

ORDINANCE NO. 821

*Ordinance
repealed
12/18/00 gm*

ESTABLISHING A NEW GENERAL ORDINANCE FOR PROCESSING OF CLAIMS UNDER BALLOT MEASURE 7, PASSED BY THE VOTERS ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY.

WHEREAS, 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, payment to landowners if government regulation reduces property value;

WHEREAS, Ballot Measure 7 provides that a landowner, in order to receive compensation, must apply for compensation to the government whose regulation allegedly has caused a reduction in the fair market value of property and the government must deny or pay the claim, or take action to except the property from the application of the regulation;

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

WHEREAS Ballot Measure 7 will take effect 30 days from the date of passage, said date depending upon the interpretation of the day count, will be either December 7th or December 8th, 2000, on which date claims may be made and will need to be processed; and,

WHEREAS, there is a need to determine how said claims will be made and how they will be processed prior to the effective date of the Measure, and there is not sufficient time for ordinary ordinance adoption measures to be followed, and such that declaration of an emergency is necessary in order to make this ordinance effective prior to the effective date of the Measure;

NOW, THEREFORE, the Stayton City Council does ordain as follows:

Section 1. Title 1 of the Stayton Municipal Code is amended to add a new Chapter 1.36 as follows:

1.36.1000 Purposes.

The purpose of this article is to accomplish the following regarding applications for compensation under Article 1, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed November 7, 2000: 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; preserve and protect limited public funds; and, establish a record of decision capable of appellate review.

1.36.1010 Definitions.

Affiliated owner. Means any entity, business, association, partnership, corporation, limited liability

company, or limited liability partnership which share ownership, control, lease or management of more than 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 Administrator Means the Administrator, or his or her designee.

Exempt Regulation. Means: (a) a regulation which imposes restrictions 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, including Stayton Municipal Code as amended from time to time, and the criminal laws of Oregon and the City of Stayton.

Person. Means an individual, partnership, corporate entity, LLC, Trust or any other form of title holder.

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.

Property owner. Means a person with a fee simple interest in real property, or, if a joint application, all persons whose rights together amount to a fee simple interest.

Reduction in Value. Means difference in the fair market value of the property before and after 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 Stayton.

Restriction on Use. Means a restriction that restricts the type, but not extent, of the use of Property.

1.36.1020 Application for Compensation.

(1) Completeness, Completeness Review and Tolling of Article 1, Section 18, Constitution of Oregon 90 Day Action Requirement for attorney fee payment:

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

(b) The City Administrator 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 to complete the application 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 be deemed incomplete and returned to the applicant.

(c) The 90 day period for action by the City specified in Article 1, Section 18 of the Constitution of Oregon, after which attorney fees are payable to the applicant, shall begin on the date the City Administrator deems an application complete and accepts it for filing. The City Administrator shall note the date of filing in writing upon the application.

(2) Material Required to be Submitted as Part of Application for Compensation.

(a) An application deposit to be paid in advance of acceptance for filing to cover the costs of completeness review and application processing. This deposit shall be as set forth by City Council Resolution. Basic application costs are to recover expenses incurred by the City in the review and processing of an application and/or supporting documentation. A non-refundable charge will be included as a part of the deposit. Actual costs and charges, based on criteria established by the City Administrator will be assessed against the deposit. Charges in excess of the deposit will be collected or balance of unused deposits refunded (not including the non-refundable charge). In the event the application is withdrawn before City action, the applicant shall be responsible to pay for the costs incurred up to the time of its withdrawal.

(b) A completed Application For Compensation form.

(c) A Title Report, including title history and including a statement of the date the applicant acquired ownership of the property and showing the ownership interests of all owners of the property.

(d) 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 subject property in issue, including the date the regulation was first passed, applied or first enforced on the subject property.

(e) 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 two appraisals must be included. If the claim is for \$10,000 or less, one appraisal must be included.

(f) 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.

(g) A statement explaining how the regulation restricts the use of private real property and why the regulation has the effect of reducing the value of the property upon which the restriction is imposed.

(h) A statement of the effect a release of the regulation on the property would have on the potential development of the property, stating the greatest degree of development that would be permitted if the identified regulation were released from the property.

(i) A statement of the relief sought by the applicant.

(j) A notification list, including all necessary addresses for those required to be notified of the application under this chapter.

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

(l) Combined or multiple requests for compensation by the same applicant for different land use restrictions under this chapter and which affect the same property or properties, shall only be considered concurrently. Any requests for compensation which are not put forth in a consolidated application shall be deemed waived for the affected property.

