

PROP 207 OVERVIEW

Prop 207 (A.R.S. §12-1131 to -1138) primarily affects:

- ❑ Eminent domain for redevelopment
- ❑ Legal Recourse for Land Use Laws



□ Eminent Domain

- If purpose is slum clearance and redevelopment, the condemnor must establish by clear and convincing evidence that:
 - Each parcel is necessary to eliminate a direct threat to public health or safety caused by the property in its current condition.
 - No reasonable alternative to condemnation exists
- If a principal residence is taken for redevelopment, the City must provide “a comparable replacement dwelling that is decent, safe, and sanitary” or just compensation in an amount sufficient to acquire it

REGULATORY TAKINGS

- Regulatory takings under U.S. and Arizona constitutions before Proposition 207
 - Generally no compensation if the regulation:
 - Prohibited the most profitable use of the property or
 - Substantially diminished the market value



□ Proposition 207

- Adds a statutory right to file a claim for diminution in value caused by land use laws
- A land use law is any new statute, rule, ordinance, resolution or law that regulates the use or division of land . . .
- Allows compensation for loss in fair market value



□ Proposition 207 exempts land use laws addressing:

- Public health and safety (“fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control”)
- Public nuisances
- Federal requirements
- Sex offender housing, illegal drug sales, liquor control, sexually oriented uses
- Utilities
- Someone else’s land



**ADULT
XXX**

*The government has the burden of demonstrating that the land use law falls within one of these exemptions

□ Proposition 207 procedures

- Landowner makes written demand for a specific amount of compensation after adoption of a land use law
- The landowner may file a value diminution lawsuit if the government does not, within 90 days, either:
 - Amend, repeal or waive enforcement of the land use law as to the landowner's parcel, or
 - Reach a compensation agreement with the landowner

□ Proposition 207 waivers: 2 Types

- Diminution claim waiver by the landowner (“Pre-enactment”)
 - **“Nothing in this section prohibits** this state or any political subdivision of this state from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any . . . action requested by a property owner.”

- Enforcement waiver by the government (“Post-enactment”)
 - Runs with the land, so future landowners get the same special treatment with respect to the waived land use law

□ Written Demand

- Once a written demand claiming diminution in value is made, it runs with the land
 - A subsequent purchaser could bring the litigation

□ Attorney Fees

- No attorneys' fees for the government bringing the condemnation action, under any circumstances
- If the landowner wins and the taking is determined not to be for a public use, the landowner must be awarded reasonable attorneys' fees, costs and expenses
- If the final amount offered in a slum clearance and redevelopment condemnation case is less than the ultimate award, the landowner must be awarded reasonable attorneys' fees
- Prevailing plaintiff in diminution in value case is awarded costs, expenses and reasonable attorneys' fees.

City's Prop 207 Waiver Policy

- ❑ City requests waivers when a private property owner requests a land use action from the City
 - Waiver is only for the land use action the property owner requested (with stipulations and conditions)
 - Signed Waiver not required for the application to be heard
 - Waivers are not requested for building permits or Plan approvals
- ❑ City treats waivers for administrative and legislative land use applications a bit differently
 - Waiver is typically signed after the stipulations that are being recommended to the City Council or DRB are known to the property owner



**PLANNING STAFF
CHECKLIST FOR PREPARING A PROPOSITION 207 WAIVER
FOR REZONING APPLICATIONS**

- For the short and long waiver forms, insert the zoning case number at the upper right hand corner where it reads 'City of Scottsdale Case No.'. For the long waiver form, also insert the case number in Paragraphs 2 (b) and (c).
- Insert the correct name of the owner(s) that will be executing the Waiver.
- For the long waiver, at Recital A, insert the address and parcel number(s) of the property.
- For the long waiver, at Paragraph 2(a), attach as Exhibit A, any stipulations that have been prepared for the case.
- Inform owner of the exact date that the final executed Waiver or Refusal to Sign form in question is to be returned to City staff. [REDACTED]
[REDACTED] of general plan amendment, [REDACTED] executed will be included in the staff report, and the case will move forward through [REDACTED].
- If the owner wants to negotiate the terms in the Waiver, refer them to Joe Padilla or Sherry Scott at the City Attorney's Office.
- Hand out the informational Flyer along with the Waiver.
- Upon receipt of the executed Waiver or Refusal to Sign form, email a copy to Joe Padilla, Sherry Scott, Elaine Goetze, and Carol Arredondo in the City Attorney's office.

