

ORDINANCE NO. 5264

AN ORDINANCE CONCERNING REAL PROPERTY COMPENSATION; ADOPTING PROCEDURES FOR PROCESSING CLAIMS; DECLARING AN EMERGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the voters of the State of Oregon on November 3, 2004 adopted Ballot Measure 37 (BM 37) which contains new requirements to provide additional compensation for the application of various City and State regulations or in the alternative for exemption or modification of said regulations; and BM 37 provides for the City to adopt procedures for the implementation of BM 37 which need to be enacted prior to December 2, 2004 which is the effective date of BM 37.

NOW, THEREFORE, THE CITY OF GRANTS PASS HEREBY ORDAINS:

Section 1. The procedures set forth in Exhibit "A" (which is attached to and made a part of this ordinance) are hereby adopted for the purpose of evaluating claims related to the enactment and enforcement of regulations as identified in Ballot Measure 37, which was adopted by the voters of the State of Oregon on November 3, 2004.

Section 2. Emergency Clause. An emergency is hereby declared to exist and in the interest of the public peace, health and safety of the City of Grants Pass and the inhabitants thereof, this Ordinance has been introduced and read twice and placed upon its final passage at one meeting of the Council and is effective at 12:01 a.m., December 2, 2004.

Section 3. Repealer Clause. All ordinances or parts of ordinances in conflict herewith, specifically chapter 9.99 including 9.99.010 through 9.99.100, are hereby repealed.

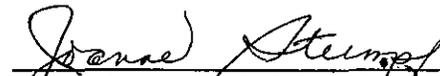
ADOPTED by the Council of the City of Grants Pass, in regular session, this 1st day of December, 2004.

SUBMITTED to and Approved by the Mayor of the City of Grants Pass, Oregon, this 1 day of December, 2004.



Mayor, Len Holzinger

ATTEST:



Joanne Stumpf, Administrative Services Director

12/2/04

Date Submitted to Mayor

Exhibit "A"

Chapter 9.25

Ballot Measure 37 Procedures

9.25.100 **Definitions.** As used in Chapter 9.25, the following definitions shall apply:

- A. **City Manager** means the City Manager or a designee.
- B. **Claim** means a demand for compensation or relief filed under Ballot Measure 37 that is accompanied by the required public notice fee, contains all of the information required by this Chapter, and is filed in accordance with this Chapter.
- C. **Exempt land use regulation** means a land use regulation that
 1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law; or
 2. Restricts or prohibits activities for the protection of public health and safety; or
 3. Is required to comply with federal law; or
 4. Restricts or prohibits the use of the subject property for the purpose of selling pornography or performing nude dancing; or
 5. Was enacted prior to the date of acquisition of the subject property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
- D. **Family member** means 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 subject property, an estate of any of the foregoing family members, or a legal entity continuously owned by any one or combination of these family members or the owner of the property.
- E. **Land use regulation** means a comprehensive plan, zoning ordinance, land division ordinance, transportation ordinance, ordinance that regulates the use of land (or any interest therein), or an ordinance that regulates farming or forest practices.
- F. **Owner** means a present owner of the subject property (or any interest therein) whose ownership interest has been continuous and uninterrupted.

- G. **Officially waived** means the date (after a public hearing is held and the City Council determines the claim is valid) that the subject property receives its tentative plat approval, or the date the subject property receives a certificate of occupancy, or the date the newly permitted use occurs on the subject property.
- H. **Subject property** means real property (or any interest therein) which is subject to the land use regulations of the City and which is the object of a claim under Ballot Measure 37.
- I. **Valid claim** means a claim submitted by a present owner of the subject property which the City Council has determined is subject to a land use regulation enacted or enforced by the City that restricts the use of the subject property and has the effect of reducing the fair market value of the subject property.

