

ORDINANCE NO. 1063

AN ORDINANCE AMENDING TITLE 1 OF THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER, 1.20, ADOPTING A PROCEDURE FOR PROCESSING CLAIMS MADE PURSUANT TO ARTICLE 1, SECTION 18 OF THE OREGON CONSTITUTION AS AMENDED BY INITIATIVE MEASURE 7; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby finds:

a. 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; and

b. Ballot Measure 7 provides that a land owner, 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 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

c. Ballot Measure 7 does not set forth a specific process for review of application 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, now therefore:

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Title 1 of the Canby Municipal Code is amended by adding a new Chapter, 1.20, entitled " Private Property Compensation Claims" to read as follows:

1.20.010 Purpose and scope.

This chapter implements the provisions added to Oregon Constitution Article 1, section 18 by Measure 7 on November 7, 2000. The measure permits owners of private real property to apply for compensation for the reduction of property value resulting from a regulation that restricts the use of that property. The process established in this chapter provides a prompt, open, and thorough process that enables property owners to present their claims consistent with the Oregon Constitution and will establish a record of decision capable of appellate review.

1.20.020 Definitions.

“Appraisal” - means an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.

“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, including Canby Municipal Code (CMC) Chapter 8.12, as amended from time to time, and the criminal laws of Oregon and the City of Canby.

“City Administrator “ - means the City Administrator of the City of Canby or his/her designee.

“Real property” - means any real property and shall include any structure built on a property, aggregate and other removable minerals, and any forest product or other crop grown on the property.

“Reduction in Fair market value” - means 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, wetland, ecosystems, scenery, open space, historical, archaeological or cultural resources, or low income housing.

“Regulation” - includes any law, rule, ordinance, resolution, goal, or other enforceable enactment of the City of Canby.

“Waiver” - means a waiver granted by the City Council, pursuant to the terms of this chapter, whereby the application of a particular regulation is waived with regard to the particular property(ies) which is the subject of the application.

1.20.030 Application.

An owner of private real property may apply for a waiver from any City regulation under Article I, section 18, subsections (a) through (f) of the Oregon Constitution (hereinafter referred to as Measure 7) if such regulation has the effect of reducing the fair market value of a property upon which the regulation is imposed. Such application shall be made on forms established for that purpose by the City and shall include any information required thereon, unless any item is specifically waived by the City Administrator. Application requirements are not limited to, but may include the following:

1. A legal description or other accurate and complete description of the subject property;
2. Proof that the subject property is in the exclusive fee simple ownership of the applicant or that the applicant has the consent of all owners, including co-owners and security interests in the parcel. Ownership information

- shall be accompanied by a current title report.
3. 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 adopted, first enforced or applied on the subject property.
 4. A copy of an appraisal indicating the amount of the alleged reduction in fair market value that is due to the regulation being challenged. For claims of more than \$10,000, two separate appraisals shall be required.
 5. 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.

1.20.040 Fee.

An application fee of \$750 is hereby established to reimburse the City for the costs of processing an application and shall accompany any application submitted under this chapter. Such fee may be modified by resolution of the City Council. The City shall refund the application fee if it is determined by the City or a court that the applicant is entitled to compensation under Measure 7.

1.20.050 Completeness.

- A. Within 15 days of receipt of an application under Section 1.20.030, the City Administrator or designee shall review the application and determine its completeness. If the application is deemed complete, a letter of completeness shall be issued to the applicant and the application will be deemed filed on the date that it was received. If the application is deemed incomplete, the applicant shall be notified of the deficiencies and the application shall not be deemed complete until all deficiencies have been corrected. The applicant has 180 days from the original submittal date to complete the application. A corrected application shall be deemed filed on the date that all deficiencies have been corrected.
- B. If the City fails to advise an applicant of any deficiencies within the required 15-day period, the application shall be deemed complete on the date of its original filing with the City.
- C. The 90-day period for action by the City specified in Measure 7 shall begin on the date on which the application was deemed filed, as specified in sections A or B above.

1.20.060 Public hearing notice and process.

- A. Upon receipt of a complete application for a waiver under this chapter, the City Administrator shall schedule the matter for a public hearing before the City Council. Notice of this hearing shall be provided to all property owners and residents of property within five hundred (500) feet of the subject property. Such notice shall be mailed a minimum of seven (7) days before the hearing and shall, at a minimum, identify the property in question, describe the application being made, and provide notice that the City may issue a waiver or pay compensation

as a result of the application. Failure of any individual to receive notice as prescribed in this section does not invalidate the proceedings.

