

ORDINANCE NO. _____

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

WHEREAS, Oregon Revised Statutes, Chapter 97, was amended by Ballot Measure 37, effective December 2, 2004; and,

WHEREAS, it is appropriate that the City of Harrisburg establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present property claims to the City, while allowing the City to preserve and protect limited public funds and establish a procedure for recording the City's decision with regard to claims made; and,

WHEREAS, it is appropriate that an emergency be declared to immediately establish this claims procedure.

NOW, THEREFORE, THE CITY OF HARRISBURG DOES HEREBY 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; and, they preserve and protect limited public funds while establishing 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:

1. **City Administrator.** The city administrator of the City of Harrisburg, or his or her designee.
2. **Claim.** A claim filed under Ballot Measure 37.
3. **Claimant.** The property owner making a claim, or their designee so long as written authorization is provided to the city by the property owner.
4. **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.
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 or the owner of the property.
6. **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; and
 - d. Statutes and administrative rules regulating farming and forest practices.
7. **Owner.** The present owner of the property, or any interest therein.
8. **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 claim must be filed on a form approved by the City.
2. A person seeking to file a claim under 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 administrator's office, or another city office if so designated by the city administrator.

3. The claimant shall have the burden of proof to show the validity of the claim. The claimant shall therefore provide information that will 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 use to which the property owner wanted or wants to apply to the property and information showing that the use would have been allowed at the time the property owner acquired the property;
 - d. 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;
 - e. 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
 - f. Copies of any leases or Covenants, Conditions and Restrictions ("CC&R's") applicable to the real property, if any, that impose restrictions on the use of the property.

Section 4 – Time for Completing Claim Response.

1. The City shall have 180 days from the date the claim was filed to render a decision on it. A claim shall be considered to have been filed when the City has determined that all information required by subsection 2 of section 3 has been provided and all fees paid. However, if the City fails to notify the claimant within fifteen business days that additional information or fees are required, then the claim will be considered to have been filed as of the date the claim and fees were submitted.
2. Notwithstanding a claimant's failure to provide all of the information required by subsection 2 of section 3, the city may review and act on a claim.

Section 5 – City Administrator Investigation and Recommendation. Following an investigation of a claim, the city administrator shall forward a recommendation to the city council that the claim be:

1. Denied;
2. Investigated further;
3. Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
4. Evaluated with the expectation of the city acquiring the property by condemnation.

Section 6 -- City Council Public Hearing.

1. The City Council shall conduct a public hearing before taking final action on a recommendation from the city administrator. 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.
2. To the extent allowed by law, the recommendation of the city administrator and the city council's evaluation of the claim may occur in an executive session.

Section 7 – 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.
2. 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 8 – Duration or Transfer of Waiver.

1. Any waiver or modification of land use regulations granted by this ordinance shall be utilized within three years of the waiver or modification. Any waiver or modification not utilized within three years shall be void and of no further consequence.
2. No waiver or modification of a land use regulation granted by this ordinance shall be transferred to a third party. Any attempted transfer of the rights granted by the City under this ordinance shall result in the termination of the waiver or modification granted.

Section 9 – Processing Fee.

A fee shall be paid for the processing of a claim. The amount of staff time involved in processing a claim should be similar to the amount to time involved in dealing with a land use site plan review. The fee shall therefore be the same as a land use site plan fee, and shall be in addition to any costs the city may incur to process a claim, such as fees paid to an engineer or attorney, and advertising and mailing costs.

Section 10 – Appeal Procedures. Any decision under this ordinance is not a land use decision. Appeal of any final decision of the City made hereunder shall be to the Linn County Circuit Court.

Section 11 – Severance Clause. If any phrase, clause, or other part or parts of this ordinance are found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and effect.

Section 12. 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.

Passed by the Council of the City of Harrisburg by a vote of _____ for and _____ against, and approved by the Mayor this 8th day of December, 2004.

Mayor

Attest:

City Recorder