

## GENERAL ORDINANCE NO. 05-1259

## AN ORDINANCE REGARDING CLAIMS FOR JUST COMPENSATION ARISING OUT OF THE ENACTMENT OF BALLOT MEASURE 37, MAKING CERTAIN PROVISIONS THEREFORE, AND DECLARING AN EMERGENCY

Section 1. Purpose. This ordinance is intended to implement the provisions added to Chapter 197 of the Oregon Revised Statutes by Ballot Measure 37. These provisions are intended to establish a prompt, open, thorough and consistent process for property owners to present their claims to the City, to preserve and protect limited public funds, and to establish a record of the decision capable of circuit court review. The provisions of this ordinance are adopted pursuant to the City of The Dalles' home rule authority under the Oregon Constitution, Article XI, Section 2, and apply to those demands for just compensation that are or may be allowed under Measure 37, enacted by the electors of the State of Oregon as a statute of the State of Oregon on November 2, 2004.

Section 2. Definitions. As used in this ordinance, the following words and phrases mean:

- (1) City Manager. The City Manager of the City, or his or her authorized designee.
- (2) Claim. A written claim filed under Ballot Measure 37 and the provisions of this ordinance.
- (3) Department. The Community Development Department of the City of The Dalles.
- (4) Exempt land use regulation. A land use regulation that:
  - (1) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
  - (2) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
  - (3) Is required to comply with federal law;
  - (4) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

- (1) Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner.
- (5) Family member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members of the owner of the property.
- (6) Land use regulation. Includes:
  - (1) Any statute regulating the use of land or any interest therein;
  - (2) Administrative rules and goals of the Land Conservation and Development Commission; and
  - (3) The City's comprehensive plan, zoning ordinances, land use and development ordinance, or subdivision ordinance, including provisions of the City's comprehensive plan and ordinances implemented under the intergovernmental agreement with Wasco County for joint management of the Urban Growth Area. A land use regulation does not include any land use regulation excepted from this ordinance, a City system development charge or City development fees or charges.
- (7) Owner. Means the present fee simple owner of real property that is the subject of the demand for compensation, as reflected in the deed records of Wasco County, or the present owner of any interest in real property that is the subject of the demand for compensation, as reflected in a written instrument conveying or creating the interest.
- (8) Real property. Privately held lots, parcels or tracts, as described in the deed conveying the real property, or the interest in real property as conveyed in such lots, parcels or tracts, owned by a current owner.
- (9) Valid claim. A claim submitted by the owner of real property that is subject to a land use regulation, other than an exempt land use regulation, adopted or enforced by the City that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

Section 3. Ripeness and Claim Accrual.

- (1) The current owner of real property may submit a demand for just compensation under Measure 37 if all of the following elements are met: (1) the City enforces a land use regulation, other than an exempt regulation, against the property; (2) the land use regulation was enacted after the date the current owner, or in a proper case, a family member of the owner, acquired the real property; (3) the land use regulation restricts uses permitted on the real property; and (4) the restriction imposed by the land use regulation has the effect of causing a reduction in the fair market value of the real property.
- (2) No enforcement shall be deemed to have occurred merely because the current owner has submitted a demand for just compensation to the City and the demand for just compensation was denied. Nothing in this subsection shall be deemed to prevent the City from engaging in any action that would result in the resolution of a potential claim under Measure 37 prior to the date the land use regulation is enforced against the current owner's real property.

Section 4. Requirements for Filing a Claim.

- (1) A claim for compensation shall comply with the following:
  - (1) A claim must be submitted and accepted for filing only by using the forms provided by the Department. A claim must consist of all materials required by this ordinance.
  - (2) The Department will conduct a completeness review within thirty (30) days after submission of the claim and advise the owner in writing, sent by certified mail, return receipt requested, of any material remaining to be submitted. Submission of additional material will result in the Department having an additional thirty (30) days to complete the completeness review.
  - (3) A claim will not be considered as filed under Ballot Measure 37 until the City accepts the claim after the requirements of this ordinance are fulfilled by the owner of the real property.
  - (4) The 180 day period required before accrual of a cause of action for compensation in circuit court under Ballot Measure 37 begins on the date the Department deems the claim complete and accepts it for filing. The Department will mark the date of completeness and filing on the claim form and provide a copy to the claimant. The Department will conduct an initial review of the claim and forward the claim to the City Manager for processing.

- (2) The claim shall be submitted in writing, signed by all current owners of the property, and shall include:
  - (1) A copy of the title report for the property not more than 30 days old, along with a statement showing the names, addresses and telephone numbers of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;
  - (2) The address, tax lot, and legal description of the real property that is the subject of the claim, and the date the property was acquired by each person or entity with an ownership interest;
  - (3) The specific provision or section of the land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property along with a description of how the regulation restricts the use of the real property and has caused a reduction in the fair market value of the real property;
  - (4) A copy of the specific provision or section of the land use regulation(s) in effect at the time the ownership interest was acquired or that the owner is seeking to have applied to the real property;
  - (5) The amount of the claim, based on the alleged reduction in value of the real property and any supporting documentation of the amount of the claim including an appraisal prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon;
  - (6) Copies of any leases of Covenants, Conditions and Restrictions (CCR's), easements, natural drainage courses, encroachments, or federal restrictions applicable to the real property, if any, that impose restrictions on the use of the property; and
  - (7) Payment of an application fee, which fee shall be established by City Council resolution.
  - (8) Such other information as may be requested by the City that the City deems necessary to adequately review the claim.

