

ORDINANCE NO. 1087

AN ORDINANCE ESTABLISHING A PROCEDURE FOR SUBMITTING NOTICE OF CLAIMS ARISING UNDER THE PROVISIONS OF SECTION 18, ARTICLE I OF THE OREGON CONSTITUTION, AS AMENDED BY BALLOT MEASURE 7 ADOPTED NOVEMBER 7, 2000, AMENDING ORDINANCE NO. 1057 AND DECLARING AN EMERGENCY.

WHEREAS, Ballot Measure No. 7, providing for the amendment of Article I, Section 18, of the Oregon Constitution, was submitted to, and approved by, qualified electors of the State of Oregon on November 7, 2000, and becomes effective December 7, 2000, and

WHEREAS, it appears that such Measure may have created a cause of action for compensation for certain regulatory takings, for which no compensation was payable prior to the adoption of said Measure, and

WHEREAS, the provisions of said Measure require a regulating entity, including this City of Prineville, under certain circumstances, if said 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, said Measure provides that such compensation is due, and that the regulating entity may be required to pay attorney's fees and expenses necessary to collect such compensation if the claim is not paid, within 90 days of filing an application for compensation, and

WHEREAS, the City of Prineville desire to comply with the requirements of said Measure in an appropriate and timely manner, and

WHEREAS, in order to do so, it is necessary that the City of Prineville shall have and receive from any such claimant full and adequate information by means of which the said City can evaluate and determine the validity and value of such claim and whether or not to grant a variance from a city regulation.

NOW, THEREFORE, THE CITY OF PRINEVILLE ORDAINS AS FOLLOWS:

1. Definitions. Words used in this ordinance, that are the same as words used in Oregon Constitution Article I, Section 18, subsections (a) through (f), shall have the same meaning as the words used in those subsections of the Oregon Constitution, notwithstanding any different definition in City ordinances or in any other City regulation.

2. Purpose. The purpose of this ordinance is to enable persons with legitimate claims for compensation because of regulations that have caused a reduction in the value of their real property to present information to the City and if a variance to the regulation is not allowed, to have those claims processed on a prompt, open, thorough process, consistent with the Oregon Constitution.

3. Application. An owner of private real property who believes a regulation of the City has caused a reduction in the value of that real property, may file an application for variance/compensation with the City.

4. Form of Application. An application for a variance/compensation under this ordinance shall be filed with the City's Planning Department on a completed application form established by the Department. An application shall include at least the following information, to the extent such information may be required as a condition of acceptance of filing of an application under Oregon Constitution Article I, Section 18, subsections (a) through (f):

- A. A legal description of the private real property as to which the owner is applying for a variance/compensation, including the common address and either a legal metes and bounds description or a Crook County Assessor's description of the property;
- B. The name, address, and telephone number of each owner of and security interest holder in the private real property, together with the signature of the owner making the application;
- C. A copy of the recorded deed transferring the ownership of the private real property to the owner.
- D. A title report, current within 30 days prior to the application date, verifying the owner's or owners' ownership of the private real property and documenting the date on which the owner or owners acquired ownership;
- E. Each parcel of land owned by the owner or owners of the private real property, as to which the owner is applying for compensation, that is either directly contiguous to the private real property or is indirectly contiguous through contiguity with another parcel under

the same ownership that itself is directly or indirectly contiguous, together with the following:

1. The date of acquisition of each such directly or indirectly contiguous parcel;
 2. Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the directly or indirectly contiguous parcels as a single, economic unit for example in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land; and
 3. Information showing the extent to which application of the subject regulation to the private real property, as to which the owner is applying for compensation, enhances the value of the contiguous or indirectly contiguous parcels of land.
- F. A copy of the specific regulation as to which the owner is applying for a variance/compensation, including the date the regulation was adopted, first enforced, or applied.
- G. A copy of the regulation in existence, and applicable to the private real property, immediately before the regulation that was imposed and allegedly restricts the use of the private real property and caused a reduction in fair market value.
- H. The manner in which, and the extent to which, the regulation restricts the use of the private real property as to which the owner is applying for a variance/compensation;
- I. Two appraisals of the private real property as to which the owner is applying for a variance/compensation, prepared by a person certified or licensed under Oregon law to perform an appraisal of the private real property, stating the appraiser's opinion of the fair market value of the private real property before application of the regulation and the evidence on which the appraiser's opinion is based; and an appraisal of the same private real property stating the appraiser's opinion of the fair market value of the private real property after application of the regulation and the evidence on which the appraiser's opinion is based.

- J. The amount the owner claims as compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) in the event a variance from the regulation is not granted.

An application also shall include an application fee, in the amount established by resolution of the City Council, to at least partially cover the City's cost of processing the application, to the extent an application fee may be required as a condition of acceptance of filing of an application under Oregon Constitution Article I, Section 18, subsections (a) through (f). The City shall refund the application fee if it is determined by the City or by a court that the applicant is entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f).

