

ORDINANCE NO. 703

AN ORDINANCE ADOPTING A NEW CHAPTER OF THE TROUTDALE MUNICIPAL CODE, 2.70, COMPENSATION UNDER ARTICLE I, SECTION 18, OF THE OREGON CONSTITUTION, 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 I, Section 18, of the Oregon Constitution, by adding subsection (a) through (f), to read as follows:

"(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."

2. The constitutional amendments adopted by Ballot Measure 7 are effective December 7, 2000.

3. Ballot Measure 7 does not set forth a specific process for reviewing claims for compensation under Ballot Measure 7. It is in the best interests of the City to establish such a process in order to assess and process claims in a timely manner.

4. In accordance with the City of Troutdale Charter, Section 30, it is necessary that this ordinance be considered for immediate adoption. The council is not scheduled to meet again until December 12, 2000. Measure 7 is effective December 7, 2000. An ordinance that adopts a process for Measure 7 claims is needed immediately. Copies of this ordinance have been distributed to the council and made available for public inspection at least twenty-four (24) hours before its adoption.

Now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Title 2 of the Troutdale Municipal Code is amended to add a new chapter, 2.70, Compensation Under Article I, Section 18, of the Oregon Constitution, to read as follows:

Chapter 2.70

**COMPENSATION UNDER ARTICLE I, SECTION 18,
OF THE OREGON CONSTITUTION**

Sections:

2.70.010	Purposes
2.70.020	Definitions
2.70.030	Filing a Claim
2.70.040	Letter of Completeness
2.70.050	Appraisal Requirements
2.70.060	City Authority to Release the Application of a Regulation
2.70.070	Release
2.70.080	Limitations on Releases
2.70.090	Claim Adjudication Procedure
2.70.100	Claim Criteria

2.70.010 Purposes

The purpose of this chapter is to provide property owners in Troutdale a process to submit claims for compensation under the Oregon Constitution, Article I, Section 18, as amended by Ballot Measure 7, passed on November 7, 2000.

2.70.020 Definitions

"*Appraisal*" means an appraisal of the fair market value of real property prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.

"*City*" means the City of Troutdale, and its officers, employees, or agents.

"*City Administrator*" means the City Administrator for the City of Troutdale or the City Administrator's designee.

"*Claimant*" means a property owner that has filed a claim under this Chapter.

"*Owner*" means a person who holds a fee simple interest in property that is the subject of a claim under this chapter.

"*Person*" means any individual, sole proprietorship, partnership, corporation, association, other organization or legal entity.

"*Property*" means any real property and 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.

"*Proposed Use*" means the lawful use of real property proposed by a claimant.

"*Reduction in the Fair Market 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 owner of an affirmative obligation to protect, provide, or preserve wildlife habitat, natural areas, wetlands, ecosystems, scenery, open space, historical, archeological or cultural resources, or low-income housing.

"*Regulation*" means any law, rule, ordinance, resolution, goal or other enforceable enactment of the City of Troutdale.

"*Release*" means the City Council's fiscal decision not to apply or enforce a regulation because the application or enforcement of the regulation would require the City to compensate a property owner under the Oregon Constitution, Article I, Section 18, as amended by Measure 7.

2.70.030 Filing a Claim

Any person seeking compensation pursuant to the Oregon Constitution, Article I, Section 18, shall file the claim on an application form provided by the city for such purpose, signed by all owners of the property that is the subject of the claim. A claim for compensation shall not be deemed filed until the application form is fully and properly completed and submitted to the city with the following:

- A. An application fee in the amount established by resolution;
- B. A title report, or other reliable document that the city determines is suitable, that identifies the owner of the property that is subject to the claim and the date when the owner acquired title to the property;
- C. A list of the property owners within 300 feet of the property that is the subject of the claim;
- D. A copy of the regulation that the claimant believes reduces the fair market value of the claimant's property;
- E. A description of the manner in which the regulation that is the subject of the claim reduces the fair market value of the claimant's property;
- F. An appraisal that complies with the requirements set forth in Section 2.70.050;
- G. A description of how the regulation that is the subject of the claim restricts the claimant's use of the claimant's property;
- H. A list of all of the land use and building permits that have been issued or sought for the property that is the subject of the claim, a summary of the disposition of all land use or building permit applications, and a summary of any enforcement actions that involve the claimant's property;
- I. A description of the claimant's proposed use of the property that is the subject of the claim; and
- J. Any other information reasonably requested by the city to evaluate the claim.

2.70.040 Letter of Completeness

The city shall treat a claim as preliminarily filed until the City Administrator certifies that a claim is complete. Within five (5) business days of the receipt of a preliminary claim for compensation, the City Administrator shall review the claim and determine whether it is complete. If the claim is deemed complete, a letter of completeness shall be mailed to the claimant informing the claimant that the claim is deemed filed. In the event that a claim is determined to be incomplete, the city shall notify the claimant of the deficiencies in the claim

and the preliminary claim shall not be deemed filed until such time as the deficiencies have been corrected. Upon correction of the deficiencies, a letter of completeness shall be mailed to the claimant informing the claimant that the claim is deemed filed. If the deficiencies are not corrected within six (6) months, the claim shall be rejected based on its incompleteness. All claim application forms shall have the date when the claim is deemed complete and filed noted on it. All claims shall be deemed filed as of the date noted on the claim application form.

