

# Senate Bill 1019

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Limits claims for compensation for land use regulations to regulations that restrict residential use of or interest in private real property.

Conforms language to legislative form and style. Corrects internal references.

## A BILL FOR AN ACT

1  
2 Relating to compensation for land use regulations; creating new provisions; and amending ORS  
3 197.352.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 197.352 is amended to read:

6 197.352. [*The following provisions are added to and made a part of ORS chapter 197:*]

7 (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regu-  
8 lation enacted prior to December 2, 2004, that restricts [*the use of*] **a residential use of or interest**  
9 **in** private real property [*or any interest therein*] and has the effect of reducing the fair market value  
10 of the property[, ] or **of** any interest therein, then the owner of the property shall be paid just com-  
11 pensation.

12 (2) Just compensation [*shall be*] **is** equal to the reduction in the fair market value of the affected  
13 property interest resulting from enactment or enforcement of the land use regulation as of the date  
14 the owner makes **a** written demand for compensation under this section.

15 (3) Subsection (1) of this section [*shall*] **does** not apply to land use regulations:

16 [(A)] **(a)** Restricting or prohibiting activities commonly and historically recognized as public  
17 nuisances under common law. [*This subsection shall be construed narrowly in favor of a finding of*  
18 *compensation under this section*];

19 [(B)] **(b)** Restricting or prohibiting activities for the protection of public health and safety, such  
20 as fire and building codes, health and sanitation regulations, solid or hazardous waste  
21 regulations[, ] and pollution control regulations;

22 [(C)] **(c)** To the extent the land use regulation is required to comply with federal law;

23 [(D)] **(d)** Restricting or prohibiting the use of a property for the purpose of selling pornography  
24 or performing nude dancing. [*Nothing in this subsection, however, is intended to affect or alter rights*  
25 *provided by the Oregon or United States Constitutions*]; or

26 [(E)] **(e)** Enacted prior to the date of acquisition of the property by the owner or a family  
27 member of the owner who owned the subject property prior to acquisition or inheritance by the  
28 owner, whichever occurred first.

29 **(4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of a finding**  
30 **of compensation under this section.**

31 **(b) Nothing in subsection (3)(d) of this section is intended to affect or alter rights pro-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 **vided by the Oregon or United States Constitution.**

2 [(4)] (5) Just compensation under subsection (1) of this section [*shall be*] **is** due the owner of the  
3 property if the land use regulation continues to be enforced against the property 180 days after the  
4 owner of the property makes a written demand for compensation under this section to the public  
5 entity enacting or enforcing the land use regulation.

6 [(5)] (6) For claims arising from land use regulations enacted prior to December 2, 2004, **the**  
7 **owner of the property shall make a** written demand for compensation under [*subsection (4) shall*  
8 *be made*] **subsection (5) of this section** within two years of December 2, 2004, or the date the  
9 public entity applies the land use regulation as an approval [*criteria*] **criterion** to an application  
10 submitted by the owner of the property, whichever is later. For claims arising from land use regu-  
11 lations enacted after December 2, 2004, **the owner of the property shall make a** written demand  
12 for compensation under [*subsection (4) shall be made*] **subsection (5) of this section** within two  
13 years of the enactment of the land use regulation, or the date the owner of the property submits a  
14 land use application in which the land use regulation is an approval [*criteria*] **criterion**, whichever  
15 is later.

16 [(6)] (7) If a land use regulation continues to apply to the subject property more than 180 days  
17 after the present owner of the property has made written demand for compensation under this sec-  
18 tion, the present owner of the property[,] or **of** any interest therein[, *shall have*] **has** a cause of  
19 action for compensation under this section in the circuit court **for the county** in which the real  
20 property is located, and the present owner of the real property shall be entitled to reasonable at-  
21 torney fees, expenses, costs[,] and other disbursements reasonably incurred to collect the compen-  
22 sation.

23 [(7)] (8) A metropolitan service district, city, [*or*] county[,] or state agency may adopt or apply  
24 procedures for the processing of claims under this section, but in no event shall these procedures  
25 act as a prerequisite to the filing of a compensation claim under subsection [(6)] (7) of this section,  
26 nor shall the failure of an owner of property to file an application for a land use permit with the  
27 local government serve as grounds for dismissal, abatement[,] or delay of a compensation claim un-  
28 der subsection [(6)] (7) of this section.

29 [(8)] (9) Notwithstanding any other state statute or the availability of funds under subsection  
30 [(10)] (11) of this section, in lieu of payment of just compensation under this section, the governing  
31 body responsible for enacting the land use regulation may modify, remove[,] or not [*to*] apply the  
32 land use regulation or land use regulations to allow the owner to use the property for a use per-  
33 mitted at the time the owner acquired the property.

34 [(9)] (10) A decision by a governing body under this section [*shall not be considered*] **is not** a  
35 land use decision as defined in ORS 197.015 [(11)].

36 [(10)] (11) Claims made under this section [*shall*] **must** be paid from funds, if any, specifically  
37 allocated by the [*legislature*] **Legislative Assembly**, city, county[,] or metropolitan service district  
38 for payment of claims under this section. Notwithstanding the availability of funds under this sub-  
39 section, a metropolitan service district, city, county[,] or state agency [*shall have discretion to*] **may**  
40 use available funds to pay claims or [*to*] **may** modify, remove[,] or not apply a land use regulation  
41 or land use regulations pursuant to subsection [(6)] (9) of this section. If a claim has not been paid  
42 within two years from the date on which it accrues, the owner [*shall be allowed to*] **may** use the  
43 property as permitted at the time the owner acquired the property.

44 [(11)] (12) [*Definitions - for purposes of*] **As used in** this section:

45 [(A)] (a) "Family member" shall include the wife, husband, son, daughter, mother, father,

1 brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law,  
 2 aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner of the  
 3 property, an estate of any of the foregoing family members[,] or a legal entity owned by any one or  
 4 combination of these family members or the owner of the property.

5 [(B)] (b) “Land use regulation” shall include:

6 [(i)] (A) Any statute regulating the use of land or of any interest therein;

7 [(ii)] (B) Administrative rules and goals of the Land Conservation and Development Commission;

8 [(iii)] (C) Local government comprehensive plans, zoning ordinances, land division ordinances[,] and  
 9 transportation ordinances;

10 [(iv)] (D) Metropolitan service district regional framework plans, functional plans, planning  
 11 goals and objectives; and

12 [(v)] (E) Statutes and administrative rules regulating farming and forest practices.

13 [(C)] (c) “Owner” is the present owner of the property[,] or of any interest therein.

14 [(D)] (d) “Public entity” shall include the state, a metropolitan service district, a city[, or] and  
 15 a county.

16 [(12)] (13) The remedy created by this section is in addition to any other remedy under the  
 17 Oregon or United States [Constitutions] Constitution, and is not intended to modify or replace any  
 18 other remedy.

19 [(13)] (14) If any portion or portions of this section are declared invalid by a court of competent  
 20 jurisdiction, the remaining portions of this section [shall remain] continue in full force and effect.

21 **SECTION 2. ORS 197.352 is added to and made a part of ORS chapter 197.**

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