

A BILL FOR AN ORDINANCE )  
 ESTABLISHING CHAPTER 17.70 OF THE )  
 LEBANON MUNICIPAL CODE CREATING )  
 A PROCEDURE FOR SUBMITTING AN )  
 APPLICATION FOR COMPENSATION )  
 ARISING UNDER THE PROVISIONS OF )  
 ARTICLE 1, SECTION 18 OF THE OREGON )  
 CONSTITUTION, AS AMENDED BY BALLOT )  
 MEASURE 7, ADOPTED NOVEMBER 7, 2000; )  
 AND DECLARING AN EMERGENCY )

Bill Number 38  
 for 2000

Ordinance Number 227B

**WHEREAS**, Ballot Measure Number 7, providing for the amendment of Article I, Section 18 of the Oregon Constitution was submitted to, and approved by, the electors of the State of Oregon on November 7, 2000, and such amendment becomes effective on December 7, 2000; and

**WHEREAS**, it appears that such Measure may have created a cause of action or claim for compensation for certain regulatory actions or enforcement of governmental laws or regulations, for which no compensation was payable under Oregon law prior to the adoption of said Measure 7; and

**WHEREAS**, the provisions of Measure 7 require that a regulating entity, including the City of Lebanon, under certain circumstances, if the City “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,” to pay to the property owner “just compensation equal to the reduction of the fair market value of the property; and

**WHEREAS**, Measure 7 provides that such compensation is due, and that the regulating entity may be required to pay attorney fees and expenses necessary for the claimant to collect such compensation if the claim is not paid, within 90 days of filing an application for compensation; and

**WHEREAS**, the City of Lebanon desires to comply with the requirements of Measure 7 in an appropriate and timely manner; and

**WHEREAS**, in order to comply, it is necessary that the City of Lebanon shall have and receive from any such claimant full and adequate information by means of which the City can evaluate and determine the validity and value of such claims;

**NOW, THEREFORE, THE CITY OF LEBANON HEREBY ORDAINS:**

**Section 1.** There is hereby established a Chapter 17.70, entitled “Procedures for Making Claims for Compensation for Regulatory Takings”, which shall read as follows:

**17.70.010. Purpose.**

A Any person desiring to make or assert a claim or claims against the City of Lebanon under the provisions of Article I, Section 18 of the Oregon Constitution, as amended by the voters of Oregon on

November 7, 2000 under Ballot Measure 7, shall, within the time limits provided by any applicable statute of limitations, submit to the City Recorder, with true and accurate accompanying information and documentation as is necessary to establish the validity and the value of such claim, including but not necessarily limited to the information hereafter enumerated, a written application for compensation. Any application so filed with the City Recorder shall include, but shall separately state, the claim for which they are applying with respect to the property therein described on the date that the application is filed with the City Recorder. No application shall set forth claims which do not affect all of the property described in the application.

B. This policy is not intended to in any way expand the rights or remedies available to property owners under Ballot Measure 7 or any other law. Neither shall it be construed so as to contravene the express terms of Ballot Measure 7. This policy in no way amends, repeals or implements the Comprehensive Plan, Transportation Plan, Community Development Code, statewide planning goals or any other land use statute, regulation or policy.

#### **17.70.020 Definitions**

For the purposes of this subchapter, the following definitions apply unless the context requires a different meaning.

**ADOPTED.** The date a regulation is enacted or passed by the City.

**APPLIED.** The date of a city administrative action or final city quasi-judicial decision that gives effect to a regulation against a specific real property.

**APPRAISAL.** An appraisal by an appraiser licensed or certified by the Appraiser Certification and Licensure Board of the State of Oregon, or an appraiser registered under state law.

**EXEMPT REGULATION.** A regulation that:

- A. Is a historically and commonly recognized nuisance law pursuant to Oregon Constitution, Article I, Section 189(b);
- B. Implements a requirement of federal law, including the Endangered Species Act, Clean Water Act, Telecommunications Act, Clean Air Act, Wild and Scenic Waterways Act, National Environmental Policy Act, Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act and Surface Mining Control and Reclamation Act to the minimum extent required; or
- C. Prohibits selling pornography, performing nude dancing, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor pursuant to Oregon Constitution Article I, Section 18 (c).

