

Chapter 5.4 Compensation Claims

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5.4.100 Purpose. If the City enacts one or more land use regulations that restrict the residential use of private real property and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the City that enacted the land use regulation or regulations as provided in Oregon Revised Statute (ORS) 195.310 to 195.314, and this Chapter.

5.4.200 Definitions. The words used in this chapter that are the same as words used in ORS 195.300 to 195.336 shall have the same meaning as the words used in those subsections of the ORS, notwithstanding any different definition in city ordinances or regulations. *OWNER* shall have both a singular and plural meaning.

5.4.300 Application Process

A. Application for compensation or waiver. An owner of private real property may apply for a waiver from a city regulation, whether in the Development Code or in any other city ordinance or regulation, if the owner believes that without a waiver, the owner is or will be entitled to compensation under ORS 195.310. A person must file a claim under ORS 195.310 within five years after the date the land use regulation was enacted.

B. Form of Application.

1. An application for compensation or a waiver under division (A) above shall be filed with the Planning Department on a completed application form established by the Department. Unless waived by the Director of the Department, an application shall include at least the following information, to the extent such information may be required as a condition of acceptance of filing an application under ORS 195.310-195.314:
 - a. A legal description of the private real property as to which the owner is applying for compensation or a waiver, including the common address and the Baker County Assessor's description of the property;
 - b. The name, address and telephone number of each owner of and security interest holder in the private real property, together with the signature of the owner making the application;
 - c. The date the owner acquired ownership of the private real property;

- d. A title report, current within 30 days prior to the application date verifying the owner's ownership of the private real property and documenting the date on which the owner acquired ownership;
- e. A description of each parcel of land owned by the owner of the private real property as to which the owner is applying for compensation that is either directly contiguous to the private real property or is indirectly contiguous through contiguity with another parcel under the same ownership that itself is directly or indirectly contiguous, together with the following:
 - i. The date of acquisition of each directly or indirectly contiguous parcel;
 - ii. Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the directly or indirectly contiguous parcels, as a single economic unit, for example in the purchase and financing of the land and in the owner's development of and economic planning for the land; and
 - iii. Information showing the extent to which application of the subject regulation to the private real property, as to which the owner is applying for compensation, enhances the value of the contiguous or indirectly contiguous parcels of land.
- f. The specific regulation as to which the owner is applying for compensation or a waiver, including the date the regulation was adopted, first enforced or applied;
- g. The manner in which, and the extent to which, the regulation restricts the use of the private real property as to which the owner is applying for compensation or a waiver;
- h. An appraisal of the private real property as to which the owner is applying for a variance or compensation, prepared by a person certified or licensed under Oregon law to perform an appraisal of the private real property, stating the appraiser's opinion of the fair market value of the private real property one year before application of the regulation and the evidence on which the appraiser's opinion is based;
- i. An appraisal of the private real property as to which the owner is applying for compensation or a waiver, prepared by a person certified or licensed under Oregon law to perform an appraisal of the private real property, stating the appraiser's opinion of the fair market value of the private real property one year after application of the regulation and the evidence on which the appraiser's opinion is based; in both appraisals required herein there shall be included a statement of the assumptions used in making the appraisals and separately stating the net cost to the owner of any affirmative obligation imposed on the owner and compensable under ORS 195.310, and included in the determination of the reduction of fair market value, with a statement and explanation of the acts required in order to accomplish the obligation; and

