

ORDINANCE NO. 362**AN ORDINANCE OF THE CITY OF COOS BAY, OREGON, REGARDING CLAIMS FOR JUST COMPENSATION ARISING OUT OF THE ENACTMENT OF BALLOT MEASURE 37, MAKING CERTAIN PROVISIONS THEREFOR, AND DECLARING AN EMERGENCY.**

The City of Coos Bay ordains as follows:

Section 1. Purpose. The purpose of this Ordinance is to establish the contents of a demand for just compensation under Measure 37, in order that the merits of claims under Measure 37 be adequately evaluated; to provide procedures for processing such demands; to provide a fair, just and expeditious evaluation of Measure 37 claims by the City; and to protect the citizens of the City of Coos Bay from the detrimental effects to public health, safety and welfare that would result from the granting of non-meritorious claims. The provisions of this Ordinance are adopted pursuant to the City of Coos Bay's 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 November 2, 2004.

Section 2. Definitions. For the purposes of this Chapter, and the evaluation, assessment and processing of Measure 37 claims, the following mean:

- (a) Appraisal: A written statement of an opinion of the value of real property prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, and who holds the applicable certification for the type of appraisal.
- (b) City Manager: The Coos Bay City Manager, or the City Manager's designee.
- (c) Common and Historically Recognized Public Nuisance Under Common Law: Unreasonable interferences with rights common to the general public in the use and enjoyment of land, as recognized in judicial decisions applying common law rules. Under common law rules, an interference is unreasonable if the harm to the public right is significant, and the particular public use interfered with is well suited to the character of the locality and the owner's proposed use of the property is unsuited to the character of that locality.
- (d) Current Owner: The present fee simple owner of real property that is the subject of the demand for compensation, as reflected in the deed records of Coos County, Oregon, 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.
- (e) Demand for Just Compensation: A written demand for just compensation by current owner pursuant to Measure 37 that fulfills the requirements of this Ordinance.
- (f) Exempt land use regulation: An exempt land use regulation, as defined by Measure 37.

(g) Fair Market Value of the Property: The minimum amount of cash which could reasonably be expected to be paid for the purchase of a current owner's real property or interest in real property, by an informed buyer, acting without compulsion, to an informed seller, also acting without compulsion, in an arms-length transaction.

(h) Family member: A member of the current owner's family, as defined by Measure 37, including any amendments thereto.

(i) Just Compensation: An amount of money equal to the reduction in the fair market value of real property that is the direct result of the enactment and enforcement of a land use regulation which provides the basis for a demand for just compensation, as of the date a current owner makes the demand for just compensation. A reduction of the fair market value of property shall exclude any reduction resulting from events, actions or occurrences other than the restriction of uses permitted by the land use regulation, and include, but are not limited to, reductions resulting from depreciation, changes in local, state or national economic conditions, failures by the current owner to gainfully use the real property, lack of public services to the real property, reductions in fair market value resulting from the existence of an historically or commonly recognized public nuisance or private nuisance on or about the property or surrounding property, changes in the value of the real property resulting from fluctuations in the real estate market, conditions on surrounding property.

(j) Land Use Regulation: A land use regulation as defined by Measure 37, including any amendments thereto.

(k) Interest in Real Property: Any legally recognized, alienable interest in real property, having monetary value, which is less than a fee simple absolute.

(l) Measure 37 claim: A claim for just compensation arising from the circumstance set forth in Ballot Measure 37, adopted by the people of the State of Oregon on November 2, 2004.

(m) 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.

Section 3. Measure 37 Demands; Ripeness; Claim Accrual. The current owner of real property may submit a demand for just compensation under Measure 37 if the City enacts or enforces a new land use regulation, other than an exempt regulation, against the property; the land use regulation was enacted after the date the current owner, or, in proper case, a family member of the owner, acquired the real property; the land use regulation restricts uses otherwise permitted on the real property; and the restriction imposed by the land use regulation has the effect of causing a reduction in the fair market value of the real property.

Section 4. Contents of Demands for Compensation; Filing.

(a) In order to adequately, completely and expeditiously assess the validity of a current owner's demand for compensation, and to protect the public interest when determining whether to modify, remove or not apply a land use regulation, any demand for compensation submitted to the City shall consist of and include the following:

- (1) A completed demand, on the form provided by the City, for just compensation signed by the current owner upon forms prescribed by the City Manager;
 - (2) Copies of all deeds and other instruments conveying interests in the affected real property to the current owner;
 - (3) A title report issued not more than thirty (30) days prior to the submission of the demand for just compensation, which shall include the title history, the date the current owner acquired title to the real property, the interests held by any other current owners, an identification of any restrictions on use of the real property unrelated to the land use regulation against which just compensation is sought, including, but not limited to, any restrictions established by covenants conditions and restrictions; easements, other private restrictions, or other regulations, restrictions or contracts;
 - (4) A copy of the land use regulation that is the basis for the demand for just compensation;
 - (5) For a Measure 37 claim based on descent, proof that the prior owner was a family member of the current owner.
 - (6) The amount of the alleged reduction in fair market value of the real property that the current owner believes is the amount of just compensation supported by an appraisal based on the use or uses to which the current owner can and intends to put the real property; and
 - (7) Any other facts the current owner believes are material to the evaluation and assessment of claim for just compensation.
- (b) Demands for just compensation shall be submitted to the City Manager. No demand for just compensation shall be deemed submitted until all materials required by this section have been provided to the City Manager by the current owner. A notice of submission shall be sent to the current owner at the time the City Manager determines the current owner demand for just compensation has been deemed submitted.

