

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING A) ORDINANCE NO. 00-887A
PROCEDURE FOR REVIEW OF APPLICATIONS)
FOR PROPERTY OWNER COMPENSATION)
UNDER ARTICLE 1, SECTION 18 OF THE) Introduced by Metro Council Growth
CONSTITUTION OF OREGON (BALLOT) Management Committee ~~or Red Park~~
MEASURE 7 PASSED NOVEMBER 7, 2000))
AND DECLARING AN EMERGENCY)

WHEREAS, on November 7, 2000 the voters of the State of Oregon approved Ballot Measure 7 which amended Article 1, Section 18 of the Constitution of Oregon to require, under certain circumstances, payment to landowners if state or local government regulation reduces property value; and

WHEREAS, Ballot Measure 7 provides that a land owner, in order to receive compensation, must apply for compensation to the government whose regulation allegedly has caused a reduction in the fair market value of property; and

WHEREAS, the government has 90 days from such application to deny or pay the claim, or take action to remove the property from the application of the regulation; and

WHEREAS, Ballot Measure 7 does not set forth a specific process for review of applications for compensation; and

WHEREAS, it is in the best interests of affected governments to establish such a process in order to be able to assess and take action on such claims in a timely manner; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Chapter 2 Administration of the Metro Code is hereby amended to add Section 2.01.300 entitled REVIEW OF APPLICATIONS FOR PROPERTY OWNER COMPENSATION in Exhibit "A," attached and incorporated herein.

Section 2. **Severability.**

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

Section 3. Emergency Clause and Effective date.

This Ordinance is necessary for the preservation of the health, safety, and welfare of the citizens of the region to prepare for claims for compensation based on the amendments to Article 1, Section 18 of the Constitution of Oregon from Ballot Measure 7, passed, November 7, 2000, which become effective on December 7, 2000. It is essential to have a process established for reviewing applications for compensation under the Constitution by the effective date of the amendment to provide an orderly review process for assessment and action on applications having a potential fiscal impact on the Metro Annual Budget. Therefore, an emergency exists and this Ordinance shall be in full force and effect, retroactively, on December 7, 2000.

ADOPTED by the Metro Council this _____ day of _____ 2000.

David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

**Exhibit “A” of
Ordinance No. 00-887A**

2.01.300 Review of Applications for Variance or Compensation.

The purposes of this section are to accomplish the following regarding applications for compensation under Article 1, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed November 7, 2000 and effective December 7, 2000: Process claims quickly, openly, thoroughly, in a manner that is consistent with the Oregon and U.S. Constitutions; Enable persons with claims to have an adequate and fair opportunity to present them to the regional government; Preserve and protect limited public funds by making timely choices under the Constitution of Oregon; and, Establish a record of decision capable of appellate review. Notwithstanding any provision of this section, this application process shall comply with the Oregon Constitution and all applicable law.

2.01.310 Definitions.

The words used in this Article, 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 this ordinance, the Metro Code, or any other Metro regulation.

Appraisal means an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.

Exempt Regulation means: (a) a regulation which imposes regulation required under federal law, to the minimum extent required by federal law; or (b) a 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, or (c) a regulation governing historically and commonly recognized nuisance laws.

Property means any real property and any structure built or sited on the property, aggregate and other removable minerals, and any forest product or other crop grown on the property. It includes only a single parcel or contiguous parcels in single ownership. It does not include contiguous parcels or parcels not contiguous that are under different ownerships.

Property owner means a person or persons who are the sole fee simple owner of the property. For persons who share ownership of a property the property owner is a joint application by all owners whose interests add up to a fee simple interest in property (including all persons who represent all recorded interests in property, including co-owners, holders of less than fee simple interests, and leasehold owners, and security interest holders).

Reduction in Value means 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.

Regulation means any law, rule, ordinance, resolution, goal or other enforceable enactment of Metro that restricts the use of private property.

Variance means a license issued by Metro pursuant to this ordinance relieving a property owner from the requirements of a Metro regulation which has been determined to reduce the value of the property.

2.01.320 Pre-application Conference.

A. Before submitting an application for variance or compensation, the applicant may schedule and attend a pre-application conference with the Executive Officer or his designee to discuss the application. The pre-application conference shall follow the procedure set forth by the Executive Officer and may include notice to neighbors and other organization and agencies.

B. To schedule a pre-application conference, the applicant must contact the Executive Officer. The pre-application conference is for the applicant to provide a summary of the applicant's application for variance or compensation to the Executive Officer and for the Executive Officer to provide information to the applicant about regulations that may effect the application. The Executive Officer may provide the applicant with a written summary of the pre-application conference within 10 days after it is held.

C. The Executive Officer is not authorized to settle any application for variance or compensation at a pre-application conference. Any omission or failure by staff to recite to an applicant all relevant applicable land use regulations will not constitute a waiver or admission by Metro.

2.01.330 Application for Variance or Compensation.

A. After a court ruling that Ballot Measure 7 is in effect, an owner of private real property may apply for a variance from a Metro regulation, whether in this ordinance, the Metro Code, or any other Metro regulation, if the owner believes that without a variance 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 Metro regulation, whether in this ordinance, the Metro Code, or any other Metro regulation, may apply for that compensation.

B. An application for variance or compensation shall be submitted for review upon completed application forms established and with the number of copies required by the Executive Officer. Unless waived by the Executive Officer, an application shall include at least the following information, to the extent such information may be required as a condition of acceptance of an application under Oregon Constitution Article I, Section 18, subsections (a) through (f):

(1) An application fee to be paid in advance of acceptance for filing to cover the costs of processing the application. The amount of this fee shall be established by resolution of the Metro Council. The application fee shall be refunded if Metro or an appellate body determines that the applicant is entitled to compensation under Oregon Constitution, Article I, Section 18, subsections (a) through (f).

(2) Identification of the name, physical address, street address, and phone number of the person filing the application for variance or 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.