9.25.200 **Claim Filing Procedures.** A claim must be filed with the Director of the Community Development Department and must contain all of the following information:

- A. The names of all present owners of the subject property, together with their addresses, telephone numbers, and a description of their ownership interest in the subject property (including proof of their percentage of ownership), and the date they acquired their interest in the subject property, and if a claim is based on ownership by a family member, legal documentation showing the chain of title back to the original family member.
- B. The address, map and tax lot, and legal description of the subject property,
- C. A title report issued within 30 days of the filing of the claim that reflects all of the ownership interests in the property, together with documentation reflecting the claimant's ownership interest in the subject property.
- D. A copy of the citation or complaint issued by the City as an enforcement action, or a copy of the conditions of development (or denial of development) that form the basis for filing a claim under Ballot Measure 37.
- E. A copy of the land use regulations in existence, and applicable to the subject property, when the claimant became the owner of the subject property.
- F. A copy of the land use regulations the claimant asserts restricts the use of the subject property that has had the effect of reducing the fair market value of the subject property and the date such land use regulation (if adopted on or after December 2, 2004) was enacted or enforced, or the date such land use regulation (if adopted prior to December 2, 2004) was enforced.
- G. A narrative statement by the claimant describing how the enactment or enforcement of the land use regulation restricts the use of the subject property and has the effect of reducing the fair market value of the subject property, together with an explanation by the claimant of their understanding of what effect a modification, removal, or non-application of the land use regulation would have on the development of the subject property stating the greatest degree of development that the owner believes would be permitted on the subject property if the identified land use regulations were modified or not applied.

- H. Copies of any easements, land purchase agreements, leases or Covenants, Conditions and Restrictions (CCRs), or other agreements or any private conditions applicable to the real property.
- I. A statement detailing the current fair market value of your subject property with the regulation challenged by the claimant; and a statement detailing what the fair market value of the property would be if the challenged regulation was not enforced; and the basis upon which the claimant arrived at their monetary figure including but not limited to copies of any appraisals, expert reports, and other information relied upon; together with a statement detailing the remedy sought. If an appraisal (prepared by an appraiser licensed by the State of Oregon to evaluate property of the class and type proposed per the standards set forth in this Chapter and Ballot Measure 37) is not included, the claim will be accepted, but a the staff evaluation and public hearing will not be scheduled until such an appraisal is received from the claimant.
- J. A statement from the claimant confirming that this claim consolidates all current and future potential claims for compensation under Ballot Measure 37 for reduction in fair market value of the subject property, based upon regulations in existence at the time of the claim for the claimant and for any successors in interest and for all other owners.

9.25.300 Public Hearing.

- A. Not later than 120 days after the claim was filed and the claimant has provided a copy of an appraisal of the subject property from a appraiser (licensed to practice in the state of Oregon who evaluates the subject property per the standards set forth in this Chapter and Ballot Measure 37) the Community Development Director shall cause a staff report to be prepared analyzing the claim for the City Manager and the City Council which report shall be made available for inspection by the public prior to the public hearing noted herein.
- B. The City Manager may order an independent appraisal of the subject property to assist the Council in determining the validity of a claim.
- C. After receipt of the staff report and any appraisals, the City Manager shall schedule a public hearing before the City Council.
- D. The City Manager shall cause notices to be mailed to the owners of neighboring properties located within 250 feet of the perimeter of the subject property, advising them of the time and date of the public hearing.
- E. At the time and date previously scheduled, the City Council shall conduct a public hearing and provide an opportunity for staff, any owners of the subject property, owners of any neighboring properties, and members of the public to provide written or oral testimony (which may be limited at the sole discretion of the Council) before taking final action.
- F. Any appraisals and the Council's consideration of any reduction in market value shall include a consideration of the desires, interests, control, and character of ownership of the subject property by persons who are owners but not claimants.
- G. After the public testimony portion has been received, the Council may proceed with deliberations, or may adjourn its regular session and retire into executive session, or may continue the matter to a date certain for further deliberations.

