

## CITY OF OAKRIDGE

### ORDINANCE NO. 875

#### **AN ORDINANCE ESTABLISHING A PROCEDURE FOR SUBMITTING AND PROCESSING DEMANDS ARISING UNDER THE PROVISIONS OF OREGON REVISED STATUTES CHAPTER 197, AS AMENDED BY BALLOT MEASURE 37, PASSED NOVEMBER 2, 2004; AND DECLARING AN EMERGENCY**

The City Council for the City of Oakridge finds:

- A. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37, amending Oregon Revised Statutes Chapter 197 to require, under certain circumstances, payment of compensation to present owners of real property if government land use regulations reduce the fair market property value; and
- B. Ballot Measure 37 provides that in order to receive compensation, a present owner of real property must provide “written demand for compensation” to the government entity enacting, enforcing or applying a land use regulation that allegedly restricts the use of the Owner’s property and has had the effect of reducing the fair market value of that property. The government entity has 180 days after the Owner of the real property makes the written demand for compensation before the property owner is allowed to file an action in circuit court for compensation, and to obtain attorneys fees and costs in addition to compensation; and
- C. Ballot Measure 37 authorizes a city to adopt and apply procedures for processing demands for compensation, but complying with city procedures is not a prerequisite to filing a compensation demand in circuit court after 180 days from making a written demand for compensation. In addition, the present owner of real property’s failure to file a demand for a land use permit may not serve as grounds for dismissal, abatement or delay of a compensation; and
- D. Ballot Measure 37 requires payment of just compensation for any reduction in fair market value of real property or, in lieu of making payment, allows cities to modify, remove or not apply the land use regulation causing the reduction in fair market value; and
- E. Ballot Measure 37 proposes an unfunded mandated duty on cities to review demands for compensation and make decisions on disposition of those demands. Prudent management of the public treasury, and fairness to all tax payers of the City require that a person submitting a demand for compensation under Ballot Measure 37 pay the actual costs of processing the demand; and

- F. Fairness to persons making demands under Ballot Measure 37, and the public interest, mandate that the determination of any demand made under Ballot Measure 37 be based upon substantial factual information and analysis, which can only be provided by a present real property owner at the time they make a written demand for compensation; and
- G. 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 to be included with the demand for compensation at the time the City accepts any written demand for compensation; and
- H. 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
- I. Ballot Measure 37 takes effect thirty days after its passage, on December 2, 2004.

The City of Oakridge ordains as follows:

**Section 158.01. FINDINGS OF FACT.**

The above Findings of Fact are hereby adopted by the City Council as its basis for the following provisions.

**Section 158.02. PURPOSE.**

The purpose of this Ordinance is to accomplish the following regarding demands for compensation under Oregon Revised Statute, Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004:

- A. Process demands for compensation quickly, openly, thoroughly and consistently with the law;
- B. Enable present real property owners making demands for compensation to have an adequate and fair opportunity to present their demands to the City's decision maker;
- C. Provide the City's decision-maker with the factual and analytical information necessary to adequately and fairly consider demands for compensation, and take appropriate action under the alternatives provided by law;
- D. Preserve and protect limited public funds;

- E. Preserve and protect the interests of the community by providing for public input into the process of reviewing demands; and
- F. Establish a record of decisions capable of withstanding legal review.

**Section 158.03. DEFINITIONS.**

- A. Appraisal. Means a written statement prepared by an appraiser licensed by the Appraiser Certification and Licensure 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 qualification, as demonstrated by written certificate.
- B. City Administrator. The City Administrator of the City, or his or her designee.
- C. Demand. Means the “written demand for compensation” required to be made by an “owner” of “real property” under Ballot Measure 37. Demands shall not be considered “made” under Ballot Measure 37 until the City accepts the demand after the requirements for making a demand under this Ordinance are fulfilled by the owner of real property.
- D. Exempt land use regulation. Means:
  - (1) A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law, including Oakridge Code Chapter 93, as amended from time to time, and the criminal laws of Oregon and the City of Oakridge;
  - (2) A regulation restricting or prohibiting 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;
  - (3) A regulation required to comply with federal law;
  - (4) A regulation restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or
  - (5) A regulation 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 property prior to acquisition or inheritance by the owner, whichever occurred first.
- E. Family member. Means 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.

