

ORDINANCE SERIES OF 2004, NO. 4

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

THE CITY OF ESTACADA ORDAINS AS FOLLOWS:

Section 1. Section 2.50.020 is hereby added.

Section 2.50.010 – 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. Section 2.50.020 is hereby added.

Section 2.50.020 – Definitions.

As used in this Ordinance, the following words and phrases mean:

“City Manager” means the City Manager of the City of Estacada, or his or her designee.

“Claim” means a claim filed under Ballot Measure 37.

“Exempt Land Use Regulation” means a land use regulation that:
Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;

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;

Is required in order to comply with federal law;

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

Was enacted or substantially identical to a regulation in affect 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 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 or the owner of the property.

“Land Use Regulation” includes:

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

Administrative rules and goals of the Land Conservation and Development Commission;

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

Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

Statutes and administrative rules regulating farming and forest practices.

“Owner” means the present owner of the property, or any interest therein.

“Valid Claim” means 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. Section 2.50.030 is hereby added.

Section 2.50.030 – Claim Filing Procedures.

A. Claims may only be made in conjunction with a fully completed application for land use approval meeting all the requirements of the city for the requested approval. Compensation or waiver shall only apply to land use regulations – or portions of regulations – for which waiver or compensation is required by Ballot Measure 37, and all other regulations and application requirements shall remain in full force and effect.

B. Claims under this ordinance must be authorized in writing by the current owner(s) 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.

C. A claim shall include:

1) The name(s), address(s) 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;

2) 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 of the property by the claimant, and the date the property was acquired;

3) 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;

4) The amount of the claim, based on the alleged reduction in value of the real property certified by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon. The appraisal report shall separately set forth the fair market value of the property with the challenged regulations in place and the fair market value of the property without the challenged regulations; and

5) Copies of any leases or Covenants, Conditions and Restrictions (CCR's) applicable to the real property, if any, that imposes restrictions on the use of the property. A complete list of all compensation claims, development or permit applications previously filed with any regulatory body relating to the property, and any enforcement actions taken by any governmental body.

D. Upon receipt of a complete claim application the city shall send notice to all interested parties described in subsection (C) above together with the public notice described in Section 2.50.050.

E. Notwithstanding a claimant's failure to provide all of the information required by subsection (C) of this section, the city may review and act on a claim.

Section 4. Section 2.50.040 is hereby added.

Section 2.50.040 – City Manager Investigation and Recommendation.

A. The City Manager shall conduct a review within 15 days of application to determine the completeness of the application, and shall record the date that a completed application is received. If the City Manager determines that the application is not complete, he shall advise the owner in writing of any material necessary to complete the application. The owner shall submit the material needed for completeness within 30 days of the written notice that additional material is necessary in order for the city to evaluate the application. The 180-day period prescribed by Ballot Measure 37 to evaluate claims shall be deemed to commence on the date that the City Manager receives a complete application.

B. Following an investigation of a claim, the City Manager shall forward a recommendation to the city council that the claim be:

Denied;

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

Evaluated with the expectation of the city acquiring the property by condemnation.

C. The City Council may deny the claim against the City after reviewing the City Manager's recommendation. If the City Council does not deny the claim against the City after reviewing the City Manager's recommendation, the City Council shall hold a public hearing on the claim against the City as described in Section 2.50.050.

Section 5. Section 2.50.050 is hereby added.

Section 2.50.050 – City Council Public Hearing.

For all claims not denied by Council, 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. Section 2.50.060 is hereby added.

Section 2.50.060 – City Council Action on Claim.

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

1. Determine that the claim does not meet the requirements of Ballot Measure 37 and this Ordinance, and deny the claim; or
2. 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.

The City Council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property.

Section 7. Section 2.50.070 is hereby added.

Section 2.50.070 – Processing Fee.

Processing fees will be set by Resolution of the Council.

Section 8. Section 2.50.080 is hereby added.

Section 2.50.080. Private Cause of Action.

If the city approves a claim under this ordinance and elects to waive or modify a land use regulation, which waiver or modification results in a reduction in the fair market value of neighboring property, the neighbor(s) shall have a cause of action in state circuit court to recover from the claimant the amount of the reduction, and shall also be entitled to attorney's fees from the party requesting the waiver or modification of the land use regulation.

Section 9. Due to the passage of Ballot 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.

This ordinance was read once in full before the City Council of the City of Estacada on November 29, 2004 and, after a unanimous vote to read by title only, read by title only at the meeting of November 29, 2004, and passed by a vote of 5 ayes and 0 nays this 29th day of November, 2004.

Mayor

ATTEST:

City Recorder