

ORDINANCE NO. 3712

AN ORDINANCE ESTABLISHING A PROCESS FOR CONSIDERING CLAIMS FOR DIMINISHED PROPERTY VALUE

Whereas, On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 that amended Oregon Revised Statutes Chapter 197 to require governments pay compensation to present owners of real property if land use regulations restrict the use of the property such that it reduces its fair market value or, in the alternative, forego enforcement of the regulation (waiver) which restricts the use beyond those restrictions in place on the property at the time the owner acquired the property; and

Whereas, Ballot Measure 37 provides that in order to receive compensation or waiver of a land use regulation, a present owner of real property (claimant) must make a written “demand for compensation” (claim) to the government entity enacting or enforcing a land use regulation that allegedly restricts the use of their property in this manner; and

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

Whereas, It is in the interest of the citizens of the City of Pendleton to adopt such procedures to ensure fair and timely review of claims and to protect the public from the detrimental effects to the public health, safety, and welfare that would result from the granting of non-meritorious claims; and

Whereas, The city wishes to do this by providing a process for the orderly review of claims; establishing a minimum amount of factual and analytical information a claimant must provide in order to file a claim; defining key terms and clarifying ambiguities in the text of the ballot measure; and establishing a fee to offset part of the cost to the general public of evaluating claims; and

Whereas, Waiver or modification of land use regulations may negatively impact the fair market value of neighboring properties. It is in the public interest that the city provide notice of claims to these citizens and provide an avenue for protecting their reasonable investment-backed expectations where they have relied upon land use regulations in purchasing real property by allowing them to seek to recover from the claimant the amount of their damages through “Private Right of Action” in circuit court;

Now, therefore,

The City of Pendleton Ordains as Follows:

Section 1: PURPOSE.

The purpose of this Ordinance is to implement Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004, and to:

- establish a procedure to process demands for compensation (claims) quickly, openly, thoroughly, and consistent with the law;
- enable present real property owners (claimants) making claims to have an adequate and fair opportunity to present their claims to the City;
- provide the City with the factual and analytical information necessary to adequately and fairly consider claims;
- ascertain city liability for compensation apart from State of Oregon (state) or Umatilla County liability;
- take appropriate action under the alternatives provided by law; to preserve and protect limited public funds;
- preserve and protect the interests of the community by providing for public input into the process of reviewing claims; and
- establish a record of decisions capable of withstanding legal review.

Section 2. DEFINITIONS.

For purposes of this Ordinance, the following definitions apply:

APPRAISAL. A written appraisal concluding to Fair Market Value of real property prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674 and meeting the appraisal requirements set forth in Uniform Standards of Professional Appraisal Practice (USPAP). In the case of commercial or industrial property, the term “appraisal” additionally means a written appraisal concluding to Fair Market Value prepared by a certified appraiser.

CITY MANAGER. The City Manager of Pendleton or the manager's designee.

CLAIM. 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” as complete.

CLAIMANT. Present owner(s) of real property. See definition for “owner.”

DEMAND. “Claim” and “written demand for compensation” as defined herein.

EXEMPT LAND USE REGULATION. Those land use regulations that are specifically listed as exempt from compensation or waiver requirements as set forth in Ballot Measure 37 and in Section 3 of this Ordinance.

FAMILY MEMBER. 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. A physical improvement on real property related to use of the land or an activity which is conducted on real property (examples: residential use, commercial use, industrial use, community service use, farm use or forest use).

LAND USE REGULATION. Includes:

- (1) Any statute regulating the use of land or any interest therein;
- (2) Administrative rules and goals of the Land Conservation and Development Commission; and,
- (3) Pendleton's comprehensive plan, zoning ordinance, land division ordinance, or transportation ordinance.

OWNER. The present owner(s) of real property, or any interest therein, which is the subject of a claim. The owner is 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.

PROPERTY. Private real property, or interest therein, as described in a deed or other legal instrument, which existed on the date of the claim.

