

ORDINANCE 00-233

AN ORDINANCE RELATING TO ADOPTING THE CONSTITUTIONAL AMENDMENTS ADOPTED BY BALLOT MEASURE 7, AND STATING AN EFFECTIVE DATE.

(1) On November 7, 2000, the voters of the State of Oregon approved Ballot Measure 7, amending Oregon Constitution Article I, Section 18 by adding subsections (a) through (f), which are 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 effective date of the constitutional amendments adopted by Ballot Measure 7 is December 7, 2000.

(3) It is necessary and appropriate that the City have in effect, on or about December 7, 2000, a procedure for implementing the constitutional amendments adopted by Ballot Measure 7.

This Ordinance is not intended to in any way expand the rights or remedies available to property owner's 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. Any action or suit brought to stay or enjoin the effective date of this measure shall pertain to this ordinance.

THE CITY OF LAKESIDE ORDAINS AS FOLLOWS:

Article 1. Ballot Measure 7, Claims and Waivers under Oregon Constitution Article I, Section 18, Subsections (a) through (f), is hereby adopted to read:

Section 1. Definitions. Words used in this chapter, 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 the City Zoning Ordinance or Municipal Code or in any other City regulation.

Section 2. Application for Waiver or Compensation. An owner of private real property may apply for a waiver from a City regulation, whether in the Zoning Ordinance or Municipal Code or in any other City regulation, if the owner believes that without a waiver the owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f). Alternatively, an owner of private real property who believes the owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f), in relation to a City regulation, whether in the Zoning Ordinance or Municipal Code or in any other City regulation, may apply for that compensation.

Section 3. Form of Application. An application for a waiver or

compensation under Section 2 shall be filed with the City Recorder, on a completed application form established by the City Recorder. Unless waived by the City Recorder, 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 waiver or compensation, including the common address and either a legal metes and bounds description or a Coos County Assessor's description of the property;

B. Identification of the name, physical address, street address, and phone number of the person filing the application for compensation. If the person filing the application is not the property owner of the real property this information must also be provided for the fee simple property owner and authorization to act on behalf of the fee simple owner of the property of the person filing must be provided;

C. The name, address, and telephone number of each owner of and security interest holder in the private real property, together with the signature of each owner making the application;

D. The date the owner or owners acquired ownership of the private real property;

E. 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;

F. 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 first passed, applied or first enforced on the subject property. A copy of the regulation in existence, and applicable to the property, immediately before the regulation that was imposed and allegedly restricts the use of the real property and caused a reduction in fair market value.

G. 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.

H. The specific regulation as to which the owner is applying for a waiver or compensation, including the date the regulation was adopted, first enforced, or applied;

I. 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 waiver or compensation;

J. A complete (and not limited) appraisal of the private real property as to which the owner is applying for a waiver or compensation. Appraisals must meet the Uniform Standards of Professional Appraisal Practice (USPAP) and be performed by an appraiser who meets the Competency Rule of USPAP. The property owner's appraisal shall be reported in a "Self Contained" format, allowed under USPAP. The appraisal shall state 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. The property owner's appraisal will be reviewed by a competent, licensed or certified appraiser in Oregon. The purpose of the review will be to determine if the appraisal meets USPAP. Further, the review appraiser will determine if the conclusions are reasonable. If the review appraiser determines that the appraisal does not meet USPAP, the appraisal will be returned to the property owner with explanations as to why it is not USPAP compliant and notify the property owner that their application is not complete.

K. The names and addresses of all property owners within 300 feet of the aggrieved parcel. Identification of any other property owned by the Applicant or any Affiliated Owner within 300 feet of the boundary of the Real Property that is the subject of the application.

L. A statement by the applicant of why the exceptions for compensation found in Article 1, Section 18 (b) (adoption or enforcement of historically and commonly recognized nuisance laws) and (c) (implementation of a requirement of federal law and regulation or selling pornography, performing nude dancing, selling of alcoholic beverages or other controlled substances, or operating of casino or gaming parlors) of the Constitution of Oregon do not apply.

M. A copy of the site plan and drawings related to the use of the property in a readable/legible 8 ½ by 11-inch format for inclusion in the application record.

N. The amount the owner claims as compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) in the event a waiver 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).

