

TITLE III: ADMINISTRATION

Chapter

- 30. MUNICIPAL COURT**
- 31. PUBLIC IMPROVEMENTS**
- 32. PROPERTY VALUE COMPENSATION CLAIMS**
- 33. BOARDS AND COMMISSIONS**

CHAPTER 30: MUNICIPAL COURT

Section

- 30.01 Creation
- 30.02 Territorial jurisdiction
- 30.03 Authority and functions of court
- 30.04 Municipal judge
- 30.05 Trial by jury; jury selection

Cross-reference:

Charter provisions concerning Municipal Judge and court, see Charter Section 22

§ 30.01 CREATION.

There is hereby created a municipal court for the City of Monroe, Benton County, Oregon, and the office of Municipal Judge to act as judicial officer therefor. (Ord. 88, passed 4-3-67)

§ 30.02 TERRITORIAL JURISDICTION.

The territorial jurisdiction of the municipal court shall be coextensive with and include all territory embraced within the boundaries of the city. The court shall exercise original and exclusive jurisdiction of all crimes and offenses defined and made punishable by ordinances of the city and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by the ordinances of the city, and any and all other rights and powers provided by the Charter of the city and by Oregon law. (Ord. 88, passed 4-3-67)

§ 30.03 AUTHORITY AND FUNCTIONS OF COURT.

The court, and the Municipal Judge thereof, shall have the authority to issue process for the arrest of any person accused of any offense against the ordinances of the city, to commit such person to jail or admit such person to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in court on the trial of any cause within the jurisdiction of said court, to issue any process necessary to carry into effect the judgments of the court, and to punish witnesses and others for contempt of court. When not governed by ordinances or the Charter, all proceedings in the municipal court for the city shall be governed by applicable general laws of the state of Oregon governing justices of the peace and justice courts. Trials in the municipal court may be held with juries under proper application.

(Ord. 88, passed 4-3-67)

§ 30.04 MUNICIPAL JUDGE.

The Municipal Judge shall be a competent person who shall be appointed by the Mayor with the approval of the Council, and shall hold office for the term coextensive with the Mayor; except that such person may be removed by the Mayor with the consent of the Council.

(Ord. 88, passed 4-3-67; Am. Ord. 123, passed 2-1-71)

§ 30.05 TRIAL BY JURY; JUROR SELECTION.

(A) *Right to trial by jury.* Every person charged with any offense defined and made punishable by the city Charter or any ordinance of the city shall only have the right to trial by jury:

(1) If the ordinance or Charter violated provides for the right of trial by jury; or

(2) If such violation of the Charter or ordinance would constitute a violation of a statute of the state, which is not materially different in the proscription or penalty from the applicable Charter or ordinance of the city, and the violation of such statute would entitle the defendant to a trial by jury under the statutes and/or constitution of the state; and

(3) If the party requesting the trial by jury has given written notice to the Municipal Judge at least six days, excluding Sundays and legal holidays, prior to the trial date set by the Municipal Court.

(B) *Number of jurors.* The jury shall consist of six persons duly sworn to try the cause for which they are called; and the jurors shall be selected as hereinafter provided.

(C) *Term of Court.* The term of Municipal Court shall be for a period of 12 months, beginning on January 1 of each year following passage of this section.

(D) *Jury list.* Upon passage of this section and on January 1 thereafter, beginning on January 1, 1981, the Court Clerk shall prepare a preliminary jury list, by lot, of 48 names of persons taken from the latest tax roll and registration books used at the last city election. The Court Clerk, in preparing the preliminary jury list, shall place thereon only those names of persons who are known or believed to be possessed of the qualifications prescribed in O.R.S. 10.030 and not entitled to exemption as provided in O.R.S. 10.040.

(E) *Jury panels.* The jury panel for each trial, shall be selected at least seven days prior to the trial day, and the Court Clerk shall select 12 names of persons, by lot, from the preliminary jury list to serve as a jury panel until the forth panel is selected. No person shall be required to serve more than one term during any calendar year. The jury panel shall be selected by the Court Clerk. No challenge shall be made or allowed to the panel, and substantial compliance with this section for selecting the panel shall be sufficient.