- F. Land use regulation. Means any comprehensive plan, zoning ordinance, land division ordinance, or transportation ordinance of the City of Oakridge. "Land use regulation" does not include exempt land use regulations, as defined by Section 158.03(D) of this Ordinance.
- G. Measure 37. Means those amendments to Oregon Revised Statutes, Chapter 197, made by Oregon Ballot Measure 37, passed November 2, 2004.
- H. Owner. Means the present owner of real property that is the subject of the demand for compensation, 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 property including all persons who represent all recorded interests in property, such as co-owners, holders of less than fee simple interests, leasehold owners, and security interest holders.
- I. Property. Means any private real property or interest therein. It includes only a single parcel or contiguous parcels in single ownership. It does not include contiguous parcels or parcels not contiguous that are under different ownerships.
- J. Reduction in Value. Means the difference in the fair market value of the property before and after enactment, enforcement or demand of a land use regulation.
- K. Subject Property. The property allegedly impacted by one or more City land use regulations, which is the subject of the demand.

#### **Section 158.04. DEMAND REQUIREMENTS.**

- A. Demand Filing. A demand shall be submitted for review upon forms established by the City. A demand shall consist of all materials required by this section. A demand will not be accepted for filing until found to be complete by the City Administrator, unless, in the Administrator's sole discretion, the Administrator determines that acceptance of an incomplete demand is in the City's best interest.
- B. Completeness Review. The Administrator shall conduct a completeness review within 15 days after submittal of the proposed demand and shall advise the owner, in writing, of any material remaining to be submitted. The owner shall submit the material needed for completeness within 30 days of the written notice that material remains to be submitted. If the owner fails to provide the materials necessary to make the demand complete within 30 days, the Administrator shall have the discretion to accept it and begin processing the demand, or reject it as incomplete.

- C. Tolling of 180-Day Action Requirement. 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 the City Administrator accepts the demand for filing. The Administrator shall note the date of filing, in writing, upon the demand. Such date shall constitute the demand accrual date for purposes of Measure 37.
- D. Information and Other Matters Required for Filing a Complete Demand. A demand shall be for a single property and shall set forth and consolidate all Measure 37 claims existing at the time of the initial submittal. Failure to raise an existing claim waives that claim and precludes it from being filed as a demand with the City in the future. A demand shall be submitted on forms established by the City, and shall consist of all materials required by this section. A demand shall not be accepted for filing without all of the following information, except in the Administrator's sole discretion:
- (1) **Fee.** An application fee is to be paid in advance of acceptance for filing to cover the costs of completeness review and demand processing. The City shall record its actual costs for processing the demand, including the costs of obtaining information required by this section which owner does not provide to the City. 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 an appropriate 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 may be deemed to have abandoned the demand, in the Administrator's discretion. If the advance fee is more than the amount of the City's actual costs in processing the demand, 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 shall have a lien against any property owned by owner(s), and City may take any enforcement actions to collect such fee as provided by law.
  - (2) **Form.** A completed demand form.
  - (3) **Identification of Owner.** Identification of the name, physical address, street address, and phone number of the owner. If the applicant is not the owner, this information must be provided for both the applicant and owner, including the owner's authorization for applicant to act on behalf of the owner.
  - (4) **Property Description.** A legal description of property as well as a common address for the property.