5. Application Completeness And Acceptance for Filing. An application shall not be deemed filed with the City until it is complete in accord with the provisions of section 4 of this Ordinance. Within 15 days following tender of an application under section 4 of this Ordinance, the Planning Director shall review the application to determine whether it is complete and ready for filing. Thereafter:

- A. If the Department determines the application is not complete, it shall, within that 15-day period, inform the applying owner in writing of the additional information necessary to make the application complete and ready for filing. The application shall be deemed complete and filed as of the date of receipt of the additional information. If the Department believes there is doubt, under Oregon Constitution Article I, Section 18, subsections (a) through (f), as to whether the additional information can be required as a condition of acceptance of filing of the application, the Department also may inform the applying owner in writing that although the Department considers the application not complete and ready for filing, the Department nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Department.
- B. If the Department determines the application is complete as initially filed, or if it fails to notify the applying owner of the application's incompleteness within the required 15-day period, then the application shall be deemed complete and filed as of the date of its tender to the Department.

6. Department Review of Application And Report to City Council. The Department of Planning and Community Development following filing of a

complete application for a variance/compensation under this Chapter and consideration of the information included in the application and any other evidence obtained or received by the Department, shall determine whether a variance is necessary to avoid the owner's being entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f), and if so the extent of the variance needed to avoid the owner's being entitled to such compensation and the amount of compensation to which the owner would be entitled without a variance. If the Department determines that a variance is needed to avoid the owner's being entitled to compensation, the Department shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a variance is not granted, taking into consideration the financial resources of the City for the payment of such claims. Based on this comparison, the Department shall prepare a written report to the City Council stating its determinations And the evidence on which they are based; And, if the Department has determined that a variance is needed to avoid the owner's being entitled to compensation, making a recommendation either to grant a variance that will avoid the owner's being entitled to compensation, grant a variance that will not avoid but will reduce the compensation to which the owner is entitled And pay the reduced compensation, or deny a variance And pay the compensation to which the owner is entitled. The Department shall provide the written report to the City Council. For purposes of Article 9 of the City's Zoning Ordinance, the Department's preparation And provision of the written report shall not be considered an administrative action.

7. Scheduling And Notice of City Council Hearing. At or about the time of the Department's providing the written report prepared under section 6 above to the City Council, the City Manager shall schedule a City Council Public hearing on the application for variance/compensation. In addition, the Department Of Planning And Community Development shall give notice of the public hearing And in its discretion may give additional notice of the public hearing as follows:

- A. The Department shall mail written notice of the public hearing, at least 10 days in advance of the initial hearing date, to the applying owner And any other owners of the private real property as to which the owner is applying for a variance/compensation; to the owners of record of property within 100 feet from the exterior boundary of the private real property as to which the owner is applying for compensation as reflected on the most recent

property tax assessment roll; And to any neighborhood or community organization recognized by the City Council And whose boundaries include the private real property as to which the owner is applying for compensation.

B. The notice mailed under subsection A of this section shall contain the following information:

1. The City Council will be holding a public hearing to determine whether an owner of private real property is entitled under Oregon Constitution Article I, Section 18, subsections (a) through (f) to receive either compensation or a variance from a City regulation and, if so, to determine whether to pay compensation or grant a variance;
2. The date, time, and place of the City Council public hearing,
3. The name of the applying owner;
4. The common address or other easily understood geographical reference to the private real property as to which the owner is applying for a variance/compensation and a map showing its location;
5. The regulation in relation to which the owner is applying for a variance/compensation;
6. The amount of compensation claimed by the owner if a variance is not granted;
7. The possibility that the City Council, following the public hearing, will grant the owner a variance from the regulation in relation to which the owner is applying for a variance/compensation, rather than paying the amount of claimed compensation. The City Council's decision will be based on (a) a determination whether the applying owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) unless the City grants a variance from the regulation; And, if so, (b) a comparison of the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a variance is not granted, taking into consideration the financial resources of the City for the payment of such claims;

8. The name of the City representative to contact And the telephone number where additional information may be obtained;
 9. A copy of the application, all documents And evidence relied on by the applying owner, and the Planning Department's report to the City Council are available for inspection at no cost And will be provided at a reasonable cost; And
 10. Written testimony may be submitted to the Planning Department at any time prior to the hearing for inclusion in the hearing record And also may be submitted at the hearing, And oral testimony may be given at the hearing.
 11. It is not certain whether an action of the City Council under this Chapter is subject to appeal to the Land Use Board of Appeals or to any other appeal tribunal. However, if any person has the right to appeal an action of the City Council under this chapter, the failure of an issue to be raised in 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 an appeal to the Land Use Board of Appeals or another appropriate appeal tribunal based on that issue.
- C. In addition, the Department, in its discretion, may publish the notice described in subsection (B) of this section in a newspaper of general circulation in the City And may give notice by such other means as the Department deems appropriate. The failure of the Department to give notice as provided in this section, or the failure of any person to receive notice given under this section, shall not invalidate any action of the City Council under this chapter.

