

ORDINANCE NO. 1807

(AN ORDINANCE ADDING CHAPTER 3.24 TO THE HOOD RIVER MUNICIPAL CODE ESTABLISHING A PROCEDURE FOR SUBMITTING AN APPLICATION FOR COMPENSATION ARISING UNDER THE PROVISIONS OF SECTION 18, ARTICLE I OF THE OREGON CONSTITUTION, AS AMENDED BY BALLOT MEASURE 7 ADOPTED NOVEMBER 7, 2000; AND DECLARING AN EMERGENCY)

WHEREAS, on November 7, 2000, the electors of Oregon adopted amendments to Section 18, Article I, of the Oregon Constitutions as follows:

Proposed by initiative petition to be voted on at the General Election, November 7, 2000.

AMENDS CONSTITUTION: REQUIRES PAYMENT TO LANDOWNER IF GOVERNMENT REGULATION REDUCES PROPERTY VALUE

RESULT OF "YES" VOTE: "Yes" vote requires state, local government pay property owner if law, regulation reduces property value.

RESULT OF "NO" VOTE: "No" vote rejects requiring government pay compensation if law or regulation reduces property value.

SUMMARY: Amends Constitution. Oregon Constitution prohibits taking private property for public use without just compensation. Oregon Supreme Court has not required compensation when property value merely reduced. Measure requires state, local governments pay landowner amount of reduction in market value if law, regulation reduces property value. Compensation required if owner must act to protect certain natural resource, cultural values or low income housing. Exemption for historically recognized nuisance laws or if owner sells alcohol, pornography, operates casino. Applies if regulation adopted after owner acquires property.

ESTIMATE OF FINANCIAL IMPACT: Direct costs to the state are estimated to be \$1.6 billion per year. Local government direct costs are estimated to be \$3.8 billion per year.

There is no state or local government revenue impact.

TEXT OF BALLOT MEASURE 7

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:
THE CONSTITUTION OF THE STATE OF OREGON IS AMENDED BY ADDING
THE FOLLOWING SUBSECTIONS TO SECTION 18 OF ARTICLE I:

- (a) If the state, a political subdivision of the state, or a local government passes or enforces a regulation that restricts the use of private real property, and the restriction has the effect of reducing the value of a property upon which the restriction is imposed; the property owner shall be paid just compensation equal to the reduction in the fair market value of the property.
- (b) For purposes of this section, adoption or enforcement of historically and commonly recognized nuisance laws shall not be deemed to have caused a reduction in the value of a property. The phrase "historically and commonly recognized nuisance laws" shall be narrowly construed in favor of a finding that just compensation is required under this section.
- (c) A regulating entity may impose, to the minimum extent required, a regulation to implement a requirement of federal law without payment of compensation under this section. Nothing in this 2000 Amendment shall require compensation due to a government 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.
- (d) Compensation shall be due the property owner if the regulation was adopted, first enforced or applied after the current owner of the property became the owner, and continues to apply to the property 90 days after the owner applies for compensation under this section.
- (e) Definitions: For purposes of this section, "regulation" shall include any law, rule, ordinance, resolution, goal, or other enforceable enactment of government; "real property" shall include any structure built or sited on the property, aggregate and other removable minerals, and any forest product or other crop grown on the property; "reduction in the fair market value" shall mean the difference in the fair market value of the property before and after application of the 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; and "just compensation" shall include, if a claim for compensation is denied or not fully paid within 90 days of filing, reasonable attorney fees and expenses necessary to collect the compensation.
- (f) If any phrase, clause, or part of this section is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and effect.

; and

WHEREAS, the amendments to Section 18, Article I, provide that if the state, a political subdivision of the state, or a local government passes or enforces a regulation that restricts the use of private real property, and the restriction has the effect of reducing the value of a property upon which the restriction is imposed; the property owner shall be paid just compensation equal to the reduction in the fair market value of the property; and

WHEREAS, it is appropriate for the City to provide a process by which owners of real property in the City of Hood River can make claims for loss as provided for in Section 18, Article I, of the Oregon Constitution;

WHEREAS, inasmuch as it is necessary to provide a process to handle claims for regulatory takings, as authorized by the voters on November 7, 2000, it is deemed necessary for the public peace, health, and safety of the citizens of the City of Hood River that an emergency be declared to exist, and this ordinance shall be in full force and effect on December 7, 2000; and

WHEREAS, the City Council finds that adoption of this ordinance is not a land use decision;

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 3.24 is added to the Hood River Municipal Code:

CHAPTER 3.24 - CLAIMS FOR COMPENSATION

(Ballot Measure 7-2000

Amendment to Article I, Section 18, Oregon Constitution)

Sections:

3.24.010 Purpose

3.24.020 Definitions

3.24.030 Notice of Claim

3.24.040 Completeness Review of Notice of Claim

3.24.050 Procedure to Evaluate Claim

3.24.010. Purpose. The purpose of this chapter is to:

A. Create a process for the evaluation of claims filed under the 2000 Amendment to Article I, Section 18, of the Oregon Constitution adopted by the voters in November 2000.

B. Enable persons with claims an adequate and fair opportunity to present and resolve them in a timely, efficient, thorough and consistent manner.

3.24.020. Definitions. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. Words not defined in this chapter shall be given the meaning intended in Article 18, Section 1 of the Oregon Constitution, or as those words may be subsequently defined by statute. If not defined there, the words shall be given their common and ordinary meaning.

“Affected property” means the private real property claimed to be reduced in value because of a regulation and includes contiguous units of property under the same ownership 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.

“Exempt regulation” means:

1. A regulation which imposes a restriction required under federal law, to the minimum extent required by federal law; or
2. 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
3. A regulation governing historically and commonly recognized nuisance laws, including those nuisances described the Hood River Municipal Code, as amended from time to time, and the criminal laws of the State of Oregon and the City of Hood River.

