answer to MEE 1 below**

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**When finished with this question, click Â to advance to the next question.**  
(Essay)

===== Start of Answer #1 (703 words) =====

1)

The issue in this case is whether the city ordinance that requires a restaurant to install floodlights is considered an unconstitutional regulatory taking. If it is considered an unconstitutional regulatory taking, the government must retract the ordinance and the restaurant will not have to comply with the ordinance. Under the Fifth Amendment's taking clause, a taking one one by the government of private land for public use. The government must, in turn, pay the landowner appropriate just compensation. In this case, we first must ask if there was a taking. There are both regulatory takings and property takings. In a regulatory taking, as in this case, the government restricts or orders a landowner to comply with a certain mandate. The question to ask if it is a regulatory taking is whether a substantial portion of the economic value of the land is taken by the regulation. Additionally, we look to factors from the *Penn Central* test, such as: does the regulation restrict the primary use of the land? Does the government's benefit from enacting the regulation outweigh the burden to the landowner, whose land is being regulated?

First, this is a case when the taking is for the benefit of the public. The public would benefit from the increased protection from the lights, and it affects private land- the restaurant's land. In this case. it must be determined if the ordinance takes away a

substantial portion of the economic value of the land. The high-powered halogen floodlights would be used to eliminate property owned by the restaurant and the sidewalks, and would cost on average about \$1,000. The restaurant, therefore, would have to invest around \$1,000 of its own money to be in accordance with this ordinance. However, the facts also indicate that these lights would increase business traffic because the public would be safer after dark to walk around with the presence of lights on the sidewalks and leading up to the restaurant. This increase in business traffic would likely "offset the cost" of the lights. Under the assumption that the restaurant is making enough money that this expenditure would not severely damage it, the restaurant should be able to spend the \$1,000 to comply with the ordinance, and this would not take away a substantial portion of the economic value of the land. The restaurant would be able to get the money they invested back by increase in business traffic. Therefore, because the economic value of the restaurant is not burdened by the ordinance, the regulation would not be considered an unconstitutional taking.

2)

The issue here is whether this exaction, where the city conditioned a permit approval upon the restaurant granting the city an easement, would be considered an unconstitutional taking. As stated above, the takings clause states that the government may take private land for public use if just compensation is given. Exactions exist when the government, in exchange for granting a permit that excuses strict performance with a certain ordinance, can place conditions on the development of the landowner's land. An exaction will be upheld as long as the condition is roughly proportionate to the permit that is sought by the developer.

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