

ORDINANCE NO. 700

**AN ORDINANCE RELATING TO REVIEW OF APPLICATIONS FOR
COMPENSATION UNDER ARTICLE 1, SECTION 18 OF THE CONSTITUTION OF
OREGON (BALLOT MEASURE 7 PASSED NOVEMBER 7, 2000) AND DECLARING AN
EMERGENCY.**

The City Council finds:

1. On November 7, 2000, the voters of the State of Oregon approved Ballot Measure 7 which amended Article 1, Section 18 of the Constitution of Oregon to require, under certain circumstances, compensation to landowners if government regulation reduces property value; and

2. Ballot Measure 7 provides that a land owner, in order to receive compensation, must apply for compensation to the government whose regulation allegedly caused a reduction in the fair market value of property and the government has 90 days from such application to deny or pay the claim, or take action to remove the property from the application of the regulation; and

3. Ballot Measure 7 does not set forth a specific process for review of applications for compensation and it is in the best interests of the City to establish such a process in order to be able to assess such claims in a timely manner.

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Title 17 of the Scappoose Code is amended to add a new Chapter 17.01.170 as follows:

17.01.170. REVIEW OF APPLICATIONS FOR COMPENSATION UNDER ARTICLE 1, SECTION 18 OF THE CONSTITUTION OF OREGON (BALLOT MEASURE 7 PASSED 11-7-00)

A. **Purposes.** The purpose of this ordinance is to accomplish the following regarding applications for compensation submitted pursuant to Article 1, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed 11-7-00: Process claims quickly, openly, thoroughly, and consistently with the Oregon and U.S. Constitutions; Enable persons with claims to have an adequate and fair opportunity to present them to the city's decision maker; Preserve and protect limited public funds; and, Establish a record of decision capable of appellate review.

This ordinance shall be interpreted in a manner consistent with Article I, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed November 7, 2000 and implementing Oregon Statutes or regulations as interpreted by Oregon appellate courts.

B. **Definitions.**

- Affiliated owner. Means any entity, business, association, partnership, corporation, limited liability, company, limited liability partnership which share ownership, control, lease or management of more that 25% ownership or leasehold interest in the Property
- Appraisal. Means an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.
- City Manager. The City Manager of the City of Scappoose or his/her delegate.
- Exempt Regulation. Means: (a) a regulation which imposes regulation required under federal law, to the minimum extent required by federal law; or (b) a regulation prohibiting the use of a property for the purpose of selling pornography, performing nude dancing, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor, or (c) a regulation governing historically and commonly recognized nuisance laws, and the criminal laws of Oregon and the City of Scappoose.
- Property. Means any real property and any structure built or sited on the property, aggregate and other removable minerals, and any forest product or other crop grown on the property. It includes only a single parcel or contiguous parcels in single ownership. It does not include contiguous parcels or parcels not contiguous that are under different ownerships.
- Property owner. Means a person who is the sole fee simple owner of the property, or a joint application by all owners whose interests add up to a fee simple interest in property (including all persons who represent all recorded interests in property, including co-owners, holders of less than fee simple interests, leasehold owners, and security interest holders).
- Reduction in Value. Means the difference in the fair market value of the property before and after application of a Regulation, and shall include the net cost to the landowner of an affirmative obligation to protect, provide, or preserve wildlife habitat, natural areas, wetlands, ecosystems, scenery, open space, historical, archaeological or cultural resources, or low income housing.
- Regulation. Means any law, rule, ordinance, resolution, goal or other enforceable enactment of the City of Scappoose.

C. **Pre-application Conference.**

(1) Before submitting an application for compensation pursuant to this ordinance, the applicant must schedule and attend a pre-application conference with the City Manager or his/her delegate to discuss the application. The pre-application conference shall follow the procedure set forth by the City Manager and may include a filing fee, and notice to neighbors and other organizations and agencies. Filing fee's shall be refunded if claims are found to be valid.

(2) To schedule a pre-application conference, the applicant must contact the City Manager and pay the appropriate conference fee. The pre-application conference is for the applicant to provide a summary of the applicant's application for compensation to the City Manager and for the City Manager to provide information to the applicant about regulations that may affect the application. The City Manager may provide the applicant with a written summary of the pre-application conference within 10 days after it is held.

(3) The City Manager is not authorized to settle any application for compensation at a pre-application conference. Any omission or failure by staff to recite to an applicant all relevant applicable land use regulations will not constitute a waiver or admission by the City.

