

## ORDINANCE NO. 300

### AN ORDINANCE OF THE CITY OF COOS BAY ESTABLISHING A CLAIMS PROCEDURE FOR REGULATORY TAKINGS

The City of Coos Bay ordains as follows:

**Section 1. Purpose.** The purpose of this ordinance is to provide a procedure for submitting claims for regulatory takings under Ballot Measure 7, and this ordinance applies to retroactive claims to the extent, but only to the extent, that such claims are determined to be allowed under Oregon law.

#### **Section 2. Definitions.**

Adopted: to put into effect or operation by enactment.

Applied: the making operative of any regulation.

Claim for Compensation: a claim by the current owner for just compensation arising under Measure 7.

Current Owner: the holder of fee title, as reflected in the deed records of Coos County at the time a regulation giving rise to a claim for compensation under Measure 7 is or becomes effective.

Effect of Reducing the Value of a Property: 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 jurisdiction, failures by the current owner to gainfully use the property, reductions resulting from the existence of a historically or commonly recognized nuisance on the property, or any other actions not within the direct control of the jurisdiction.

Effective Date of the Measure: December 7, 2000.

Enforced: the putting into effect of any regulation, including, but not limited to the issuance of any document evidencing compliance with the regulation.

Fair Market Value of the Property: the minimum amount in cash which could reasonably be expected by an informed seller acting without compulsion, from an informed buyer acting without compulsion, in an "arms-length" transaction at the time the claim of the current owner is created.

Historically and Commonly Recognized Nuisance: any state of facts which has been recognized legislatively or judicially as a nuisance prior to the effective date of Measure 7.

Jurisdiction: the City of Coos Bay.

Just Compensation: an amount equal to the reduction in the fair market value of the property before and after the adoption, initial enforcement or application of the regulation.

A Property: each discrete legally created lot or parcel owned by the owner, as described in the deed conveying a property.

Person Interested in the Proceeding: any person who appears, orally or in writing, in any proceeding for the payment of a claim or release of a regulation brought against the City pursuant to Measure 7.

Regulation: any law, rule, ordinance, resolution, goal, or other enforceable enactment of government.

Restricting the Use of Real Property: any limit placed on the use of real property, other than a limit based historically or commonly recognized nuisance laws or a restriction placed on the use of real property which is the result of a regulation implementing any requirement of federal law and is the minimum regulation needed to establish compliance with federal law.

Retroactive Claim: any claim for just compensation based on the belief Measure 7 applies retroactively to regulations adopted, and enforced or applied prior to the effective date of the Measure.

### **Section 3. Regulatory Takings.**

(a) The current owner of private real property shall be paid just compensation if a regulation is passed or enforced by the City restricting the use of the current owner's private real property, and the restriction has the effect of reducing the fair market value of a property upon which the restriction is imposed.

(b) The current owner's claim for just compensation shall commence on the date the regulation is adopted, first enforced or applied. No retroactive claim shall be granted for just compensation based on any regulation adopted, first enforced or applied prior to the effective date of the Measure; provided, however, should any final decision be reached by an appellate court of this state that Measure 7 is retroactive, any person who qualifies for just compensation due to the retroactive application of Measure 7 may seek just compensation as provided by this ordinance. Just compensation for any such claim shall be based on the difference between actual fair market value of the property with and without the regulation at the time the regulation was adopted, first enforced or applied, but shall take into account any regulation in existence at the time the regulation was adopted, first enforced or applied.

(c) No regulatory taking shall be deemed to have occurred as the result of a minimum regulations to implement a requirement of federal law, as the result of any regulation adopting, enforcing or applying a historically and commonly recognized nuisance law, or a regulation prohibiting 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.

**Section 4. Claims Procedure:**

**(a)** The current owner of private real property with a claim for compensation shall file a claim for compensation with the City Manager no later than 90 days after the date a regulation is adopted, first enforced or applied.

**(b)** The claim for compensation shall be made on a form provided by the City, and shall include the following:

**(1)** An objective, qualitatively neutral appraisal by a certified appraiser, which shall contain the following:

**(A)** 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;

**(B)** the current fair market value of the current owner's real property, taking into account the uses of the property under the state of facts which the current owner claims to have given risen to the claim for just compensation;

**(C)** In the event retroactive claims are allowed, as provided by Section 3(b) of this ordinance, then the appraisal shall also include:

**(i)** the fair market value of the current owner's real property at the time the regulation for which the current owner is seeking just compensation was first adopted, enforced or applied, taking into account all possible uses of the property at the time of adoption, enforcement or application of the regulation;

**(ii)** the fair market value of the current owner's real property at the time the regulation for which the current owner is seeking just compensation was first adopted, enforced or applied, taking into account the uses of the property at the time of adoption, enforcement or application of the regulation.

**(E)** a certification by the appraiser, under penalty of perjury, that the appraisal is objective and qualitatively neutral.

