

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

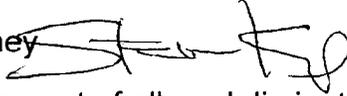
CC: 18R
Amend No. _____

Date Prepared: August 13, 2007

Council Meeting Date: September 4, 2007

TO: Honorable Mayor and Council

FROM: Steve Kemp, City Attorney



SUBJECT: Addressing Claims arising out of alleged diminution of value of real property

RECOMMENDATION:

That the Mayor and council adopt the proposed ordinance amending Chapter 2 of the Peoria City Code (1992) establishing a process for addressing claims alleging that a regulation has diminished the value of real property.

SUMMARY:

In 2006, the qualified electors of the State of Arizona adopted Proposition 207, the Arizona Private Property Rights Act (the "Act"). The Act created a new classification of claim against the City known as a diminution of real property value claim. Such claims arise out of an allegation that a government regulation has caused the value of the real property to be reduced based on the expense of complying with the regulation or the limits it has placed on the use of the property.

The Act does not provide for any process to evaluate such claims by the local government. The purpose of the proposed ordinance is to create such a process. The process is modeled on that which is used for all other claims. The difference with claims arising under the Private Property Rights Act is that there will be an opportunity to have an administrative determination of the claim prior to filing an action in Court.

Pre-litigation review of claims in an administrative process is used for other types of actions that may be filed in the Arizona Courts such as medical malpractice. The process permits a claimant to obtain a hearing before one of the City's administrative hearing officers on the validity of their claim, together with an opportunity for the City Council to receive a recommendation from the hearing office on administrative types of matters. This process will also provide a means for both the property owner and the City to avoid the expense and delay of litigation over such matters.

The proposed ordinance amends a number of sections as follows:

1. Adds a new section consolidating references to administrative hearing officer

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # 07-30 RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

appointments.

2. Adds new definitions pertaining to Proposition 207 type claims.
3. Provides for referral of Proposition 207 type claims to an administrative hearing officer.
4. Establishes a presumption that if the city council removes a land use regulation that such actions are fundamental governmental policies and not subject to litigation.
5. Provides guidelines for hearing by an administrative hearing officer and implementation of such decisions.

The proposed ordinance is designed to fit with the earlier adopted changes to the land use ordinance of the City and provide a complete framework to address such claims under the Act. Therefore, it is my recommendation that the Mayor and Council adopt the proposed ordinance amending Chapter 2 of the Peoria City Code (1992) establishing a process for addressing claims alleging that a regulation has diminished the value of real property

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ATTACHMENT:

1. Proposed Ordinance

ORDINANCE NO. 07-30

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 2 OF THE PEORIA CITY CODE (1992) BY ENACTING SECTION 2-20 PERTAINING TO CITY COUNCIL; ADMINISTRATIVE HEARING OFFICERS AND PROVIDING THAT SECTIONS 2-45 THROUGH 2-48 SHALL BE RESERVED AND AMENDING CHAPTER 2 OF THE PEORIA CITY CODE(1992) RENUMBERING SECTION 2-51 PERTAINING TO RISK MANAGEMENT; DEFENSE AND INDEMNIFICATIONS TO SECTION 2-49 WITH THE TITLE OF CLAIMS MANAGEMENT; RISK; DEFENSE AND INDEMNIFICATIONS AND AMENDING CHAPTER 2 OF THE PEORIA CITY CODE(1992) BY RENUMBERING SECTION 2-52 PERTAINING TO RISK MANAGEMENT; DEFINITIONS TO SECTION 2-50 WITH THE TITLE OF CLAIMS MANAGEMENT; DEFINITIONS AND AMENDING SAID SECTION AND AMENDING CHAPTER 2 OF THE PEORIA CITY CODE(1992) BY RENUMBERING SECTION 2-53 PERTAINING TO CLAIMS MANAGEMENT, CLAIMS AGAINST THE CITY, DEMAND, TIME LIMIT FOR PRESENTATION OF CLAIMS TO SECTION 2-51 WITH THE TITLE OF CLAIMS MANAGEMENT; DEMAND, TIME LIMIT FOR PRESENTATION OF CLAIM, DIMINUTION IN VALUE CLAIMS AND AMENDING SAID SECTION AND BY ENACTING SECTION 2-52 PERTAINING TO CLAIMS; DIMINUTION IN VALUE OF REAL PROPERTY; ADMINISTRATIVE REVIEW PROCESS; REFERRAL TO ADMINISTRATIVE HEARING OFFICER AND BY ENACTING SECTION 2-53 PERTAINING TO CLAIMS; DIMINUTION IN VALUE OF REAL PROPERTY; PRIVATE CAUSES OF ACTION; LIMITATIONS AND BY ENACTING SECTION 2-54 PERTAINING TO CLAIMS; DIMINUTION IN VALUE; EFFECT OF CLAIM; ESTOPPEL; LIMITATION AND BY AMENDING CHAPTER 2 OF THE PEORIA CITY CODE(1992) IS AMENDED BY RENUMBERING SECTION 2-54 PERTAINING TO CITY ATTORNEY; CLAIMS MANAGEMENT; DUTIES AND RESPONSIBILITIES TO SECTION 2-55 AND AMENDING CHAPTER 2 OF THE PEORIA CITY CODE(1992) BY RENUMBERING SECTION 2-55 PERTAINING TO CLAIMS MANAGEMENT; CLAIMS PAYMENT; PAYMENT OF CLAIM COSTS TO SECTION 2-56 WITH THE TITLE OF CITY ATTORNEY; CLAIMS MANAGEMENT; CLAIMS PAYMENT; PAYMENT OF CLAIM COSTS AND AMENDING CHAPTER 2 OF THE PEORIA

