GOLDWATER INSTITUTE

Safe Neighborhoods Act

AN ACT relating to compensation for property owners affected by the nonenforcement of public order laws and public nuisances.

(A) Notwithstanding any other law, a property owner or triple net leaseholder may submit a claim for compensation in an amount determined pursuant to subsection B of this section if either of the following occurs:

1. The city, town or county in which the real property is located adopts and follows a policy, pattern or practice of declining to enforce existing laws, ordinances or other legislation prohibiting illegal public camping, obstructing public thoroughfares, loitering, panhandling, public urination or defecation, public consumption of alcoholic beverages, possession or use of illegal substances or shoplifting, or if the city, town or county in which the real property is located maintains a public nuisance, and the property owner incurs documented expenses to mitigate the effects of such policy, pattern, practice or public nuisance on the property owner's real property.
2. The city, town or county in which the real property is located adopts and follows a policy, pattern or practice of declining to enforce existing laws, ordinances or other legislation prohibiting illegal public camping, obstructing public thoroughfares, loitering, panhandling, public urination or defecation, public consumption of alcoholic beverages, possession or use of illegal substances or shoplifting, or if the city, town or county in which the real property is located maintains a public nuisance, and the fair market value of the owner's private real property is reduced by this policy, pattern, practice, or public nuisance.

(B) The amount of compensation to which the property owner is entitled shall be, at the owner's election, equal to:

1. The documented expenses incurred by the property owner that were reasonably necessary to mitigate the effects of the policy, pattern, practice or public nuisance on the property owner's real property; or
2. The reduction in fair market value of the property resulting from the state or local government's policy, pattern, practice, or public nuisance.

(C) The compensation allowed under this section:

1. Is in lieu of any claim for monetary damages.
2. May not exceed the amount the property owner paid for the prior tax year in primary property taxes for the tax year to the affected city, town or county. If the total amount of compensation determined pursuant to subsection B of this section is more than the amount the property owner paid for the prior tax year in primary property taxes to the affected city, town or county for the tax year and the claim is accepted, the affected city, town or county shall pay the property owner an amount equal to the amount the property owner paid for the prior tax year in primary property tax to the affected city,

town or county. The property owner must submit a claim for the remaining portion of the compensation the following and successive tax years, as needed.

(D) Within thirty days after a property owner submits a written claim for compensation to the affected city, town or county in a specific amount for reimbursement for mitigation expenses or just compensation, the affected city, town or county shall accept or reject the claim. If the affected city, town or county:

1. Accepts the claim, the affected city, town or county shall pay the amount requested to the property owner.
2. Rejects the claim or does not respond to the claim within the thirty-day period, the property owner may file a cause of action in the trial court of the county in which the real property is located to challenge the rejection of the claim. The questions of whether the property owner is entitled to the compensation and whether the amount of the claim is reasonable are judicial questions. In a cause of action filed pursuant to this paragraph:
    a. The city, town or county shall bear the burden of demonstrating that its actions are lawful or that the amount of the claim is unreasonable.
    b. The property owner is not liable to the city, town or county for attorney fees or costs.
    c. A prevailing property owner shall be awarded reasonable attorney fees and costs.

(E) The property owner may not be required to submit any claim besides that prescribed in subsection E of this section as a prerequisite to demanding or receiving reimbursement for mitigation expenses or just compensation pursuant to this section.

(F) A property owner may submit a claim under this section once per tax year.

(G) If the policy, pattern, practice or public nuisance remains in place after the property owner submits a claim pursuant to this section, the property owner is entitled to additional compensation under this section in a subsequent tax year, unless the affected city, town or county and the property owner enter into a knowing and voluntary settlement, or the affected city, town or county ends the policy, pattern or practice or abates the public nuisance.

(H) The remedy established by this section is in addition to any other remedy that is provided by the laws and constitution of this state or the United States and is not intended to modify or replace any other remedy.

(I) Nothing in this section prohibits the property owner from entering into a knowing and voluntary settlement with the affected city, town or county for an amount less than the property owner requested in the claim submitted pursuant to subsection D of this section.

(J) This section does not apply to:

1. Decisions by city, town or county authorities to exercise prosecutorial discretion not to prosecute alleged offenders if such discretion is exercised on a case-by-case basis and the justifications for each decision are published on a monthly basis by the city, town or county.
2. Acts of executive clemency.

3. Acts or omissions mandated by federal law.

(K) For purposes of this section:

1. “Affected city, town or county” means a city, town or county to which a property owner is submitting a claim provided under this section.
2. “Property owner” means the holder of fee title to the real property.
3. “Fair market value” means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.
4. “Just compensation” for purposes of an action for diminution in value means the sum of money that is equal to the reduction in fair market value of the property resulting from the adoption of the policy, pattern or practice or maintenance of public nuisance.