- B. The applicant shall post notice of the public hearing on the subject property a minimum of seven (7) days before the hearing. The form of such notice shall be supplied to the applicant by the City.
- C. A minimum of seven (7) days before the public hearing, the City shall make available a staff report on the issue. This report shall include a summary of all relevant information and shall contain a recommendation for the Council's consideration.
- D. The public hearing shall be held according to the evidentiary hearing procedures established in CMC 2.28.
- E. The applicant has the burden of proof for all issues required to show that just compensation is due to the property owner.

1.20.070 Decision and order.

- A. After a public hearing as established in this chapter, the City Council shall make a determination as to whether the applicant is or will be entitled to compensation under Measure 7 unless the City grants a waiver from the regulation. If so, the Council shall weigh the public benefits from application of the regulation to the subject property against the public burden of paying required compensation if a full or partial waiver is not granted. It shall make a decision as to whether compensation shall be paid and in what amount, and/or whether one or more specific regulations are to be waived or modified for a specific property or properties in order to reduce or eliminate any required compensation. The City Council is hereby authorized to waive or modify any City regulation to meet the requirements of this section.
- B. To deny a claim for waiver or compensation under Measure 7, the City Council must make 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 an exempt regulation, as defined in this chapter.
 - 6. The regulation is required by federal law and is the minimum required to comply with federal law.
 - 7. The City is not responsible for payment. The City is not responsible if the challenged regulation was not enacted by the City or if the challenged regulation was required by a state or federal statute or regulation.
 - 8. The City has not taken final action to enforce or apply the regulation.
 - 9. The claimant is not legally entitled to compensation under Measure 7 for a reason other than those listed in subsections 1 through 8. The basis for this finding must be clearly explained.
- C. The City Council's decision shall be by a written order that shall include the

findings and conclusions upon which the Council has made its decision and, if applicable, the extent of the waiver granted and/or the amount of the compensation to be paid.

- D. The City shall mail a notice of all decisions made under this chapter to those notified under 1.20.060(A) and to those who submitted written or oral testimony, and to any others that requested notice of the decision.
- E. In the event the subject regulation is required under state or federal statutes or regulations, thereby preempting City authority, the City may not waive or modify the application of the regulation.

1.20.080 Conditions of approval.

- A. The City Council may establish any reasonable conditions of approval for compensation, should compensation be granted.
- B. Failure of an applicant, or an applicant's successor in interest, to fully comply with all conditions of approval of the application is grounds for revocation of the approval and for recovering any compensation previously paid on the claim.

1.20.090 Future court decisions.

- A. If the City Council grants a waiver or partial waiver as a means to avoid having to compensate, or as a means to limit compensation to, or to avoid potential litigation with an owner or owners under Measure 7, and if, based on an appellate court interpretation or invalidation of Measure 7, in the same or another case, the applying owner was not entitled to compensation, then the waiver or partial waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Measure 7.
- B. Any City payment of compensation under this chapter shall be conditional on the owner signing an agreement that, if an appellate court interprets or invalidates Measure 7, 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.

1.20.100 Attorney Fees.

If a claim for compensation under Measure 7 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 the applicant.

1.20.110 Availability of Funds to Pay Claims.

Compensation can only be paid based upon availability and appropriation of funds for this purpose.

1.20.120 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 Declared.

It being necessary for the health, safety and general welfare of the citizens of Canby, that this ordinance be adopted prior to the effective date of Measure 7, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a special meeting thereof on Wednesday, November 29, 2000, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, December 20, 2000, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Chaunee Seifried
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of December, 2000, by the following vote:

YEAS _____

NAYS _____

Scott Taylor, Mayor

ATTEST:

Chaunee Seifried, City Recorder - Pro Tem

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

I, CHAUNEE SEIFRIED, being first duly sworn, depose and say that I am the Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 6th day of December, 2000, the Council for said City of Canby held a Regular Council Meeting, at which meeting Ordinance No. 1063 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 13th day of December, 2000, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

- 1. Canby City Hall Bulletin Board - outside
- 2. Canby Public Library Bulletin Board
- 3. Canby Post Office

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 20th day of December, 2000.

Chaunee F. Seifried
City Recorder pro tem

Subscribed and sworn to before me this 7th day of December, 2000.

Notary Public For Oregon
My Commission Expires: 2-20-03