

agenda

CITY OF BROOKINGS
SPECIAL COUNCIL MEETING
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon
December 5, 2000
4:00 p.m.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. ORDINANCES/RESOLUTIONS/FINAL ORDERS

A. Ordinances

1. Approval of Ordinance No. 00-O-541, an ordinance to adopt a procedure for processing claims for compensation made pursuant to Article I, Section 18, of the Oregon Constitution as amended by Initiative Measure 7, enacted into law by the voters on November 7, 2000, and declaring an emergency *

V. ADJOURN

* Copy of proposed ordinance will be available for review after 2:00 p.m. on Monday, December 4, 2000, at City Hall, 898 Elk Drive, Brookings, OR 97415

**IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON**

**In the Matter of an Ordinance to Adopt a Procedure)
for Processing Claims for Compensation Made)
Pursuant to Article 1, Section 18, Oregon)
Constitution as Amended by Initiative Measure 7)
Enacted Into Law by the Voters on November 7,)
2000 and Declaring an Emergency)**

Sections:

- Section 1. Purpose**
- Section 2. Definitions**
- Section 3. Application**
- Section 4. Application Content**
- Section 5. Certificate of Completeness**
- Section 6. Fee**
- Section 7. Appraisal by City**
- Section 8. City Manager Recommendation**
- Section 9. City Authority to Waive the Enforcement Regulation**
- Section 10. Effect of an Enforcement Waiver Upon a Claim for Compensation**
- Section 11. Scheduling and Notice of City Council Hearing**
- Section 12. Council Decision**
- Section 13. Burden of Proof**
- Section 14. Emergency Clause**

The City of Brookings ordains as follows:

Section 1. **Purpose.** Ballot Measure 7 does not specify the process for submission and consideration of claims for compensation. The purpose of this Ordinance is to provide a procedure for submitting claims under Ballot Measure 7, and applies to retroactive claims to the extent, but only to the extent, that such claims are or may be allowed under Oregon law. The Ordinance provides a prompt, open and thorough process that enables property owners to present their legitimate claims consistent with the Oregon Constitution.

Section 2. Definitions: For the purpose of this Ordinance, the following definitions apply:

- (a) *Appraisal* means an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.
- (b) *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 products or other crop grown on the property.
- (c) *City Manager* means the City Manager or his or her designee.
- (d) *Current Owner* means the owner of fee title as reflected in the deed records of Curry County at the time a regulation giving rise to a claim for compensation under Ballot Measure 7 is effective.
- (e) *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 gambling parlor; or
 - (3) A regulation governing historically and commonly recognized nuisance laws.
- (f) *Effect of Reducing the Value of Property* means any concrete reduction in the actual fair market value of the owner's property which is the direct result of enforcement, application,

or adoption of an enactment, but excluding any reduction in value resulting from depreciation, changes in economic conditions within the City or any other actions not within the direct control of the City.

- (g) *Regulation* means any law, rule, ordinance, resolution, goal, or other enforceable enactment of the City.
- (h) *Retroactive Claim* means any claim for just compensation under Ballot Measure 7 based on the adoption, enforcement or application of a regulation prior to the effective date of the measure.

Section 3. Application. The claim for compensation shall be made on an application form provided by the City. An application shall not be deemed filed until and unless the application form is fully and properly completed with the inclusion of such information as required by the form and this ordinance and the completed form is actually received at the office of the City Manager.

Section 4. Application Content. An application for compensation shall, at a minimum, require the following information:

- (a) An objective, qualitatively neutral appraisal by a certified appraiser. If the claim is for more than \$10,000, copies of three different appraisals prepared by three different appraisers must be included. If the claim is for \$10,000 or less, one appraisal must be included. The appraisal shall contain the following:
 - (1) The current fair market value of the current owner's real property, taking into account all possible uses of the property under the regulation for which the current owner is seeking just compensation.
 - (2) The current fair market value of the current owner's real property, taking into account the uses of the property under the stated facts which the current owner claims to have given rise to the claim for compensation.