Section 4. 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 3. Within 15 working days following tender of an application under Section 3, the City Recorder shall review the application to determine whether it is complete and ready for filing. Thereafter:

A. If the City Recorder determines the application is not complete, it shall, within that 15 working day period, inform the applying owner/s 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 City Recorder 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 City Recorder also may inform the applying owner/s in writing that although the City Recorder considers the application not complete and ready for filing, the City Recorder nevertheless will proceed to process the application if the additional information is not supplied by a date set by the City Recorder.

B. If the City Recorder determines the application is complete as initially filed, or if it fails to notify the applying owner/s 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 City Recorder.

Section 5. City Recorder Review of Application and Report to City Council. the City Recorder, following filing of a complete application for a waiver or compensation under this Chapter and consideration of the information included in the application and any other evidence obtained or received by the City Recorder, shall determine whether a waiver 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 waiver needed to avoid the owner's being entitled to such compensation and the amount of compensation to which the owner/s would be entitled without a waiver. If the City Recorder determines that a waiver is needed to avoid the owner's being entitled to

compensation, the City Recorder 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/s if a waiver is not granted, taking into consideration the financial resources of the City for the payment of such claims. Based on this comparison, the City Recorder shall prepare a written report to the City Council stating its determinations and the evidence on which they are based; and, if the City Recorder has determined that a waiver is needed to avoid the owner's being entitled to compensation, making a recommendation either to grant a waiver that will avoid the owner's being entitled to compensation, grant a waiver that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a waiver and pay the compensation to which the owner is entitled. The City Recorder shall provide the written report to the City Council.

Section 6. Scheduling and Notice of City Council Hearing. At or about the time of the City Recorder's providing the written report prepared under Section 5 to the City Council, the City Manager shall schedule a City Council public hearing on the application for a waiver or compensation. In addition, the City Recorder shall give notice of the public hearing and in its discretion may give additional notice of the public hearing as follows:

A. The City Recorder 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 waiver or 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 waiver from a City regulation and, if so, to determine whether to pay compensation or grant a waiver;

(2) The date, time, and place of the City Council public hearing;

(3) The name of the applying owner/s;

(4) The common address or other easily understood geographical reference to the private real property as to which the owner/s is applying for a waiver or compensation and a map showing its location;

(5) The regulation in relation to which the owner/s is applying for a waiver or compensation;

(6) The amount of compensation claimed by the owner/s if a waiver is not granted;

(7) The possibility that the City Council, following the public hearing, will grant the owner a waiver from the regulation in relation to which the owner/s is applying for a waiver or 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 waiver 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 waiver is not granted, taking into consideration the financial resources of the City for the payment of such claims;

(8) The possibility that the City Council, if it decides not to grant a waiver or to grant only a limited waiver and pay compensation, may make the decision conditional on a defined amount of contributions toward the compensation being received by a specified date from persons opposed to the waiver, such as persons who believe they would be negatively affected by a waiver, with the waiver being granted if the defined amount of contributions is not received by the specified date;

(9) The name of the City representative to contact and the telephone number where additional information may be obtained;

(10) A copy of the application, all documents and evidence relied on by the applying owner, and the City Recorder's report to the City Council are available for inspection at no cost and will be provided at a reasonable cost; and

(11) Written testimony may be submitted to the City Recorder 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.

C. In addition, the City Recorder, has the discretion, to 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 City Recorder deems appropriate. The failure of the City Recorder 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.

Section 7. City Council Hearing and Action. The City Council shall hold a public hearing on the application for a waiver or compensation. The hearing shall be

legislative in nature. The applicant shall have the burden of proof on all elements of the claim, including that the exceptions set forth in Oregon Constitution Article I, Section 18, subsections (a) through (f) or otherwise provided by law do not apply.

The Council shall consider and address the following in adjudicating the claim.

- A. Whether the regulation(s) at issue was adopted, first enforced or applied after the current owner(s) became the owner(s).
- B. What regulations, if any, were in place prior to the time determined to govern the claim.
- C. What regulations, if any, are determined to restrict the use of the property and have the effect of reducing the value of the property as provided in Oregon Constitution Article I, Section 18, subsections (a) through (f) .
- D. What regulations, if any, do not restrict the use of the property.
- E. The impact of any of the exceptions set forth in Oregon Constitution Article I, Section 18, subsections (a) through (f) or otherwise provided by law.
- F. The amount of compensation claimed or determined to be potentially due.
- G. The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest.
- H. The impact of removing, not enforcing or otherwise permitting the use on other properties and the public interest.
- I. Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.