“Property owner” means the owner of title to affected property or the contract purchaser of such property, where the contract is of record.

“Reduced in value” means the difference in the fair market value of the property before and after application of the regulation including 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 a duly adopted city ordinance as codified in the Hood River Municipal Code, a restriction on the use of property imposed under the Hood River Municipal Code, or any law, rule, ordinance, resolution, goal, or other enforceable enactment of the City of Hood River.

3.24.030. Notice of Claim.

A. No claim arising from the 2000 Amendment to Article I, Section 18 (Measure 7) shall be considered a claim unless notice of claim is filed as required by this section.

B. Notice of claim must be a written communication from a claimant filed with the city manager and must include:

1. Name, address and telephone number of person filing claim.
2. Names and addresses of all property owners and all persons who hold a security interest in the affected property.
3. Legal description and street address of affected property including contiguous units of property under the same ownership.
4. Preliminary title report, dated not more than 30 days from the date the claim is filed, from a title insurance company licensed in Oregon.

5. Description of, and citation to, regulation adopted, applied or enforced on the affected property causing a reduction in value.
 - a. Date regulation was adopted, applied or enforced on the affected property.
 - b. Date property owner or owners obtained title to property or became contract purchasers of record.
6. Description of the use that has been restricted by the regulation described in subsection B.5 of this section.
7. Amount the affected property has been reduced in value because of the restriction.
8. Statements explaining why the regulation is not an exempt regulation.
9. The alleged effect of the regulation on the subject real property, including copies of appraisals by appraisers certified and licensed under ORS Ch. 674, showing the reduction in fair market value on the property upon which the restriction is imposed. The appraisal must expressly note all existing infrastructure limitations and value the property without any assumption that the infrastructure will be improved at governmental expense or through discretionary governmental action.
 - a. If the claim is for more than \$10,000, copies of three appraisals must be included.
 - b. If the claim is for \$10,000 or less, one appraisal is sufficient.
10. Any exempt regulations, known to the claimant, that may apply to the affected property, whether or not those exempt regulations affect the fair market value.
11. A statement explaining how the regulation restricts the use of the affected property and why the regulation has the effect of reducing the value of the property upon which the restriction is imposed.
12. 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.
13. A statement of the relief sought by the claimant.
14. Provide a list of the names of the applicant and all owners of property within 250 feet of the subject property. The list shall be compiled from the last available complete property tax assessment roll, and shall include all addresses and map and tax lot numbers.

C. A notice of claim must be accompanied by a fee to be paid in advance of acceptance for filing to cover the costs of completeness review and application processing. This fee shall be established by resolution of the council. The application fee shall be refunded if the city or an appellate body determines that just compensation should be paid.

3.24.040. Completeness Review of Notice of Claim. A notice of claim shall not be considered a claim until determined to be complete by the city manager. If the notice of claim is not complete, the city manager shall inform the claimant in writing of the additional information necessary to make the notice of claim complete. The notice of claim shall be deemed complete at such time as the additional information is submitted and determined complete.

3.24.050. Procedure to Evaluate Claim. Claims shall be processed as follows:

A. The city manager shall make a recommendation to the city council as to disposition of the claim and schedule the matter for consideration by the council.

B. Notice of the time and date the council will consider the claim shall be mailed to the claimant (and all owners of record of property on the most recent property tax assessment roll where such property is located within 250 feet of the affected property) ten days prior to this date.

C. The city council shall hold a public hearing on the application for a waiver or compensation. The hearing shall be legislative in nature. At the close of the hearing, the city council (a) shall determine whether the applying owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) unless the city grants a waiver of the application of the regulation and, if so, (b) shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a waiver is not granted, taking in to consideration the financial resources of the city for the payment of such claims.

1. The waiver of the application of a regulation shall be entitled an enforcement waiver and shall apply only to an individual property that has been determined by the city council to be eligible pursuant to the provisions of this chapter.
2. An enforcement waiver is expressly limited to the minimum waiver necessary to avoid the need to pay compensation pursuant to the amendments to Oregon Constitution Article I, Section 18, adopted by Measure 7. The enforcement waiver shall be automatically rescinded if limited in scope, without the need for any action by the City of Hood River, to comply with any subsequent modifications to Oregon Constitution Article I, Section 18.

D. It is not certain whether an action of the city council under this chapter is subject to appeal to the Land Use Board of Appeals or to any other appeal tribunal. However, if any person has the right to appeal an action of the city council under this chapter, the failure of an issue to be raised in the hearing before the city council, through written or oral testimony, in a manner sufficient to afford the city council the opportunity to respond to the issue, will preclude an appeal to the Land Use Board of Appeals or another appropriate appeal tribunal based on that issue.

E. The failure of any property owner to receive notice shall not effect or invalidate any subsequent proceedings.

F. The burden of proof of any material element shall be upon the applicant for all matters required to be shown that the applicant is entitled to just compensation, and shall be upon the city to show that the regulation is exempt from the obligation for compensation.

G. All documents or evidence relied upon by or on behalf of the application shall be submitted to the city as part of the application. Persons other than the applicant may submit documents or evidence at the hearing before the city council.

H. A staff report used at the hearing shall be available at least seven days prior to the hearing.

I. When the city council reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

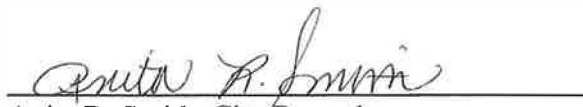
Read for the first time: December 4, 2000.

Read for the second time and passed: December 5, 2000, to become effective immediately.



Paul G. Cummings, Mayor

ATTEST:



Anita R. Smith, City Recorder