- j. The amount the owner claims as compensation under ORS 195.310 in the event a waiver from the regulation is not permitted.
2. An application shall also include an application fee, in the amount established by resolution of the City Council, to at least partially cover the city's cost of processing the application, to the extent an application fee may be required as a condition of acceptance of the filing of an application under ORS 195.310.
- C. Application completeness and acceptance for filing.** The Planning Director shall review the application and determine whether it is complete within 60 days after receiving the claim. If deemed complete, the 180-day period referred to in ORS 195.312 shall commence as of the date of filing. If the Planning Director determines that the application is not complete, the Planning Director shall inform the applicant in writing of the additional information necessary to make the application complete. The application shall be deemed complete at such time that the additional information is submitted unless additional information is required to make the application complete. If the Planning Director determines that the additional information still does not result in a complete application, the Planning Director shall inform the applicant in writing of the remaining additional information necessary to make the application complete. If the Planning Director fails to mail notice of the determination of incompleteness within 60 days from the date of filing the application, the application shall be deemed complete as of the date of initial filing of the application. If the Planning Director fails to mail notice of the determination of incompleteness within 30 days from the date of filing the supplemental information submitted following initial determination of incompleteness, the application shall be deemed complete as of the date of filing of the supplemental information. A claim filed under this section is deemed withdrawn if the Planning Department gives notice to the claimant and the claimant does not comply with the requirements of this section.
- D. Review and report to City Council.** The City Manager shall, following the filing of a complete application for compensation or a waiver under this section, determine whether a waiver is necessary to avoid the owners being entitled to compensation under ORS 195.310 and, if so, the extent of the waiver needed to avoid the owner's being entitled to the compensation and the amount of compensation to which the owner would be entitled without a waiver. If the City Manager determines that a waiver is needed to avoid the owner's being entitled to compensation, the City Manager shall compare 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 the waiver is not granted, taking into consideration the financial resources of the city for the payment of the claims. Based on this comparison, the City Manager shall prepare a written report to the City Council stating his or her determinations and the evidence on which they are based; and, if the City Manager has determined that a waiver is needed to avoid the owner's being entitled to compensation, making a recommendation to grant a waiver that will avoid the owner's being entitled to compensation, to grant a waiver that will not avoid, but will reduce, the compensation to which the owner is entitled and to pay the reduced compensation, or to deny a waiver and pay the compensation to which the owner is entitled. The City Manager shall provide the written report to the City Council.

E. Notice of City Council hearing.

1. Upon receipt of the written report provided above, the City Council shall schedule a public hearing on the application for compensation or a waiver. Public notice of the hearing shall be given as follows.
 - a. The city shall mail written notices of the public hearing at least thirty (30) days in advance of the hearing date to the applying owner and any other owners of the private real property as to which the owner is applying for compensation or a waiver; to the owners of record of property within 100 feet from the exterior boundary of the private real property as to which the owner is applying for compensation as reflected on the most recent property tax assessment roll; to Baker County; and to any neighborhood or community organization recognized by the City Council and whose boundaries include the private real property as to which the owner is applying for compensation or a waiver.
 - b. The notice mailed under division (E)(1)(a) above shall contain the following information:
 - i. The City Council will hold a public hearing to determine whether an owner of private real property is entitled under ORS 195.310 to receive either compensation or a waiver from a city regulation and, if so, to determine whether to pay compensation or grant a waiver;
 - ii. The date, time and location of the City Council public hearing, and the final date for submission of written evidence and arguments relating to the claim;
 - iii. The name of the applying owner;
 - iv. The common address or other easily understood geographical reference to the private real property as to which the owner is applying for compensation or a waiver and a map showing its location;
 - v. The regulation in relation to which the owner is applying for compensation or a waiver;
 - vi. The amount of compensation claimed by the owner if a waiver is not granted;
 - vii. The possibility that the City Council, following the public hearing, would grant the owner a waiver from the regulation in relation to which the owner is applying for compensation or a waiver, rather than paying the amount of claimed compensation; the City Council's decision will be based on:
 - A. A determination whether the applying owner is or will be entitled to compensation under ORS 195.310 unless the city grants a waiver from the regulations; and, if so,

