

ORDINANCE NO. 04-112-2

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

Whereas, on November 2, 2004 the voters of the State of Oregon approved Ballot Measure 37 that amended Oregon Revised Statutes Chapter 197; and

Whereas, Ballot Measure 37 authorizes the City to adopt and apply procedures for processing claims for compensation; and

Whereas, Ballot Measure 37 imposes an unfunded mandated duty on the City to review demands for compensation and make decisions on dispositions of those demands. Prudent management of the public treasury, and fairness to all taxpayers of the City of John Day requires that a person submitting a claim for compensation under Ballot Measure 37 pay actual costs of processing the claim; and

Whereas, it is in the best interest of the City to establish a process to assess such demands in a timely manner by establishing, among other things, a procedure that requires the necessary factual and analytical information be included with the demand for compensation at the time the City accepts any written demand for compensation; and

Whereas, the City of John Day Council finds that the City's regulations, ordinances, policies, standards and specifications that regulate construction and performance standards for water, wastewater, transportation or public utility systems are necessary for the protection of the public health and safety; and

Whereas, Ballot Measure 37 takes effect on December 2, 2004.

THE CITY OF JOHN DAY ORDAINS 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:

Appraisal. Means a written statement prepared by an appraiser licensed by the Appraiser Certification and License Board of the State of Oregon pursuant to ORS Chapter 674. In the case of commercial or industrial Property, the term "Appraisal" additionally means a written statement prepared by an appraiser holding the MAI qualifications, as demonstrated by written certificate.

City of John Day. The City of John Day shall be referred to herein as "City" or "City of John Day."

City Manager. The *City Manager* of the City of John Day, 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 and offenses enumerated in the John Day City Code;
- (b) Restricts or prohibits activities for the protection of public health and safety, including but not limited to: fire and building codes; health and sanitation regulations; solid or hazardous waste regulations; a regulation, ordinance, policy, standard or specification that regulates construction and performance standards for water, wastewater, transportation or public utility systems; 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 real Property by the Owner or a Family Member of the Owner who owned the subject real Property prior to acquisition or inheritance by the Owner, whichever occurred first.

Family Member. Shall include 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 real 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 real Property.

Land Use Regulation. Shall include:

- (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) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- (e) Statutes and administrative rules regulating farming and forest practices.

The term "Land use regulation" does not include "Exempt land use regulations."

Owner. Means the present Owner of the real Property, or any interest therein. The Owner must be a person who is the sole fee simple Owner of the real Property or all joint Owners whose interests add up to a fee simple interest in real Property including all persons who represent all recorded interests in real Property, such as co-Owners, holders of less than fee simple interests, leasehold Owners and security interest holders.

Property. Means any real Property or interest therein. It includes only a single parcel or contiguous parcel of a single Owner. It does not include contiguous parcels or parcels not contiguous of a different Owner.

Reduction in Value. Means the difference in the fair market value of the real Property without enforcement or application of a land use regulation and the value with enactment, enforcement or application of a land use regulation.

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 real Property that is the subject of the claim at the time the claim is submitted. The claim shall be on a form established by the City Manager and shall be filed with the City Manager's office, or another city office if so designated by the City Manager. The claim will not be accepted until found complete.

(2) A claim shall include the following information, reports and fee. A claim shall not be accepted for filing without all of the following :

(a) Fee. An application fee to be paid in advance of acceptance for filing to cover the costs of completeness review and Claim processing. The City shall record its actual costs for processing the Claim, and, in the event that the advance payment is not sufficient to cover all of the City's costs, then the Owner shall pay the balance owed, if any, upon receipt of a billing statement from the City. The City may send the Owner periodic billing statements. If the Owner does not pay on the billing statements when due, the Owner will be deemed to have abandoned the Claim. If the advance fee is more than the amount of the City's actual costs in processing the Claim, then the excess shall be returned to the Owner. This fee shall be established by council resolution. In the event that the fee is not paid in full, the City of John Day shall have a lien against any real Property owned by the Owner(s), and the City may take any enforcement actions to collect such fee as provided by law.

(b). Form. A completed claim form supplied by the City Manager.

(c) Identification. 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. If the applicant is not the Owner, the applicant must submit a valid power of attorney created by the Owner authorizing the applicant to act on behalf of the Owner;

(d) Real Property Description and Title Report. 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;

(e) Copy of Existing Regulation. The current land use regulation(s) that the Owner making a Claim states allegedly restricts the use of the real Property and allegedly causes a reduction in the fair market value of the subject real Property;

(f) Copy of Prior Regulation. A copy of the land use regulation in existence, and applicable to the real Property when the Owner became the Owner of the real Property, and a copy of the land use regulation in existence immediately before the regulation was enacted or enforced or applied to the real Property that the Owner claims restricts the use of the real Property and, the Owner claims, caused a reduction in fair market value due to the land use regulation in question being more restrictive;

(g) The amount of the claim, based on the alleged reduction in value of the real property supported by a copy of an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon as defined herein. The appraisal shall indicate the amount of the alleged reduction in the fair market value of the real Property before and after enactment, enforcement or application of the land use regulation in question, and explaining the rationale and factors leading to that conclusion. Any claims valuing over \$30,000 shall require two appraisals by the Owner.