After 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 waiver 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 waiver 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 waiver is required, then based on this comparison:

(1) 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 waiver from the specified regulation to the extent necessary to avoid the owner's being entitled compensation;

(2) 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 waiver from the specified regulation and the City shall pay the required compensation;

(3) 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 waiver 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 waiver is not granted. The City Council'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 waiver should be granted or compensation should be paid, or both, the extent of the waiver granted or of the amount of the compensation to be paid, or both.

Section 8. Denial Conditional on Receipt of Contributions. In taking an action under Section 7.B or 7.C, based on its assessment of the City's financial resources for the payment of such claims, the City Council may make its decision to deny a waiver and pay compensation, or to grant only a limited waiver and pay compensation, conditional on the City receiving a defined amount of contributions from others by a specified date. In the event the City Council makes such a conditional decision, then the Finance Director shall establish an account into which it shall deposit all contributions the City has received for the payment of compensation. On the date specified for receipt of the defined amount of contributions, the City Recorder or Finance Director shall certify whether the defined amount of contributions has been received. If the defined amount of contributions has been certified as received, then the compensation shall be paid and the waiver deemed denied or granted only to the limited extent approved by the City Council, as of the certification date. If the defined amount of contributions has been certified as not received, then the waiver shall be deemed granted as of the certification date and all contributions received by the City shall be returned to the persons who made the contributions.

Section 9. Conditions Based on Future Court Decisions. If the City Council grants a waiver or limited waiver 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 (f), and if, based on an appellate court interpretation or invalidation of Oregon Constitution Article I, Section 18, subsections (a) through (f), in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the waiver was granted, then the waiver or limited waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the waiver or limited waiver. 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 I, Section 18, subsections (a) through (f), 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.

Section 10. Notice of City Council Decision. the City Recorder 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 City Recorder 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.

Section 11. Extent of Waiver in Case of Court Review. If the City Council has taken an action under Section 7, and the owner nevertheless files court action seeking compensation in the case of Section 7.A, or additional compensation in the case of Section 7.B or 7.C 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 waiver specified as being granted by the City Council was not sufficient to avoid the owner's being entitled to compensation or additional compensation, then the extent of waiver granted by the City shall be deemed to be the extent of waiver necessary to avoid the owner's being entitled to compensation or additional compensation, effective as of the date of the City Council's decision.

Section 12. Termination of Waiver. Any waiver granted under this chapter automatically shall terminate on the occurrence of an event following which any owner or future owner of the private real property that is the subject of the waiver will not be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) in relation to the regulation from which the waiver was granted.

Section 13. Judicial Review.

A. Review of the decision of the City shall be solely by Writ of Review.

B. The prevailing party on review shall be entitled to reasonable attorney fees and costs as determined by the court.

C. Failure of the applicant to exhaust the remedy provided for herein shall be a bar to judicial review.

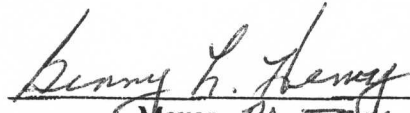
Article 2. The constitutional amendments adopted by Measure 7 will be effective December 7, 2000. Those constitutional amendments give the City only 90 days to consider claims for compensation filed under the amendments, after which the City will lose its right to grant a waiver rather than pay the compensation. Because of the limited time to consider claims, it is necessary and appropriate for the City to establish the procedures set out in Section 1 of this ordinance immediately, in order that they be effective on or about December 7, 2000 when the constitutional amendments become effective. Therefore, the Council declares that an emergency exists and this ordinance shall be in full force and effect from and after its adoption by the Council.

FIRST READ to the Council the 30 day of NOVEMBER, 2000.

PASSED by the Council this 5 day of DECEMBER, 2000.

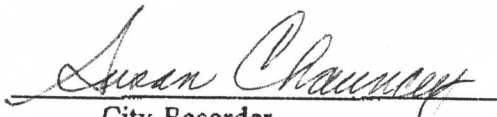
SIGNED by the Mayor this 5 day of DECEMBER, 2000.

Effective this 5 day of DECEMBER, 2000.



Mayor PROTEM

ATTEST:



City Recorder