CITY CODE(1992) BY RENUMBERING SECTION 2-56 PERTAINING TO CLAIMS; INSURANCE TO SECTION 2-57 AND AMENDING CHAPTER 2 OF THE PEORIA CITY CODE BY RENUMBERING SECTION 2-57 PERTAINING TO CLAIMS; SELF-INSURANCE; SCOPE; FUND TO SECTION 2-58 AND AMENDING CHAPTER 20 OF THE PEORIA CITY CODE (1992) BY ENACTING SECTION 20-21 PERTAINING TO LAND USE APPEALS; DIMINUTION IN VALUE; DEFINITIONS AND BY ENACTING SECTION 20-22 PERTAINING TO LAND USE APPEALS; DIMINUTION IN VALUE OF REAL PROPERTY; PROCEDURES AND BY ENACTING SECTION 20-23 PERTAINING TO LAND USE APPEALS; DIMINUTION IN VALUE OF REAL PROPERTY; HEARINGS; DECISION BY ENACTING SECTION 20-24 PERTAINING TO LAND USE APPEALS; CITY COUNCIL DECISION; IMPLEMENTATION; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the citizens of Arizona by initiative enacted the Property Rights Protection Act of 2006 (the "Act") (A.R.S. §§ 12-1134 to 1138, as amended), which was proclaimed by the Governor as of December 5, 2006;

WHEREAS, the City desires to establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the City; preserves and protects limited public funds; and establishes a record of the City's decision capable of Superior Court review;

WHEREAS, the City, as a charter city under the Arizona Constitution, Article XIII, Section 2 is authorized to exercise all powers granted under the Peoria City Charter, unless the State through the Legislature or the people have preempted the City;

WHEREAS, the Act does not expressly or impliedly preempt the City's ability to legislate in the area of land use regulation or claims management; and

WHEREAS, the provisions of this ordinance are designed to provide procedures and guidelines for considering claims arising under the Act are intended to clarify and apply the provisions of the Act, and are not intended to conflict with the text or intent of the Act.

NOW THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 2 of the Peoria City Code (1992) is amended by enacting Section 2-20 pertaining to City Council; Administrative Hearing Officers and which shall read as follows:

Sec. 2-20 City Council; Administrative Hearing Officers.

(a) The City Council by Resolution may designate one or more administrative hearing officers to hear administrative appeals arising under Chapters 2, 12, 19, 20, 23, and 25 of this code and the Zoning Ordinance of the City.

(b) The administrative hearing officers are deemed to be a judicial officer and shall be appointed for a defined term of not less than two years.

(c) Administrative hearing officers may be removed for any reason that a municipal judge may be removed pursuant to Section 15-2 of this code or for any conduct that would constitute a violation of the Arizona Code of Judicial Conduct or for cause in the determination of the City Council.