(F) *Selection of the trial jury.* The time and place of the selection of the jury shall be designated by the Court. The Court Clerk shall then select by lot six names of persons from the jury panel. Each party may take two peremptory challenges of the prospective jurors. The order of challenges shall be that the defendant or his attorney may challenge one and then the City Attorney may challenge one, and then the defendant or his attorney may again challenge one, and then the City Attorney may challenge one. Additional names shall be selected by lot to replace those jurors challenged.

(G) *Conduct of trials.* Trials shall be conducted as trials in justice courts, and the rules shall be the same as in the state courts and shall include applicable statutes of the state regarding the introduction or admission of evidence.

(H) *Verdicts.* All jurors sworn to try the cause must concur to render a verdict.

(I) *Payment of jurors.* Those jurors notified and who appear at trial shall receive compensation from the city in the amount of \$7.50 for each day of attendance upon the Municipal Court if they are chosen to hear the case and \$5 for all other jurors.

(J) *Powers of the Municipal Judge.* The Municipal Judge shall have all inherent and statutory powers and duties of a justice of the peace within the jurisdictional limits of the city. The Chief of Police shall assist the Judge in the serving of subpoenas,

notices of jury duty, and such other orders of the Court necessary for the proper conduct thereof. The Municipal Judge may hold any prospective juror who disregards the notice of jury duty in contempt of court and may punish said juror by a fine of not more than \$100, or by imprisonment in the city jail for not more than 50 days, or both.

(K) *Costs and disbursements.* In all cases tried before the Municipal Court, both with a jury and without a jury, the Judge shall add the costs and disbursements to the fine, penalty or sentence imposed, in a sum not less than \$5.
(Ord. 164, passed 8-4-80)

CHAPTER 31: PUBLIC IMPROVEMENTS

Section

- 31.01 Initiation of proceedings and report from City Engineer
- 31.02 Council's action on Engineer's report
- 31.03 Resolution and notice of hearing
- 31.04 Hearing
- 31.05 Call for bids
- 31.06 Assessment ordinance
- 31.07 Method of assessment and alternative methods of financing
- 31.08 Remedies
- 31.09 Notice of assessment
- 31.10 Lien records and foreclosure proceedings
- 31.11 Errors in assessment calculations
- 31.12 Deficit assessment
- 31.13 Rebates
- 31.14 Abandonment of proceedings
- 31.15 Curative provisions
- 31.16 Reassessment

§ 31.01 INITIATION OF PROCEEDINGS AND REPORT FROM CITY ENGINEER.

(A) Whenever the Council shall deem it necessary, upon its own motion or upon the written petition of the owners of property upon which more than 33% of the total amount of the assessment is levied, to make any street, sewer, sidewalk, drain, or other public improvement to be paid for in whole or in part by special assessment according to benefits, then the Council shall, by motion, direct the City Engineer to make a survey and written report for such project and file the same with the City Recorder.

(B) Unless the Council shall direct otherwise, such report shall contain the following matters:

(1) A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof;

(2) Plans, specifications, and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the Engineer may adopt the plans, specifications, and estimates of such agency;

(3) An estimate of the probable cost of the improvement, including any legal, administrative, and engineering costs attributable thereto;

(4) An estimate of the unit cost of the improvement to the specially benefitted properties;

(5) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefitted;

(6) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefitted by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;

(7) A statement of outstanding assessments against property to be assessed.
(Ord. 120, passed 2-1-71)

§ 31.02 COUNCIL'S ACTION ON ENGINEER'S REPORT.

After the City Engineer's report shall have been filed with the City Recorder, the Council may thereafter by motion approve the report, modify the report, and approve it as modified, require the Engineer to supply additional or different information for such improvement, or it may abandon the improvement.
(Ord. 120, passed 2-1-71)

§ 31.03 RESOLUTION AND NOTICE OF HEARING.