REDUCTION IN VALUE. The difference in the fair market value of the property with certain land use regulations enforced or applied; and the fair market value of the subject property without those land use regulations enforced or applied to the property.

RESTRICTS THE USE. A land use regulation that prohibits a land use or limits the manner in which it can be established on the property.

VALID CLAIM. A claim submitted by the owner of real property that is subject to a land use regulation enacted and/or enforced by The City of Pendleton that restricts the use of the private real property in a manner that reduces the fair market value of the real property and meets all the requirements of this Ordinance

WRITTEN DEMAND FOR COMPENSATION. "Claim" or "demand" as defined herein.

Section 3. APPLICABILITY AND EXCEPTIONS.

(A) An owner of private real property located within The City of Pendleton may file a claim under this Ordinance if city enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to December 2, 2004, the effective date of Ballot Measure 37, and it restricts the use of private real property, or any interest therein, and has the effect of reducing the fair market value of the property, or any interest therein.

(B) This Ordinance, in compliance with ORS Chapter 197, as amended by Ballot Measure 37, does not allow claims for certain categories of regulations which may reduce the fair market value of the property, or any interest therein. The categories of regulations that are exempt from claims for compensation include the following:

(1) A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law and the criminal laws of Oregon and The City of Pendleton;

(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.

Section 4. SCOPE OF CLAIMS.

(A) An owner of private real property located within the City of Pendleton, or an owner of contiguous parcels purchased at the same time, who asserts a right to compensation under ORS 197, as amended by Ballot Measure 37, shall make a claim for compensation as provided in this Ordinance. Owners of noncontiguous properties must file separate claims.

(B) A claim must identify each land use regulation which the owner asserts restricts the use of a property and has the effect of reducing the fair market value of the property.

(C) If an owner wishes to assert that more than one regulation restricts use of the property, and has the effect of reducing the fair market value of the property, all claims regarding that property must be filed simultaneously and considered by the city simultaneously.

(D) Separate claims must be submitted for each parcel of real property.

(E) Claims based on regulations that contain discretionary criteria for approval of development on a property may only be filed after the City of Pendleton has enforced its regulations through approval or denial of a land use application. Such an approval or denial is necessary to establish whether a particular land use regulation “restricts the use” of a property.

Section 5. CONTENT OF WRITTEN CLAIM.

(A) A Claim pursuant to Section 3 of this Ordinance shall only be submitted to and accepted for review by the City Manager and shall include the following information:

(1) The amount of the claim, based upon the alleged reduction in value,

(2) A description of the private real property for which the owner is claiming compensation, including the street address and either a legal description or a County Tax Assessor’s description of the property. The description shall specifically identify whether the claim relates to real property other than land or to an ownership interest less than fee simple absolute;

(3) The date the claimant acquired ownership of or an interest in the real property and a copy of the document which provides proof of this ownership;

(4) If the claim is based upon the date a family member acquired the property, then documentation sufficient to establish the familial relationship along with a chain of title showing continual ownership;

(5) Identification of the specific land use regulations which restrict the owner’s use of the real property and for which the owner is claiming compensation;

(6) A statement describing the manner in which, and the extent to which, the regulation restricts the use of the private real property and has the effect of reducing the fair market value of the property for which the owner is claiming compensation;

(7) A statement of the relief sought by the owner, such as a monetary payment in a specific amount; waiver of the applicable regulation; or modification of the applicable regulation. If a modification of the regulation is sought, then a description of the desired modification must be included;

- (8) Payment of any required claim processing fee; and
- (9) The signature of the claimant.

(B) A Claim pursuant to Section 3 of this Ordinance may, at the claimant's option, include the following additional information:

(1) The name, address, and telephone number of all owners and anyone with an interest in the property, including lien holders, trustees, renters, and lessees, together with a description of the ownership interest of each;

(2) An appraisal supporting the amount of the claim, based upon the alleged reduction in value, of the private real property for which the owner is asserting a claim.

