

ORDINANCE NO. 383

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

WHEREAS, Ballot Measure 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 is expected to become effective December 7, 2000, and

WHEREAS, it appears that Measure 7 may have created a cause of action for compensation for certain regulatory restrictions on the use of real property, for which no compensation was payable prior to the adoption of Measure 7, and

WHEREAS, the provisions of Measure 7 require a regulating entity, including the City of Drain, 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's fees and expenses necessary to collect such compensation if the claim is not paid, with 90 days of filing an application for compensation, and

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

WHEREAS, in order to do so, it is necessary that the City of Drain 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 claim,

NOW, THEREFORE,

THE CITY OF DRAIN ORDAINS AS FOLLOWS:

- 1. Purpose.** Any person desiring to make or assert a claim or claims against the City of Drain under the provisions of Ballot Measure 7, as incorporated into Section 18, Article I, of the Oregon Constitution, shall, within the time limit provided by any applicable statute of limitations, submit to the City Administrator a written application for compensation with true and accurate accompanying information and documentation as

necessary to establish the validity and value of such claim, including but not necessarily limited to the information hereafter enumerated. Any application so given shall include, but shall separately state, all claims for which compensation is sought with respect to the property therein described on the date the application is tendered to the City. No application shall set forth claims which do not affect all of the property described in the application, and where multiple claims are sought to be asserted for more than one parcel of real property, the claims shall be stated in separate notices unless all of the claims set forth affect all of the parcels described in the application.

2. Application Process. The application for compensation shall be submitted to the City Administrator, in writing, and shall be subscribed by all of the owner(s) of the subject property, as applicant(s). Such application for compensation shall be verified under the applicants' oath or affirmation, under penalty of perjury, that the information contained in the application for compensation and supporting materials is true and correct. The application shall contain or be submitted together with the following information and materials:

(a) An application fee in the amount of \$250 or such other amount as may be established by resolution of the Drain City Council;

(b) A description, sufficient for identification, of the regulation asserted by the applicant to have restricted the use of the private real property;

(c) The street address, and a description in compliance with the provisions of ORS 93.600, sufficient to identify and permit location of the private real property, the use of which is alleged to have been restricted by such regulation;

(d) The true and correct names, mailing addresses and telephone numbers of all of the owner(s) of the property (including all interests therein), accompanied by a copy of a policy of the title insurance, deed of conveyance or other sufficient proof of such ownership, or a reference to the book and page numbers where such a document is recorded in the official records of Douglas County;

(e) The date on which the owner acquired the property;

(f) Whether the claim is alleged to arise on account of (1) the adoption of a regulation, (2) the enforcement of a regulation, or (3) the application of a regulation, and the date on which the claim is alleged to have arisen by reason of such event;

(g) A description of the effect of the regulation on the property, including a statement of the manner in which the use of the property is thereby restricted, and of the proposed use of the property;

(h) A statement of the amount claimed to be due for compensation under Section 18, Article I, as amended by Measure 7 upon the claim(s) of which are the subject of the application;

(i) A statement of the manner in which the fair market value of the property has been reduced, and a statement describing any affirmative obligation imposed on the owner which is alleged by the applicant to cause any part of the reduction in fair market value compensable under Section 17, Article I, as amended by Measure 7;

(j) The alleged values of the property on the date the claim is alleged to have arisen, including the value of the property on such date, without the restriction, accompanied by the opinion of a real estate appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, verifying the values set forth and including a statement of the methodology by which such values were determined, and a statement of the assumptions used in making such appraisal or other determination of value. The application shall separately state the net cost to the owner of any affirmative obligation imposed on the owner of the property and alleged to be compensable under Section 17, Article I, as amended by Measure 7, which is included in the determination of the reduction of fair market value, with an explanation of the acts required in order to comply with such obligation, an itemization of their costs, and receipts verifying such costs;

(k) Whether, in what manner and by what means, the owner has contested the validity of the regulation, the application of the regulation to the subject property, or the manner in which it is imposed, interpreted or enforced;

(l) Whether applicant believes the restriction to be related to the prohibition of a historically and commonly recognized nuisance, or to implement a requirement of federal law, and

(m) Any additional information which would aid in the determination of the validity and value of the claim, or any decision to release the restriction, or which is reasonably requested by the City to evaluate the claim.

3. Completeness Review of Application for Compensation. An application for compensation shall not be considered a claim until determined to be complete by the City Administrator. If the notice of claim is not complete, the City Administrator shall inform the claimant in writing of the additional information necessary to make the application complete. The application shall be deemed complete at such time as the additional information is submitted and determined complete.

4. Notice and Determination by Council.

(a) At the next regularly scheduled City Council meeting following provision of notice as required by this ordinance, the City Council shall consider the application. At

November 7, 2000, by the electors of the State, the Council determines that an emergency exists and it is in the public interest and safety that this ordinance take effect immediately upon its passage by the Council and approved by the Mayor.

PASSED BY THE CITY COUNCIL OF THE CITY OF DRAIN, COUNTY OF DOUGLAS, OREGON, this 4th day of December, 2000.

APPROVED BY THE MAYOR
this 4th day of December, 2000.



Brad Borrigo, Mayor

ATTEST:



Carl Patenode, City Administrator

the Council meeting or a subsequent meeting, the City Council shall, by majority vote of those present and voting, determine whether compensation is granted, the amount of compensation, whether any exceptions to the requirement for compensation apply or whether the regulation will no longer be applied 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 within 250 feet of the applicant's property no later than ten (10) days prior to the initial meeting at which the Council will consider the application.

5. Evidence. The burden of proof of any material element shall be upon the applicant for all matters required to demonstrate that the applicant is entitled to compensation and the amount of such compensation and shall be upon the City to show that the regulation is a regulation which is exempt from the obligation for compensation under the provisions of Ballot Measure 7.

6. Attorney Fees on Delayed Compensation. If a claim for compensation under Section 18, Article I, of the Oregon Constitution and this Ordinance is not resolved within 90 days of the date it is deemed to be final under § 3 of this ordinance, applicant's reasonable attorney fees and expenses necessary to collect the compensation will be added as additional compensation if compensation is awarded after the end of the 90-day period. If a claimant commences suit or action to collect compensation and the City is the prevailing party in such action, then City shall be entitled to receive from claimant such sum which a court, including any appellate court, may adjudge as reasonable attorney fees.

7. Effect of Future Determination of Invalidity of Ballot Measure 7.

(a) Any compensation awarded under this ordinance shall be repaid by the applicant to the City if an appellate court should interpret or invalidate Measure 7 in a manner that established that the applicant was not entitled to compensation under Measure 7. The repayment obligation shall be a lien against the property until repaid to the City.

(b) Any decision by the City to cease to apply a regulation to applicant's property shall automatically be repealed if an appellate court should interpret or invalidate Measure 7 in a manner that established that the applicant would not have been entitled to compensation under Measure 7 if the regulation had been applied to applicant's property.

8. Severability. The provisions of this Ordinance are severable, and if any phrase, clause or part of this Ordinance 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.

9. Emergency Clause. It being deemed by the Council that the amendments to Article I, Section 18 of the Constitution of Oregon from Ballot Measure 7, were passed