

SECTION 1. Section 2 of this 2006 Act is added to and made a part of ORS Chapter 35.

SECTION 2. (1) Except as otherwise provided in this section, a public body as defined in ORS 174.109 may not condemn private real property used as a residence, business establishment, farm, or forest operation if at the time of the condemnation the public body intends to convey fee title to all or a portion of the real property, or a lesser interest than fee title, to another private party.

(2) Subsection (1) of this section does not apply to condemnation of:

(a) Improved or unimproved real property that constitutes a danger to the health or safety of the community by reason of contamination, dilapidated structures, improper or insufficient water or sanitary facilities, or any combination of these factors;

(b) Any timber, crops, top soil, gravel or fixtures to be removed from the real property being condemned;

(c) Real property condemned for maintenance, improvement, or construction of transportation facilities, transportation systems, utility facilities or utility transmission systems;

(3) Subsection (1) of this section does not prohibit a public body from leasing a portion of a public facility to a privately owned business for the provision of retail services designed primarily to serve the patrons of the public facility.

(4) A public body as defined in ORS 174.109 may at any time publish notice that the public body intends to consider condemnation of a lot or parcel. If the public body publishes notice under this subsection, subsection (1) of this section does not apply for such time necessary to provide the public body reasonable opportunity to condemn the property, if the lot or parcel is conveyed by the owner of the lot or parcel to another private party after the notice is published, but prior to the time the property is condemned.

(5) Subsection (1) of this section does not affect the ability of a public body as defined in ORS 174.109 to make a conveyance of a non-possessory interest in condemned property for the purpose of financing acquisition of the property.

(6) A court shall independently determine whether a taking of property complies with the requirements of this section, without deference to any determination made by the public body. If a court determines that a taking of property does not comply with the requirements of this section, the owner of the lot or parcel that is the subject of the condemnation proceeding shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to defend against the proposed condemnation.

SECTION 3. If any portion or portions of this 2006 Act are declared invalid by a court of competent jurisdiction, the remaining portions of this 2006 Act shall remain in full force and effect.

SECTION 4. ORS 35.346 is amended as follows (matter in **boldfaced** type is new; matter [*italic and bracketed*] is existing law to be omitted):

(1) At least 40 days before the filing of any action for condemnation of property or any interest in property, the condemner shall make an initial written offer to the owner or party having an interest to purchase the property or interest, and to pay just compensation therefor and for any compensable damages to remaining property.

(2) The offer shall be accompanied by any written appraisal upon which the condemner relied in establishing the amount of compensation offered. If the condemner determines that the amount of just compensation due is less than \$20,000, the condemner, in lieu of a written appraisal, may provide to the owner or other person having an interest in the property a written explanation of the bases and method by which the condemner arrived at the specific valuation of the property. The amount of just compensation offered shall not be reduced by amendment or otherwise before or during trial except on order of the court entered not less than 60 days prior to trial. An order for reduction of just compensation offered, pleaded by the condemner in the complaint or deposited with the court for the use and benefit of the owner pending outcome of the condemnation action, may be entered only upon motion of the condemner and a finding by clear and convincing evidence that the appraisal upon which the original offer is based was the result of a mistake of material fact that was not known and could not reasonably have been known at the time of the original appraisal or was based on a mistake of law.

(3) Unless otherwise agreed to by the condemner and the owner, prior to appraising the property the condemner shall provide not less than 15 days' written notice to the owner of the planned appraisal inspection. The property owner and designated representative, if any, shall be invited to accompany the condemner's appraiser on any inspection of the property for appraisal purposes.

(4) The owner has not less than 40 days from the date the owner receives the initial written offer required by subsection (1) of this section, accompanied by the appraisal or written explanation required by subsection (2) of this section, to accept or reject the offer. If the owner rejects the condemner's offer and obtains a separate appraisal, the owner shall provide the condemner with a copy of the owner's appraisal not less than 60 days prior to trial or arbitration.

(5) (a) Failure to provide the opposing party with a copy of the appropriate appraisal as provided in subsections (2) and (4) of this section shall prohibit the use of the appraisal in arbitration or at trial.

(b) In the event the owner and condemner are unable to reach agreement and proceed to trial or arbitration as provided in subsection (6) of this section, each party to the proceeding shall provide to every other party a copy of every appraisal obtained by the party as part of the condemnation action.

(6) (a) If an action based on the condemnation is filed, the owner may

elect to have compensation determined by binding arbitration if the total amount of compensation claimed by any party does not exceed \$20,000. Notice of an election of binding arbitration must be given to the condemner at least 90 days prior to the date on which an arbitration hearing is scheduled under ORS 36.420.

(b) Notwithstanding the amounts established under ORS 36.400, if the owner elects to proceed with binding arbitration, the arbitration shall be conducted according to the mandatory arbitration program established under ORS 36.400 to 36.425. Notwithstanding ORS 36.425, no party may request a trial de novo after the filing of the decision and award of the arbitrator. Within 20 days after the filing of the decision and award of the arbitrator under ORS 36.425, any party may file a motion with the court for the vacation, modification or correction of the award. The court may vacate an award only if there is a basis to vacate the award described in ORS 36.705 (1)(a) to (d). The court may modify or correct an award only for the grounds given in ORS 36.710. Except as provided in this subsection, no party may appeal from the decision and award of an arbitrator if the owner elects binding arbitration in lieu of trial.

(c) If the total amount of compensation claimed exceeds \$20,000 but is less than \$50,000, the owner may elect to have compensation determined by nonbinding arbitration under the applicable provisions of ORS 36.400 to 36.425.

(7) If a trial is held or arbitration conducted for the fixing of the amount of compensation to be awarded to the defendant owner or party having an interest in the property being condemned, the court or arbitrator shall award said defendant costs and disbursements including reasonable attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

(a) If the amount of just compensation assessed by the verdict in the trial exceeds the *[highest]* **initial** written offer in settlement submitted by condemner to those defendants appearing in the action *[at least 30 days prior to commencement of said trial]* **pursuant to subsection (1) of this section; or**

(b) If the court finds that the first written offer made by condemner to defendant in settlement prior to filing of the action did not constitute a good faith offer of an amount reasonably believed by condemner to be just compensation.

(8) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled to costs and disbursements under subsection (7) of this section.

SECRETARY OF THE STATE  
BILL BRADBURY

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