**REGULATION.** An ordinance, resolution or other enforceable legislative enactment that has been adopted, or approved by the City of Lebanon.

**RESTRICTS THE USE.** A regulation that restricts the type of use of private real property, but does not include a regulation that effects either the extent or location of a use, a land division, subdivision,

or a regulation that governs development standards or construction.

**REDUCTION IN FAIR MARKET VALUE.** The difference in the fair market value of the property before and after application of the regulation.

**ENFORCEMENT WAIVER.** A waiver granted by the city, pursuant to the terms of this chapter whereby the application of a particular regulation is waived with regard to the particular property or properties which are the subject of the application.

**17.70.030 Initiation of a Claim.**

Owners of record before the regulation was imposed may initiate applications for compensation for reduction in real property value due to a city regulation.

**17.70.040 Code Compliance and Applications.**

The city will not approve any application for compensation or issue a waiver for any property that is not in full compliance with all applicable provisions of the Lebanon Municipal Code and any permit approvals previously issued for that property by the city.

**17.70.050 Application Requirements.**

A. All claims applications must be submitted to the City Recorder on the most current form provided by the city, along with the appropriate fee and all necessary supporting documentation and information.

B. All applications must concern only a single parcel of land.

C. All applications must concern a single or particular city regulation that is alleged to restrict the use. A separate application is required for each and every regulation that is alleged to restrict the use.

D. All applicants must demonstrate that they have been specifically restricted from a desired use on the particular parcel for which relief is sought. Such evidence or demonstration must be in the form of denied permit application, a cease and desist order, proposed enforcement letter or other similar specific city imposed restriction on, or denial of use of, the subject property.

**17.70.060. Complete Application Information**

The city will not deem the application complete until all information required by the City Recorder has been submitted. Unless specifically waived by the City Recorder, the following must be submitted:

- A. One copy of a completed city application form that includes the following information:
  - 1. An accurate legal description, tax account number, map and property address of the private real property that is the subject of the application as well as all contiguous parcels owned by the same owner(s);

2. Name, address, telephone number and notarized signature of all property owners;
- B. A current (within 30 days prior to the application) preliminary title report for the subject property that includes title history, date applicant acquired ownership of the property, and any co-owners or security interests in the property.
- C. A certified copy of the property deed or real estate land sale contract.
- D. Specific identification of the city regulation alleged that restricts the use of the subject private real property, including when the regulation was adopted, first enforced or applied to the property.
- E. The alleged effect of the regulation that restricts the use on the property, including copies of appraisals by appraisers showing the alleged reduction in fair market value of the property within six months before and six months after the application of the regulation to the property. If the claimed reduction in fair market value is based on an alleged net cost to the property owner 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 must establish that net cost.
- F. A statement by the applicant of why the regulation alleged to restrict the use of the property is not an exempt regulation.
- G. A statement of the effect that a release of the regulation alleged to restrict the use of the property would have on the fair market value of the property, and the development potential for the property if it were not subject to that regulation.
- H. A statement of the relief sought by the applicant.
- I. The names and addresses of all property owners within 300 feet of the aggrieved parcel.
- J. A copy of all reports, plans, site plans, permits and applications submitted, at any time, by the current owner(s) of the subject property.
- K. All appraisals shall comply with the following:
  1. All appraisals must be prepared by an Oregon State licensed appraiser.
  2. If in support of a claim in excess of \$10,000, two appraisals shall be required and prepared by and in accordance with the standards of an MAI, SR, or SRPA appraisal.
  3. A description of its area and a detailed description of the subject property.
  4. It shall address the market feasibility of the use of restriction of use for which compensation is sought, taking into account the potential impact on other properties, the availability of necessary public service, probability of obtaining needed approvals from other governmental bodies and other constraints.
  5. Detailed explanation of the facts, methodology and analysis used by the appraiser to reach his/her opinion as to the commensurable reduction in fair market value

caused solely by the application of the specific regulation in question.