1.36.1030 Process of Review of Application for Compensation.

(1) The City Administrator shall have the duty to assess any application for compensation and make a recommendation to the City Council on the disposition of the application for compensation.

(2) Before the City Administrator may make a recommendation on a request for compensation the City Administrator shall provide notice of the application for compensation in accordance with the provisions of subsections (6) and (7) of this section.

(3) Any person may present written comments to the City Administrator that address the Application For Compensation. The comments must be received by the City Administrator within 14 calendar days from the date on the notice. The applicant shall have an additional 7 calendar days to respond to any written comments received by the City Administrator.

(4) The City Administrator shall make a recommendation to the City Council based on all of the information presented. This recommendation may include a recommendation to conduct a public hearing, if none has been requested by another interested party. The recommendation to the City

Council may include establishing any relevant conditions for compensation, should compensation be recommended.

(5) The City Council shall hold a public hearing on the application for compensation: if requested by the applicant in the initial written application for compensation; 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 initial 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.

(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 five hundred (500) feet of the property which is the subject of the notice. Additional mailed notice sent to Oregon Department of Land Conservation and Development, Oregon Department of Justice, 1000 Friends of Oregon, Oregonians in Action, City Planning Commission and such other as the City shall designate by Council resolution.

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

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

(b) Set forth the street address or other easily understood 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 Administrator may, in his or her discretion, retain the services of an appraiser to appraise the Property and evaluate whether or not the cited 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 relied upon by the applicant shall be submitted to the City Administrator 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 (7) days prior to the hearing.

(c) The failure of a person entitled to notice to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio or television.

(10) Within 10 days from the date of the close of the period for written comments or the conclusion of the hearing if one is requested, the City Administrator shall make a recommendation to the City Council as to whether compensation shall be paid, the amount, if any, of compensation to be paid, and whether one or more specifically articulated regulations are to be waived as to the property for which compensation was sought.

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

(11) Review by the City Council will include all records of the City Administrator's review and all documents or evidence relied on by the City Administrator in his or her review. Any staff report used at the City Council review shall be available at least four days prior to the City Council meeting. The City Council shall allow written and/or oral arguments, based on all records of the City Administrator's review, to be made by the applicant and any party entitled to receive notice of the City Council review.

(12) The burden of proof of any material element shall be upon the Applicant for all matters required to show that the Property Owner is entitled to just compensation, and shall be upon the City to show that the regulation is exempt from the obligation for compensation. The burden of proof standard shall be by the preponderance of the evidence.

(13) This Article shall be interpreted in a manner consistent with Article I, Section 18 of the Constitution of Oregon and implementing Oregon Statutes or regulations as interpreted by Oregon courts.

(14) The City Council shall, by majority vote of those present and voting, determine whether compensation is granted, the amount of compensation, whether any exceptions to the requirement for compensation apply or whether the regulation should be deemed not to apply to the applicants property. Not less than seven (7) days after the City Council meeting a notice of the City Council decision shall be sent, via first class mail, to the applicant and to each party which participated in the

City Administrator's or City Council review process provided the party provided a mailing address to the City as part of the review process.

1.36.1040 Attorney Fees On Delayed Compensation or Prevailing Party.

If a claim for compensation under Section 18, Article I, of the Oregon Constitution and this Ordinance is denied or not fully paid within 90 days of the date of filing, Applicant's reasonable attorney fees and expenses necessary to collect the compensation will be added as additional compensation provided compensation is awarded to Applicant. If a claim for compensation under Article 1, Section 18 of the Constitution of Oregon and this Article is denied or not fully paid within 90 days of the date of filing, and the Applicant commences action to collect compensation, and the City is the prevailing party in such action, then the City shall be entitled to any sum which an arbitrator or court, including any appellate court, may adjudge reasonable as attorney's fees.

1.36.1050 Funds Available to Pay Claims.

Compensation can only be paid based on the availability and appropriation of funds for this purpose. Compensation can be structured by mutual agreement between the parties. This can include in-kind compensation by the city to the applicant, payments over a time period agreed to by the parties, or any combination thereof.

1.36.1060 Severability.

If any phrase, clause, or part of this Article 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. This Ordinance, being necessary for the preservation of the health, safety, and welfare of the City of Stayton, an emergency exists and this Ordinance shall be in full force and effect on December 7, 2000.

ADOPTED BY THE STAYTON CITY COUNCIL this 4th day of December, 2000

CITY OF STAYTON

Signed: Dec 8, 2000, 2000

Henry A. Porter
Henry A. Porter, Mayor

Signed: Dec. 8, 2000

Chris Childs
Chris Childs, City Administrator

APPROVED AS TO FORM:

David A. Rhoten
David A. Rhoten, City Attorney