2.70.050 Appraisal Requirements

A claimant's appraisal offered to support a claim for compensation pursuant to the terms of this chapter shall comply with the following requirements:

A. The appraisal must expressly note all existing infrastructure limitations and value the property without an assumption that the infrastructure will be improved at governmental expense or through discretionary governmental action;

B. The appraisal must indicate the amount of the alleged reduction in fair market value of the property by showing the difference in the fair market value of the property before and after the application of the regulation that is the subject of the claim for compensation;

C. The appraisal's consideration of the reduction and fair market value shall be limited to the difference in the fair market value of the property before and after the application of the regulation that is the subject of the claim, and shall include the net cost to the owner of an affirmative obligation to protect, provide, or preserve wildlife habitat; natural areas; wetlands; ecosystems; scenery; open space; historical, archeological, or cultural resources; or low-income housing, but shall not include consideration of any other damage that the regulation may have upon the property in question or any other property owned by the claimant;

D. The appraisal must expressly consider the effect a release under Measure 7, as applied to the claimant's and similarly situated properties, will have on the availability of other property, including the extent to which the supply of other property is or will be increased; and

E. The appraisal shall address any other matters the City determines are reasonably necessary to adequately evaluate the claim for compensation.

2.70.060 City Authority to Release the Application of a Regulation

The city, acting through the council, may release any regulation which the council determines will entitle an owner to compensation pursuant to Section 2.70.100 of this chapter. The release of a regulation shall relieve the owner of the owner's obligation to comply with the regulation to the extent that a release is required to avoid paying compensation under the Oregon Constitution, Article I, Section 18, as amended by Measure 7. The release issued to the owner shall apply only to the specific property which the council has determined complies with the criteria in Section 2.70.100 of this chapter. If the council releases a regulation, the owner shall enter into a release agreement with the city in a form acceptable to the City Attorney. The release agreement shall be recorded in the real property records in Multnomah County.

2.70.070 Release

If the council releases a regulation and the owner executes and records a release agreement, the city shall not apply or enforce the regulation against the property owner, as set out in the release agreement. No person shall be entitled to compensation pursuant to the provisions of the Oregon Constitution, Article I, Section 18, as implemented in this chapter, if the council grants a release within ninety (90) days of the date a complete claim was filed.

2.70.080 Limitations on Releases

A release is expressly limited to the minimum release that is necessary to avoid the need to pay compensation pursuant to the amendments to Oregon Constitution, Article I, Section 18, adopted by Measure 7. A release shall be automatically rescinded or limited in scope if necessary or appropriate to comply with any subsequent modifications to the Oregon Constitution, Article I, Section 18.

2.70.090 Claim Adjudication Procedure

A. When a complete claim for compensation has been filed pursuant to the terms of this chapter, the city shall schedule a public hearing before the council. The hearing shall be preceded by written notice to the owners of all real property located within 300 feet of the claimant's property. Such notice shall identify the claimant's property, set forth a summary of the claim for compensation, describe the regulation that the claimant alleges restricts the use of the claimant's property, describe the claimant's proposed use of the property, and provide notice that the city may release application or enforcement of the regulation as an alternative to paying compensation.

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

C. Following the public hearing, the council shall determine whether or not the claim complies with the criteria in Section 2.70.100. If the council determines that the claim complies with the criteria in Section 2.70.100, the council shall decide whether or not to pay the claim or release the application or enforcement of the challenged regulation. If the council decides to pay the claim, the council may authorize payment of an amount that it determines is necessary to compensate the owner for the reduction in fair market value that is a direct result of the application or enforcement of the challenged regulation.

2.70.100 Claim Criteria

The city may grant a claim for compensation if all of the following criteria have been met:

A. A complete claim has been properly filed pursuant to the terms of this chapter;

B. The claimant is the owner of the property that is subject to the claim and owned the property when the regulation that is the subject of the claim was adopted, first enforced or applied; and

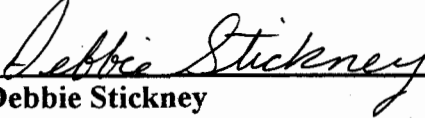
C. The regulation that is the subject of the claim restricts the claimant's use of the claimant's property and such restriction has reduced the fair market value of the claimant's property.

Section 2. An emergency is declared. Immediate adoption of this ordinance is necessary. The ordinance is effective immediately upon its passage and execution by the Mayor.

YEAS:	<u>7</u>
NAYS:	<u>0</u>
ABSTAINED:	<u>0</u>


Paul A. Thathofer, Mayor

Dated: 11-29-00


Debbie Stickney
City Recorder

Adopted: November 28, 2000