8. City Council Hearing And Action. The City Council shall hold a public hearing on the application for a variance/compensation. The hearing shall be legislative in nature. At the close of the hearing, the City Council (a) shall determine whether the applying owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) unless the City grants a variance from the regulation And if so, (b) shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a variance is not granted, taking into consideration the financial resources of the City for the

payment of such claims. If the City Council has determined that either compensation or a variance is required, then based on this comparison:

- A. If the City Council finds 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's private real property, the City Council shall grant a variance from the specified regulation to the extent necessary to avoid the owner's being entitled to compensation;
- B. If the City, Council finds that the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, the City Council shall deny a variance from the specified regulation And the City shall pay the required compensation;
- C. If the City Council finds that some of the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying some of the required compensation, taking into consideration the City's financial resources for the payment of such claims, but that other of the public benefits are not sufficient to justify the public burden of paying the balance of the required compensation, taking into consideration the City's financial resources for the payment of such claims, the City Council shall grant a variance to the limited extent necessary to avoid the owner's being entitled to compensation as to that part of the specified regulation providing public benefits not sufficient to justify the public burden of paying compensation And the City shall pay the required compensation as to that part of the specified regulation as to which a variance is not granted.

The CityCouncil's decision shall be by a written order that shall include the findings And conclusions based on which the Council has made its decision And, if the Council has determined that a variance should be granted or compensation should be paid, or both, the extent of the variance granted or of the amount of the compensation to. be paid, or both.

9. Conditions Based on Future Court Decisions. If the City Council grants a variance or limited variance as a means to avoid having to compensate, or as a means to limit compensation to, an owner or owners under Oregon Constitution

Article I, Section 18, subsections (a) through (h), and if, based on an appellate court interpretation or invalidation of Oregon Constitution Article I, Section 18, subsections (a) through (h), in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the variance was granted, then the variance or limited variance shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the variance or limited variance. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Oregon Constitution Article I, Section 18, subsections (a) through (f). Any City payment of compensation to an owner under this chapter shall be conditional on the owner's signing an agreement that if an appellate court interprets or invalidates Oregon Constitution Article 1, Section 18, subsections (a) through (h), 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.

10. Notice of City Council Decision. The Department of Planning and Community development shall mail a copy of the City Council's written order to the applying owner and to all other persons who submitted written or oral testimony at the City Council hearing. The failure of the Department to give notice as provided in this section, or the failure of any person to receive notice given under this section, shall not invalidate any action of the City Council under this chapter.

11. Extent of Variance in Case of Court Review. If the City Council has taken an action under section 8 above and the owner nevertheless files a court action seeking compensation in the case of section 8(A) above, or additional compensation in the case of section 8(B) or (C) above, from the City in relation to the specified regulation as it affects the owner's private real property, and if a final court decision determines that the extent of the variance specified as bring granted by the City Council was not sufficient to avoid the owner's being entitled to compensation or additional compensation, then the extent of variance granted by the City shall be deemed to be the extent of variance necessary to avoid the owner's being entitled to compensation or additional compensation, effective as of the date of the City Council's decision.

12. Termination of Variance. Any variance granted under this chapter automatically shall terminate on the occurrence of an event following which any owner or future of the private real property that is the subject of the variance will not be entitled to compensation under Oregon Constitution Article I, Section 18,

subsections (a) through (h) in relation to the regulation from which the variance was granted.

13. Attorney Fees. If an owner commences suit or action to collect compensation under Article 1, Section 18 of the Oregon Constitution and the City is the prevailing party in such action, then City shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.

14. Amendment of Ordinance 1057. Ordinance 1057 is amended by adding to Article 10 of Ordinance 1057 the following language:

"In addition to granting a variance for the circumstances set out in Section 10.020 a Takings Variance may be granted upon proof that:

- A. Enforcement of Ordinance No. 1087 could require compensation to the owner pursuant to Article I Section 18 of the Oregon Constitution; and
- B. Strict enforcement of the regulation (as defined in Article 1 Section 18 of the Oregon Constitution) will reduce the value of the owner's private real property in an amount that exceeds the public benefit in enforcing such regulation."

Procedures for granting the Takings Variance shall be according to Ordinance No. 1087 and not Ordinance 1057.

14. Severability. If any phrase, clause, or part of this ordinance is found to be invalid by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in full force and effect.

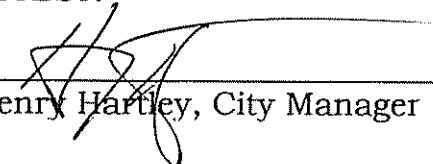
15. Emergency. It being necessary for the preservation of the health, safety, and welfare of the City an emergency exists and this Ordinance shall be in full force and effect on December 7, 2000.

Passed by the City Council this 20th day of November, 2000

Approved by the Mayor this 20th day of November, 2000.


Ann Graf

ATTEST:


Henry Hartley, City Manager