(A) After the Council shall have approved the Engineer's report as submitted or modified, the Council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying out the improvement, and shall direct the Recorder to give notice of such improvement by two publications one week apart in a newspaper of general circulation within the city, and by mailing copies of such notice by registered or certified mail to the owners to be assessed for the costs of such improvement.

(B) Said notice shall contain the following matters:

(1) That the report of the City Engineer is on file in the office of the Recorder and is subject to public examination.

(2) That the Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than 30 days following the first publication of notice pursuant to O.R.S. 223.117, at which objections and remonstrances to

such improvement will be heard by the Council; and that if prior to such hearing there shall be presented to the Recorder valid written remonstrances of the owners of property upon which more than 33% of the total amount of the assessment is levied, then the improvement will be abandoned.

(3) A description of the property to be specially benefitted by the improvement, the owners of such property, and the Engineer's estimate of the unit cost of the improvement to the property to be specially benefitted, and the total cost of the improvement to be paid for by special assessments to benefitted properties.

(4) The Council may provide in the improvement resolution that the construction work may be done in whole, or in part by the city, by a contract, or by any other governmental agency, or by any combination thereof.
(Ord. 120, passed 2-1-71)

§ 31.04 HEARING.

At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of said hearing of written remonstrances and oral objections, if any, the Council may, by motion, at the time of said hearing or within 60 days thereafter, order said improvement to be carried out in accordance with the resolution; or the Council may, on its own motion, abandon the improvement.
(Ord. 120, passed 2-1-71)

§ 31.05 CALL FOR BIDS.

(A) The Council may, in its discretion, direct the City Recorder to advertise for bids for construction of all, or any part of the improvement project on the basis of the Council-approved Engineer's report and before the passage of the resolution, or after the

passage of the resolution and before the public hearing on the proposed improvement, or at any time after the public hearing; provided, however, that no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement. In the event that any part of the work of the improvement is to be done under contract bids, then the Council shall determine the time and manner of advertisement forbids; and the contracts shall be let to the lowest responsible bidder, provided that the Council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority; and the provisions thereof, in case of default, shall be enforced by action in the name of the city.

(B) If the Council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is substantially in excess of the Engineer's estimate, it may, in its discretion, provide for holding a special hearing of objections to the proceeding with the improvement on the basis of such bid; and it may direct the City Recorder to publish one notice thereof in a newspaper of general circulation in the city.
(Ord. 120, passed 2-1-71)

§ 31.06 ASSESSMENT ORDINANCE.

If the Council determines that the local improvement shall be made, when the estimated cost thereof is ascertained on the basis of the contract award or city departmental cost, or after the work is done and the cost thereof has been actually determined, the Council shall determine whether the property benefitted shall bear all or a portion of the cost. The City Recorder shall prepare the proposed assessment to the respective lots within the assessment district and file it in the appropriate city office. Notice of such proposed assessment shall be mailed or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amounts of

assessment proposed on that property and shall fix a date by which time objections shall be filed with the Recorder. Any such objection shall state the grounds thereof. The Council shall consider such objections and may adopt, correct, modify, or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments.

(Ord. 120, passed 2-1-71)

§ 31.07 METHOD OF ASSESSMENT AND ALTERNATIVE METHODS OF FINANCING.

The Council, in adopting a method of assessment of the costs of the improvement may:

(A) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived.

(B) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefitted.

(C) Authorize payment by the city of all, or any part of the cost of any such improvement when, in the opinion of the Council, the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefitted property of the costs of the improvement.

(D) Nothing contained in this chapter shall preclude the Council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the Council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

(Ord. 120, passed 2-1-71)

§ 31.08 REMEDIES.

