

**An Ordinance Concerning Real Property Compensation; Adopting Procedures for Processing Claims; Declaring an Emergency; and Providing an Immediate Effective Date. [Adopted and Effective as of 11-30-2004]**

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The City of Brookings, Oregon does ordain as follows:

**Section 1. Purpose.** This Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the City; preserves and protects limited public funds; and establishes a record of the City's decision capable of circuit court review.

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

**City Manager.** The City Manager of the City of Brookings, Oregon, or his or her designee.

**Claim.** A claim filed under Ballot Measure 37.

**Exempt Land Use Regulation.** A land use regulation that:

- (a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law.
- (b) 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;
- (c) Is required in order to comply with federal law;

(d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

(e) Was enacted prior to the date of acquisition of the 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.

**Family Member.** Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, 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 or the owner of the property.

**Land Use Regulation.** Includes:

(a) Any statute regulating the use of land or any interest therein;

(b) Administrative rules and goals of the Land Conservation and Development Commission;

(c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(d) Statutes and administrative rules regulating farming and forest practices.

**Owner.** The present owner of the property, or any interest therein.

**Valid Claim.** A claim submitted by the owner of real property that is subject to a 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. Claim Filing Procedures**

(1) A person seeking to file a claim under sections 1-7 of this ordinance must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the City Manager's office, or another City office if so designated by the City Manager.

(2) A claim shall include:

(a) The name(s), address(es) and telephone number(s) 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;

(b) The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other

documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired.

(c) The current 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;

(d) The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon; and

(e) Copies of any leases, or Covenants, Conditions and Restrictions (“CCR’s”) applicable to the real property, if any, that impose restrictions on the use of the property.

(f) A statement of the relief sought by the Owner.

(g) An explanation of the proposed use of the real property.

(h) The 180-day period required to pass prior to any cause of action being available to Owner in circuit court specified in Measure 37, shall only commence on the date all required information is provided to the City.

(3) Notwithstanding a claimant’s failure to provide all of the information required by subsection (2) of this section, the City may review and act on a claim.

**Section 4. City Manager Investigation and Recommendation.**

(1) Following an investigation of a claim, the City Manager shall forward a recommendation to the City Council that the claim be:

(a) Denied;

(b) Investigated further;

(c) Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or

(d) Evaluated with the expectation of the City acquiring the property by condemnation or other manner.

**Section 5. City Council Public Hearing.** The City Council shall conduct a public hearing before taking final action on a recommendation from the City Manager. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property.

**Section 6. City Council Action on Claim.**

(1) Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council shall:

(a) Determine that the claim does not meet the requirements of Measure 37 and this Ordinance, and deny the claim; or

(b) Adopt a Resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.

**Section 7. Processing Fee.**

(1) The City Manager shall maintain a record of the City's costs in processing a claim, including the costs of obtaining information required by Section 3 of this ordinance which a property owner does not provide to the City. 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 on the claim.

**Section 8. Real Property Compensation - Private Cause of Action.** If the City Council's approval of a claim by removing or modifying a land use regulation causes a reduction in value of other property located in the vicinity of the claimant, the neighbor(s) shall have a cause of action in state circuit court to recover from the claimant.

**Section 9. Emergency Clause.** Due to the passage of Measure 37 at the General Election on November 2, 2004 with an effective date 30 days thereafter, the City Council declares it is necessary for the preservation of the public health, welfare and safety for this Ordinance to have immediate effect. Therefore, this Ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor.

[Adopted and Effective as of November 30, 2004]