(4) A pre-application conference is valid for six months from the date it is held. If no application is filed within six months of the conference, the applicant must schedule and attend another conference before the city will accept a claim application. The City Manager may waive the pre-application requirements if, in the City Manager's opinion, the application does not warrant such conference.

D. **Application for Compensation.**

(1) Any Property Owner may file an application with the City Manager for compensation pursuant to Article 1, Section 18, Constitution of Oregon.

(a) An application for compensation shall be submitted for review upon forms established by the City. An application shall consist of all materials required by this ordinance. An application will not be accepted for filing until found to be complete by the City Manager after all application materials required by this ordinance have been submitted.

(b) The City Manager shall conduct a completeness review within 15 days after submittal of the proposed application and shall advise the applicant, in writing, of any material remaining to be submitted. The applicant shall submit the material required for completeness within 30 days of the written notice that material remains to be submitted. If the applicant fails to provide the materials necessary to make the application complete within 30 days, the application shall not be accepted for filing.

(c) The 90 day period for action by the city specified in Article 1, Section 18 of the Constitution of Oregon shall begin on the date the City Manager deems

an application complete and accepts it for filing. The City Manager shall note the date of completeness and filing in writing upon the application.

(2) An application for compensation will not be accepted for filing without all of the following information:

- (a) An application fee to be paid in advance of acceptance for filing to cover the costs of completeness review and application processing. Such fee shall be established by resolution of the council. Filing fee's shall be refunded if claims are found to be valid.
- (b) A completed application for compensation form.
- (c) Identification of the name, physical address, street address, and phone number of the person filing the application for compensation. If the person filing the application is not the Property Owner of the Real Property, such information must also be provided for the Property Owner together with authorization to act on behalf of the Property Owner.
- (d) The address and legal description of the Property that is the subject of the application.
- (e) Proof that the property allegedly affected by a Regulation is in the exclusive fee simple ownership of the applicant or that the applicant has the consent of all owners, including co-owners and all security interests in the Property.
- (f) The names and addresses of all property owners within 300 feet of the property, and identification of any other property owned by the applicant or any Affiliated Owner within 200 feet of the boundary of the Property that is the subject of the application.
- (g) A title report from a title insurer, completed not more than 30 days before the date of application, including title history, a statement of the date the applicant acquired ownership of the property, the ownership interests of all owners of the property, and an assessor's map showing the location of the Property.
- (h) A copy of the regulation that allegedly restricts the use of the real property and has allegedly caused a reduction in the fair market value of the property, including the date the regulation was first passed, applied or first enforced on the property.
- (i) A copy of a written appraisal by an appraiser, qualified as such in the state of Oregon, indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of the regulation. If the claimed reduction in fair market value of the property is based on an alleged net cost to the landowner of an affirmative obligation to protect, provide, or preserve

wildlife habitat, natural areas, wetlands, ecosystems, scenery, open space, historical, archaeological or cultural resources or low income housing the appraisal shall establish that net cost. If the claim is for more than \$10,000, copies of three appraisals must be included. If the claim is for \$10,000 or less, one appraisal must be included.

- (j) A statement by the applicant of why the exceptions for compensation found in Article 1, Section 18 (b) (adoption or enforcement of historically and commonly recognized nuisance laws) and (c) (implementation of a requirement of federal law and regulation of selling pornography, performing nude dancing, selling of alcoholic beverages or other controlled substances, or operating of casino or gaming parlors) of the Constitution of Oregon do not apply.
- (k) Whether the claim is alleged to arise on account of (1) the adoption of a regulation, (2) the enforcement of a regulation, or (3) the application of a regulation, and the date on which the claim is alleged to have arisen by reason of such event.
- (l) A statement explaining how the regulation restricts the use of the property upon which the restriction is imposed and why the regulation has the effect of reducing the value of the property.
- (m) A statement describing any affirmative obligation imposed on the owner which are part of the reduction in fair market value compensable under Section 18, Article I, as amended by Measure 7, with a statement and explanation of the acts required in order to accomplish such obligation, an itemization of such costs and receipts verifying such costs.
- (n) A statement of the effect which a release of the applicable regulation would have on the potential development of the property, including the extent of development that would be permitted if the identified regulation were released from the property.
- (o) A copy of all reports, plans, site plans and other documents submitted to the city for any previous applications for permit approvals pertaining to the Property.
- (p) A copy of any site plan and drawings related to the current or proposed use of the property in a readable/legible 8 ½ by 11-inch format.
- (q) A statement of the relief sought by the applicant.
- (r) Any additional information which would aid in the determination of the validity and value of the claim, or any decision to release the restriction.