- B. A comparison of the public benefits from application of these regulations to the owner's private real property to the public burden of paying the required compensation to the owner if the waiver is not granted, taking into consideration the financial resources of the city for the payment of the claims.
- viii. The name of the city representative to contact and the telephone number where additional information may be obtained;
 - ix. A copy of the application, all documents and evidence relied on by the applying owner and the City Manager's report to the City Council are available for inspection at no cost and will be provided at a reasonable cost;
 - x. Written testimony may be submitted to the Planning Department at any time prior to the hearing for inclusion in the hearing record and may also be submitted at the hearing; and oral testimony may be given at the hearing;
 - xi. Judicial review of the final determination of the City on the claim is limited to the written evidence and arguments submitted to the City; and
 - xii. Judicial review is available only for issues that are raised with sufficient specificity to afford the City an opportunity to respond.
- c. In addition, the city, in its discretion, may publish the notice described in division (E)(1)(b) of this section in a newspaper of general circulation in the city and may give other notice by such means as the city deems appropriate.
- 2. The failure of the city to give notice as provided in this section or the failure of any person to receive notice given under this section shall not invalidate any action of the City Council under this chapter.
 - 3. Except as provided in item 4 of this section, written evidence and arguments in the proceedings on the claim must be submitted to the Planning Department not later than the close of the final public hearing on the claim.
 - 4. The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.
 - 5. The Planning Department shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in items 3 and 4 of this section.

F. City Council hearing and action.

1. The City Council shall hold a public hearing on the application for compensation or a waiver. The hearing shall be legislative in nature. At the close of the hearing, the City Council shall:
 - a. Determine whether the applying owner is or will be entitled to compensation under ORS 195.310; and
 - b. If so entitled, the City Council shall compare the public benefits in the 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 waiver is not granted, taking into consideration the financial resources of the city for the payment of the claims.
2. If the City Council has determined that either compensation or a waiver is appropriate, then based on this comparison:
 - a. If the City Council finds that the public burden of paying the required compensation, taking into consideration the city's financial resources for the payment of the claims, is sufficient to justify, foregoing the public benefits from application of the regulation to the owner's private real property, the City Council shall grant a waiver from the specified regulation to the extent necessary to avoid the owner's being entitled to the compensation;
 - b. If the City Council finds that the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying the required compensation, taking into consideration the city's financial resources for the payment of the claims, the City Council shall deny a waiver from the specified regulation and the city shall pay the required compensation; and
 - c. If the City Council finds that some of the public benefits from application of the regulation to the owner's private real property are sufficient to justify the public burden of paying some of the required compensation, taking into consideration the city's financial resources for the payment of the claims, but that other public benefits are not sufficient to justify the public burden of paying the balance of required compensation, taking into consideration the city's financial resources for the payment of the claims, the City Council shall grant a waiver to the limited extent necessary to avoid the owner's being entitled to compensation as to that part of the specified regulation providing public benefits not sufficient to justify the public burden of paying compensation and the city shall pay the required compensation as to that part of the specified regulation as to which a waiver is not granted.
3. The City Council's decision shall be by written order that shall include the findings and conclusions based on which the City Council has made its decision. If the Council has determined that a waiver should be granted or compensation should be paid, or both, the order shall state the extent of the waiver granted or the amount of compensation to be paid, or both.

- G. Notice of City Council decision.** The City shall mail a copy of the City Council's written order to the applying owner and to all other persons who submitted written or oral testimony at the City Council hearing and to any person who submitted written evidence or arguments before the close of the record. The failure of the City to give notice as provided in this section, or the failure of any person to receive notice given under this section, shall not invalidate any action of the City Council under this section. The Planning Department shall forward to the county, and the county shall record, a memorandum of the final determination in the deed records of the county in which the property is located.
- H. Extent of waiver in case of Court review.** If the City Council has taken an action under division (F) above, and the owner nevertheless files a Court action seeking compensation or additional compensation from the city in relation to the specified regulation as it affects the owner's private real property and, if a final Court decision determines that the extent of the waiver specified as being granted by the City Council is not sufficient to avoid the owner's being entitled to compensation, then the extent of the original waiver granted by the city shall be deemed to be the extent of waiver necessary to avoid the owner's being entitled to compensation or additional compensation, effective as of the original date of the City Council's decision.
- I. Termination of waiver.** Any waiver granted under this section shall be applicable during such time as the property owner owns the property and so long after the property owner is no longer the property owner as the property qualifies under any Baker City land development ordinance as a non-conforming use. At such time as the use of the property ceases to qualify as a non-conforming use, all regulations then in effect will apply to the property.