(3) A legal metes and bounds description or a description by street address and by map and assessor's tax lot number for each parcel of land that is the subject of the application—A and a description of adjacent lands owned by the same property owners. This description shall include a legal metes and bounds description or a county assessor's description of each parcel of land, that is either directly contiguous to the real property that is the subject of the application or is indirectly contiguous through contiguity with another parcel under the same ownership. The following shall be provided for each parcel:

(a) The date of acquisition of each such directly or indirectly contiguous parcel;

(b) Information showing the extent to which the owner has treated the real property, for which the owner is applying for compensation and the directly or indirectly contiguous parcels as a single economic unit. For example, use as a single unit in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land;

(c) Information showing the extent to which application of the subject regulation to the real property, as to which the owner is applying for compensation, enhances the value of the contiguous or indirectly contiguous parcels of land; and

(d) The amount of any compensation previously paid by a government under Oregon Constitution Article I, Section 18, subsections (a) through (f), in relation to each such parcel.

(4) Proof that the property allegedly affected by the regulation is in the exclusive fee simple ownership of the applicant or that the applicant has the consent of all owners, including co-owners and ~~all security interests~~ in the aggrieved parcel. The name, mailing address and telephone number of each owners of a legal, equitable or security interest, together with the signature of the applicant owner must be provided.

(5) A preliminary title report issued by a property title insurance company authorized to conduct business within the State of Oregon within 30 days prior to the application date, insuring to Metro that the applicant is the property owner. Such report shall include title history and including a statement of the date the applicant acquired ownership of the property and showing the ownership interests of all owners of the property.

(6) The Metro regulation that is the basis for the application for a variance or compensation, including the number of the ordinance or code section, date the regulation was first applied or first enforced on the subject property. If more than one regulation is alleged to restrict the use of the property, all claims regarding that property must be filed simultaneously.

(7) A written statement ~~addressing the approval criteria that~~ explains how Metro's regulation restricts the use of private real property and how the regulation has the effect of reducing the value of the property upon which the restriction is imposed. If based on adoption of the regulation, the date of adoption of the regulation. If based on first enforcement of the regulation, the date and manner of first enforcement and any documentation establishing the date and manner of first enforcement. If based on application of the regulation, the date and manner of application and any documentation establishing the date and manner of application.

(8) A copy of a written appraisal prepared and signed by an appraiser, certified or licensed under Oregon law to perform an appraisal of real property. The appraisal shall state the fair market value of the property before and after application of the regulation and the evidence on which the appraiser's opinion is based on the date of the valuation and the year used for the value of the dollar in the appraisal. If the claimed reduction in fair market value of the property is based on an alleged 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 the appraisal shall establish that net cost.

(9) A statement by the applicant of why the reasons for a reduction in the value of the property are not within 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 of 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.

(10) A statement of the relief sought by the applicant, including the amount the owner claims as compensation in the event a variance from the regulation is or is not granted.

C. The applicant may request an extension for filing a complete application for a continuance of review of a complete application. A request for extension or continuance shall be deemed a waiver of the 90-day deadline contained in Section 18, Article 1, of the Oregon Constitution and this Article for the period of the extension or continuance.

D. The Executive Officer shall conduct a review within 15 days after submittal of the proposed application to determine whether it is complete and ready for filing.

(1) If the Executive Officer determines the application is not complete, notice shall be given, within that 15 day period, to the applying owner in writing of exactly what additional information is necessary to make the application complete and ready for filing. If the Executive Officer 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 Executive Officer also may notify the applying owner in writing that although the Executive Officer considers the application not complete and ready for filing, the Executive Officer nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Executive Officer, not to exceed 20 days after the date of the notification. The application shall be deemed complete and filed as of the date of receipt of the additional information, except that if the applying owner does not supply the additional information by the date set by the Executive Officer, then the application shall be deemed complete for purposes of filing as of the date of its tender to the Executive Officer.

(2) If the Executive Officer determines the application is complete as initially filed, or if notice of the application's incompleteness has not been mailed to the applying owner within the required 15 day period, then the application shall be deemed complete for filing as of the date of its tender to the Executive Officer.

(3) The Executive Officer shall note in writing on the face of the application the date on which the application is deemed complete.

2.01.340 Process of Review of Application for Variance or Compensation.

A. The Executive Officer shall assess any application for variance or compensation that is deemed complete and make a recommendation to the Metro Council on the disposition of the application for compensation. The Executive Officer may recommend denial of an application that does not comply with the requirements for an application without a ~~public~~~~-evidentiary~~ hearing.

B. Before a request for variance or compensation can be approved, notice of the application for variance or compensation shall be provided in accordance with the provisions of subsections ~~EF~~ and ~~FG~~ of this section and a ~~legislative~~~~-evidentiary~~ hearing shall be conducted. The Executive Officer ~~may~~shall conduct a ~~public~~~~-evidentiary~~ hearing unless the Metro Council takes action to cause the ~~initial public~~~~-evidentiary~~ hearing to be scheduled before the full Council.

C. The Executive Officer or the Metro Council shall hold a ~~legislative~~ public hearing on a ~~complete~~the application for variance or compensation. Where the Executive Officer recommends denial without conducting a ~~public~~~~-evidentiary~~ hearing, the Metro Council ~~may~~shall conduct a public hearing on the recommendation on their regular meeting agenda. Where an ~~initial public~~~~-evidentiary~~ hearing has been conducted ~~by the Executive Officer~~, notice of the Metro Council's public hearing on the Executive Officer's recommendations ~~may~~shall be given at the ~~initial public hearing~~ and held on the ~~regular~~ Metro Council agenda.

D. The Executive Officer shall make a recommendation to the Metro Council based on all of the information presented. The recommendation to the Metro Council shall include consideration of:

(1) Whether a variance is necessary to avoid the owner or owners being entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f); and

(2) If so, the extent of the variance needed to avoid the owner or owners being entitled to such compensation; and

(3) The amount of compensation to which the owner or owners would be entitled with and without a variance.

If the Executive Officer determines that a variance is needed to avoid the owner or owners being entitled to compensation, the Executive Officer shall compare the public benefits from application of the regulation to the owner's or owners' real property to the public burden of paying the required compensation to the owner or owners if a variance is not granted, taking into consideration the financial resources of Metro for the payment of such claims. Based on this comparison, the Executive Officer shall prepare a written report to the Metro Council stating, as appropriate, the determinations, the result of its comparison, and the evidence on which they are based. If the Executive Officer has determined that a variance is needed to avoid the owner or owners being entitled to compensation, the report also shall make a recommendation either to grant a variance that will avoid the owner or owners being entitled to compensation; grant a variance that will not avoid but will reduce the compensation to which the owner is, or owners are, entitled and pay the reduced compensation; or deny a variance and pay the required compensation. The Executive Officer shall provide the written report to the Metro Council for consideration-final action.

E. Notice of a public-evidentiary hearing on an application for variance or compensation shall be by mailed notice at least 10 days in advance of the initial public hearing date provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located within one hundred feet (100') of the property which is the subject of the notice. Additional mailed notice shall be sent to Oregon Department of Land Conservation and Development, Oregon Department of Justice and such others as the Metro Council may designate by resolution.

F. The notice of an initial public-evidentiary hearing under this Section shall:

(1) Explain the nature of the application and the variance or compensation sought and the Regulation that causes the compensation to be alleged to be due.

(2) Set forth the street address or other easily understood geographical reference to the subject property;

(3) State the date written comments are due or, if a hearing has been requested, the date, time and location of the hearing;

(4) Include the name of a Metro representative to contact and the telephone number where additional information may be obtained;

(5) State that a copy of the application and all documents submitted by the applicant are available for inspection at no cost and that copies will be provided at reasonable cost; and

(6) Include a general explanation of the requirements for submission of written comments or, if a hearing is to be held, the requirements for submission of testimony and evidence and the procedure for conduct of hearings.

(7) State the ~~consideration~~ criteria for the Metro Council decision in Metro Code 2.01.345.

G. The Executive Officer may, in the Executive Officer's discretion, retain the services of an appraiser to appraise the ~~P~~property and the application for compensation, for the purposes of determining whether or not the cited regulation has had the effect of reducing the fair market value of the ~~P~~property and for other purposes relevant to the application.

H. The ~~initial public~~ evidentiary hearing shall be conducted as follows:

(1) All documents or evidence relied upon by the applicant shall be submitted to the Executive Officer or Metro Council as a part of the application. Persons other than the applicant may submit documents or evidence at the hearing.

(2) Any staff report used at the hearing shall be available at least seven days prior to the hearing.

~~— (3) When the Executive Officer or Metro Council reopens a record to admit new evidence or testimony, any person may raise new issues, which relate to the new evidence, testimony or criteria for decision making which apply to the matter at issue.~~

(34) The failure of a person entitled to notice to receive notice as provided in this section shall not invalidate such proceedings if a demonstration by affidavit that such notice was given is included in the record. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

I. Within 10 days from the date of the close of the period for written comments or the conclusion of the ~~initial public~~ evidentiary hearing, the Executive Officer shall make a recommendation to the Metro Council as to whether compensation shall be paid, the amount of compensation to be paid, and whether one or more specific variances to regulations should be adopted as to the property for which compensation was sought.

~~A copy of the Executive Officer's recommendation and date, time, and place of the Metro Council meeting at which the recommendation will be reviewed shall be sent, via first class mail, not less than seven days before the Metro Council meeting to the applicant and to each party which provided written comments and/or participated in the Executive Officer's hearing and provided a mailing address to the Executive Officer as part of the hearing process.~~

J. Review by the Metro Council shall ~~include~~ be on the record of the Executive Officer recommendation ~~and the testimony at any initial public evidentiary hearing, including the Executive Officer report.~~ All documents or evidence relied on before the Metro Council shall have been submitted as part of Executive Officer's review or the hearing. Following the Metro Council deliberations to apply the decision ~~considerations~~ criteria, the Office of General Counsel shall prepare a written order or ordinance, based on the Council deliberations, for Metro Council adoption. The final order or ordinance ~~may~~ shall include ~~legislative~~ the findings and conclusions based on the Council review and, if the Council preliminarily 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. The written order or ordinance shall be presented to the Metro Council for a final decision. The written order or ordinance and any staff report to be used at the Metro Council shall be available at least four days prior to the Metro Council meeting to take final action. The Metro Council ~~may~~ shall allow written and/or oral arguments based on evidence in the record of the Executive Officer's review and the hearing to be made by the applicant and any party entitled to receive notice of the Metro Council review.

2.01.345 Criteria For Metro Council's Decision Considerations.

A. The Metro Council's legislative decision shall be based on the following considerations criteria that shall be interpreted to be in a manner consistent with Article I, Section 18, subsections (a) – (f) of the Oregon Constitution. These considerations shall be applied in a manner consistent with the Oregon Constitution and all applicable law.

(1) The application is sufficient for a claim under Article I, Section 18, subsections (a) – (f) complete;

(2) The applicant is a qualifying property owner as follows:

a. The subject property is located within Metro and is subject to the ordinance and regulation, which is the basis of the application for claim;

b. The use, which the applicant alleges is restricted, is so restricted under a Metro regulation and does not constitute an exempt regulation; and

c. The property owner as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied, which is the basis of the application for claim; and

~~d. There is substantial evidence to support the applicant's claim of reduction in value of the subject property;~~

(3) The cited regulation(s) caused a reduction in the value of the subject property and thus entitles the property owner to compensation or variance of the regulation.

~~(4) The property owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) if Metro grants a variance from the regulation;~~

~~(45) The amount of just compensation due with or without a variance from the regulation; and~~

~~(56) 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 Metro for the payment of such claims as follows:~~

~~a. If the Metro Council finds that the public burden of paying the required compensation, taking into consideration Metro'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 or owners' private real property, the Metro Council may grant a variance from the specified regulation to the extent necessary to avoid the owner or owners being entitled to compensation;~~

~~b. If the Metro Council finds that the public benefits from application of the regulation to the owner's or owners' private real property are sufficient to justify the public burden of paying the required compensation, taking into consideration Metro's financial resources for the payment of such claims, the Metro Council may deny a variance from the specified regulation and identify a specified amount of compensation to be paid; or~~

~~c. If the Metro Council finds that some of the public benefits from application of the regulation to the owner's or owners' private real property are sufficient to justify the public burden of paying some of the required compensation, taking into consideration Metro'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 Metro's financial resources for the payment of such claims, the Metro Council may grant a variance to the limited extent necessary to avoid unjustified compensation and identify the amount of compensation to be paid as to that part of the regulation as to which a variance is not granted.~~

~~B. Actions the Metro Council may take include, but are not limited to: shall, by majority vote of those present and voting, determine whether granting or denying a variance and/or whether a the regulation should be deemed not to apply to the applicant's property, compensation, is granted, the amount of any compensation, whether any conditions to the compensation should apply or such whether some other action as the Council deems is appropriate, including actions such as deciding to acquire the subject property by condemnation.~~

2.01.350 Variance From Metro Regulation.

A. There is hereby established a Metro variance, which provides relief from one or specified Metro regulations found by the Metro Council to reduce the value of an Applicant's Real Property. Such variance shall have the following characteristics:

(1) It shall be issued only to an applicant pursuant to the process set forth in this Section;

~~(2) It shall be personal to the owner and nontransferable. The variance shall expire upon the owner's death or the expiration or termination of a business or corporate owner;~~

~~(3) It shall remain effective so long as the applicant owns the property in the same manner and degree as was owned at the time the claim was allowed by Metro;~~

(42) Such variance shall be presented to Metro as part of any application for development of the subject property for which it is claimed.

~~(53) It shall be revoked if the amendments to Article I, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed November 7, 2000, is held to be invalid or repealed.~~

B. The Office of General Counsel is authorized to prepare an appropriate form of variance as part of the final Metro Council order or ordinance under this Section.

2.01.355 Conditions of Approval, Revocation of Decision and Transfer of Approval Rights.

A. The Metro Council may establish any relevant conditions of approval of a variance or of compensation, should a variance or compensation be granted.

B. Failure to comply with any condition for a variance for compensation shall be grounds for revocation of the approval of the application for variance or compensation and grounds for recovering any compensation paid.

C. In the event an applicant fails to fully comply with all conditions of approval or otherwise does not comply fully with Metro's approval, Metro may institute a revocation or modification proceeding under this Section.

2.01.360 Payment Recipient and Condition.

A. Any Metro payment of compensation under this Section shall be to the owner or owners in proportion to their ownership interests in the private real property as to which a variance or compensation was applied for. If there is a dispute among owners as to their proportional interests in the private real property, or if Metro otherwise deems it appropriate, Metro shall make the payment to an escrow agent in trust for the benefit of the owners, for distribution to the owners based on their proportional interests as soon as the owners have resolved their dispute or

agreed on the appropriate distribution. Any Metro payment shall be conditional on the owner providing an updated title report insuring to Metro the current owners of all legal, equitable, and security interests in the private real property.

B. If the Metro 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 a subsequent 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 Metro Council's order granting the variance or limited variance. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the Metro being required to compensate the owner under Oregon Constitution Article I, Section 18, subsections (a) through (f).

C. Any Metro payment of compensation to an owner under this Section may be conditional on the owner's signing an agreement, in a form acceptable to Metro, that, if an appellate court subsequently interprets or invalidates Oregon Constitution Article I, 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 Metro, with the repayment obligation being a lien against the private real property until paid.

2.01.370 Notice of Decision.

Not less than seven days after the Metro Council adopts the final order or ordinance a copy of the Metro Council decision shall be sent, via first class mail, to the applicant and to each party which participated in the Executive Officer or Metro Council review process provided the party provided a mailing address to Metro as part of the review process.

~~2.01.375 Ex Parte Contacts, Conflict of Interest and Bias.~~

~~The following rules govern any challenges to the recommending Executive Officer's or Metro Councilor's participation in review/recommendation or hearing of applications for compensation:~~

~~A. Any factual information obtained by the recommending Executive Officer or a Metro Councilor outside of information provided by Metro staff and outside of the context of formal written comments or hearing will be deemed an ex parte contact. Prior to the close of the record the recommending Executive Officer or a Metro Councilor that has obtained any material factual information through an ex parte contact must declare the content of that contact and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between Metro staff and the recommending Executive Officer or a Metro Councilor.~~

~~B. Whenever the recommending Executive Officer or a Metro Councilor, or any member of their immediate family or household, has a financial interest in the outcome of a particular compensation matter that recommending Executive Officer or Metro Councilor must not participate in the deliberation or decision on that matter.~~

~~C. All decisions in compensation matters must be fair, impartial and based on the applicable review standards and the evidence in the record. Any recommending Executive Officer or Metro Councilor who is unable to render a decision on this basis in any matter must refrain from participating in the deliberation or decision on that matter.~~

2.01.380 Attorney Fees On Delayed Compensation.

If a claim for compensation under Section 18, Article I, of the Oregon Constitution and this is denied or not fully paid within 90 days of the date of filing a completed application, Applicant's reasonable attorney fees and expenses necessary to collect the compensation will be added as additional compensation provided compensation is awarded to Applicant. If a claim for compensation under Article 1, Section 18 of the Constitution of Oregon and this Article is denied or not fully paid within 90 days of the date of filing, and the Applicant commences suit or action to collect compensation, if Metro is the prevailing party in such action, then Metro shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the prevailing party is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the region for the type of legal services performed.

2.01.385 Availability of Funds to Pay Claims.

Compensation can only be paid based on the availability and appropriation of funds for this purpose.

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ADOPTED by the Metro Council this ____ day of _____ 2000.

David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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2.01.300 Review of Applications for Variance or Compensation.

The purposes of this section are to accomplish the following regarding applications for compensation under Article 1, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed November 7, 2000 and effective December 7, 2000: Process claims quickly, openly, thoroughly, in a manner that is consistent with the Oregon and U.S. Constitutions; Enable persons with claims to have an adequate and fair opportunity to present them to the regional government; Preserve and protect limited public funds by making timely choices under the Constitution of Oregon; and, Establish a record of decision capable of appellate review.

2.01.310 Definitions.

The words used in this Article, 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 this ordinance, the Metro Code, or any other Metro regulation.

Appraisal means an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.

Exempt Regulation means: (a) a regulation which imposes regulation required under federal law, to the minimum extent required by federal law; or (b) a 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, or (c) a regulation governing historically and commonly recognized nuisance laws.

Property means any real property and any structure built or sited on the property, aggregate and other removable minerals, and any forest product or other crop grown on the property. It includes only a single parcel or contiguous parcels in single ownership. It does not include contiguous parcels or parcels not contiguous that are under different ownerships.

Property owner means a person or persons who are the sole fee simple owner of the property. For persons who share ownership of a property the property owner is a joint application by all owners whose interests add up to a fee simple interest in property (including all persons who represent all recorded interests in property, including co-owners, holders of less than fee simple interests, leasehold owners, and security interest holders).

Reduction in Value means 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.

Regulation means any law, rule, ordinance, resolution, goal or other enforceable enactment of Metro that restricts the use of private property.

Variance means a license issued by Metro pursuant to this ordinance relieving a property owner from the requirements of a Metro regulation which has been determined to reduce the value of the property.

2.01.320 Pre-application Conference.

A. Before submitting an application for variance or compensation, the applicant may schedule and attend a pre-application conference with the Executive Officer to discuss the application. The pre-application conference shall follow the procedure set forth by the Executive Officer and may include notice to neighbors and other organization and agencies.

B. To schedule a pre-application conference, the applicant must contact the Executive Officer. The pre-application conference is for the applicant to provide a summary of the applicant's application for variance or compensation to the Executive Officer and for the Executive Officer to provide information to the applicant about regulations that may effect the application. The Executive Officer may provide the applicant with a written summary of the pre-application conference within 10 days after it is held.

C. The Executive Officer is not authorized to settle any application for variance or compensation at a pre-application conference. Any omission or failure by staff to recite to an applicant all relevant applicable land use regulations will not constitute a waiver or admission by Metro.

2.01.330 Application for Variance or Compensation.

A. An owner of private real property may apply for a variance from a Metro regulation, whether in this ordinance, the Metro Code, or any other Metro regulation, if the owner believes that without a variance 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 Metro regulation, whether in this ordinance, the Metro Code, or any other Metro regulation, may apply for that compensation.

B. An application for variance or compensation shall be submitted for review upon completed application forms established and with the number of copies required by the Executive Officer. Unless waived by the Executive Officer, an application shall include at least the following information, to the extent such information may be required as a condition of acceptance of an application under Oregon Constitution Article I, Section 18, subsections (a) through (f):

(1) An application fee to be paid in advance of acceptance for filing to cover the costs of processing the application. The amount of this fee shall be established by resolution of the Metro Council. The application fee shall be refunded if Metro or an appellate body determines that the applicant is entitled to compensation under Oregon Constitution, Article I, Section 18, subsections (a) through (f).

(2) 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.

(3) A legal metes and bounds description or a description by street address and by map and assessor's tax lot number for each parcel of land that is the subject of the application. A description of adjacent lands owned by the same property owners. This description shall include a legal metes and bounds description or a county assessor's description of each parcel of land, that is either directly contiguous to the real property that is the subject of the application or is indirectly contiguous through contiguity with another parcel under the same ownership. The following shall be provided for each parcel:

(a) The date of acquisition of each such directly or indirectly contiguous parcel;

(b) Information showing the extent to which the owner has treated the real property, for which the owner is applying for compensation and the directly or indirectly contiguous parcels as a single economic unit. For example, use as a single unit in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land;

(c) Information showing the extent to which application of the subject regulation to the real property, as to which the owner is applying for compensation, enhances the value of the contiguous or indirectly contiguous parcels of land; and

(d) The amount of any compensation previously paid by a government under Oregon Constitution Article I, Section 18, subsections (a) through (f), in relation to each such parcel.

(4) Proof that the property allegedly affected by the regulation is in the exclusive fee simple ownership of the applicant or that the applicant has the consent of all owners, including co-owners and all security interests in the aggrieved parcel. The name, mailing address and telephone number of each owners of a legal, equitable or security interest, together with the signature of the applicant owner must be provided.

(5) A preliminary title report issued by a property title insurance company authorized to conduct business within the State of Oregon within 30 days prior to the application date, insuring to Metro that the applicant is the property owner. Such report shall include title history and including a statement of the date the applicant acquired ownership of the property and showing the ownership interests of all owners of the property.

(6) The Metro regulation that is the basis for the application for a variance or compensation, including the number of the ordinance or code section, date the regulation was first applied or first enforced on the subject property.

(7) A written statement addressing the approval criteria that explains how Metro's regulation restricts the use of private real property and how the regulation has the effect of reducing the value of the property upon which the restriction is imposed. If based on adoption of the regulation, the date of adoption of the regulation. If based on first enforcement of the regulation, the date and manner of first enforcement and any documentation establishing the date and manner of first enforcement. If based on application of the regulation, the date and manner of application and any documentation establishing the date and manner of application.

(8) A copy of a written appraisal prepared and signed by an appraiser, certified or licensed under Oregon law to perform an appraisal of real property. The appraisal shall state the fair market value of the property before and after application of the regulation and the evidence on which the appraiser's opinion is based on the date of the valuation and the year used for the value of the dollar in the appraisal. If the claimed reduction in fair market value of the property is based on an alleged 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 the appraisal shall establish that net cost.

(9) A statement by the applicant of why the reasons for a reduction in the value of the property are not within 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 of 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.

(10) A statement of the relief sought by the applicant, including the amount the owner claims as compensation in the event a variance from the regulation is or is not granted.

C. The applicant may request an extension for filing a complete application for a continuance of review of a complete application. A request for extension or continuance shall be deemed a waiver of the 90-day deadline contained in Section 18, Article 1, of the Oregon Constitution and this Article for the period of the extension or continuance.

D. The Executive Officer shall conduct a review within 15 days after submittal of the proposed application to determine whether it is complete and ready for filing.

(1) If the Executive Officer determines the application is not complete, notice shall be given, within that 15 day period, to the applying owner in writing of exactly what additional information is necessary to make the application complete and ready for filing. If the Executive Officer 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 Executive Officer also may notify the applying owner in writing that although the Executive Officer considers the application not complete and ready for filing, the Executive Officer nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Executive Officer, not to exceed 20 days after the

date of the notification. The application shall be deemed complete and filed as of the date of receipt of the additional information, except that if the applying owner does not supply the additional information by the date set by the Executive Officer, then the application shall be deemed complete for purposes of filing as of the date of its tender to the Executive Officer.

(2) If the Executive Officer determines the application is complete as initially filed, or if notice of the application's incompleteness has not been mailed to the applying owner within the required 15 day period, then the application shall be deemed complete for filing as of the date of its tender to the Executive Officer.

(3) The Executive Officer shall note in writing on the face of the application the date on which the application is deemed complete.

2.01.340 Process of Review of Application for Variance or Compensation.

A. The Executive Officer shall assess any application for variance or compensation that is deemed complete and make a recommendation to the Metro Council on the disposition of the application for compensation. The Executive Officer may recommend denial of an application that does not comply with the requirements for an application without an evidentiary hearing.

B. Before a request for variance or compensation can be approved notice of the application for variance or compensation shall be provided in accordance with the provisions of subsections F and G of this section and an evidentiary hearing shall be conducted. The Executive Officer shall conduct the evidentiary hearing unless the Metro Council takes action to cause the evidentiary hearing to be scheduled before the full Council.

C. The Executive Officer or the Metro Council shall hold a public hearing on the application for variance or compensation. Where the Executive Officer recommends denial without conducting an evidentiary hearing the Metro Council shall conduct a public hearing on the recommendation on their regular meeting agenda. Where an evidentiary hearing has been conducted, a public hearing on the Executive Officer's recommendations shall be held on the regular Metro Council agenda.

D. The Executive Officer shall make a recommendation to the Metro Council based on all of the information presented. The recommendation to the Metro Council shall include consideration of:

(1) Whether a variance is necessary to avoid the owner or owners being entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f); and

(2) If so, the extent of the variance needed to avoid the owner or owners being entitled to such compensation; and

(3) The amount of compensation to which the owner or owners would be entitled with and without a variance.

If the Executive Officer determines that a variance is needed to avoid the owner or owners being entitled to compensation, the Executive Officer shall compare the public benefits from application of the regulation to the owner's or owners' real property to the public burden of paying the required compensation to the owner or owners if a variance is not granted, taking into consideration the financial resources of Metro for the payment of such claims. Based on this comparison, the Executive Officer shall prepare a written report to the Metro Council stating, as appropriate, the determinations, the result of its comparison, and the evidence on which they are based. If the Executive Officer has determined that a variance is needed to avoid the owner or owners being entitled to compensation, the report also shall make a recommendation either to grant a variance that will avoid the owner or owners being entitled to compensation; grant a variance that will not avoid but will reduce the compensation to which the owner is, or owners are, entitled and pay the reduced compensation; or deny a variance and pay the required compensation. The Executive Officer shall provide the written report to the Metro Council for final action.

E. Notice of an evidentiary hearing application for variance or compensation shall be by mailed notice at least 10 days in advance of the initial hearing date provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located within one hundred feet (100') of the property which is the subject of the notice. Additional mailed notice shall be sent to Oregon Department of Land Conservation and Development, Oregon Department of Justice and such others as the Metro Council may designate by resolution.

F. The notice of an evidentiary hearing under this Section shall:

- (1) Explain the nature of the application and the variance or compensation sought and the Regulation that causes the compensation to be alleged to be due.
- (2) Set forth the street address or other easily understood geographical reference to the subject property;
- (3) State the date written comments are due or, if a hearing has been requested, the date, time and location of the hearing;
- (4) Include the name of a Metro representative to contact and the telephone number where additional information may be obtained;
- (5) State that a copy of the application and all documents submitted by the applicant are available for inspection at no cost and that copies will be provided at reasonable cost; and
- (6) Include a general explanation of the requirements for submission of written comments or, if a hearing is to be held, the requirements for submission of testimony and evidence and the procedure for conduct of hearings.
- (7) State the criteria for the Metro Council decision in Metro Code 2.01.345.

G. The Executive Officer may, in the Executive Officer's discretion, retain the services of an appraiser to appraise the Property and the application for compensation, for the purposes of determining whether or not the cited regulation has had the effect of reducing the fair market value of the Property and for other purposes relevant to the application.

H. The evidentiary hearing shall be conducted as follows:

(1) All documents or evidence relied upon by the applicant shall be submitted to the Executive Officer or Metro Council as a part of the application. Persons other than the applicant may submit documents or evidence at the hearing.

(2) Any staff report used at the hearing shall be available at least seven days prior to the hearing.

(3) When the Executive Officer or Metro Council reopens a record to admit new evidence or testimony, any person may raise new issues, which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(4) The failure of a person entitled to notice to receive notice as provided in this section shall not invalidate such proceedings if a demonstration by affidavit that such notice was given is included in the record. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

I. Within 10 days from the date of the close of the period for written comments or the conclusion of the evidentiary hearing, the Executive Officer shall make a recommendation to the Metro Council as to whether compensation shall be paid, the amount of compensation to be paid, and whether one or more specific variances to regulations should be adopted as to the property for which compensation was sought.

A copy of the Executive Officers recommendation and date, time, and place of the Metro Council meeting at which the recommendation will be reviewed shall be sent, via first class mail, not less than seven days before the Metro Council meeting to the applicant and to each party which provided written comments and/or participated in the Executive Officer's hearing and provided a mailing address to the Executive Officer as part of the hearing process.

J. Review by the Metro Council shall be on the record of the Executive Officer recommendation or the evidentiary hearing including the Executive Officer report. All documents or evidence relied on before the Metro Council shall have been submitted as part of Executive Officer's review or the hearing. Following the Metro Council deliberations to apply the decision criteria, the Office of General Counsel shall prepare a written order or ordinance, based on the Council deliberations, for Metro Council adoption. The final order or ordinance shall include the findings and conclusions based on the Council review and, if the Council preliminarily 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. The written order or ordinance shall be presented to the Metro Council for a final decision. The written order or ordinance and any staff report to be used at the Metro Council shall be available at least four

days prior to the Metro Council meeting to take final action. The Metro Council shall allow written and/or oral arguments based on the record of the Executive Officers review and the hearing to be made by the applicant and any party entitled to receive notice of the Metro Council review.

2.01.345 Criteria For Metro Council's Decision.

A. The Metro Council's decision shall be based on the following criteria that shall be interpreted in a manner consistent with Article I, Section 18, subsections (a) -- (f) of the Oregon Constitution:

(1) The application is complete;

(2) The applicant is a qualifying property owner as follows:

a. The subject property is located within Metro and is subject to the ordinance and regulation, which is the basis of the application for claim;

b. The use, which the applicant alleges is restricted is so restricted under a Metro regulation and does not constitute an exempt regulation;

c. The property owner as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied, which is the basis of the application for claim; and

d. There is substantial evidence to support the applicant's claim of reduction in value of the subject property;

(3) The cited regulation(s) cause the reduction in the value of the subject property and thus entitle the property owner to compensation or variance of the regulation.

(4) The property owner is or will be entitled to compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) if Metro grants a variance from the regulation;

(5) The amount of just compensation due with or without a variance from the regulation; and

(6) 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 Metro for the payment of such claims as follows:

a. If the city Council finds that the public burden of paying the required compensation, taking into consideration Metro'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 or owners' private real property, the city Council may grant a variance from the

specified regulation to the extent necessary to avoid the owner or owners being entitled to compensation;

b. If the city Council finds that the public benefits from application of the regulation to the owner's or owners' private real property are sufficient to justify the public burden of paying the required compensation, taking into consideration Metro's financial resources for the payment of such claims, the city Council may deny a variance from the specified regulation and identify a specified amount of compensation to be paid; or

c. If the city Council finds that some of the public benefits from application of the regulation to the owner's or owners' private real property are sufficient to justify the public burden of paying some of the required compensation, taking into consideration Metro'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 Metro's financial resources for the payment of such claims, the city Council may grant a variance to the limited extent necessary to avoid unjustified compensation and identify the amount of compensation to be paid as to that part of the regulation as to which a variance is not granted.

B. The Metro Council shall, by majority vote of those present and voting, determine whether a variance and/or whether a the regulation should be deemed not to apply to the applicant's property, compensation is granted, the amount of any compensation, whether any conditions to the compensation should apply or whether some other action is appropriate, such as deciding to acquire the subject property by condemnation.

2.01.350 Variance From Metro Regulation.

A. There is hereby established a Metro variance, which provides relief from one or specified Metro regulations found by the Metro Council to reduce the value of a Applicant's Real Property. Such variance shall have the following characteristics:

- (1) It shall be issued only to an applicant pursuant to the process set forth in this Section;
- (2) It shall be personal to the owner and nontransferable. The variance shall expire upon the owner's death or the expiration or termination of a business or corporate owner;
- (3) It shall remain effective so long as the applicant owns the property in the same manner and degree as was owned at the time the claim was allowed by Metro;
- (4) Such variance shall be presented to Metro as part of any application for development of the subject property for which it is claimed.
- (5) It shall be revoked if the amendments to Article I, Section 18 of the Constitution of Oregon as amended by Ballot Measure 7, passed November 7, 2000, is held to be invalid or repealed.

B. The Office of General Counsel is authorized to prepare an appropriate form of variance as part of the final Metro Council order or ordinance under this Section.

2.01.355 Conditions of Approval, Revocation of Decision and Transfer of Approval Rights.

A. The Metro Council may establish any relevant conditions of approval of a variance or of compensation, should a variance or compensation be granted.

B. Failure to comply with any condition for a variance for compensation shall be grounds for revocation of the approval of the application for variance or compensation and grounds for recovering any compensation paid.

C. In the event an applicant fails to fully comply with all conditions of approval or otherwise does not comply fully with Metro's approval, Metro may institute a revocation or modification proceeding under this Section.

2.01.360 Payment Recipient and Condition.

A. Any Metro payment of compensation under this Section shall be to the owner or owners in proportion to their ownership interests in the private real property as to which a variance or compensation was applied for. If there is a dispute amount owners as to their proportional interests in the private real property, or if Metro otherwise deems it appropriate, Metro shall make the payment to an escrow agent in trust for the benefit of the owners, for distribution to the owners based on their proportional interests as soon as the owners have resolved their dispute or agreed on the appropriate distribution. Any Metro payment shall be conditional on the owner providing an updated title report insuring to Metro the current owners of all legal, equitable, and security interests in the private real property.

B. If the Metro 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 a subsequent 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 Metro Council's order granting the variance or limited variance. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the Metro being required to compensate the owner under Oregon Constitution Article I, Section 18, subsections (a) through (f).

C. Any Metro payment of compensation to an owner under this Section may be conditional on the owner's signing an agreement, in a form acceptable to Metro, that, if an appellate court subsequently interprets or invalidates Oregon Constitution Article I, 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 Metro, with the repayment obligation being a lien against the private real property until paid.

2.01.370 Notice of Decision.

Not less than seven days after the Metro Council adopts the final order or ordinance a copy of the Metro Council decision shall be sent, via first class mail, to the applicant and to each party which participated in the Executive Officer or Metro Council review process provided the party provided a mailing address to Metro as part of the review process.

2.01.375 Ex Parte Contacts, Conflict of Interest and Bias.

The following rules govern any challenges to the recommending Executive Officer's or Metro Councilor's participation in review/recommendation or hearing of applications for compensation:

A. Any factual information obtained by the recommending Executive Officer or a Metro Councilor outside of information provided by Metro staff and outside of the context of formal written comments or hearing will be deemed an ex parte contact. Prior to the close of the record the recommending Executive Officer or a Metro Councilor that has obtained any material factual information through an ex parte contact must declare the content of that contact and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between Metro staff and the recommending Executive Officer or a Metro Councilor.

B. Whenever the recommending Executive Officer or a Metro Councilor, or any member of their immediate family or household, has a financial interest in the outcome of a particular compensation matter that recommending Executive Officer or Metro Councilor must not participate in the deliberation or decision on that matter.

C. All decisions in compensation matters must be fair, impartial and based on the applicable review standards and the evidence in the record. Any recommending Executive Officer or Metro Councilor who is unable to render a decision on this basis in any matter must refrain from participating in the deliberation or decision on that matter.

2.01.380 Attorney Fees On Delayed Compensation.

If a claim for compensation under Section 18, Article I, of the Oregon Constitution and this is denied or not fully paid within 90 days of the date of filing a completed application, Applicant's reasonable attorney fees and expenses necessary to collect the compensation will be added as additional compensation provided compensation is awarded to Applicant. If a claim for compensation under Article 1, Section 18 of the Constitution of Oregon and this Article is denied or not fully paid within 90 days of the date of filing, and the Applicant commences suit or action to collect compensation, if Metro is the prevailing party in such action, then Metro shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the prevailing party is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the

reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the region for the type of legal services performed.

2.01.385 Availability of Funds to Pay Claims.

Compensation can only be paid based on the availability and appropriation of funds for this purpose.

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 00-887, FOR THE PURPOSE OF ESTABLISHING A PROCEDURE FOR REVIEW OF APPLICATIONS FOR PROPERTY OWNER COMPENSATION UNDER ARTICLE 1, SECTION 18 OF THE CONSTITUTION OF OREGON (BALLOT MEASURE 7 PASSED NOVEMBER 7, 2000) AND DECLARING AN EMERGENCY

Date: November 27, 2000

Prepared by: Michael Morrissey

Proposed Action: Ordinance 00-887 amends Metro Code chapter 2, adding a new section Review of Applications for Property Owner Compensation. This action is in response to the passage of state ballot measure 7, which becomes effective on December 7, 2000. Measure 7 provides for compensation for reduction in the value of property, due to government regulation, in some circumstances. Metro could therefore expect to receive claims from property owners as early as December 7. The ordinance describes the procedures by which the claims will be processed, including a possible pre-application conference, components of a claim, and options available to the Council prior to a final decision.

Applicable Law: Ballot measure 7's amendment of the Oregon constitution, including interpretation by the state Attorney General. Metro code chapter 2, Administration and Procedures.

Budget Impact: The council will have the option of compensating valid individual claims, or granting a variance from the applicable regulation. The amount of compensation that could be requested is unknown, but could be very large.

An application fee due from the claimant at the time of submitting the claim will cover administrative cost for processing the claim.

Factual Background and Analysis: See ordinance summary by Larry Shaw, Senior Assistant Counsel.

M E M O R A N D U M


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METRO

DATE: November 27, 2000

TO: Metro Council

FROM: 
Larry Shaw
Senior Assistant Counsel

RE: Measure 7 Claims Ordinance Summary

Ballot Measure 7, the Oregon Constitution amendment requiring compensation for reduction in property value from government regulation, becomes effective December 7, 2000. Some claims may be filed that day. This memo explains a recommended initial claims processing ordinance for Metro. First Reading would be on November 30 and adoption on December 7, 2000. As the Oregon Attorney General opinion, court interpretations and actual claims experiences occur, this ordinance will need updating amendments. This draft was prepared after comparing six draft city ordinances that have been reviewed to date.

Applicability: All Claims for Compensation

This ordinance will apply to all claims for reduced property value due to Metro regulations. Therefore, this claims process is not added to the Metro Code as a land use process only. Claims alleging reduced value due to a solid waste or transportation plan regulation would be processed under this procedure, too.

Approach: Consider the Least Variance Necessary to Avoid Compensation

The underlying strategy of local governments to respond to compensation will be reflected in their claims ordinances. A simple notice approach with little formal procedure may be sufficient if the anticipated strategy is to quickly allow the full extent of variances requested to avoid possible compensation and attorneys fees. If the anticipated strategy is to build a record to attempt to deny most claims, a more complex process with numerous prerequisites to a "complete application" may be employed by some jurisdictions. The recommended approach in this ordinance would require Executive Officer administration of a process that includes appraisal information and considers potential changes in the application of regulations, short of a

complete exemption, to minimize or eliminate any reduction in property value. This approach would include an evidentiary hearing for all complete claims with the opportunity for affected landowners and others to participate. Incomplete or unsubstantiated claims could be considered with only a public hearing before the Metro Council. Since these claims have potential impact on the Metro Annual Budget, all final decisions would be made by the Metro Council. This recommended ordinance or a modified ordinance with a different approach should be adopted to have retroactive application to all claims filed on or after December 7, 2000.

The following are brief summaries of provisions of this recommended claims procedure.

Definitions would come first from the Oregon Constitution, as interpreted by the courts. As the courts review Ballot Measure terms that are now constitutional terms, those definitions will control. However, some terms are defined for purposes of the application process.

Pre-application Conference would not be required. The recommended ordinance for Metro contains the option of such a conference without a fee to assist the Executive Officer and the applicant.

Applications are for either a variance from a regulation that restricts use of property or compensation. If a regulation has not yet been applied, a variance from the regulation may reduce or eliminate a compensation claim. That option is required to be evaluated by this claims process.

Application Fee is required by most, if not all, draft city ordinances. The Council would set the fee by resolution and the fee would be refunded if compensation is due under this recommended ordinance.

Title Report is used as proof of ownership and date of ownership. An inexpensive preliminary title report completed within 30 days of the application would be required by this recommended ordinance.

Appraisal is used as proof of reduction in value. One draft city ordinance would require three appraisals for claims over \$10,000. That requirement seems onerous and, potentially, unenforceable. This recommended ordinance requires one appraisal and provides for an Executive Officer appraisal for Metro. An applicant may choose to seek another appraisal after a Metro appraisal is entered in evidence.

Completeness of an Application would be determined quickly by the Executive Officer. However a determination that an application is incomplete would not always be a denial of filing. If applicant does not submit additional materials identified by the Executive Officer the process would continue to a decision within the 90 day period before liability and attorney fees may attach. An incomplete or unsubstantiated claim may be referred to the Metro Council for action without an evidentiary hearing.

Evidentiary Hearing with notice to adjacent property owners and others is required for applications deemed complete in this recommended ordinance. The Executive Officer conducts these hearings unless the Council votes to move the hearing before the full Council.

Criteria For Metro Council Decision are based on Measure 7 constitutional provisions.

Notice of Decision is required to be consistent with land use appeal procedures that may or may not be applicable.

Ex Parte Contacts and Conflicts of Interest are addressed in the recommended ordinance consistent with existing state law.

Conclusion:

A claims ordinance applicable to any constitutional claim for compensation is needed to be effective on December 7, 2000, the effective date of Measure 7. This ordinance or a modified ordinance adopted at this time will need updating as more becomes known about Measure 7. The Metro Council may want to consider alternatives to the approach in this ordinance.

cc: Mike Burton, Executive Officer
Daniel B. Cooper
Andy Cotugno