Subject to the curative provisions of § 31.15 and the rights of the city to reassess as provided in § 31.16 of this chapter, proceedings for writs of review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein. A property owner who has filed written objections with the City Recorder prior to the public hearing may have the right to apply for a writ of review based upon the Council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner, if the facts supporting such claim have been specifically set forth in the written objections. A property owner who has filed written objections with the City Recorder prior to the public hearing may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the City Recorder within 30 days after receiving notice or knowledge of the improvement. No provision of this section shall be construed so as to lengthen any period of redemption or so as to affect the running of any statute of limitation. Any proceeding on a writ of review or suit in equity shall be abated, if proceedings are commenced and diligently pursued by the Council to remedy or cure the alleged errors or defects. (Ord. 120, passed 2-1-71)

§ 31.09 NOTICE OF ASSESSMENT.

Within ten days after the ordinance levying assessments has been passed, the City Recorder shall send by registered or certified mail a notice of assessment to the owner of the assessed property, and shall publish notice of such assessment twice in a newspaper of general circulation in the city, the first publication of which shall be made not later than ten days after the date of the assessment ordinance. The

notice of assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within ten days from the date of the first publication of notice, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure; and said notice shall further set forth a description of the property assessed, the name of the owner of the property, and the amount of each assessment.

(Ord. 120, passed 2-1-71)

§ 31.10 LIEN RECORDS AND FORECLOSURE PROCEEDINGS.

After passage of the assessment ordinance by the Council, the City Recorder shall enter in the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, together with a description of the improvement, the name of the owners, and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land, or portions thereof, which have been assessed for such improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state permit. Interest shall be charged at the rate of 7% per annum until paid on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 30 days from the date of such assessment ordinance the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state to redeem such property.

(Ord. 120, passed 2-1-71)

§ 31.11 ERRORS IN ASSESSMENT CALCULATIONS.

Claimed errors in the calculation of assessments shall be called to the attention of the City Recorder, who shall determine whether there has been an error in fact. If the Recorder shall find that there has been an error in fact, he shall recommend to the Council an amendment to the assessment ordinance to correct such error; and upon enactment of such amendment, the City Recorder shall make the necessary correction in the docket of city liens and send a correct notice of assessment by registered or certified mail.
(Ord. 120, passed 2-1-71)

§ 31.12 DEFICIT ASSESSMENT.

In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the Council may, by motion, declare such deficit and prepare a proposed deficit assessment. The Council shall set a time for a hearing of objections to such deficit assessment and shall direct the City Recorder to publish one notice thereof in a newspaper of general circulation in the city. After such hearing, the Council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the docket of city liens as provided by this chapter; and notices of the deficit assessment shall be published and mailed; and the collection of the assessment shall be made in accordance with §§ 31.09 and 31.10 of this chapter.
(Ord. 120, passed 2-1-71)

§ 31.13 REBATES.

If, upon the completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the Council must ascertain and declare the same by ordinance; and

when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or his legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.
(Ord. 120, passed 2-1-71)

§ 31.14 ABANDONMENT OF PROCEEDINGS.

The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this chapter at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled; and any payments made on such assessments shall be refunded to the person paying the same, his assigns, or legal representatives.
(Ord. 120, passed 2-1-71)

§ 31.15 CURATIVE PROVISIONS.

No improvement assessment shall be rendered invalid by reason of a failure of the Engineer's report to contain all of the information required by § 31.01 of this chapter, or by reason of failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket, or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to the owner of any property as required by this chapter, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.
(Ord. 120, passed 2-1-71)

§ 31.16 REASSESSMENT.

Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city has been, or shall be, set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment; or reassessment, or any part thereof, then the Council may make a reassessment in the manner provided by the laws of the state.

(Ord. 120, passed 2-1-71)

CHAPTER 32: PROPERTY VALUE COMPENSATION CLAIMS

Section

- 32.01 Purpose
- 32.02 Definitions
- 32.03 Application for compensation
- 32.04 Criteria for review of application for compensation
- 32.05 Land use regulation public hearing
- 32.06 City Council decision
- 32.07 Conditions of approval
- 32.08 Attorney fees
- 32.09 Claim limitations
- 32.10 Ordinance interpretation
- 32.11 Availability of funds to pay claims

§ 32.01 PURPOSE.