(3) The applicant may request an extension for filing a complete application or a continuance of review of a complete application. A request for extension or continuance shall be deemed a waiver of the 90-day deadline contained in Section 18, Article 1, of the Oregon Constitution and this ordinance for the period of the extension or continuance.

E. **Process of Review of Application for Compensation.**

(1) The City Manager shall assess any application for compensation and make a recommendation to the City Council on the disposition of the application. The City Council shall issue a final decision on an application within ninety (90) days from the date of completeness of the application.

(2) Before the City Manager may make a recommendation on a request for compensation, the City Manager shall provide notice of the application for compensation in accordance with the provisions of this section.

(3) Any person may present written comments to the City Manager that address the application for compensation. The comments must be received by the City Manager within 14 calendar days from the date on the notice.

(4) The City Manager shall hold a public hearing on the application for compensation if requested by the applicant in the application, or if requested by another person entitled to notice under subsection (6) of this section provided that person makes the request within 7 days from the date on the notice. If the applicant requests a hearing, the notice under subsections (6) and (7) of this section shall provide information on the date, time and location of the hearing. If a hearing is requested by other persons entitled to notice, a new notice shall be issued to the remaining persons entitled to notice giving the date, time and location of the hearing.

(5) After the hearing, the City Manager shall make a recommendation to the City Council based on all of the information presented. The recommendation to the City Council may include establishing any relevant conditions for compensation, should compensation be recommended.

(6) Notice of the application for compensation shall be by mailed notice provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located within three hundred (300') feet of the property which is the subject of the notice. Additional mailed notice shall be sent to the Oregon Department of Land Conservation and Development and such other persons as the city shall designate by council resolution.

(7) The notice required by subsection (6) of this section shall:

(a) Explain the nature of the application and the compensation sought and the Regulation that allegedly causes compensation to be due.

- (b) Set forth the street address or other geographical reference to the subject property;
 - (c) State the date written comments are due or, if a hearing has been requested, the date, time and location of the hearing;
 - (d) Include the name of a City representative to contact and the telephone number where additional information may be obtained;
 - (e) State that a copy of the application and all documents submitted by the applicant are available for inspection at no cost and that copies will be provided at reasonable cost; and
 - (f) Include a general explanation of the requirements for submission of written comments or, if a hearing is to be held, the requirements for submission of testimony and evidence and the procedure for conduct of hearings.
- (8) The City Manager may, in the City Manager's discretion, retain the services of an appraiser to appraise the Property and to evaluate the application for compensation for the purposes of determining whether or not the applicable regulation has had the effect of reducing the fair market value of the Property and for other purposes relevant to the application.
- (9) If a hearing is conducted:
- (a) All documents or evidence to be relied upon by the applicant shall be submitted to the City Manager as a part of the application. Persons other than the applicant may submit documents or evidence at the hearing.
 - (b) Any staff report used at the hearing shall be available at least seven days prior to the hearing.
 - (c) When the City Manager or City Council reopens a record to admit new evidence or testimony, any person may provide additional evidence or testimony which relate to such new evidence or testimony.
- (10) The failure of a person entitled to notice to receive such notice as provided in this section shall not invalidate the proceedings. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- (11) Within 10 days from the conclusion of the hearing, if one is requested, the City Manager shall submit a written recommendation to the City Council as to whether compensation should be paid, the amount of compensation to be paid, and whether application of one or more regulations should be waived as to the property for which compensation was sought.

A copy of the City Manager's recommendation and the date, time, and place of the City Council meeting at which the recommendation will be considered shall be sent, via first class mail, not less than seven days before the City Council meeting, to the applicant and to each party who provided written comments and/or participated in the City Manager's hearing, provided the party provided a mailing address to the City Manager as part of the review or hearing process.

(12) Review of the recommendation by the City Council shall be on the record of the City Manager's review or hearing and all documents or evidence relied on before the City Council shall have been submitted as part of the City Manager's review or hearing. The City Council shall allow written and/or oral arguments based on the record of the City Manager's review or hearing to be made by the applicant and any party entitled to receive notice of the City Council review.

(13) The burden of proof of any material fact or element of the case shall be upon the Applicant for all matters required to be shown to demonstrate that the Property Owner is entitled to compensation, and shall be upon the City to show that the applicable regulation is exempt from the obligation for compensation.

