

INITIATIVE 906

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 906 to the People is a true and correct copy as it was received by this office.

AN ACT Relating to compensating property owners when certain land use restrictions reduce property values; and adding a new chapter to Title 64 RCW.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** PURPOSE. State agencies and local governments should pay property owners just compensation when certain land use restrictions reduce property values. These decisions should be consistent with the United States Constitution. If state agencies or local governments do not pay just compensation, the regulations that require the payment of just compensation shall not apply to the owner's property.

NEW SECTION. **Sec. 2.** COMPENSATION AND COMPLIANCE WITH THE UNITED STATES CONSTITUTION REQUIRED OR REGULATIONS ARE WAIVED. (1) If a public entity enacts or enforces a new land use regulation or enforces an existing land use regulation that restricts the use of private real property or any interest therein in the manner set out in subsection (2) of this section, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be paid to the owner of real property in any of the following circumstances:

(a) Physical occupation by the public entity unless:

(i) An essential nexus exists between a legitimate state interest and the occupation or dedication of real property; and

(ii) The degree of the occupation or dedication is roughly proportional to the extent of the impact of a proposed use, activity, or development;

(b) The property has no economic use considering the parcel as a whole;

(c) The land use regulation, or its enforcement, requires the payment of just compensation under the United States Constitution considering the following:

(i) The regulation's economic effect on the owner;

(ii) The extent to which the regulation interferes with reasonable investment-backed expectations;

(iii) The character of the government action; and

(iv) The parcel as a whole; or

(d) The United States Constitution would otherwise require the payment of just compensation for the adoption or enforcement of the land use regulation.

(3) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation that restricts the use of private real property or any interest therein in the manner set out in subsection (2) of this section as of the date the owner makes written demand for compensation under this chapter.

(4) Subsections (1) and (2) of this section shall not apply to land use regulations:

(a) Restricting or prohibiting activities recognized as public or private nuisances under common law;

(b) When Washington state's real property laws would prohibit some or all of the anticipated uses including the restrictions imposed by the public trust doctrine;

(c) Restricting or prohibiting uses or activities to protect the public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(d) To the extent the land use regulation is required to comply with federal law; and

(e) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Washington or United States constitutions.

(5) Just compensation under subsection (1) of this section shall be due the owner of the property if the land use regulation continues to be enforced against the property one hundred eighty days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(6) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (5) of this section shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (5) of this section shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

(7) If a land use regulation continues to apply to the subject property more than one hundred eighty days after the owner has made written demand for compensation under this chapter, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this chapter in the superior court in the county in which the real property is located. The prevailing party shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(8) A public entity may adopt or apply procedures for the processing of claims under this chapter, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (5) of this section.

(9) Notwithstanding any other state statute or the availability of funds under subsection (10) of this section, in lieu of payment of just compensation under this chapter, the public entity responsible for

enacting the land use regulation may modify, remove, or not apply the land use regulation to allow the owner to use the property without the part of the land use regulation that requires compensation under subsection (2) of this section applying to the owner's property.

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, town, or county for payment of claims under this chapter. Notwithstanding the availability of funds under this subsection, a public entity shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (9) of this section. If a claim has not been paid within two years from the date on which it accrues, the part of the land use regulation that requires compensation under subsection (2) of this section shall not apply to the owner's property.

NEW SECTION. **Sec. 3.** DEFINITIONS. For the purposes of this chapter:

(1) "Land use regulation" shall include:

(a) Any statute regulating the use of land or any interest therein;

(b) Local government comprehensive plans, zoning ordinances, development regulations, land division ordinances, and transportation ordinances; and

(c) Statutes and administrative rules regulating farming and forest practices.

(2) "Owner" is the present owner of the real property, or any interest therein.

(3) "Public entity" shall include the state, a city, a town, or a county.

NEW SECTION. **Sec. 4.** MISCELLANEOUS. (1) The remedy created by this chapter is in addition to any other remedy under the Washington or United States constitutions, and is not intended to modify or replace any other remedy.

(2) Captions used in this chapter are not any part of the law.

(3) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute a new chapter in Title 64 RCW.

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