The purpose of this chapter is to accomplish the following regarding applications for compensation under Article I, Section 18 of the Oregon Constitution as amended by Ballot Measure 7, passed on November 7, 2000:

(A) Process claims quickly, openly, thoroughly, and consistently with the Oregon and U.S. Constitutions;

(B) Enable persons with claims to have an adequate and fair opportunity to present them to the city's decision maker;

(C) Preserve and protect limited public funds; and

(D) Establish a record of decision capable of appellate review.
(Ord. 01-240, passed 12-4-00)

§ 32.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AFFILIATED OWNER. Means any entity, business, association, partnership, corporation, limited liability company, limited liability partnership which shares ownership, control, lease, or a lienhold, management, reversionary, remainder, life estate, or any other future or contingent interest in the subject property.

APPRAISAL. Means an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the state.

EXEMPT REGULATION. An exempt regulation is one that is any of the following:

(1) A regulation imposing, to the minimum extent required, a requirement of federal law; or

(2) 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

(3) A historically and commonly recognized nuisance law, including the City of Monroe's Ordinance No. 1961 as amended from time to time, and the criminal laws of Oregon and the city.

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 under single ownership. It does not include contiguous parcels or parcels not contiguous that are under different ownerships.

REDUCTION IN VALUE. Means the 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 the city.

SUBJECT PROPERTY. The property allegedly impacted by one or more city regulations, which is the subject of the application for compensation.
(Ord. 01-240, passed 12-4-00)

§ 32.03 APPLICATION FOR COMPENSATION.

(A) *Application filing.* An application for compensation shall be submitted for review upon forms established by the city. An application shall consist of all materials required by this section. An application will not be accepted for filing until found to be complete by the City Administrator, unless, in the Administrator's sole discretion, the Administrator

determines that acceptance of an incomplete application is in the city's best interest.

(B) *Completeness review.* The Administrator shall conduct a completeness review within 15 days after submittal of the proposed application and shall advise the applicant, in writing, of any material remaining to be submitted. The applicant shall submit the material needed for completeness within 30 days of the written notice that material remains to be submitted. If the applicant fails to provide the materials necessary to make the application complete within 30 days, the application shall not be accepted for filing.

(C) *Tolling of 90-day action requirement.* The 90-day period for action by the city specified in Article I, Section 18 of the Oregon Constitution shall begin on the date the City Administrator deems an application for compensation complete and accepts it for filing. The Administrator shall note the date of completeness and filing in writing upon the application.

(D) *Application.* An application for compensation must be filed by a current owner of the subject property and shall be submitted on forms established by the City Administrator. It shall consist of all materials required by this chapter and will not be accepted for filing without all of the following information:

(1) An application fee to be paid in advance of acceptance for filing to cover the costs of completeness review and application processing. This fee shall be established by resolution of the City Council. The fee shall be refunded to applicant if the city or a court determines that the applicant is entitled to compensation under Article I, Section 18 of the Oregon Constitution;

(2) A completed application for compensation form;

(3) Identification of the name, physical address, street address, and phone number of the property owner filing the application for compensation;

(4) A legal description of the subject property, a common address for the subject property, and a survey of the subject property completed no more than 90 days prior to the application submittal;

(5) Proof that the subject property is in the exclusive fee simple ownership of the applicant. If applicant does not hold the subject property in fee simple, applicant must submit the consent of all affiliated owners on forms provided by city for this purpose. The name and mailing address of all affiliated owners other than the applicant must be provided;

(6) The date(s) that applicant acquired an ownership interest in the subject property. If there is more than one such date, applicant must submit a statement of all such dates with a complete explanation of applicant's ownership interest at each date and a list of all other affiliated owners at that time, with current mailing addresses for each;

(7) The names and addresses of all property owners within 750 feet of the subject property. Identification of any other property owned by the applicant or any current affiliated owner within 750 feet of the boundary of the subject property;

(8) A title report issued no more than 30 days prior to the application submittal, that includes title history, the date the applicant acquired ownership of the property, and the ownership interests of all affiliated owners of the property;

(9) A copy of:

