

CITY OF MILWAUKIE
ORDINANCE NO. 1882

AN ORDINANCE PROVIDING A PROCESS FOR MAKING CLAIMS UNDER ARTICLE I, SECTION 18 OF THE OREGON CONSTITUTION, ADDING A NEW CHAPTER 1.20 TO THE MILWAUKIE MUNICIPAL CODE AND DECLARING AN EMERGENCY.

WHEREAS, the City has developed a sound system of land use planning, which includes regulations that in some cases restrict the uses that can be made of property; and

WHEREAS, the restrictions on use of property have both served the public interest and increased property values by allowing the City to develop in a harmonious way avoiding incompatible uses and assuring appropriate development; and

WHEREAS, the voters of the state adopted Ballot Measure 7 in the November 2000 election amending Article I, Section 18 of the Oregon Constitution to require local governments to pay compensation for land use regulations that restrict the uses that can be made of property if the restriction causes a reduction in the value of the property; and

WHEREAS, some property owners may believe that regulations as applied to their property both restrict use of the property and reduce the fair market value of the property and consequentially may bring claims under Measure 7; and

WHEREAS, Ballot Measure 7 does not specify the process for submission and consideration of claims for compensation; and

WHEREAS, it is appropriate for the City to provide a Measure 7 claims procedure; now, therefore;

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1. A new Chapter 1.20 is added to the Milwaukie Municipal Code in the form of Exhibit A attached hereto and incorporated by this reference.

Section 2. Because this ordinance is necessary for the preservation of the health, safety and welfare of the City and is needed to provide a process for claims by December 7, 2000, an emergency is declared to exist and this ordinance shall be in full force and effect on December 7, 2000.

Read the first time on 12/5/00, and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the Council on 12/5/00.

Signed by the Mayor on 12/5/00.

Carolyn Tomei
Carolyn Tomei, Mayor

ATTEST:

Pat DuVal
Pat DuVal, City Recorder

APPROVED AS TO FORM:
RAMIS, CREW, CORRIGAN &
BACHRACH, LLP

Janis H. V. Kearney
City Attorney

EXHIBIT A
to Milwaukie Ordinance No. 1882

Chapter 1.20 Compensation for Reduction in Property Value

1.20.010 Purpose

The purpose of this Chapter is to provide procedures and standards for claims for compensation made pursuant to subsections (a) through (f) of Article I, Section 18 of the Oregon Constitution, effective December 7, 2000.

1.20.020 Definitions

As used in this chapter, unless the context requires otherwise:

“Affected property” means the private real property that is alleged to have suffered a reduction in fair market value as a result of the City’s regulation restricting the use of that property and for which a property owners seeks compensation for the reduction in value.

“Regulation” shall mean any law, rule, ordinance, resolution, goal, or other enforceable enactment of the City.

“Restricts the use of property” means prohibiting a particular use of the property or making that use only permissible under certain conditions. Standards that regulate the form of development, how a structure must be constructed, or how grading or fill is to be conducted, such as yard setback requirements, height limitations, erosion control measures and building code standards, are not restrictions on the use of property. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

“Manager” means City Manager or designee.

1.20.030 Pre-Application Conference

1. Before submitting an application for compensation, a property owner seeking compensation may schedule and attend a pre-application conference with the Manager to discuss the application for compensation. The pre-application conference, if requested, shall follow the procedure set forth by the Manager.

2. To schedule a pre-application conference, a written request must be submitted to the Manager. The pre-application conference is intended to allow a summary of the basis for the claim to be presented to the Manager and for the Manager to provide information to the applicant about applicable regulations. The Manager may provide a written summary of the pre-application conference within 10 days after it is held.
3. The Manager is not authorized to offer compensation at a pre-application conference but may take any other action within the Manager's authority. Any omission or failure by the Manager or staff to provide information on all relevant applicable land use regulations will not constitute a waiver or admission by the City.

1.20.040 Application for Compensation

A property owner wishing to make a claim against the City under subsections (a) through (f) of Article I, Section 18 of the Oregon Constitution shall first submit a notice of claim to the City. The notice of claim shall be in writing and shall include:

1. A notice of claim form provided by the City signed by all owners of the affected property. If the affected property is owned by two or more persons and not all owners seek compensation, all owners who do not seek compensation shall sign a waiver of the right to compensation.
2. Identification of the affected property by street address and tax lot number.
3. The name, address and phone number of all owners of the affected property seeking compensation (Claimants).
4. The name, address and phone number of all owners of the affected property who do not seek compensation and waive the right to compensation.
5. The name and mailing address of all persons with a lien on or security interest in the property.
6. An explanation of the nature of the claim, including specification of the regulation at issue, a description of how the regulation restricts the use of the affected property, and an explanation of how the restriction affects the value of the affected property. The explanation shall also state the date the Claimant(s) first owned the affected property and the date the regulation was adopted, first enforced or applied.
7. A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation.