- L. All required application fees and any additional costs as set by council resolution.
- M. A sworn statement that the information submitted is true and complete to the best knowledge and belief of the claimant.
- N. Such other information or fees as may reasonably be required by the city to establish the validity of the claim including, but not limited to, an additional appraisal performed by an appraiser of the city's choice, economic feasibility studies, engineering studies and environmental assessments.

**17.70.070 Completeness Review and 90-Day Rule**

- A. Upon submission of a compensation claim, the City Recorder will then review the application and evaluate whether the application is complete. Within 30 days of receipt of the application, the City Recorder will complete this initial review and issue to the applicant a completeness letter stating that the application is complete, or if not complete, what information must be submitted to make the application complete.
- B. Upon receipt of a letter indicating the application is complete, the applicant has 180 days from the original application submittal date within which to submit the missing information or the application will be rejected and all materials submitted with the application will be returned to the applicant.
- C. Once the City Recorder determines the application is complete, the city will declare the application complete. The city will take action on the completed application within 90 days as required by Article I, section 18(d) of the Oregon constitution, unless the applicant waives or extends the 90-day period. The 90-day period does not apply when the applicant requests a hearing continuance or other process delay.

**17.70.080. Notice and Determination by the City Council.**

- A. Within 90 days of the receipt of a completed application for compensation by the City Recorder, and at a regularly scheduled City Council meeting conducted following the provision of notice as required by this Chapter, the Lebanon City Council shall consider the application filed for compensation. At the Council meeting, or subsequent meeting as the Council may schedule, the City Council shall, by a majority vote, determine whether compensation is granted for the application, the amount of compensation, whether any exceptions to the requirement for compensation shall apply or whether the regulation should be deemed not to apply to the applicant's property.
- B. Notice of the City Council's intent to consider the application shall be mailed to the applicant and property owners of property located 300 feet of the applicant's property, no later than 7 days prior to the initial meeting at which the Council will consider the application. Written notice of further Council meetings scheduled to consider the

application shall not be required if the time, date and location of such subsequent meeting is announced at the initial meeting of the Council held to consider the application. Lack of actual notice of the initial meeting shall not invalidate the actions of the City Council concerning the application.

**17.70.090. Evidence**

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 to pay compensation.

**17.70.100 No Re-application.**

If an application is denied or withdrawn following the close of the public hearing, no re-application for the same or substantially similar compensation claim may be made by the current owner of the subject property.

**17.70.110 Limitations on Enforcement Waivers**


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 on November 7, 2000. The enforcement waiver shall be automatically rescinded or limited in scope, without the need for any action by the city to comply with any subsequent modifications to Oregon Constitution Article I, Section 18. A property for which an enforcement waiver is issued is ineligible for any new water and sewer connection until such time as the enforcement waiver may be released by the owners of the subject property.

**17.70.120. Severability.**

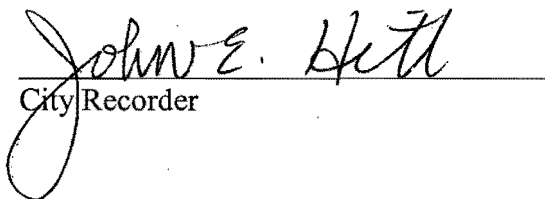
The provisions of this Chapter are severable, and if any phrase, clause or part of this Chapter is found by a court of competent jurisdiction to be invalid or unenforceable, each and every remaining phrase, clause and part shall nonetheless remain in full force and effect.

**Section 2. Emergency Clause.** It being deemed by the City Council that the amendments to Article I, Section 18 of the Oregon Constitution, as amended by Ballot Measure 7, were passed on November 7, 2000 by the electors of the State, which makes the effective date of said amendments December 7, 2000, the City Council therefore determines that an emergency exists and it is in the public interest and general safety that this ordinance take effect immediately upon its passage by the City Council and approval of the Mayor.

Passed by the City Council of the City of Lebanon by a vote of 5 for and 0 against this  
6<sup>th</sup> day of December, 2000.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
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City Recorder