SECTION 2. Chapter 2 of the Peoria City Code (1992) is amended by providing that Sections 2-45 through 2-48 shall be reserved.

Secs. 2-45. Reserved through 2-48

SECTION 3. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-51 pertaining to Risk Management; defense and indemnifications to Section 2-49 with the title of Claims Management; risk; defense and indemnifications and which shall read as follows:

Sec. 2-49. Claims Management; risk; defense and indemnifications.

(a) All of the protections and benefits conferred by this section shall be enjoyed by any present or former Mayor, Vice-Mayor and each and all of the present or former members of the city council, city officers, municipal judges, city employees, including the city attorneys, any prosecuting attorneys, whether or not such attorneys are full-time employees or serving on a contract basis, and every one of the members of all city boards and commissions and subcommittees, which protected parties are referred to in this section individually as a "city officer" and collectively or jointly as "city officials."

(b) Any City officer and all city officials shall be entitled to be exonerated, indemnified and held harmless by the City from and against any liability or loss in any manner arising out of, or occasioned by, his or their service as a City officer or officials and based upon any claim by any third party that the City or such City officer or officials, by any action or failure to act, damaged the property or infringed the rights of the third party, or of

any other persons on whose behalf the third party brings a claim or legal action. The coverage afforded by this subsection shall not apply in any case where indemnification is not permissible pursuant to any state statute or any determination that such indemnification would be contrary to public policy.

(c) Subject to the above-stated limitations, the right to indemnification provided for in subsection (a) of this section shall extend as well to any claim brought by, or on behalf of, the city to recover damages alleged to have been occasioned to it or any of its property by any act or failure to act of any City officer or officials.

(d) In any case where indemnification is required under the provisions of this section the City shall pay, on behalf of any City officer and all City officials, any money judgments, and shall perform the onerous provisions of any court order, which may be entered against him or them, when such judgments or orders have become final and are no longer appealable.

(e) In any case where any City officer or officials are, entitled to be exonerated, indemnified and held harmless pursuant to the provisions of this section the City shall protect and defend any City officer and all city officials from and against any litigation commenced against him or them, by engaging and compensating competent legal counsel to conduct his or their defense, and by paying all court costs, and any fees of opposing legal counsel, taxed or imposed by the court having jurisdiction.

(f) The City shall at all times procure insurance policies providing the maximum coverages and limits procurable at reasonable rates to protect its interests and to indemnify and protect all City officials and any City officer entitled to indemnification and protection under this section. Acceptance of coverage and undertaking of protection by any such insurance carrier shall be deemed to satisfy the requirements of this section on the part of the City. However, in any case or instance where an insurance carrier does not in fact accept coverage and defend any City officer or officials, or where the insurance policy limits are insufficient to cover any judgment entered against any City officer or officials or such insurance is not effective for any reason for such coverage, the City shall be bound by the provisions of this section to protect and indemnify pursuant to the provisions of this section.

(g) It shall be a precondition to the assertion of any claim for protection and indemnity under this section that any City officer or officials, after having been served with process commencing litigation against him or them, or after having received written notice of a possible claim alleged to be covered under the provisions of this section, shall promptly give notice of the pendency of such action, or the presentation of any such claim, to the City Clerk who shall in turn present such actual or potential claim to the city council, together with such city officer's or officials' request for indemnity and protection hereunder. It shall further be a precondition to coverage hereunder that a city officer or officials claiming the protection and benefits conferred by this section shall at all times, and in

every way, cooperate fully with legal counsel appointed by the city to defend against any threatened or pending litigation under the provisions of subsection (e) of the section.

SECTION 4. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-52 pertaining to Risk Management; definitions to Section 2-50 with the title of Claims Management; definitions and amending said section and which shall read as follows:

Sec. 2-50. Claims Management; definitions.

(a) City - The City of Peoria and all its Council Members, Mayor, appointed officers and department heads, employees, agents (when acting within the scope of their authority), boards, commissions or other City created entities.

(b) City Manager means the City Manager of the City, or his or her designee.