**(2)** Certified copies of all deeds and other instruments reflecting any interest owned or held by any person to and in the real property for which the current owner's claim is filed, from and after the effective date of the regulation.

(3) Any and all documents, including, but not limited to zoning compliance letters, notices of non-compliance, and resolutions declaring the property a nuisance, from and after the effective date of the regulation, in the possession of the current owner or which the current owner can reasonably obtain, indicating the real property for which the current owner's claim is filed is subject to the adoption, enforcement or application of the regulation for which just compensation is sought.

(4) 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 is filed in any manner other than that provided for by the regulation.

(5) A copy of the archived regulation for which the current owner's claim for just compensation is sought.

(6) Complete documentation of all existing improvements on the property, including, but not limited to, the date the improvement was constructed, cost of the improvement, and real property taxes assessed against the property.

(7) Any other facts the current owner believes are material to the claim for just compensation.

(8) An affidavit by the current owner, under penalty of perjury, attesting to the factual correctness of all material submitted in support of the current owner's claim for just compensation.

(9) An application fee. Application fees shall be set by resolution of the Council.

(b) No application shall be deemed complete until all materials required by this section have been submitted by the current owner.

#### **Section 5. Notice of Completion; Claim Evaluation.**

(a) A notice of completion of claim shall be sent to the current owner at the time the City Manager determines that the current owner's application is complete.

(b) After the current owner's application is deemed complete, the application shall be submitted to a claims examiner, who shall review and evaluate the application, and shall make a recommendation to grant the claim, in whole or in part, to deny the claim, or to refer the claim for hearing before the City Council. If the claim is referred to the City Council, a hearing shall be set, where the current owner shall appear and present his or her case for just compensation. In addition to any evidence and argument presented by staff, any person interested in the proceeding may likewise appear and present argument and evidence why just compensation is not due. The City Council may order a hearing on any claim for which

the claims examiner has recommended the granting or denying of a claim. Upon recommendation, or after hearing, the City Council may grant the claim, in whole or in part, or deny the claim, as the case may be.

(c) The current owner has the burden of proof to demonstrate just compensation is due. In any claim for compensation submitted pursuant to this ordinance, there shall be a rebuttable presumption that any development built or planned to be built, on or after the effective date of the regulation which forms the basis for the current owner's claim, was development to the highest and best use of the property, unless the current owner can demonstrate he or she sought relief from the application, enforcement or effect of the regulation prior to the date development was commenced or permits to undertake the development were applied for.

(d) Any claim shall be granted, in whole or in part, or denied within ninety days of the date the application is deemed complete.

**Section 6. Appeal.** Appeal of any claim by the current owner denying just compensation shall be by writ of review.

**Section 7. Release of Restriction.**

(a) In lieu of seeking just compensation, the current owner may apply for a release from the regulation. Such action by the current owner shall be deemed an election of remedies, precluding any further request for just compensation. The City may, in its discretion, release the regulation in lieu of paying just compensation, by proceeding to adopt a Measure 7 variance to the property.

(b) An application for a release from a zoning regulation shall be treated as an application for a Measure 7 variance in the zone in which the property is located. Any Measure 7 variance granted or adopted by virtue of this section shall be immediately revoked upon a final decision of an appellate court that Measure 7 is invalid and any improvement constructed upon the property shall be immediately removed at the then current owner's expense, and the property restored to the condition which existed prior to the date construction commenced. The City or any interested party, including adjoining land owners, may compel such removal by injunction or other appropriate action, and the costs of such removal be a lien upon the property, which shall have priority over all other liens.

(c) No application pursuant to this section shall be deemed complete until the current owner has complied with all requirements of the City's land development ordinance, including the filing of any notices of intent to appeal, in addition to providing the application materials required under Section 4 of this ordinance. No proceeding to adopt a Measure 7 variance for the property instituted by the City shall be deemed complete until the close of the hearing on the Measure 7 variance.

(d) Any release of any regulation shall occur within ninety days after the date the application or materials in support of the Measure 7 variance is deemed complete.

**Section 8. Attorney's Fees.** In any action to contest the denial of a claim under this ordinance, the prevailing party shall be entitled to attorney's fees and costs, at trial and upon appeal.

**Section 9. Severability.** The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

**Section 10. Emergency.** The City Council of the City of Coos Bay finds that the health, safety and welfare of the City of Coos Bay requires this ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 5<sup>th</sup> day of December, 2000.

Yes: Mayor Benetti and Councilors Jeff McKeown, Cindi Miller, Kevin Stufflebean and Judy Weeks

No: Councilors Anna Marie Larson and Don Spangler

Absent: None

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Joe Benetti  
Mayor of the City of Coos Bay  
Coos County, Oregon

ATTEST:

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Joyce Jansen  
Deputy Recorder of the City of Coos Bay  
Coos County, Oregon