8. The amount of compensation claimed and a statement whether the application seeks compensation or a waiver, suspension or modification of the regulation. The statement of the amount of compensation claimed shall separately specify the amount claimed as depreciation in value and the amount claimed as the net cost of any 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, if any. If an amount is claimed for the net cost of any such affirmative obligation, the statement shall describe all work performed and evidence of costs incurred must be submitted.
9. An application fee in an amount to be set by resolution to cover the costs of the completeness review and application processing. The fee shall be refunded if a determination is made that compensation should be paid or that the regulation should be waived or suspended.
10. Proof of ownership of the affected property at all relevant times.
11. An appraisal of the value of the affected property under the regulation and of the value of the affected property without the regulation. The appraisal shall be conducted by appraiser licensed by the Appraiser Certification and Licensing Board of the State of Oregon. The appraisal shall appraise the value as of the date the regulation was adopted, first enforced or applied, whichever is applicable to the claim. Claimant shall also submit any other appraisals of the affected property obtained by or in the possession of Claimant in the ten years prior to submitting the notice of claim.
12. Mailing labels for all persons entitled to notice under Section 1.20.060.

The application may include any other materials the Claimant believes is relevant to the notice of claim. A notice of claim shall not be a claim for compensation until the notice of claim is determined to be complete by the City Manager. If an incomplete notice of claim is received, the City Manager shall inform the Claimant in writing of the additional material necessary to make the notice of claim complete. The notice of claim will be complete when the additional material is submitted and determined by the City Manager to be complete. Until the notice of claim is complete, the Claimant shall not be considered to have applied for compensation or filed a claim for compensation.

1.20.060 Notice

The City shall provide notice of the hearing required by Section 1.20.080 to all owners of the property, lien holders and security interest holders listed in the notice of claim, record owners of property within 250 feet of the property and anyone who has requested notice at least 7 days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim, list a city contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing.

1.20.070 Staff Report

City staff shall prepare a report analyzing the claim. The staff report shall be reviewed and approved by the Manager before being submitted to the City Council. Staff may discuss options with the Claimant and may enter into a settlement agreement with the Claimant as to actions within staff's authority. Staff may agree with Claimant that staff will recommend a particular course of action to the City Council if staff lacks authority to commit to the action.

The staff report shall be submitted to the Council, mailed to the Claimant, and made available to the public at least 7 days before the public hearing required by Section 1.20.080.

1.20.080 City Council Proceedings

The City Council shall hold a public hearing on the claim. The public hearing should normally be set within 70 days of the notice of claim but may be set at any time. The City Council may hold an executive session on the claim at any time.

1.20.090 Public Hearing

The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The City Council may limit the duration of testimony.

1.20.100 Council Decision

In deciding the claim, the City Council may take any of the following actions:

1. Deny the claim based on any one or more of the following findings:
 - a. The regulation does not restrict the use of the private real property,

- b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.
 - c. The claim was not filed in a timely manner.
 - d. The Claimant is not the current property owner or was not the property owner at the time the regulation was adopted, first enforced or applied.
 - e. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography, nude dancing, gambling, or the sale of alcoholic beverages or other controlled substances.
 - f. The regulation is required by federal law and is the minimum required to comply with federal law.
 - g. The City is not the entity responsible for payment. The City is not responsible if the City did not enact the challenged law, rule, ordinance, resolution, goal or other enactment.
 - h. The City has not taken final action to enforce or apply the regulation.
 - i. The claimant is not legally entitled to compensation under Article I, Section 18 for a reason other than those listed in subsections a through f. The basis for this finding must be clearly explained.
2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose.
 3. Waive or suspend the regulation. The Council may provide that the waiver or suspension of the regulation shall expire when the Claimant ceases to own the property or shall terminate if no longer needed to comply with Article I, Section 18 of the Oregon Constitution.
 4. Modify the regulation so that it does not give rise to a claim for compensation.
 5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by the waiver or suspension. The waiver or suspension would be granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 90 days of the date the notice of claim was filed. To allow the City time to process the contributions and pay compensation, the City and the Claimant may by mutual agreement extend the time for payment.

The City Council may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Article I, Section 18 of the Oregon Constitution. The City Council may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the City Council directs staff to negotiate, the Council shall set the matter for further action no more than 89 days from the date the notice of claim became complete. If the City Council directs staff to negotiate, it may delegate authority to staff. The Council shall take final action within 90 days of the date the notice of claim became complete.

1.20.110 Authority

The City Council shall have the authority to take the actions listed in Section 1.20.100, including the authority to waive or suspend any provision of any City code, ordinance or resolution, notwithstanding any inconsistent provision in this code or the Zoning Ordinance or Subdivision Ordinance. The City may retain an appraiser to review the appraisal submitted by the Claimant or to prepare a separate appraisal.

1.20.120 Severability

If any section, phrase, clause, or part of the this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

1.20.130 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 of filing, claimant's reasonable attorney fees and expenses necessary to collect the compensation will be added as additional compensation provided 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 any sum which a court, including any appellate court, may adjudge as reasonable attorney fees.