(h) Narrative. The Owner shall provide a narrative describing the history of the Owner and/or Family Member's Ownership in the real Property, the history of the relevant land use regulations applicable to the Claim, and how the enactment enforcement or application of the land use regulation restricts the use of the real Property, or any interest therein, and has the effect of reducing the fair market value of the real Property, or any interest therein.

(I) A statement regarding Exceptions. A statement by the real Property Owner making the Claim of why the land use regulation in question is not an “exempt land use regulation.”

(J) Site Plan and Drawings. A copy of the site plan and drawings in a readable, legible 8½ by 11 inch format related to the expected use of the real Property should the land use regulation be modified, removed or not applied.

(k) 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.;

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 in another manner not inconsistent with this Ordinance or Ballot Measure 37, including possible City condemnation of the property.

(2) If the city manager’s recommendation is that a claim be denied, and no elected official informs the city manager within 14 days that the official disagrees, then the city manager may deny the claim. If an elected official objects, then the city manager shall wait an additional seven days to see whether two more elected officials object to the proposed denial. If they do, then the city manager shall schedule a work session with the city council. If not, the city manager may deny the claim.

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 100 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.

(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.

(3) The owner will bear the burden of proof relating to the claim, the devaluation of the owner’s property and the owner’s entitlement to just compensation. The standard of proof will be by a preponderance of the evidence.

(4) A copy of the city council order will be sent by mail to the owner and to each individual or entity that participated in the city council review if the City was provided with a mailing address.

(5) The city council may establish by resolution additional procedures related to the processing of Ballot Measure 37 claims.

Section 7 – Conditions, Revocation and Transfer

(1) The city council may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under this chapter.

(2) Failure to comply with any condition of approval is grounds for revocation of the approval of the compensation for the claim, grounds for recovering any compensation paid and ground for revocation of any other action taken under this chapter.

(3) If the owner, or the owner's successor in interest fail to fully comply with all conditions of approval, the City may institute a revocation or modification proceeding before the city council under the same process for city council review of a claim under this chapter.

(4) Unless otherwise stated in the City' decision, any action taken under this chapter runs with the property and is transferred with ownership of the real property. All conditions, time limits or other restrictions imposed with approval of a claim will bind all subsequent owners of the subject property.

(5) All potential claims that an owner knew or should have known exist as of the date of a claim is submitted must be included in that claim if they are to be preserved. Any potential claim not included is waived by the real property owner.

Section 8 — Processing Fee.

(1) The city manager shall maintain a record of the city's costs in processing a claim. Following final action by the City on the claim at the local level, the city manager shall send to the real 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 9. Attorney's Fees. If a Claim made herein is denied or not fully paid within 180 days of the date of filing a completed Claim, and the Owner commences suit or action to collect compensation, if the City is the prevailing party in such action, then City shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the City is the prevailing party and is represented by "in house" counsel, the prevailing party shall nevertheless be entitled to reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the City of John Day for the type of legal services performed.

Section 10. 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 real property located in the vicinity of the real Property, the owner(s) of the other real property shall have a cause of action in the appropriate Oregon Circuit Court to recover from the Owner(s) (of the real property subject to the Claim) in the amount of such reduction in value. A person who recovers for a reduction in value of real property under this section shall be entitled to recover attorney's fees and disbursements from the Owner(s) (of the real Property subject to the Claim). This section does not create a cause of action against the City of John Day.

Section 11. Availability of Funds to Pay Claims. Compensation can only be paid based on the availability and appropriation of funds for this purpose.

Section 12. Severability. 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 other part or parts shall remain in full force and effect.

Section 13. Applicable State Law.

For all Claims filed with the City of John Day, the applicable state law is Measure 37 as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State Administrative Agencies. Any Claim that has not been processed completely under this Ordinance shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Ordinance shall be read in a manner so not to conflict with such amendments, modifications, clarifications or other action taken at the state level. This Ordinance is adopted solely to address Claims filed under the authority of those provisions of Measure 37. Except as expressly provided by this Ordinance, no rights independent of said provisions are created by adoption of this Ordinance.

Section 14. 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 John Day

City Council and approval by the Mayor, retention by the Mayor for more than ten days, or readoption over a Mayoral veto by two-thirds of all members of the City Council.

Approved by Mayor Roger Simonsen, this 23rd day of November 2004.

Roger Simonsen, Mayor

Attest:

Anna Bass, City Recorder

SUMMARY OF VOTES:

- | | |
|---------------------------------|------------------|
| Mayor Roger Simonsen | YES OR NO |
| Councilor Gene Officer | YES OR NO |
| Councilor Charles Mills | YES OR NO |
| Councilor Jack Grubbs | YES OR NO |
| Councilor Chris Labhart | YES OR NO |
| Councilor Leslie Lindley | YES OR NO |

Councilor Don Caldwell

YES OR NO