- (5) Proof of Present Property Ownership. Proof, acceptable to the City Administrator, that the property is in the exclusive fee simple ownership of the owner filing the demand or that all owners have consented to the demand. The name and mailing address of all owners other than the owner making the demand must be provided.
- (6) Ownership Dates. The date(s) that owner acquired an ownership interest in the subject property. If there is more than one such date, the owner must submit a statement of all such dates with a complete explanation of the owner's ownership interest at each date and a list of all other owners at that time, with current mailing addresses for each.
- (7) Surrounding Properties. The names and addresses of all property owners within 300 feet of the subject property. Identification of any other property owned by the owner(s) within 300 feet of the boundary of the subject property.
- (8) Title Report. A Title Report issued no more than 30 days prior to the demand submittal, that includes title history, the date the owner submitting the demand acquired ownership of the property, the ownership interests of all owners of the property and when those interests were acquired. The Title Report must also specify any restrictions on use of the subject property unrelated to the land use regulation at issue including, but not limited to, any restrictions established by Covenants, Conditions, and Restrictions (CC&Rs), other private restrictions, or other regulations, restrictions or contracts.
- (9) Land Use Regulations. A copy of:
  - a. the land use regulation(s) that allegedly restricts the use of the subject property and has allegedly caused a reduction in its fair market value, including the dates the regulation was enacted, enforced, and applied to the subject property;
  - b. any land use regulation in existence and applicable to the subject property when the owner obtained an interest in the subject property; and
- (10) Appraisal. A written appraisal by a certified Oregon appraiser indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after enactment, application, and first enforcement of each challenged regulation, individually, and after enactment, application, and enforcement of all of the challenged regulations, cumulatively. Fair market value shall include consideration of any benefits ever received to date by owner(s) from tax deferral status as a result of the subject property's land use designation.

- (11) Narrative. The owner shall provide a narrative describing the history of the owner's and/or family member's ownership in the property, the history of relevant land use regulations applicable to the demand, and how the enactment, enforcement or demand of the land use regulation restricts the use of the property, or any interest therein, and has the effect of reducing the fair market value of the property, or any interest therein.
  - (12) Restriction on Use/Reduction in Value. A statement explaining how the regulation restricts the use of private property and why the regulation has the effect of reducing the value of the property upon which the restriction is imposed.
  - (13) Effect of Waiver. A statement of the effect the modification, removal or non-demand of each challenged land use regulation to the subject property would have on the potential development of the subject property and its impact upon surrounding properties, specifying the greatest degree of development that would be permitted if the identified regulation(s) were modified, removed or not applied to the subject property.
  - (14) Prior Applications. Copies of prior permit applications, and description of enforcement and/or application actions by the City. Copies of any land use actions, development applications or other relevant applications for permits that have previously been filed in connection with the property and the action taken. Any such actions that represent the required "enforcement" and/or "application" of the land use regulation that are prerequisites to making a demand must be described and identified as such.
  - (15) Site Plan. A copy of the site plan and drawings related to the desired use of the subject property in a readable/legible 8½ by 11-inch format.
  - (16) Relief Sought. A statement of the relief sought by the owner.
- E. City Appraisal. The City Administrator may, in the Administrator's discretion, retain the services of an appraiser to appraise the subject property and evaluate the demand to assist in determining its validity. The appraiser's fee may be included in the fee required of the owner under Section 158.04(D)(1) of this Ordinance.

**Section 158.05. CITY ADMINISTRATOR RECOMMENDATION.**

Following an investigation of a demand, including review of all material, the City Administrator shall forward a recommendation to the City Council that the demand be:

- A. Denied;
- B. Investigated further;
- C. Declared valid. In this case the Administrator shall further recommend waiving or modifying the land use regulation, or compensating the owner(s); or
- D. Evaluated with the expectation of the City acquiring the property by condemnation.

**Section 158.06. PUBLIC HEARING.**

- A. The City Council shall conduct a public hearing before taking final action on the City Administrator's recommendation.
- B. Notice of the hearing regarding demand shall be mailed to:
  - 1. All owners of the subject property;
  - 2. Owners of record of property on the most recent property tax assessment roll where such property is located within 300 feet of the perimeter of the subject property;
  - 3. Neighborhood groups or community organizations officially recognized by the City Council and whose boundaries include the subject property;
  - 4. The Oregon Department of Land Conservation and Development and the Oregon Department of Justice.
  - 5. Such other persons or entities as the City Administrator or City Council determine to notify, in their sole discretion.
- C. The notice under subsection (B) of this section shall:
  - 1. Explain the nature of the demand, including the proposed use or uses which could be authorized and the regulation that allegedly lowers the market value of the subject property.
  - 2. Set forth the street address or other easily understood geographical reference to the subject property;