(a) The regulation that allegedly restricts the use of the subject property and has allegedly caused a reduction in its fair market value,

including the dates the regulation was adopted, first enforced, and applied to the subject property; and

(b) Any regulation in existence and applicable to the subject property immediately before the regulation referenced in subsection (a);

(10) A written appraisal by an appraiser appearing on the list of approved appraisers provided by city, 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 adoption, application, and first enforcement of each challenged regulation, individually, and after adoption, application, and first enforcement of all of the challenged regulations, cumulatively. 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. If the claim is for more than \$10,000, copies of three appraisals must be included. If the claim is for \$10,000 or less, one appraisal must be included;

(11) An opinion of counsel establishing why or to what extent each regulation(s) allegedly reducing the value of the subject property is not an exempt regulation under Article I, Section 18 of Oregon's Constitution and as defined by this chapter, as applied to the subject property. The opinion of counsel shall guarantee city's reliance upon said opinion in either discontinuing application of the regulation(s) to the subject property, in full or in part, or paying compensation to applicant;

(12) A statement explaining how the regulation restricts the use of private property and why the regulation has the effect of reducing the value of the property upon which the restriction is imposed;

(13) A statement of the effect of discontinuing application of each challenged regulation(s) to the subject property would have on the potential development of the subject property and its impact upon surrounding properties, specifying the greatest degree of development that would be permitted if the identified regulation were not applied to the subject property;

(14) A copy of all reports, plans, site plans and other documents submitted to the city for any previous applications for permit approvals for the subject property;

(15) A copy of the site plan and drawings related to the use of the subject property in a readable/legible 8½ by 11-inch format for inclusion in the application record;

(16) Proof of exhaustion of all administrative remedies available for claims alleging that the application or enforcement of one or more regulations reduced the value of the subject property;

(17) A statement of the relief sought by the applicant.

(E) *City appraisal.* The City Administrator may, in the Administrator'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. (Ord. 01-240, passed 12-4-00)

§ 32.04 CRITERIA FOR REVIEW OF APPLICATION FOR COMPENSATION.

(A) After the Administrator's acceptance of an application for filing, the City Council shall determine whether the application qualifies for compensation.

(B) A complete application qualifies for compensation if Ballot Measure 7, as approved by the electors in November 2000, is in effect and if the applicant has demonstrated that all of the following criteria are met:

(1) 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;

(2) The restriction on use has the effect of reducing the value of the applicant's property;

(3) The challenged regulation was adopted, first enforced, or applied after the applicant became the owner;

(4) The challenged regulation will continue to apply to the property 90 days after the completed application for compensation is filed with the city, in compliance with this chapter; and

(5) The challenged regulation is not an exempt regulation under Article I, Section 18 of the Oregon Constitution and as defined by this chapter. (Ord. 01-240, passed 12-4-00)

§ 32.05 LAND USE REGULATION PUBLIC HEARING.

(A) Before the City Council may render a decision where the challenged regulation is a land use regulation, the City Administrator shall provide notice of the application for compensation and of a public hearing in accordance with the provisions of divisions (B) and (C) of this section and hold a public hearing. In its discretion, the City Council may hold a public hearing for challenged regulations which are not land use regulations.

(B) Notice of the application for compensation shall be by mailed notice provided to:

- (1) The applicant and all affiliated owners;
- (2) Owners of record of property on the most recent property tax assessment roll where such property is located within 100 feet of the perimeter of the subject property;
- (3) Neighborhood groups or community organizations officially recognized by the City Council and whose boundaries include the subject property; and
- (4) Such other persons or entities as the City Administrator or City Council determines to notify, in the Administrator's or Council's sole discretion.

(C) The notice under division (B) of this section shall:

- (1) Explain the nature of the application, including the proposed use or uses which could be authorized and the regulation that allegedly lowers the market value of the subject property;
- (2) Set forth the street address or other easily understood geographical reference to the subject property;
- (3) State the date, time, and location of the hearing;
- (4) Include the name of a city representative to contact and the telephone number where additional information may be obtained;
- (5) State that a copy of any staff report will be available for inspection at no cost at the hearing and that copies will be provided at reasonable cost;
- (6) 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;

(7) Include a general explanation of the requirements for submission of written comments, submission of testimony and evidence, and the procedure for conducting the hearing; and

(8) State 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.