(c) Claim - Any demand made for the payment of money damages from the City by any person or entity, in the nature of a tort or contract claim; excluding any demand based solely on the assertion of a claim within the jurisdiction of the personnel board, a demand relating solely to payment of wages earned and employment benefits granted to all employees; a demand arising solely out of any right or claim of superior title to property, its use or transfer, a demand based on taxes, or any solely non-monetary demand.

(d) Claim Costs- Any internal or external costs or expense incurred by the City, in response to any claim against the City, including insurance or bond policy costs, contractual services costs, legal defense costs and related consultant costs.

(e) Claims Management Program - the program administered by the Office of the City Attorney to procure insurance against claims and to pay claim costs arising out of claims based on the amounts appropriated by the City Council through the budget process.

(f) Diminution in Value Claim means a claim for just compensation, as defined in A.R.S. § 12-1136, as amended, for diminution in the fair market value of real property resulting from the enactment of a land use law that is not exempt under A.R.S. § 12-1134 (B), as amended, by the City that reduces existing rights to use, divide, sell, or possess private real property as of the date of the enactment. Such claims are permitted by A.R.S. § 12-1134, as amended.

(g) Exempt land use law means a land use law that:

(1) Limit or prohibit a use or division of real property for the protection

of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;

- (2) Limit or prohibit the use or division of real property commonly and historically recognized as a public nuisance under common law, including and land use law that prohibits unreasonable interference with the exercise of a right common to the general public;
- (3) Are required by Maricopa County, Yavapai County, the State of Arizona, other political subdivisions thereof other than the City and over which the City has no legal control, or federal law;
- (4) Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitution of Arizona and the United States;
- (5) Establish locations for utility facilities;
- (6) Do not directly regulate an owner's land;
- (7) Were enacted before December 5, 2006; or
- (8) Any regulation affecting real property that is not a land use law.
- (h) Insurance Reserve Fund- Any fund or account established by the City for the purposes of paying claims and claim costs.
- (i) Land use law means any statute, rule, ordinance, resolution or law enacted by the City that regulates the use or division of land or any interest in land or that regulates accepted farming or forestry practices. Land use law specifically excludes (without limitation): administrative rules of the City not adopted by the City Council; development fees levied under the authority granted by A.R.S. § 9-463.05; approval of a preliminary and/or final plat; conditions and issuance of building, utility, fire, grading, drainage and engineering permits and site plans and minor amendments of planned zoning districts under the zoning ordinance of the city..
- (j) Owner means the holder of fee title to the real property that is the subject of the claim on the date at the time that the diminution in value is alleged to have occurred. Owner does not mean persons having less than fee title ownership.
- (k) SIR - Self-Insurance Retention.

SECTION 5. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-53 pertaining to Claims Management, claims against the city, demand, time limit for presentation of claims to Section 2-51 with the title of Claims Management; demand, time limit for presentation of claim, diminution in value claims and amending said section and which shall read as follows:

Sec. 2-51. Claims Management; demand, time limit for presentation of claim; diminution in value claims.

(a) A person having a claim against the City of Peoria for any cause of action not specifically covered under Title 12, Chapter 7, Article 2, Arizona Revised Statutes, or a Diminution in Value Claim as defined in this Chapter, shall within six (6) months after the last item of the account accrues, present to the City Clerk and the Claims Management Program in the City Attorney's Office a written itemized claim, stating specifically what the claim is for, specifying each item, the date and amount thereof and each City employee or officer that the claim is against.

(b) A person seeking to file a Diminution in Value Claim under this Chapter must be an owner or a property owner who specifically alleges that the action that is the subject matter of the claim directly regulates their property. The claim shall be filed with the City Clerk and the Claims Management Program in the City Attorney's Office.

(c) All claims shall be executed under penalty of perjury or acknowledged as being true to the best of knowledge, information and belief.

(d) A Diminution in Value Claim shall meet all the requirements of Section 12-821.01.A, Arizona Revised Statutes, as amended, and also shall include:

(1) The name(s), address(es) and telephone number(s) of all owners, and persons having any interest in the property, including but not limited to lien holders, trustees, renters, lessees, and a description of the ownership interest of each;

(2) The address, tax lot, and legal description of the real property that is

the subject of the claim, together with a title report issued not more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting ownership of the entire property by the claimant(s), and the date the property was acquired;

(3) The current land use law(s) that allegedly restricts the use of the real

property and allegedly causes a reduction in the fair market value of the subject property;

- (4) The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser who is licensed or certified by the Arizona Board of Appraisal; and
- (5) Copies of any leases or Covenants, Conditions and Restrictions ("CCR's") applicable to the real property.