3. State the date, time, and location of the hearing;
  4. Include the name of a City representative to contact and the telephone number where additional information may be obtained;
  5. State that a copy of any staff report will be available for inspection at no cost at the hearing and that copies will be provided at reasonable cost;
  6. State that a copy of the demand and all documents submitted by the Owner are available for inspection at no cost and that copies will be provided at reasonable cost;
  7. Include a general explanation of the requirements for submission of written comments, submission of testimony and evidence, and the procedure for conducting the hearing; and
  8. State that failure to raise an issue at the hearing, in person or by letter, or failure to provide statements or evidence with sufficient specificity to enable the decision maker to respond to the issue, precludes an appeal based on that issue.
- D. All documents or evidence relied upon by the owner in the hearing must be submitted to the Administrator prior to the hearing as a part of the demand. Persons other than the Owner may submit documents or evidence prior to or at the hearing.

### **Section 158.07. CITY COUNCIL DECISION**

Within 180 days of accepting a demand, the City Council shall take, by resolution, any one or more of the following actions on a demand, as appropriate:

- A. Deny the demand based upon, but not limited to, any one or more of the following findings:
1. The land use regulation does not restrict the use of the private real property;
  2. The fair market value of the property is not reduced by the enactment, enforcement or application of the land use regulation;
  3. The demand was not timely filed;
  4. The owner failed to comply with the requirements for making a demand as set forth in this Ordinance.

5. The owner is not the present property owner or was not the property owner at the time the land use regulation was enacted, enforced or applied, or the subject property was not owned by a family member if that is required for compensation;
  6. The land use regulation is an exempt land use regulation as defined in Measure 37 and this Ordinance;
  7. The land use regulation in question is not an enactment of City;
  8. City has not taken final action to enact, enforce or apply the land use regulation(s) to the subject property;
  9. The owner is not entitled to compensation under Measure 37, for a reason other than those provided herein.
- B. Award compensation, either in the amount requested, or in some other amount supported by the evidence in the record. Payment of any compensation is subject to the availability and appropriation of funds for that purpose.
  - C. Modify the land use regulation.
  - D. Remove the land use regulation.
  - E. Not apply the land use regulation.
  - F. Acquire the subject property through negotiation or eminent domain.
  - G. Take such other actions as the City Council deems appropriate consistent with Measure 37.
  - H. The owner shall bear the burden of proof relating to the demand and entitlement to just compensation. City shall bear the burden of proof to show that the regulation is exempt under Measure 37 or this Ordinance. The standard of proof shall be by a preponderance of the evidence.
  - I. A copy of the City Council decision shall be sent by mail to the owner(s) and to each individual or entity that participated in the review process, provided a mailing address was provided to City as part of the review process. The City Council may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under this Ordinance.
  - J. Where more than one land use regulation is being challenged, the City Council may provide for a combination of the remedies listed in this section.

- K. The City Council's decision shall be based upon all the information presented in the demand, by comment and testimony, and shall consider the standards of Measure 37 and this Ordinance. If the demand is not denied, the decision shall also consider the benefit(s) occurring to the public arising as a result of the application of the land use regulation; and the burden to the public in paying compensation to the owner, taking into consideration the available financial resources of City.
- L. If the City Council removes or modifies any land use regulation, it may, in its discretion, put back into effect with respect to the subject property, all of the land use regulations in effect at the time owner acquired the property.
- M. A decision by the City Council to remove or modify a land use regulation shall be personal to owner and shall automatically become invalid and void upon the transfer of any ownership interest in the subject property by the owner to anyone. Following the voiding of the decision because of a transfer, any use of the property must be consistent with all regulations in effect at the time of transfer, or thereafter amended. Should a development or use not be consistent with such regulations, then the use may be declared a public nuisance and abated as provided by Oakridge Code Chapter 93.
- N. The City Administrator shall record on the property a copy of the City Council resolution adopted pursuant to this section with Lane County Records.