(D) All documents or evidence relied upon by the applicant in the hearing must be submitted to the Administrator prior to the hearing as a part of the application. Persons other than the applicant may submit documents or evidence prior to or at the hearing. (Ord. 01-240, passed 12-4-00)

§ 32.06 CITY COUNCIL DECISION.

(A) Pursuant to Article I, Section 18, subsections (a) through (f) of the Oregon Constitution, and notwithstanding any other law, rule, ordinance, resolution, goals or other enforceable enactment of the city, the City Council is authorized to discontinue application of a regulation to a property by resolution pursuant to this chapter when the City Council, in its discretion, elects to do so rather than paying compensation to the property owner.

(B) Within 90 days of accepting a claim application, the City Council shall declare that:

(1) The application for compensation is denied for failure to meet one or more criteria listed in § 32.04;

(2) Compensation is due to the applicant in an amount determined in the City Council's decision; or

(3) The city will, as of a date specified in the decision, discontinue to apply the challenged regulation(s) to the subject property.

(C) Where more than one regulation is being challenged, the City Council may provide for a combination of the remedies listed in division (B) of this section.

(D) The City Council's decision shall be based upon all of the information presented in the application, by comment and testimony. If the application is not denied, the decision shall also consider 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.

(E) Notice of the City Council's decision shall be mailed to the applicant.

(F) A decision made by the City Council to discontinue application of a regulation under division (B)(3) 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.

(G) If the Council compensates an applicant under Article I, Section 18 of the Oregon Constitution and this chapter, such compensation shall immediately be repaid to city, plus 9% interest accruing from the date of payment, upon the earlier of the repeal of Ballot Measure 7 or a determination by a court of competent jurisdiction that Article I, Section 18, as amended by Ballot Measure 7, is invalid or unenforceable. (Ord. 01-240, passed 12-4-00)

§ 32.07 CONDITIONS OF APPROVAL.

(A) The City Council may establish any relevant conditions of approval for compensation or discontinuing to apply the challenged regulation to the subject property, should such relief be granted.

(B) Failure to comply with any condition of approval is grounds for revocation of the Council's decision and grounds for recovering any compensation paid.

(C) In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city's approval, the city may institute a revocation or modification proceeding under this chapter.

(D) Unless otherwise stated in the city's decision, any claim approved under this chapter runs with the property and is transferred with ownership of the subject property. Any conditions, time limits or other restrictions imposed with a claim approval will bind all subsequent owners of the subject property. (Ord. 01-240, passed 12-4-00)

§ 32.08 ATTORNEY FEES.

If a claim for compensation under Article I, Section 18 of the Oregon Constitution and this chapter is denied or not fully paid, unless application of the challenged regulation is discontinued, 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 eventually awarded to applicant. If the applicant commences suit or action to collect claimed compensation, and the city is the prevailing party in such action, then city shall be entitled to any sum

which a court, including any appellate court, may adjudge reasonable as attorney's fees.
(Ord. 01-240, passed 12-4-00)

§ 32.09 CLAIM LIMITATIONS.

Written notice of any claims for compensation pursuant to Article I, Section 18 of the Oregon Constitution and this chapter shall be submitted to the city on forms provided by the city within 30 days after either the effective date of Ballot Measure 7 for claims arising before the effective date, or, for claims arising on or after the effective date, within 30 days of when the claim first arises. The time period for filing these claims shall be tolled during any period for which a court of competent jurisdiction has issued an injunction prohibiting implementation or enforcement of Article I, Section 18, as amended by Ballot Measure 7.
(Ord. 01-240, passed 12-4-00)

§ 32.10 ORDINANCE INTERPRETATION.