- (3) A certification by the appraiser, under penalty of perjury, that the appraisal is objective and qualitatively neutral.
- (b) The identity of the owner of fee title to the real property in question and the date when fee title was acquired. Such ownership information shall be accompanied by a title report, issued no more than 30 days prior to the application's submittal, prepared by a title insurance company licensed and authorized to do business in the State of Oregon, proposing to provide title insurance to the City, insuring the City as to the identities of the current owners of all legal, equitable and security interest in the private real property documenting the date and manner in which the owner or owners acquired ownership thereof.
- (c) The identity of the specific regulation as to which the owner is applying for compensation, including the section number of the regulation and a copy of the regulation.
- (d) A statement whether the application for compensation is based on adoption, first enforcement, or application of the regulation. If based on adoption of the regulation, the date of adoption of the regulation. If based on first enforcement of the regulation, the date and manner of first enforcement and any documentation establishing the date and manner of first enforcement. If based on application of the regulation, the date and manner of application and any documentation establishing the date and manner of application.
- (e) Identification of all efforts at amendment, repeal or a variance undertaken by the applicant.
- (f) Identification of any and all documents, including, but not limited to, architect's plans, appraisals letters of inquiry, real estate agency agreements, which demonstrate the current owner sought, desired or intended to, or was approached with a proposal to develop or use the real property for which the current owner's claim was filed in any manner other than that provided for by the identified regulation.

- (g) The amount the owner claims as compensation under Oregon Constitution Article 1, Section 8 and the amount of any compensation previously paid by the City under Oregon Constitution Article 1, Section 8 in relation to the property as to which the owner is seeking compensation.
- (h) A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation.

Section 5. Certificate of Completeness.

- (a) An application shall be deemed preliminary until it has been certified to be complete by the City Manager. Within ten (10) business days of the receipt of a preliminary application for compensation, the City Manager shall review the application and determine its completeness.
- (b) If the application is deemed complete, a certificate of completeness shall be issued to the applicant and the application will be deemed filed on the date that it was actually received. In the event that the application is determined to be incomplete, the applicant will be notified of the application deficiencies and the preliminary application shall not be deemed filed until such time as the deficiencies have been corrected.
- (c) Upon correction of the deficiencies, a certificate of completeness will be issued and the application shall be deemed filed on the date that the deficiencies were corrected.
- (d) In either event, the application shall have noted upon it, the date when it was deemed complete and filed.
- (e) Any notice to be given to an applicant pursuant to this section shall be mailed to the applicant by first class mail.
- (f) If the City Manager fails to advise an applicant of any deficiencies within the time required, the application shall be deemed complete on the date of its original filing with the City.

Section 6. Fee. An application fee, in an amount to be established by resolution of the City Council, shall accompany any application for compensation. The application fee shall be in an amount determined by the City Council to reasonably compensate the City for the actual cost involved in processing of the application. No application shall be deemed complete until the fee is paid.

Section 7. Appraisal by City. The City Manager may, in the City Manager's discretion, retain the services of an appraiser to appraise the property and the claim, for the purposes of determining whether or not the cited regulation has had the effect of reducing the fair market value of the property.

Section 8 City Manager Recommendation.

- (a) The City Manager shall make a recommendation to the City Council based upon his review of the application. As a part of that recommendation, the City Manager shall advise the Council whether or not the applicant has met the following criteria:
 - (1) The challenged regulation restricts the use of private property, and no other regulation authorizes an exemption, variance, waiver or other release from the regulation;
 - (2) The restriction on use has the effect of reducing the value of the applicant's property;
 - (3) The challenged regulation was adopted, first enforced or applied after the applicant became the owner; and
 - (4) The challenged regulation is not an exempt regulation.
- (b) If an applicant fails to meet one or more of the criteria listed above, the City Manager shall recommend that the City Council deny the claim.

- (c) If the application meets all of the above criteria, the City Manager shall refer the application to the City Council along with a recommendation based on the criteria, that the City Council either compensate the applicant for the reduction in fair market value or discontinue application of the regulation to the subject property by way of a “enforcement waiver”.

