

ORDINANCE BILL NO. 7 FOR 2000

ORDINANCE NO. 1133

AN ORDINANCE CREATING SHMC CHAPTER 3.30 TO ADOPT A PROCEDURE FOR PROCESSING CLAIMS FOR COMPENSATION MADE PURSUANT TO ARTICLE I, SECTION 18, OF THE OREGON CONSTITUTION AS AMENDED BY INITIATIVE MEASURE 7 ENACTED INTO LAW BY THE VOTERS ON NOVEMBER 7, 2000, 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 Measure 7 may have created a cause of action for compensation for certain regulatory takings, 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 Sweet Home, 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, within 90 days of filing an application for compensation, and

WHEREAS, the City of Sweet Home 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 Sweet Home 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,

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

1. **Purpose.** Any person desiring to make or assert a claim or claims against the City of Sweet Home 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 Manager 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, a written application for compensation. Any application so given shall include, but shall separately state, the claims for which they are applying 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 provided by the City for compensation, accompanied by the deposit set by separate Council Fee Resolution, shall be submitted to the City Manager, in writing, and shall be subscribed by all of the owner(s) of fee title of the subject property, as applicant(s), or shall be subscribed by at least one of the property owner(s), and accompanied by the written consent of the other owners to the submission of the application for compensation or, if not all owners subscribe or consent to the submission of the application, shall contain a statement identifying the owners who have not subscribed or consented to the application, and stating that such owners were provided with a copy of the application and refused to subscribe or consent thereto. 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 have attached thereto the following information and materials at a minimum:

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

b. 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;

c. The true and correct names, mailing addresses, telephone numbers, and Social Security numbers of all of the owner(s) of the property (including all interests therein), accompanied by a title report, in the form of a litigation guarantee, completed within 30 days of the application which includes the title history and including a statement of the date the applicant acquired ownership of the property and that shows the ownership interests of all owners of the property;

d. 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;

e. A description of the effect of the regulation on property, including a statement of the manner in which the use of the property is thereby restricted;

f. 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 application is given;

g. 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 are part of the reduction in fair market value compensable under Section 18, Article I, as amended by Measure 7;

h. The alleged values of the property on the date the claim is alleged to have arisen, including the value the property would have on such date as it is, subject to the restriction, and the alleged value of the property on such date, without the restriction, accompanied by a copy of a detailed written appraisal report by an MAI appraiser, qualified, certified and licensed as such in the state of Oregon for the type of property under consideration, indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of the regulation(s). 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 appraisal must be in a self contained format and must be “complete”, not “limited”. The appraisal shall address the specific limitations set forth in this ordinance. If the claim is for more than \$50,000, copies of two detailed appraisal reports must be included. If the claim is for \$50,000 or less, one detailed appraisal report must be included.

i. Whether, and 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;

j. Whether or not 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

k. Any additional information which would aid in the determination of the validity and value of the claim, or any decision to release the restriction.

3. **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 applications. At the Council meeting or 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 should be deemed not to apply to the applicants’ property.

b. Notice of the City Council’s intent to consider the application shall be mailed to the applicants and property owners within 300 feet of the applicants’ property no later than 7 days prior to the initial meeting at which the Council will consider the application.

4. **Complete Application Required.** No application for compensation shall be deemed to have been given, except in full compliance with the requirements of this Ordinance, and the City shall disregard any purported application for compensation which fails to comply with all of the requirements of this Ordinance. If an application shall set forth multiple claims, the application shall be deemed to have been given only with respect to such claim or claims as for which full and adequate information and supporting materials have been submitted.

5. **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 for compensation.

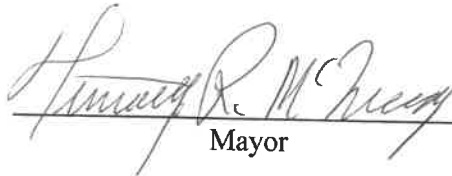
6. **Severability.** The provisions of this Ordinance are severable, and if any phrase, clause or part of this Ordinance is found by a court of competent jurisdiction to be invalid or unenforceable, each and every remaining phrase, clause and part shall nonetheless remain in full force and effect.

7. **Effect of Invalidation or Repeal of Measure 7 and a Sunset Clause.** In the event Measure 7 is subsequently repealed by the voters or invalidated by a court of competent jurisdiction subsequent to payment of compensation by the City as called for herein, the person to whom the compensation was paid and/or property owner of the affected property shall repay the compensation received to the City with the repayment obligation being a lien against the private property until paid. This ordinance shall have no further force and effect to the extent Measure 7 is enjoined or stayed, repealed, or otherwise declared invalid.

8. **Fees.** The City council shall set by Resolution a fee schedule to cover the costs of processing the application.

9. **Emergency Clause.** It being deemed by the Council that the amendments to Article 1, Section 18 of the Constitution of Oregon from Ballot Measure 7, were passed 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 approval by the Mayor.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 12th day of December, 2000.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder