

**ORDINANCE NO. 161**

**AN ORDINANCE ADDING CHAPTER 157 TO TITLE XV OF THE DUNES CITY MUNICIPAL CODE, IMPLEMENTING ARTICLE I, SECTION 18 OF THE OREGON CONSTITUTION, AS AMENDED BY BALLOT MEASURE 7 IN THE 2000 GENERAL ELECTION; ESTABLISHING PROCEDURES FOR PROPERTY OWNERS TO FILE CLAIMS FOR COMPENSATION; AND DECLARING AN EMERGENCY AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.**

**THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** This chapter implements the provisions added to Article I, Section 18 of the Oregon Constitution by Ballot Measure 7 (November 7, 2000). Measure 7 permits owners of private real property to apply for compensation for the reduction in property value resulting from certain types of regulations that restrict the use of that property. This ordinance establishes a procedure, consistent with Measure 7, that enables property owners to present the claims authorized by Measure 7; provides a process and a standard for the City to reject a claim, pay compensation or take action to remove the restriction on the use of the claimant's real property; preserves limited public funds to the extent possible; and provides for a record of the city's decision.

**Section 2. Real Property Compensation.** As used in this ordinance, words and phrases shall have the same meaning as those added to Article I, Section 18 of the Oregon Constitution as a result of Ballot Measure 7, approved by the electors in November 2000. In addition, the following words and phrases mean:

**City Recorder.** The City Recorder of the city, or his or her designee.

**Exempt regulation.** As used in Section 5 of this ordinance, an exempt regulation is one that is any of the following:

- (a) A historically and commonly recognized nuisance law;
- (b) A regulation imposing, to the minimum extent required, a requirement of federal law; or
- (c) A regulation prohibiting the use of property for selling pornography, performing nude dancing, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor.

Regulation. Law, rule, ordinance, resolution, goal or other enforceable enactment.

**Section 3. Real Property Compensation -Application Requirements.** An applicant seeking to file a claim under this ordinance must be a current owner of the property that is the subject of the claim. An applicant shall submit an application consisting of all of the items set out in this section:

- (a) A completed application form;
- (b) An application fee established by the City Council by resolution, which shall be refunded if the City Council or a court determines that the applicant is entitled to compensation under Article I, Section 18, subsections (a) through (f) of the Oregon Constitution.
- (c) The name, mailing address, phone number and signature of the property owner filing the claim application, and of each of the other current owners of the subject property;
- (d) A legal description and tax lot number of the subject property as well as a street address, if any, for the property;
- (e) A title report issued no more than 30 days prior to the application's submittal, which includes the title history, the date the applicant acquired ownership of the property, and the ownership interests of all owners of the property. As an alternative to the title report, a copy of the deed(s) granting all existing ownership

interests to the owner(s) of the subject property signing the application may be submitted with the application;

(f) A statement specifically identifying the section(s) of the Dunes City Code, the city's Zoning Ordinance or other City regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was first adopted, first enforced or applied.

(g) A copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;

(h) A written statement addressing the criteria listed in Subsections (a) to (d) of Section 5 of this ordinance.

(i) A statement by the applicant specifying the amount of the claim, and the fair market value of the property before and after application of the challenged regulations(s); and

(j) Copies of all covenants, conditions and restrictions applicable to the subject property.

**Section 4. Real Property Compensation - Completeness Review.** The City Recorder shall review a claim application and, within 10 days of its receipt, send notice to the applicant as to whether the application is complete. If the City Recorder determines that the application is complete, the City shall begin the application review process. If the City Recorder determines that the application is incomplete, the City shall advise the applicant in writing of the necessary missing information. Within 10 days of the mailing of a notice of missing information, the applicant shall submit to the City a written

statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement that the applicant intends to submit the missing information shall be deemed to be an acknowledgment that the application is incomplete, and the 90-day period for the City to act on the claim shall not begin until the missing information is provided. The City shall accept the application and begin review either:

- (a) Upon receipt of all of the missing information requested by the city;
- (b) Upon receipt of a written statement from the applicant indicating that the missing information will not be provided; or
- (c) Upon the 11th day after mailing the notice of missing information referred to above, if the applicant has not responded.

**Section 5. Real Property Compensation - City Recorder Decision/Recommendation.**

(1) The City Recorder shall determine whether the application qualifies for consideration by the City Council for compensation. An application qualifies for compensation consideration if the amendments to Article I, Section 18 of the Oregon Constitution, approved by the voters in November 2000, is in effect, and if the applicant has demonstrated that all of the following criteria are met:

- (a) The challenged regulation restricts the use of private real property, and no other regulation authorizes an exemption, variance, waiver or other release from the regulation;
- (b) The restriction on use has the effect of reducing the value of the applicant's property;
- (c) The challenged regulation was adopted, first enforced or applied after the applicant became the owner; and
- (d) The challenged regulation is not an exempt regulation as defined in Section 2 of this ordinance.

(2) If an application fails to meet one or more of the criteria listed above, the City Recorder shall deny the claim. If the application meets all of the above criteria, the City Recorder shall refer the application to the City Council along with a recommendation based on the criterion at Section 7 of this ordinance, that the City Council either compensate the applicant for the reduction in fair market value or discontinue application of the regulation to the subject property.

(3) Notice of the City Recorder's denial or recommendation to City Council shall be mailed to the applicant.

(4) The City Recorder shall deny the claim or refer the application and recommendation to the City Council by the 63rd day after the application was accepted.

**Section 6. Real Property Compensation - Notice of Application.**

(1) If the challenged regulation is a land use regulation, then the City shall comply with the requirements of Subsections (2) and (3) of this section. Otherwise, the City Recorder shall provide such notice as he or she deems appropriate given the nature of the particular application.

(2) Following the City Recorder's referral to the City Council, but no less than 20 days before the City Council holds a public hearing, written notice of the application shall be mailed to all of the following:

(a) The applicant and other owners of the subject property listed on the application;

(b) Owners and occupants of properties located within 100 feet of the perimeter of the subject property; and

(c) Neighborhood groups or community organizations officially recognized by the City Council and whose boundaries include the subject property.

(3) The notice shall include all of the following:

(a) The street address or other easily understood geographical reference to the subject property;

- (b) The criterion for the decision;
- (c) The place, date and location of the hearing;
- (d) The nature of the application and the proposed use or uses, which could be authorized;
- (e) A statement that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and that a copy will be provided at reasonable cost;
- (f) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
- (g) A statement that copies of the application and all evidence and documents submitted by or on behalf of the applicant are available for review, and that copies can be obtained at a reasonable cost;
- (h) A statement that failure to raise an issue at the hearing, in person or by letter, or failure to provide statements or evidence with sufficient specificity to enable the decision maker to respond to the issue, precludes an appeal based on that issue;
- (i) The name and telephone number of a City contact person; and
- (j) A brief summary of the local decision making process for the decision being made.

**Section 7. Real Property Compensation - City Council Decision.**

- (1) Within 90 days of accepting a claim application, the City Council shall either declare that:
  - (a) Compensation is due to the applicant in an amount determined in the City Council's decision; or
  - (b) The City will, as of a date specified in the decision, discontinue to apply the challenged regulation(s) to the subject property.
- (2) Where more than one regulation is being challenged, the City Council may provide for a combination of the two remedies listed in Subsection (1) of this section.

(3) The City Council's decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by discontinuing to apply the challenged regulation(s) to the subject property.

(4) A decision made by the City Council to discontinue application of a regulation under Subsection (1)(b) shall automatically be repealed on the occurrence of an event that would prevent any owner or future owner of the subject property from successfully claiming compensation under Oregon Constitution Article I, Section 18, subsections (a) through (f) in relation to the discontinued regulation.

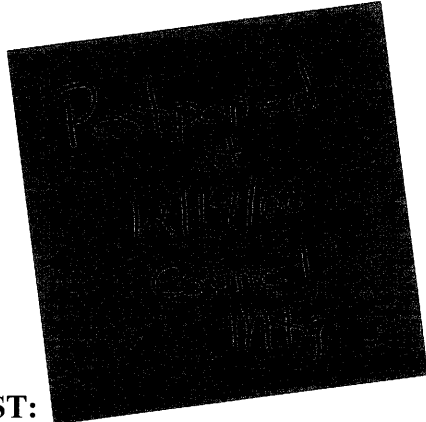
(5) Pursuant to Article I, Section 18 of the Oregon Constitution, as amended by Measure 7 (November 7, 2000), and notwithstanding any other statute, rule, ordinance, resolution or other enactment, the City Council is authorized by Measure 7 and this chapter to discontinue application of any regulation to real property by a resolution issued under this section, when the City Council, in its discretion, decides to do so in accordance with Subsection (3) of this Section.

**Section 8.** The City recorder, at the request of, or with the concurrence of the City attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Dunes City Municipal Code, to the provisions added, amended or repealed herein.

**Section 9.** It is necessary for the preservation of the public health, welfare and safety for this ordinance to have immediate effect. Therefore, this ordinance shall become effective immediately upon its passage by the City Council and endorsement by the mayor.

Adopted by the Dunes City Council of Lane County, OR on this \_\_\_\_ day of \_\_\_\_\_, 2000.

Aye \_\_\_\_\_ Nay \_\_\_\_\_ Absent \_\_\_\_\_ Abstain \_\_\_\_\_



\_\_\_\_\_  
Robert B. Ward Jr., Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Spankroy, City Recorder



**CITY OF DUNES CITY  
LANE COUNTY, OREGON**

**RESOLUTION 12-14-00**

**RESOLUTION SETTING FEES FOR FILING A CLAIM FOR COMPENSATION UNDER  
BALLOT MEASURE 7**

**WHEREAS**, the City has adopted Ordinance 161 establishing a procedure for submitting an application for compensation arising under the provisions of Section 18, Article I of the Oregon Constitution, as amended by Ballot Measure 7 adopted November 7, 2000;

**WHEREAS**, Ordinance 161 provides that a notice of claim must be accompanied by a filing fee to be established by resolution of the Council;

**WHEREAS**, the following fee is necessary and proper;

**NOW THEREFORE THE DUNES CITY COUNCIL RESOLVES AS FOLLOWS:**

The fee for filing a notice of claim under Ordinance 161 (Chapter 157 of the Dunes City Municipal Code) shall be \_\_\_\_\_, payable at the time of submittal of the application to the city.

**ADOPTED:** \_\_\_\_\_, 2000

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Abstain: \_\_\_\_\_ Absent: \_\_\_\_\_

\_\_\_\_\_  
Robert B. Ward, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Mary Spankroy, City Recorder