This chapter shall be interpreted in a manner consistent with Article I, Section 18 of the Oregon Constitution as amended by Ballot Measure 7, passed November 7, 2000 and implementing Oregon Statutes or regulations, as interpreted by Oregon courts.
(Ord. 01-240, passed 12-4-00)

§ 32.11 AVAILABILITY OF FUNDS TO PAY CLAIMS.

Compensation can only be paid by city based upon the availability and appropriation of funds for this purpose.
(Ord. 01-240, passed 12-4-00)

CHAPTER 33: BOARDS AND COMMISSIONS

Section

Planning Commission

- 33.01 Purpose and authority
- 33.02 Membership
- 33.03 Organization
- 33.04 Meetings
- 33.05 Voting
- 33.06 Conflict of interest
- 33.07 Amendments to the by-laws
- 33.08 Parliamentary authority

PLANNING COMMISSION

§ 33.01 PURPOSE AND AUTHORITY.

The purpose of the Planning Commission is to prepare recommendations for the City Council regarding proposed amendments to the county's land use and development regulations and to make decisions on quasi-judicial land use matters, in accordance with O.R.S. 227.020.

§ 33.02 MEMBERSHIP.

(A) The Planning Commission shall consist of seven members appointed by the City County for staggered, four-year terms or until their successors have been named. Terms shall commence on January 1.

(B) Vacancies shall be filled by the City Council. Appointees shall serve only for the remainder of the term for the position to which appointed.

(C) No more than two members of the Commission may be City Officers, and who shall serve as ex officio non-voting members. (O.R.S. 227.030(1)).

§ 33.03 ORGANIZATION.

(A) The Chairman and Vice-Chairman shall be elected by majority vote of the Planning Commission members at the regularly scheduled January meeting. Terms of office shall begin on February 1 of each year.

(B) The Planning Commission shall designate a Recording Secretary who shall keep permanent record of proceedings of the Commission.

(C) The Planning Commission shall establish subcommittees as it deems necessary and assign each committee specific duties and functions. All subcommittee actions shall be subject to ratification by the full Planning Commission.

§ 33.04 MEETINGS.

(A) All Planning Commission meetings shall be open to the public and shall be scheduled on the fourth

Monday of each month and at other times as the Commission deems necessary. All foreseeable absences should be reported promptly in advance to the Recording Secretary.

(B) Special meetings may be called by the Chairman, the Vice-Chairman in his absence, or by a majority of the membership, provided each member is notified at least three days in advance. Action to convene a meeting need not be taken at a public meeting.

(C) A quorum shall consist of four members of the Commission.

(D) If both the Chairman and Vice-Chairman are absent at any meeting, the Commission shall elect a temporary Chairman for that particular meeting.

(E) The order of business at all meetings shall be set forth in a Rule of Procedure to be adopted by the Planning Commission.

§ 33.05 VOTING.

(A) Motions may be made and seconded by any member of the Planning Commission except the Chairman.

(B) Each member shall vote unless there is a recognized conflict of interest. A silent vote shall count as an affirmative vote.

(C) A majority vote of those present shall be required to pass any motion before the Commission.

(D) All voting shall be by calling of the roll by the Recording Secretary. The Chairman shall vote last and shall never vote to create a tie.

§ 33.06 CONFLICT OF INTEREST.

(A) A member of a Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or member's spouse, brother, sister, child, parent, in-law, partner, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Commission where the action is being taken. (O.R.S. 227.035).

(B) All potential conflicts of interests shall be disclosed upon the opening of a public hearing and prior to the presentation of the staff report on a particular issue.

§ 33.07 AMENDMENTS TO THE BY-LAWS.

Amendments to these by-laws may be proposed by the Planning Commission at any regular meeting of the Committee by a two-thirds vote of the membership, provided that the recommended amendment has been submitted in writing at the previous regular meeting. The proposed amendments shall be forwarded to the City Council for their review and approval. Final authority to amend these by-laws rests with the City Council.

§ 33.08 PARLIAMENTARY AUTHORITY.

All aspects of Planning Commission procedural activity not covered by these rules shall be governed by *Robert's Rules of Order*.