**Section 158.08. CONDITIONS OF APPROVAL.**

- A. The City Council may establish any relevant conditions of approval for compensation or for any other action taken under this Ordinance.
- B. Failure to comply with any condition of approval is grounds for revocation of the Council's decision and grounds for recovering any compensation paid.

**Section 158.09. EX PARTE CONTACTS, CONFLICT OF INTEREST, BIAS.**

The following rules govern any challenges to the City Administrator's or member of the City Council's participation in the review and recommendation motion, or hearings regarding demands:

- A. Any factual information obtained by the City Administrator or a member of the City Council outside the information provided by City staff, or outside the formal written comments process or hearing will be deemed ex parte contact. The City Administrator or a member of the City Council that has obtained any material factual information through an ex parte contact must declare the content of that contact, and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between City staff and the City Administrator or member of the City Council.

- B. Whenever the City Administrator or a member of the City Council, or any member of their immediate family or household, has a direct financial interest in the outcome of a particular demand or lives within the area entitled to notice of the demand, the City Administrator or member of the City Council shall not participate in the deliberation or decision on that demand.
- C. All decisions on demands must be fair, impartial and based on the applicable review standards and the evidence in the record. The City Administrator or a member of the City Council who is unable to render a decision on this basis must refrain from participating in the deliberation or decision on that matter.

**Section 158.10. ATTORNEY FEES.**

If a demand under Measure 37 and this Ordinance is denied or not fully paid, unless demand of the challenged regulation is modified, removed or not applied within 180 days of the date of filing a completed demand, owner's reasonable attorney fees and expenses necessary to collect the compensation will be added as additional compensation, provided compensation is eventually awarded to owner. If the owner commences suit or action to collect demanded compensation, and 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, costs and disbursements.

**Section 158.11. PRIVATE CAUSE OF ACTION.**

If the City Council's approval of a demand by removing, modifying or not applying a land use regulation causes a reduction in value of other property located in the vicinity of the subject property, the neighbors shall have a cause of action in Oregon Circuit Court to recover from the owner the amount of the reduction in value, and shall also be entitled to attorney's fees. This section does not create a cause of action against the City of Oakridge.

**Section 158.12. ORDINANCE INTERPRETATION.**

This Ordinance shall be interpreted and applied to demands filed with the City in a manner consistent with Measure 37 as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State administrative agencies, and as interpreted by Oregon courts. Any demand 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 or by a court of competent jurisdiction. This Ordinance is adopted solely to address demands filed under the authority of Measure 37. Except as expressly provided in Section 10, no rights independent of said provisions are created by adoption of this Ordinance.

**Section 158.13. AVAILABILITY OF FUNDS TO PAY DEMANDS.**

Compensation can only be paid by City based upon the availability and appropriation of funds for this purpose.

**Section 158.14. SEVERABILITY.**

If any phrase, clause, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

**Section 158.15. EMERGENCY CLAUSE AND EFFECTIVE DATE.**

It is hereby adjudged and declared that, because Measure 37, passed November 2, 2004, becomes effective on December 2, 2004, and it is essential to have a process for reviewing demands under the law by this effective date, this Ordinance is necessary for the preservation of the health, safety, welfare and financial integrity of City. For these reasons, an emergency is hereby declared to exist, and this Ordinance shall take full force and effect when signed by the Mayor.

READ FOR A FIRST TIME, BY TITLE ONLY, this 18<sup>th</sup> day of November, 2004, no Council person present having requested that it be read in full.

READ FOR A SECOND TIME, BY TITLE ONLY, AND FOR FINAL ADOPTION, this 18<sup>th</sup> day of November, 2004, no Council person having requested that it be read in full.

PASSED AND ADOPTED by a 4-0 vote of the Oakridge City Council.

DATED this 18<sup>th</sup> day of November, 2004.

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S. Sue Bond, Mayor

ATTEST:

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Chantell Hayson, City Recorder