



Updated March 5, 2007

Recommendations Regarding Proposition 207 Waiver Form

Introduction

Since the League's initial guidelines regarding the Proposition 207 Waiver Form were issued on December 19, 2006, there has been much discussion about their use. This update is intended to respond to questions about the recommended use of the waivers as we continue to learn about the new law and its impacts.

Waiver of right of claim for diminished value under Prop 207

A municipality may request a waiver of a property owner's Prop 207 claim if the owner applies for a re-zoning or other legislative land use actions within a municipality's jurisdiction. The waiver is specific to the property owner and to the action requested. Note: Not all cities have the same land use actions identified as administrative or legislative. In some jurisdictions use permits, for example, are administrative actions but in others they are legislative.

A Prop 207 waiver will allow municipalities to proceed with a land owner's land use application without fear of Prop 207 liability from the land owner at some future time. By signing the waiver, the property owner acknowledges that a Prop 207 claim may exist but that the property owner voluntarily relinquishes that claim and agrees to the municipality's conditions regarding the subject property in exchange for the requested land use.

The language of the Proposition itself opens the door to the use of a waiver of Prop 207 rights when a property owner requests a zoning change: A.R.S. § 12-1134 (I): "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 of value regarding any proposed action by this state or a political subdivision of this state or action requested by the property owner.” [emphasis added]

If a property owner requests a land use change that requires legislative action by the city or town Council, you may consider asking the applicant to waive the ability to file a claim for diminished value under Proposition 207. The city cannot require the applicant to sign the waiver, but the Council may consider the application incomplete without the waiver or condition approval upon the receipt of a signed Prop 207 waiver.

Some cities have inserted language in their ordinance that keeps the rezoning ordinance from becoming operative and does not start the 30-day referendum clock (for actions subject to referendum) until the waiver has been recorded. Failure to execute the waiver for recording results in the ordinance being treated as not having been “adopted” – as if it had not been passed in the first place. The waiver must be recorded within a 15-day window after the action’s passage or the passage becomes null and void.

Other cities ask property owners (after the Planning Commission recommendation is known) to consent to all conditions attached to the approval of the application. That applies to conditions subsequently imposed by the city council. If there is an objection to doing that prior to council action, signing of the waiver is deferred until the council acts (but before the rezoning ordinance is adopted). The council's motion would indicate that approval is conditioned upon receiving a signed waiver.

Failure to change a land use designation that was in place as of the effective date of the bill (December 4, 2006), does not by itself trigger a Proposition 207 claim.

General principles regarding a waiver of Proposition 207 claims

- It is not recommended that a waiver be required to initiate a land use application process which is administrative in nature.
- The waiver applies only to the property owner, not a renter, leaseholder, or a neighboring property owner.
- The waiver acknowledges that the property owner consents to the conditions being imposed under the approval of the land use change requested and applies only to that specific action, not future land use actions affecting that property.

- The waiver may be conditional until amended to include any additional stipulations that may have been imposed by the Council and to which the property owner agrees, or may have a delayed effective date conditioned upon the recording of a Prop 207 waiver.
- Prop 207 is intended to apply only to the property owner subject to a regulation, not to neighboring property owners. The language refers to regulation, not impact. If a change in land use negatively impacts a neighboring property owner, the owner may choose to sue the neighbor and/or the city for the harm to the property, but the owner does not have a claim under Proposition 207.
- A city may consider the use of a development agreement that includes a declaration by the property owner that a specific change in land use regulation does not lessen the property's value.

Please remember these suggestions and related League forms are guidelines only. Each municipality should always seek the advice and input of your city or town attorney for specific recommendations.