**THIS FLYER IS FOR INFORMATIONAL PURPOSES ONLY AND NOT INTENDED
AS LEGAL ADVICE.**

**Re: *Proposition 207 - Private Property Rights Protection Act*
(A.R.S. § 12-1131 to § 12-1138)**

Under Proposition 207, the Private Property Rights Protection Act (A.R.S. § 12-1131, et. seq.), a property owner is permitted to make a claim for just compensation if the value of the owner's property is reduced by the city's enactment of a land-use law to the property. A land-use law is defined as a law or regulation that regulates the use or division of land, such as municipal zoning laws, or regulates accepted farming or forestry practices.

For example, a property owner may file a claim against a city if the owner's existing rights to use, sell, divide, or possess the property is diminished in value by enactment or applicability of land-use laws to their property, even though the owner made the request or application to the city.

Under Proposition 207, the city may request a waiver of a property owner's potential Proposition 207 claim for any of the numerous land-use actions within the city's jurisdiction, such as rezoning property, platting, abandonments, annexations, change of use, requesting a use permit, or approval of development plans or site plans. The waiver is specific to the action requested.

By signing the waiver, a property owner acknowledges that a Prop.207 claim may exist but that the property owner voluntarily relinquishes the right to any claims that the city's land-use laws, applicable to the owner's property, reduce the property's value.

Not all land-use laws that are applied to an owner's property will raise a Prop.207 compensation requirement. The following seven (7) types of land-use laws are exempt from the application of Prop.207:

1. Laws or regulations that limit or prohibit the use or division of real property enacted for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation, traffic control, solid or hazardous waste, and pollution control.
2. Laws or regulations that limit or prohibit the use or division of real property and laws historically recognized as "public nuisance" laws.
3. Laws or regulations that are required by the Federal government.

4. Laws or regulations that limit or prohibit the use or division of property for the purpose of housing sex-offenders, selling illegal drugs, liquor control, or pornography, obscenity, or any other adult-oriented businesses.
5. Laws or regulations that establish locations for utility facilities.
6. Laws or regulations that do not directly regulate an owner's land.
7. Laws or regulations that were enacted before the effective date of Prop. 207 (December 7, 2006).

A complete version of Proposition 207 is available at your local law library, at Title 12, Chapter 8, Article 2.1 of the Arizona Revised Statutes.

If The Waiver Is Not Executed

If an owner elects not to sign a waiver, he/she will execute a Refusal to Sign Waiver Form and return the form to city staff. For legislative actions such as re-zonings or general plan amendments, information regarding whether a waiver has been executed will be included in the staff report for the case and the owner's case and application will move through the city's process.

Questions Regarding the Waiver

If you have specific questions on the interpretation of Proposition 207 and/or execution of a waiver, you may consult with privately retained counsel. City staff, including the City Attorney's office, are prohibited from giving legal advice to private parties.

WHEN RECORDED RETURN TO:
CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(_____)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

WAIVER OF RIGHT TO MAKE A CLAIM UNDER PROPOSITION 207
(A.R.S. § 12-1131 et. seq.)

The undersigned is the fee title Owner of property, (Parcel No.) ____-____-____-____
located at _____ Scottsdale, Maricopa
County, Arizona, that is the subject of a request by owner for a:

- Use permit
Land division
Development Review
Other _____

By signing this document, the undersigned Owner agrees and consents to all of the
conditions and/or stipulations imposed by the Scottsdale Planning Commission, Development
Review Board, city staff, or the City Council _____

Owner waives any right to compensation for diminution in value that may be asserted now
or in the future under Proposition 207, the Private Property Rights Protection Act (A.R.S. § 12-
1131, et.seq.), based upon Owner's request in case no. _____.

Dated this ____ day of _____, 200__.

Owner: _____ By : _____
(Type Name) (Signature of Owner)

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this ____ day of _____, 200__ by

My Commission Expires: _____
Notary Public

WHEN RECORDED RETURN TO:
CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
()
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

**AGREEMENT FOR THE WAIVER OF CLAIMS
FOR DIMINUTION IN VALUE OF PROPERTY**

THIS AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY (the "Agreement") is made in favor of the City of Scottsdale ("City") by _____ a _____ ("Owner").