(14) The City Council may, upon determining that any claim is valid, pay to the Owner such just compensation as the Owner is by law entitled to receive, or may waive the restriction. The City Council shall, by majority vote of those present and voting, determine whether compensation shall be granted, the amount of any compensation, whether any exceptions to the requirement for compensation apply or whether application of the regulation to the Property should be waived. Not less than seven days after the City Council meeting, a copy of the City Council decision shall be sent, via first class mail, to the applicant and to each party who participated in the City Manager or City Council review process, provided the party has provided a mailing address to the City.

F. **Conditions of Approval, Revocation of Decision and Transfer of Approval Rights.**

(1) The City Council may establish any relevant conditions of approval of compensation, should compensation be granted. Any City payment of compensation to an owner under this Section shall be conditional on the Owner's signing an agreement that, if an appellate court interprets or invalidates Oregon Constitution Article I, Section 18, subsections (a) through (h), in the same or another case, in a manner such that the applying owner was not entitled to compensation in relation to the subject regulation, then the owner will repay the compensation received by the owner to the City.

(2) Failure to comply with any condition for compensation is grounds for revocation of the approval of the application for compensation and for recovering any compensation paid.

(3) In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city's approval, the city may institute a revocation or modification proceeding under this ordinance.

(4) Unless otherwise stated in the city's decision, any claim approved under this ordinance runs with the property and is transferred with ownership of the property. Any conditions, time limits or other restrictions imposed with a claim approval will bind all subsequent owners of the property for which the claim was granted.

(5) If the City Council grants a waiver as a means to avoid having to compensate, or as a means to limit compensation to, an owner or owners under Oregon Constitution Article I, Section 18, subsections (a) through (h), and if, based on an appellate court interpretation or invalidation of Oregon Constitution Article I, Section 18, subsections (a) through (h), in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the waiver was granted, then the waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the waiver. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Oregon Constitution Article I, Section 18, subsections (a) through (f).

(6) If the City Council has granted a waiver and the owner nevertheless files a court action seeking compensation, and if a final court decision determines that the extent of the waiver was not sufficient to avoid the owner's being entitled to compensation, then the extent of waiver granted by the City shall be deemed to be the extent of waiver necessary to avoid the owner's being entitled to compensation, effective as of the date of the City Council's decision.

(7) Any variance granted under this chapter automatically shall terminate on the occurrence of an event following which any owner or future owner of the private real property that is the subject of the waiver will not be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (h) in relation to the regulation from which the variance was granted.

G. **Ex Parte Contacts, Conflict of Interest and Bias.** The following rules govern any challenges to the City Manager's or City Councilor's participation in review/ recommendation or hearing of applications for compensation:

(1) Any factual information obtained by the City Manager or a City Councilor outside of information provided by city staff and outside of the context of formal written comments or hearing will be deemed an ex parte contact. Prior to the close of the record, the City Manager or City Councilor that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between city staff and the City Manager or City Councilor.

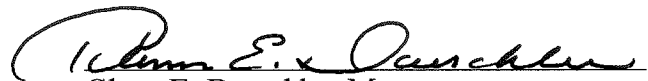
(2) Whenever the City Manager or a City Councilor, or any member of their immediate family or household, has a financial interest in the outcome of a particular compensation matter, the City Manager or City Councilor must declare the interest and shall not participate in the deliberation or decision on that matter.

- H. **Availability of Funds to Pay Claims.** Compensation can only be paid based on the availability and lawful appropriation of funds for such purpose.
- I. **Severability.** If any phrase, clause, or part of this ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and effect.

Section 2. Emergency Clause and Effective Date. Due to the fact that the amendments to Article 1, Section 18 of the Constitution of Oregon from Ballot Measure 7, passed, November 7, 2000 become effective on December 7, 2000 and it is essential to have a process for reviewing applications for compensation under the Constitution by the effective date in order to establish an orderly review process for assessment of applications, it is deemed necessary for the preservation of the health, safety, and welfare of City, that an emergency be declared to exist and this Ordinance shall be in full force and effect on December 7, 2000.

Adopted this 4th day of December, 2000.

CITY OF SCAPPOOSE, OREGON


Glenn E. Dorschler, Mayor

First Reading: December 4, 2000

Second Reading: December 4, 2000

Attest:


Debi G. Schmit, City Recorder