(3) A title report, including title history, verifying the ownership or interests in the private real property; and

(4) Copies of any Covenants, Conditions and Restrictions (CCR's), leases, or other encumbrances applicable to the real property;

(C) The City Manager shall conduct a completeness review within 28 days after submittal of the claim and shall advise the owner, in writing, of any material remaining to be submitted. Once all of the required materials for a complete claim are received, the City Manager shall declare the claim complete and send the notice required by Section 7 (A) and (B) of this Ordinance.

(D) Commencement of the 180-day period allowed for local government claim procedures prior to any cause of action being authorized for the owner in circuit court as specified in Oregon Revised Statutes Chapter 197 starts on the date the City Manager deems the claim complete and accepts it for filing.

Section 6. CLAIM PROCESSING FEES.

(A) The Claim Processing Fees shall cover part of the actual administrative costs to city for processing a claim. An owner shall pay \$200 at the time the owner submits a claim to the City Manager.

Section 7. CLAIM REVIEW PROCESS.

(A) After a claim for compensation is declared complete pursuant to Section 5 of this Ordinance, the City Manager shall mail notice of the claim to the claimant, other owners of record of the property, and all owners of property within 250 feet of the subject property. Additional mail notice shall be sent to any public entities with land use regulatory authority over the property and other organizations or persons as the City Manager may designate.

(B) The City Manager's notice under subsection (A) shall:

(1) Indicate the date that the claim was filed;

(2) State the basis of the claim, the amount of the compensation sought and the land use regulation that the owner asserts gives rise to a claim;

(3) Identify the property by the street address or other easily understood geographical reference;

(4) State that persons noticed may provide written comments on the claim, and provide the date written comments are due;

(5) Indicate a time frame within which the City will take action on the claim and identify how interested persons can learn of the specific date the City Planning Commission and City Council will meet on the matter, once meeting dates are set;

(6) Provide the name and phone number of a city representative who can be contacted for additional information; and

(7) State that a copy of the claim and the supporting documents submitted by the owner are available for inspection at no cost, or that copies will be provided at reasonable cost.

(C) Written comments regarding the demand may be submitted to the City Manager by any interested person. Comments must be received by the City Manager within 14 days from the date of the notice required under subsections (A) and (B) above. The owner shall have an additional 14 days after the deadline set out above to respond to any written comments received by the City Manager.

(D) The City Manager shall prepare a staff report for the Council within 35 days after the comment period has ended. The report shall apply the standards of Oregon Revised Statutes Chapter 197, as implemented through this Ordinance, to the claim and shall include options for Council action.

(E) The City Manager will make the staff report available to the claimant and the public at least 14 days prior to the Planning Commission meeting.

(F) The Planning Commission shall conduct a public hearing and make a recommendation to the City Council. The procedures for the hearing must include, but are not limited to staff presentation and public testimony.

(G) After the Planning Commission Hearing, the Planning Commission shall make proposed findings of fact and a recommendation to the City Council..

(H) The City Council shall conduct a public hearing before taking final action on the claim. The procedures for the hearing must include, but are not limited to staff presentation and public testimony, followed by deliberation and a decision by the Council.

(I) The Council's options for its decision include, but are not limited to the following:

(J) Find the claim invalid and issue a Council Order to deny the claim based on one or more of the following findings:

(a) The land use regulation does not restrict the use of the private real property;

(b) The fair market value of the property is not reduced by the enactment, enforcement or application of the land use regulation;

(c) The demand was not timely filed;

(d) The owner failed to comply with the requirements for making a demand as set forth in this Ordinance;

(e) The owner is not the present property owner, or the property was not owned by a family member or the claimant was not the property owner at the time the land use regulation was enacted, enforced or applied;

(f) The land use regulation is an exempt regulation as defined in Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004;

(g) The land use regulation in question is not an enactment of the city;

(h) The city has not taken final action to enact, or enforce the land use regulation to the property;

(I) The owner is not entitled to compensation under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004, for a reason other than those provided herein.