RECITALS

A. Owner is the fee title owner of property, Parcel No(s) _____ - _____ - _____ located at _____ (the "Property").

B. Owner acknowledges that he/she has made a request to the City for application of its land use laws for the development of the Property and is under no compulsion, economic or otherwise, to enter into this Agreement.

C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a land owner, in some cases, if the city approves a land use law that reduces the fair market value of the owner's property. This law is sometimes referred to as "Proposition 207" or the "Private Property Rights Protection Act". (ARS 12-1131, et seq.)

D. The Private Property Rights Protection Act (e.g., A.R.S. § 12-1134.I) authorizes private property owners to enter into agreements with political subdivisions to waive any claim for diminution in value of their property in connection with any action requested by the property owner.

E. City and Owner seek to resolve whether the application of the City's land use laws to the Property constitute a "diminution in value" of the Property or other harm entitling Owner, now or in the future, to seek compensation from the City under the Private Property Rights Protection Act.

IT IS AGREED AS FOLLOWS:

Owner hereby makes the following acknowledgements and representations:

1. Owner acknowledges that:
 - a. The recitals set forth above are true and correct and are incorporated herein by this reference.
 - b. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et seq.)
 - c. Owner has independently determined and believes that the application of the City's land use laws to the Property will not reduce the fair market value of the Property.
 - d. Owner is aware that, as a condition of receiving approvals under the City's land use laws, the City may impose various requirements upon the Property, such as requirements

for right-of-way dedications, time limitations for development, and other zoning ordinance stipulations and conditions.

2. The undersigned Owner agrees as follows:

a. The Owner agrees that the stipulations and conditions set forth in Exhibit A shall be included as part of the ordinance that will be considered by the Scottsdale City Council. Owner agrees that compliance with the stipulations and conditions set forth in Exhibit A will govern development of the property. Owner further understands and agrees that stipulations and conditions may be added or modified during the public hearing process and that those stipulations and conditions will be incorporated into this Agreement.

b. Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act based on the Owner's request in Case No. _____. This waiver constitutes a complete release of any and all claims and causes of action under the Private Property Rights Protection Act that may arise out of the Owner's request in Case No. _____.

c. Owner hereby agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including reasonable attorney's fees and litigation costs asserted by or resulting from any of the present owners of any interest in the Property seeking any potential compensation, damages, attorney's fees or costs under the Private Property Rights Protection Act that they may have based on the Owner's request in Case No. _____.

d. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property. Owner consents to the recording of this Agreement with the County Recorder in which the Property is located.

e. The Owner agrees that, as of the effective date of this Agreement, he/she has received equal protection of the laws and due process of all claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence).

3. Owner warrants and represents that Owner is the owner of the fee title to the Property.

4. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to City that he has legal power to bind Owner to this Agreement.

Owner: _____ Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed, sworn to and acknowledged before me
by _____ on this ___ day of _____, 200__.

My commission expires: _____ Notary Public _____

WHEN RECORDED RETURN TO:
CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(_____)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

**REFUSAL TO SIGN WAIVER
OF RIGHT TO MAKE A CLAIM UNDER PROPOSITION 207**

I, _____, the undersigned, being the fee title Owner of
the property, (*Parcel No.*) _____ - _____ - _____ located at
_____ in Scottsdale,
Maricopa County, Arizona hereby acknowledges receipt of a "Waiver of Right to Make
a Claim under Proposition 207" and, upon review and consideration, decline to sign
said waiver.

Dated this ____ day of _____, 200__.

By: _____
(*Printed Name of Owner*)

Owner: _____
(*Signature of Owner*)

- ❑ The city shall be prohibited from requesting or receiving waivers of claims for diminution in value and/or covenants not to sue for diminution in value, or the equivalent thereof, in advance of processing or approving administrative land use applications, including, but not limited to, requests for plan review, development review board approval, subdivision plat approval and conditional use permits.

- ❑ The city may request, receive and consider waivers of claims for diminution in value and/or covenants not to sue, or the equivalent thereof, before making a decision on legislative land use applications, including but not limited to, requests for zoning changes and requests for abandonments, but shall not require an executed waiver of claim for diminution in value and/or covenant not to sue, or the equivalent thereof, before processing or making a decision on any legislative land use application.

Scenarios

Conditional Use Permit

- Use will be materially detrimental to the public welfare
 - Noise, traffic, illumination
 - Private school use permit hypothetical
 - Waiver ?

DRB – Waiver would not be allowed

Zoning – Waiver allowed, but not required

Abandonments – Waiver allowed, but not required