Section 5. City Manager Investigation and Recommendation.

- (1) The City Manager shall assess a claim for compensation and make a recommendation to the City Council on the disposition of the claim. The City Manager may hold a public hearing to gather information before making a recommendation on the claim. The recommendation will consist of one of the following:
  - (1) The claim be denied;
  - (2) The claim be declared valid, in which case the recommendation will further state whether the land use regulation at issue should be removed, waived or modified, or the claimant should be compensated;
  - (3) The claim be resolved in another manner consistent with this ordinance or Ballot Measure 37.
- (2) To assist in making a recommendation, the City Manager has the authority to retain the services of an appraiser to perform an appraisal of the property. If the claimant refuses to jointly share the costs of such an appraisal, the City Manager has the option to retain the services of an appraiser at the City's sole expense.
- (3) The City Manager's recommendation shall be forwarded to the City Council, and a hearing shall be scheduled as set forth in Section 6(A) of this ordinance.

Section 6. City Council Decision.

- (1) Once a recommendation is made by the City Manager, the City Council shall take action on the claim in a timely manner. The City Council shall conduct a public hearing before taking final action on a recommendation from the City Manager. The City shall make reasonable efforts to provide notice of the public hearing at least 10 days prior to the hearing, to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject property, and such other notice that the City Council deems appropriate. The failure to provide notice shall not invalidate the decision of the City Council. At the time of the public hearing, if any, or at the time of decision, City Council members shall disclose any ex-parte contacts with property owners or any conflicts of interest.
- (2) The owner shall bear the burden of proof relating to the claim, the devaluation of the owner's property and the owner's entitlement to just compensation. The standard of proof will be by a preponderance of evidence.
- (3) After the conclusion of the public hearing, and no later than 180 days from the date the claim was filed, the City Council will:

- (1) Determine that the claim does not meet the requirements of this ordinance and Ballot Measure 37, and deny the claim; or
  - (2) Adopt a resolution setting forth appropriate findings that support a determination that the claim is valid and directing that the claimant be compensated in an amount set forth in the resolution, or remove, waive or modify the challenged land use regulation as applied to the subject property.
- (D) The City Council's decision to remove, waive or modify a land use regulation or to compensate the claimant will be based on whether the public interest would be better served by compensating the owner, or by removing, waiving or modifying a land use regulation with respect to the subject property; or any other factors deemed relevant by the City Council.
- (E) If the City Council removes, waives or modifies a land use regulation, it may, at its discretion, put back into effect with respect to the subject property, all of the land use regulations in effect at the time the claimant acquired the property.
- (F) A decision by the City Council to remove or modify a land use regulation shall be personal to the claimant. Following the claimant's transfer of title to the property any use resulting from the removal or modification shall be deemed a non-conforming use and shall be treated as a non-conforming use for planning purposes.
- (G) A copy of the City Council resolution will be sent by mail to the owner and to each individual or entity that participated in the City Council review process if the City was provided with a mailing address.
- (H) The City Council may establish by resolution additional procedures related to the process of Ballot Measure 37 claims.

Section 7. Availability of Funds to Pay Claims. Compensation can only be paid based upon the availability and appropriation of funds for this purpose.

Section 8. Review of a Decision. A writ of review under ORS 34.010 to 34.102 is the exclusive means to contest a final decision of the City Council under Section 6 and must be filed within 60 days of the notice. The owner of the real property that is the subject of the claim under this ordinance is a necessary party in such a proceeding.

Section 9. Compensation by Other. An individual or entity other than the City may compensate the claimant for any diminution in value established under this ordinance, in lieu of the City removing, modifying or waiving the land use regulation causing the diminution. A contract between the City, the claimant and the individual or entity providing the compensation is a condition precedent to compensating a claimant under this subsection, and must be approved by the City Attorney.

Section 10. Private Cause of Action. In order to protect the reasonable investment-based expectations of other property owners who have relied upon land use regulations in purchasing real property, if the modification, removal or waiver of the land use regulation pursuant to Measure 37 results in a private nuisance on other owners' real property, then the affected owner or owners shall have a cause of action in circuit court against the current owner to abate the nuisance or to recover an amount equal to the diminution of value in than owner or owners' real property as a result of the nuisance. The prevailing party in such an action shall be entitled to reasonable attorney's fees and costs at trial and upon appeal.

Section 11. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs, and clauses.

Section 12. Emergency. The City Council of the City of The Dalles finds that in order to implement the provisions of Ballot Measure 37, the health, safety and welfare of the City of The Dalles requires this ordinance to have immediate effect. Therefore, the City Council declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

Passed by the Council and approved by the Mayor February 14, 2005