(c) The Claims Management Program shall reject a claim unless presented within time limits specified in subsection (a) and, if applicable the requirements of subsection (b).

(d) Claims not presented within the time period provided by this section or Title 12, Chapter 7, Article 2, Arizona Revised Statutes shall be deemed waived and barred to the extent provided by law.

SECTION 6. Chapter 2 of the Peoria City Code (1992) is amended by enacting Section 2-52 pertaining to Claims; diminution in value of real property; administrative review process; referral to administrative hearing officer and which shall read as follows:

Sec. 2-52. Claims, Diminution in value of real property; administrative review process; referral to administrative hearing officer.

(a) The owner shall file the claim for diminution in value pursuant to Section 2-51 of this Code with the City Clerk and the City Attorney's Office within 180 days of the date that the owner knew or should have known that the claim accrued.

(b) Within 60 days of receipt of a claim, the Claims Management Program shall refer the claim to the City's administrative hearing officer for Land Use matters and exactions and issue the notice required by Section 20-22(a) or the claim shall be deemed denied by the City.

(c) The right to file an action for just compensation for diminution in value shall be tolled while the process required by this chapter and Chapter 20 of the Peoria City Code is undertaken.

SECTION 7. Chapter 2 of the Peoria City Code (1992) is amended by enacting Section 2-53 pertaining to Claims; diminution in value of real property; private causes of action; limitations and which shall read as follows:

Sec. 2-53. Claims; diminution in value of real property; private causes of action; limitations.

(a) If the City Council approves a Diminution in Value Claim and then removes or modifies the subject land use law, and such removal or modification directly regulates and causes a reduction in value of other property pursuant to A.R.S. § 12-1134, the decision of the City Council shall be presumed to constitute a fundamental government policy within the scope of Section 12-820.01, Arizona Revised Statutes.

(b) Any owner of real property other than the party having filed a Diminution in Value Claim with the City who alleges that the removal or modification of a land use regulation directly regulates and causes a reduction in the value of its property shall have a cause of action in superior court to recover from the party who filed the Claim the amount of the reduction.

(c) The prevailing party in such actions shall be entitled to reasonable attorney's fees and costs at trial and upon appeal.

SECTION 8. Chapter 2 of the Peoria City Code (1992) is amended by enacting Section 2-54 pertaining to Claims; diminution in value; effect of claim; estoppel; limitation and which shall read as follows:

Sec. 2-54. Claims, diminution in value; effect of claim; estoppel; limitation.

(a) Payment by the City of a claim for diminution in value of real property forever bars, with respect to the property for which the claim is made, any diminution in value claim resulting from application of the land use law for which the claim was made.

(b) A lawsuit seeking just compensation based on diminution in value shall be forever barred unless filed before expiration of the later of the following:

(1) Within three years of the effective date of a non-exempt land use law that may be applied to all properties within the City, such as a major general

plan amendment or a text amendment to the Zoning Ordinance, regardless of whether the land use law has been specifically applied to a claimant's property; or

a. Within three years of the date that a non-exempt land use law specifically reduces the claimant's existing rights to use, divide, sell or possess property, and is not a land use law that may be applied to all properties within the City.

(c) The City may charge an application fee for filing and processing diminution in value claims under this Chapter in the amounts provided in Table 2-199 of this code.

SECTION 9. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-54 pertaining to City Attorney; Claims Management; duties and responsibilities to Section 2-55 and which shall read as follows:

Sec. 2-55. City Attorney; Claims Management, duties and responsibilities.

(a) The City Attorney's Office Claims Management Program shall be responsible for the fiscal and administrative management of all claims as defined in Section 2-50, including SIR claims against the City; responsibility for the management and budgeting of the Insurance reserve fund the payment for insurance; and the payment of claim costs and related costs.

SECTION 10. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-55 pertaining to Claims Management; claims payment; payment of claim costs to Section 2-56 with the title of City Attorney; claims management; claims payment; payment of claim costs and which shall read as follows:

Sec. 2-56. City Attorney; claims management; claims payment; payment of claim costs.

