

990 CMR 12.00: COMPENSATION TO ABUTTING COMMUNITIES

Section

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12.01: Timing

Within 60 days of a determination by the Council and the Secretary that the PPIR is adequate, the chief executive officer of any abutting community may petition the Council to establish the compensation to be paid by the developer to said abutting community for the demonstrably adverse impacts of the proposed project.

12.02: Condition Precedent to Petitioning for Compensation

As a condition precedent to the filing of a petition for compensation, the chief executive officer shall agree in writing on a form prescribed by the Council:

- (1) that if a siting agreement is declared operative, his city or town shall accept the compensation to be established by the Council or by arbitration in full settlement of any claims for demonstrably adverse impacts imposed by the current proposed project; and
- (2) that if a siting agreement is declared operative, the chief executive officer will sign an agreement with the developer accepting the compensation established by the Council or by arbitration, which agreement shall be a nonassignable contract binding on the abutting community and the developer, and enforceable as such in any court of competent jurisdiction.

12.03: Schedule and Notice of Hearing

Upon the approval of a siting agreement pursuant to 990 CMR 14.02, the Executive Secretary of the Council shall set the date, time and place of an adjudicatory hearing to establish the compensation to be given by the developer to the petitioning abutting community or communities. The hearing shall commence no later than 45 days after approval of the siting agreement, provided that the Executive Secretary has given at least 14 days prior notice of said hearing to the developer, the chief executive officer of the petitioning abutting community or communities and the local assessment committee of the host community, and has also caused notice of the hearing to be published in a newspaper serving the abutting community at least seven days prior to the hearing.

12.04: Identification of Issues

- (1) At least once prior to the hearing the abutting community or communities and the developer shall meet to define the issues and explore areas of potential agreement.
- (2) At least seven days prior to the hearing the abutting community or communities and the developer shall submit joint or separate reports to the Council and the Department indicating resolved and unresolved issues.

12.05: Hearing and Tentative Determination

The hearing shall be conducted by a presiding officer appointed by the Council to conduct such hearings. The hearing shall be open to the public and shall be conducted in accordance with the Standard Adjudicatory Rules of Practice and Procedure, Formal Rules, 801 CMR 1.01. The Council may consolidate hearings whenever more than one abutting community has petitioned the Council for compensation. The presiding officer shall within 14 days of the adjournment of the hearing render a

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tentative determination of the compensation to be

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given to the abutting community or communities by the developer. The tentative determination shall include a written statement of each finding of fact and conclusion necessary to support the tentative determination. The presiding officer shall submit the tentative determination to the Executive Secretary, who will send copies thereof to the chief executive officer of the abutting community or communities, the developer and the local assessment committee of the host community.

12.06: Final Determination of Compensation

Not more than 45 days following issuance of the tentative determination, the Council shall issue a final determination establishing the compensation to be given by the developer to the abutting community or communities. The Council may permit the developer and the abutting community or communities to make brief oral arguments at its meeting. The Council's determination shall be final unless the developer or the abutting community or communities files a request for arbitration, indicating dissatisfaction with the Council's decision. If either party files said request within 15 days of the Council's determination, the Council shall refer the matter of compensation to arbitration as provided by 990 CMR 13.00. The Council shall also forward to the arbitrator or arbitrators a statement of its recommended compensation.

REGULATORY AUTHORITY:

990 CMR 12.00: M.G.L. c. 21D, § 4.