(2) Find the claim valid and issue a Council Order to award compensation, either in the amount requested, or in some other amount supported by the evidence in the record, subject to the availability and appropriation of funds for that purpose;

(3) Find the claim valid and issue a Council Order to modify the regulation which restricts the use beyond those restrictions in place on the property at the time the owner acquired the property; or

(4) Find the claim valid and issue a Council Order to waive the regulation which restricts the use beyond those restrictions in place on the property at the time the owner acquired the property.

(K) If the Council modifies or waives the challenged city land use regulation in response to a claim by owner, the modification or waiver is valid only as to those regulations listed in the claim which were found by the Council to be valid; all other current regulations remain in effect. The Council may, at its discretion, reinstate any or all of the land use regulations in effect at the time the owner acquired the property.

(L) The final decision on a claim shall be made by the Council. After review the Council shall, under the standards of Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 determine whether compensation is granted, the amount of compensation if any, whether any exceptions to the requirement for compensation apply or whether the regulation should be modified, removed or deemed not to apply to the property. A copy of the Council decision shall be sent by first class mail to the owner and to each individual or entity that participated in the City Manager, Planning Commission, or Council process, provided a mailing address was provided to the City Manager as part of the claim process.

(M) Waiver of a city land use regulation does not constitute a waiver of any corresponding state statutes.

(N) A decision by the Council to waive or modify a land use regulation shall be personal to the owner and shall automatically become invalid and void upon transfer of any ownership interest in the subject property. Upon transfer of any ownership interest in the subject property such that no ownership interest remains in the owner at the time of the waiver or modification or in a member of the family of the owner at the time of the waiver or modification, any use of the property that is not consistent with regulations in effect at the time of transfer, shall be deemed to be a nonconforming use and all state laws, rules and city ordinance provisions relating to nonconforming uses shall be applicable, including the right to continue a non-conforming use subject to regulations that provide that a non-conforming use may be altered, repaired, or restored, and will be discontinued for non-use..

(O) If the Council issues an Order finding that an owner has a valid claim and granting compensation or a modification or a waiver, the City may record a copy of the Order in the Recorder's Office of Umatilla County. The Order must include a legal description of the subject property.

(P) This Ordinance shall be interpreted in a manner consistent with Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004, and other implementing statutes or regulations and as interpreted by Oregon appellate courts.

Section 8. CONDITIONS OF APPROVAL, REVOCATION OF DECISION.

(A) The Council may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under Section 7 of this Ordinance.

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

(C) In the event the owner, or the owner's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the conditions of approval, the City Manager may institute a revocation or modification proceeding before the Council under the same process for Council review of a claim under this Ordinance.

Section 9. ATTORNEY FEES ON DELAYED COMPENSATION.

(A) If a demand under Oregon Revised Statutes Chapter 197 and this Ordinance is denied or not fully paid within 180 days of the date of filing a completed demand, the owner's reasonable attorney fees and expenses necessary to collect compensation will be added as additional compensation provided compensation is awarded to the owner. If such demand is denied, not fully paid, or other action taken under Oregon Revised Statutes Chapter 197, within 180 days of the date of filing a completed demand, and the owner commences suit or action to collect compensation, if 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.

(B) In the event city is the prevailing party and is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally charged and paid in The City of Pendleton, Oregon for the type of legal services performed.

Section 10. AVAILABILITY OF FUNDS TO PAY CLAIMS.

Compensation can only be paid from funds specifically allocated for the payment of claims and available for that purpose.

Section 11. PRIVATE RIGHT OF ACTION.

If the 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 City of Pendleton, the affected party 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.

Section 12. APPLICABLE STATE LAW.

For all demands filed, the applicable state laws are those portions of Oregon Revised Statutes Chapter 197 added or made a part of said Chapter by Ballot Measure 37, passed on November 2, 2004 amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature, Oregon State Administrative Agencies or this Ordinance. 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 and this Ordinance shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level.

PASSED by the City Council and approved by the Mayor December 20, 2004

APPROVED: _____
Mayor

ATTEST: _____
City Recorder

APPROVED AS TO FORM:

Peter H. Wells
City Attorney

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January 3, 2005