9.25.400 Valid Claims.

- A. Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council in public session shall:
1. Determine that the claim does not meet the requirements of Ballot Measure 37 and of this Ordinance, and deny the claim; or
 2. Direct the City Manager to prepare for litigation by the claimant; or
 3. Adopt a Resolution with findings therein that supports a determination that the claim is valid and do one or more of the following:
 - a. Direct that claimants who are owners of the subject property who were damaged by the application of land use regulations that were not in effect when their ownership interest was acquired be compensated in an amount set forth in the Resolution for all or a portion of the reduction in fair market value of the subject property proportional to their percentage of ownership of the subject property,
 - b. Modify the challenged land use regulation or any other land use regulation.
 - c. Direct that the challenged land use regulation or any other land use regulation not be applied to the subject property.
 - d. Direct the City Manager to negotiate for the purchase of the subject property.
 - e. Make a finding that the acquisition of the subject property (considering the waiver or value established by the Council through this process) is appropriate for any public or municipal use or for the general benefit and use of the people within or without the City, including but not limited to appropriation for a park, a City hall, City buildings, public parking, transportation facilities, right of way, City Utility Easement, and pedestrian facilities and authorize the City Manager to proceed with condemnation of all or a portion of the subject property or any interest therein if negotiations for the subject property are unsuccessful.
- B. The City Council's decision to compensate or to modify or not apply a land use regulation shall be based on how the public interest would be better served with due consideration for the interests of the public and neighboring properties in maintaining the current land use regulations and with due regard for the budgetary limitations of the City.
- C. The City Manager shall cause notices to be mailed to the owners of neighboring properties located within 250 feet of the perimeter of the subject property, advising them of the final decision.
- D. The City Manager shall cause the resolution of the Council to be filed with the County Clerk and recorded on the subject property indicating all Ballot Measure 37 compensation claims have been paid.

9.25.500 Non-Conforming Use, Non-Conforming Lot.

- A. If the City Council decides not to apply or to modify the challenged land use regulation, it may, at its discretion, put back into effect with respect to the subject property, all or a portion of the land use regulations in effect at the time the claimant acquired the subject property.
- B. A person entitled to relief under this Chapter must be also be an owner at the time compensation is paid or an owner at the time any land use regulation is officially waived as defined herein.
- C. If the City Council decides not to apply or to modify the challenged land use regulation, then when the challenged regulation is officially waived herein, the property shall be considered a non-conforming use, non-conforming lot, or both and shall be treated as such under the Grants Pass Development Code and Municipal Code.
- D. If after an official waiver the property later applies for a further development permit, said application shall be governed by the land use regulations in effect at the time of the application.
- E. A decision to modify or not enforce a land use regulation is personal to the owner and may not be transferred to a person who is not a family member unless and until the date the land use regulation is officially waived as defined herein (i.e. the subject property receives its tentative plat approval, or the date the subject property receives a certificate of occupancy, or the date the newly permitted use occurs on the subject property).

9.25.600 Fees and Costs.

- A. To cover the cost of the mailing of the hearing notice and notice of final decision to neighboring property owners and publishing the same, a person filing a claim under this Chapter shall pay a fee of \$500 at the time of filing to cover said expenses.
- B. In addition to the fee noted above, the claimant shall also pay a \$1,000 processing fee which shall be deferred until the final decision of the City and which shall be waived if the claim is determined by the City Council to be a valid claim.
- C. In addition to the fees noted above, if a claimant or potential claimant requests that the City conduct research relative to a claim under Ballot Measure 37, the claimant or potential claimant shall pay a research fee equivalent to the actual, fully loaded costs for staff time necessary to conduct said research and shall deposit \$200 with the Community Development Department for said costs. The City Manager shall maintain a record of the City's research costs (including staff time, copying, and legal costs). When said costs reach \$200 the City shall notify the claimant or potential claimant of the research findings to date and advise them that further research will require additional \$200 deposits which will be handled in the same manner as the initial deposit.