(a) The Claims Management Program, acting within the parameters set by the City Attorney for determining that the City has exposure to legal liability and upon determination that the proposed expenditure of funds is reasonable may approve and pay any claim, in an amount not to exceed the sum of \$5,000.00 in the aggregate for any single claim.

(b) The City Attorney may authorize the payment of claims in accordance with Section 2-77 of this code.

(c) Except as provided above, no claim or demand against the City shall be paid except upon authorization by the City Council, unless such claim or demand has been reduced to a legal judgment against the City.

(d) Upon approval by the City Attorney, the Claims Management Program shall have the authority to pay all claims costs for which the City is legally liable, subject to the charter, ordinances and other provisions of law.

SECTION 11. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-56 pertaining to Claims; insurance to Section 2-57 and which shall read as follows:

Sec. 2-57. Claims; insurance.

The City Manager is authorized to enter into on behalf of the City, any appropriate insurance and surety bonding contracts to provide insurance against claims and risks as

he/she determines to be in the best interest of the City and upon the approval of the City Attorney. The approval of the City Council shall be required if such contract is in excess of fifty thousand dollars (\$50,000) to execute all such contracts.

SECTION 12. Chapter 2 of the Peoria City Code (1992) is amended by renumbering Section 2-57 pertaining to Claims; self-insurance; scope; fund to Section 2-58 and which shall read as follows:

Sec. 2-58. Claims; Self-Insurance; scope; fund.

(a) There shall be established an Insurance Reserve Fund. This fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts as to provide sufficient monies to pay all reasonably anticipated lawful SIR claims and claim costs against the City for the ensuing fiscal year.

(b) The Finance and Budget Departments shall with the approval of the Chief Financial Officer allocate insurance and Insurance Reserve Fund costs consistent with appropriate risk underwriting methodology.

SECTION 13. Chapter 20 of the Peoria City Code (1992) is amended by enacting Section 20-21 pertaining to Land Use Appeals; diminution in value; definitions and which shall read as follows:

Sec. 20-21. Land Use Appeals; diminution in value; definitions.

In this Chapter, the following terms shall be defined as follows:

(a) Diminution in Value Claim means a claim submitted by the owner of real property that is subject to a land use law, other than an exempt land use law, adopted or enforced by the City that restricts the use of the owner's private real property in a manner that is alleged to result in a diminution in value of the of the real property from its fair market value.

(b) Directly regulate means the definition provided in Section 14-2-2 of the Zoning Ordinance of the City of Peoria, Arizona.

(c) "Existing rights to use, divide, sell or possess private real property" are those statutory rights to use, divide, sell, or acquire title to real property that were existing and vested as of December 5, 2006. Speculative, inchoate, private, or merely reasonably expected (but not yet obtained) rights are not and cannot become existing rights.

(d) "Owner" means the definition provided in Section 14-2-2 of the Zoning Ordinance of the City of Peoria, Arizona.

(e) “Vested Rights” means the definition provided in Section 14-2-2 of the Zoning Ordinance of the City of Peoria, Arizona.

SECTION 14. Chapter 20 of the Peoria City Code (1992) is amended by enacting Section 20-22 pertaining to Land Use Appeals; diminution in value of real property; procedures and which shall read as follows:

Sec. 20-22. Land Use Appeals; diminution in value of real property; procedures

(a) The City Attorney’s Office Claims Management Program shall serve upon the administrative hearing officer, the Director of Community Development and the Owner of Real Property that filed the claim a notice of referral of the claim and the claim for diminution in value of real property

(b) The Community Development Department shall within twenty (20) days of receipt of the claim, write a report with a recommendation and forward the report and the claim to the administrative hearing officer and the Owner of Real Property that filed the claim for diminution in value of real property.

(c) The Owner of Real Property that filed the claim for diminution of value of real property shall have twenty (20) days to file a response to the report and recommendation of the Community Development Director.

(d) Within twenty days following the filing of the response by the Owner of Real Property that filed the claim, the Administrative hearing officer shall hold a hearing on the matter. The parties may stipulate and agree to additional time. All parties shall receive not less than ten (10) days notice of the hearing.