Section 5. Notice of Demand for Just Compensation.

- (a) The City Manager shall mail notice of demand to any other owner with an interest in the current owner's real property, and to all owners of real property located within two hundred and fifty feet of the current owner's real property, as listed on the most recent property tax assessment rolls. The notice shall:
- (1) State the basis of the demand, the amount of the compensation sought and the land use regulation which is the basis of the demand;
 - (2) Identify the current owner's real property by the street address or other easily understood geographical reference;

- (3) State that person noticed may provide written comments on the demand, and provide the date on which written comments are due;
 - (4) Identify a city representative and telephone number to contact to obtain additional information; and
 - (5) State that a copy of the demand and the supporting documents submitted by the current owner are available for inspection at no cost, and that copies will be provided at reasonable cost.
- (b) Written comments regarding a demand may be submitted to the City Manager. Comments must be received by the City Manager within fourteen (14) days from the date of mailing of the notice of demand for just compensation.

Section 6. Claim Processing and Evaluation.

- (a) After the current owner's demand for just compensation is deemed submitted, the City Manager shall review and evaluate the demand and determine whether the demand meets the requirements, and satisfies the criteria of Measure 37. The City Manager may obtain other appraisals and opinions of the value of the real property for the purposes of evaluating the current owner's estimate of the reduction in the fair market value.
- (b) The current owner has the burden of proof to demonstrate to the City by preponderance of the evidence that just compensation is due under Measure 37.
- (c) The City Manager shall maintain a record of all costs, including personnel costs, incurred by the City in processing the demand for just compensation. Following final action by the City on the claim at the local level, the City Manager shall send to the property owner a bill for the actual costs, including staff and legal costs, that the City incurred in reviewing and acting upon the claim.
- (d) If the property owner does not pay the amount due within thirty (30) days, then the City shall pursue collections, including filing a lien on the subject property.

Section 7. Recommendation to City Council.

- (a) The City Manager shall forward a recommendation to the City Council, supported by findings, that the current owner's demand for just compensation be denied or granted in whole or in part. If the City Manager recommends the demand be granted, in whole or in part, the City Manager shall include a recommendation whether just compensation should be paid and the amount of such compensation, or whether the land use regulation be modified, removed or not applied to the real property.
- (b) If the City Manager's recommendation is to deny the demand in whole, and no City Councilor requests a hearing regarding the claim within ten (10) days after receiving notice of the recommendation, then the City Manager may issue a summary denial.

(c) The City Manager shall schedule a public hearing before the City Council on any demand for just compensation, other than a demand for which a summary denial has issued under subsection (b) of this section. Notice of the public hearing shall be provided to the current owner, to all persons entitled to notice under Section 5 herein, and to neighborhood groups and community organizations whose boundaries include the current owner's real property. Notice may also be published in a newspaper of general circulation within the City, at the City Manager's discretion.

(d) After the public hearing, the City Council shall either deny the demand for just compensation if the demand fails to meet the requirements of Measure 37, or grant the demand, in whole or in part, and adopt a resolution therefore. The resolution shall either direct that the current owner be awarded just compensation in an amount set forth in the resolution, or direct that the land use regulation giving rise to the demand for just compensation be modified, removed, or not applied to the real property, in lieu of paying just compensation. The City Council's decision to modify, remove or waive the land use regulation shall be based on whether the public interest would be better served by either paying just compensation to the current owner or by modifying, removing or waiving the land use regulation.

Section 8. Modification, Removal or Waiver of Land Use Regulation.

(a) If the City Council directs that the land use regulation be modified, removed, or waived, then the current owner shall be allowed to use the real property for a use permitted at the time the current owner acquired the property. Successors in interest to the current owner shall acquire their interests in the real property subject to such land use regulations as are in effect prior to the date of the successor's acquisition of the real property, as provided by Subsection (3)(E) of Measure 37, and such interests shall have the legal status otherwise provided by law.

(b) A copy of the resolution modifying, removing or waiving the land use regulation, or awarding compensation to the owner, shall be recorded in the deed records of the county wherein the real property lies.

(c) If the City Council removes or modifies the challenged land use regulation, it may, at its sole discretion, put back into effect all land use regulations pertaining to the property which were in effect at the time the claimant acquired the property.

Section 9. Private Cause of Action. In order to protect the reasonable 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 that owner or owner's 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 10. 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 11. Emergency. The City Council of the City of Coos Bay finds that the health, safety and welfare of the City of Coos Bay requires this ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency, and this ordinance shall be in full force and effect from the time of its passage and approval.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 4th day of January 2005.