Section 9. City Authority to Waive the Enforcement of a Regulation.

- (a) The City, acting through its City Council, is hereby authorized to waive the enforcement of any regulation which is determined by the City Council to entitle an owner to compensation pursuant to the provisions of this ordinance. The waiver of the application of a regulation shall be entitled an *Enforcement Waiver* and shall apply only to an individual property which has been determined by the City Council to be eligible pursuant to the provision of this ordinance.
- (b) An Enforcement Waiver is expressly limited to the minimum waiver necessary to avoid the need to pay compensation. The Enforcement Waiver shall be automatically rescinded or limited in scope, without the need of any action by the City, to comply with any subsequent modifications to Oregon Constitution Article 1, Section 18.

Section 10. Effect of an Enforcement Waiver Upon a Claim for Compensation.

No compensation shall be due pursuant to the provisions of this ordinance if an Enforcement Waiver is granted by the City Council within 90 days of the filing of a completed application for compensation.

Section 11. Scheduling and Notice of City Council Hearing.

- (a) Following filing of the City Manager’s recommendation, the City Council shall schedule a public hearing on the application. The hearing shall be scheduled for a date as soon as is reasonably possible, and in any event, in sufficient time that the City Council can make a final decision not later than

90 days after the filing of an application that is deemed complete.

- (b) The hearing shall be preceded by written notice to the owners of all real property located within 300 feet of the real property owned by the applicant for which a compensation claim has been filed.
 - (1) Such notice shall identify the property in question;
 - (2) The amount of compensation claimed by the owner;
 - (3) Set forth a summary of the claim;
 - (4) Advise that the City may issue an Enforcement Waiver as an alternative to paying compensation;
 - (5) State the date, time and location of the public hearing;
 - (6) Contain a statement that any interested party may submit written comments on the claim prior to the hearing and any interested party may testify at the hearing, and that the City Manager's recommendation will be available to the public five days prior to the hearing; and
 - (7) Contain a statement that the failure to raise an issue at 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 appeal to any other tribunal based on that issue.

Section 12. Council Decision. In deciding the claim, the City Council may take any of the following actions:

- (a) Deny the claim based on any one or more of the following findings:

- (1) The regulation does not restrict the use of the private real property.
 - (2) The fair market value of the property is not reduced by the passage or enforcement of the regulation.
 - (3) The claim was not timely filed.
 - (4) The claimant is not the current property owner or was not the property owner at the time the regulation was adopted, first enforced or applied.
 - (5) The regulation is a historically and commonly recognized nuisance law or law regulating pornography, nude dancing, gambling or the sale of alcoholic beverages or other controlled substances.
 - (6) The regulation is required by federal law and is the minimum required to comply with federal law.
- (b) The City Council may also find as follows:
- (1) That the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, is sufficient to justify sacrificing the public benefits from application of the regulation to the owner or owner's private real property;
 - (2) The Council may grant an Enforcement Waiver from the specified regulation to the extent necessary to avoid the owner or owner's being entitled to compensation;
 - (3) The City Council may find that the public benefits from application of the regulation to the owner or owner's private real property are sufficient to justify the burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims; and

- (4) The Council may specify a specified amount of compensation to be paid.

Section 13. Recording of the Decision. The decision of the Council runs with the land and must be placed in the county deed records. Recording shall be completed by the applicant and at the applicant's expense.

Section 14. Burden of Proof. The burden of proof of any material element shall be upon the claimant for all matters required to show that the property owner is entitled to just compensation.

Section 15. Emergency Clause. The matters contained herein concern the peace, health, safety and welfare of the people of the City of Brookings and therefore an emergency is hereby declared to exist and this ordinance shall become immediately effective upon its final passage by the Common Council and approval by the Mayor.

First Reading: _____

Second Reading: _____

Passage: _____

Signed by me in authentication of its passage this _____ day of December, 2000.

Bob Hagbom, Mayor

ATTEST:

Sharon A. Ridens
Finance Recorder