(e) Once the matter is set for hearing, the City shall:

1. Post on the City’s website information related to the claim, including the name(s) of the Owner filing the claim, the location of the property, the regulation(s) identified in the claim, and the requested relief sought by the Owner of Real Property.
2. Notify by e-mail or any reasonably practical means any neighborhood groups who have requested notification of land use matters pursuant to the zoning ordinance of the city.
3. Notify all owners and occupants of property within 300 feet of the perimeter of the subject property.

SECTION 15. Chapter 20 of the Peoria City Code (1992) is amended by enacting Section 20-23 pertaining to Land Use Appeals; diminution in value of real property; hearings; decision and which shall read as follows:

Sec. 20-23. Land Use Appeals; diminution in value of real property; hearings; decision.

Administrative Hearing matters under this chapter are quasi-judicial. It shall be presumed that the regulation in question has not resulted in a diminution of value to real property. The Owner of the subject property shall have the burden of proving diminution to value of their real property by a preponderance of the evidence

(a) Within Ten (10) days following the hearing the administrative hearing officer shall issue a decision. The decision shall determine whether the claim is:

- (1) Denied in whole or in part;
- (2) Upheld in whole or in part;

(b) The administrative hearing officer's determination shall be in writing and provide a factual and legal basis for the determination.

- (1) If a claim is denied in whole, the claim shall be deemed as denied pursuant to Section 2-52 of this code.
- (2) If a claim is upheld in whole or in part and the matter involves a non legislative matter, the decision shall be final and implemented by the City.
- (3) If a claim is upheld in whole or in part and the matter involves a legislative matter, the decision shall be forwarded to the City Council as a recommendation for action. The Council shall place the item on its next available agenda. The City Council may make such decisions as it legislatively determines to be in the public interest. The decision of the City Council shall be determined to be final for all purposes.

SECTION 16. Chapter 20 of the Peoria City Code (1992) is amended by enacting Section 20-24 pertaining to Land Use Appeals; City Council decision; implementation; decision and which shall read as follows:

Sec. 20-24 Land Use Appeals; City Council decision; implementation.

(a) If the City Council rejects the recommendation of the administrative hearing officer and denies the claim, the claim shall be deemed as denied under Section 2-52 of this Code.

(b) If the City Council adopts the recommendation of the administrative Hearing officer and upholds the claim in whole in part, the City Council shall direct the Office of the City Attorney to:

(1) Prepare for consideration by the City Council an ordinance removing Or modifying the land use law in question in accordance with the Council action. Such an action shall run with the land to the extent required by law, or,

(2) Prepare for consideration by the City Council a determination on the amount of compensation that is due to the claimant as just compensation for the diminution in value to their real property. Such compensation shall only be paid to the claimant upon execution of a settlement agreement and release acceptable to the office of the City Attorney and providing for a full, complete and total release of the City, its officers and employees from any further claims, causes or action, damages or liability arising out of the land use law that resulted in the owner's claim for diminution in value to their real property.

SECTION 17. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 18. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 4th day of September, 2007.

Dated: _____

Bob Barrett, Mayor

Ordinance No. 07-30
Page 15 of 16

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

Published in Peoria Times

Publication Dates: September 7th and 14th, 2007

Effective Date:

TABLE 2-199
Section 2-199 (a)
FEES; CITY ATTORNEY SERVICES; MISCELLANEOUS DOCUMENTS

ITEM	DATE EFFECTIVE August 1, 2002
City Charter	9.00
City Code	200.00
City Code, Binders and Tab Dividers—*Actual Cost plus 15%	*
City Code-Annual Supplementation	100.00
Notary Public Services (per document)	5.00
Code Enforcement Diversion Program—Maximum Fee	200.00
Juvenile Diversion Program-Juvenile Participant--Maximum Fee	150.00
Juvenile Diversion Program-Adult Participant--Maximum Fee	200.00
All other Diversion Programs--Maximum Fee	200.00
Photo Copies – per page up to a maximum of fifty pages, does not include any pages provided at no cost.* In the event the number of copies is such, that it would cost more to bill, the department may elect not to bill.	.20
Photo Copies-per page [per page, fifty one or more pages]	.15
Development Agreements application fee to be credited against city reimbursements	1,000.00
<u>Diminution in Value of Real Property Claim and Application for Review</u>	<u>150.00</u>