

November 24, 2004

**ORDINANCE NO.**

**AN ORDINANCE CONCERNING REAL PROPERTY COMPENSATION;  
ADOPTING PROCEDURES FOR PROCESSING DEMANDS; ADDING TO CHAPTER 2  
"GOVERNMENT AND ADMINISTRATION" OF THE SPRINGFIELD MUNICIPAL  
CODE, SECTION 2.900 ET SEQ. "DEMANDS FOR REAL PROPERTY  
COMPENSATION" DECLARING AN EMERGENCY; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

**THE CITY OF SPRINGFIELD DOES ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 2 "Government and Administration of the Springfield Municipal Code is hereby amended by addition of the following sections implementing a process of reviewing Demands for real property compensation under Oregon Revised Statutes Chapter 197 as amended by Ballot Measure 37 passed November 2, 2004.

"DEMANDS FOR REAL PROPERTY COMPENSATION"

Section 2.900 "Title" through 2.995 shall be known as "Demands for Real Property Compensation"

Section 2.910 "Findings and Purpose"

- (1) This Ordinance is intended to implement Ballot Measure 37 approved by the voters of the State of Oregon on November 2, 2004 which amended Oregon Revised Statutes Chapter 197 to require, under certain specific circumstances, payment of compensation to present Owner of real property if government land use regulations reduce fair market property value; and
- (2) Ballot Measure 37 provides that in order to receive compensation, a present Owner of real property must make a written "Demand for compensation" to the government entity enacting or enforcing a land use regulation that allegedly restricts the use of their property and has had the effect of reducing the fair market value of the property. The government entity has 180 calendar days after the Owner of the real property makes the written Demand for just compensation before the property Owner is allowed to file an action in Circuit Court for just compensation, and obtain attorney's fees, expenses, and costs reasonably incurred in addition to just compensation; and
- (3) Ballot Measure 37 authorizes the City to adopt and apply procedures for processing Demands for just compensation,

- but complying with the City procedures is not a prerequisite to filing a just compensation Demand in Circuit Court after 180 calendar days from making a written Demand for just compensation. In addition, the present Owner of real property's failure to file an application for a land use permit may not serve as grounds for dismissal, abatement or delay of a just compensation Demand; and
- (4) Ballot Measure 37 requires payment of just compensation for any reduction in fair market value of the real property resulting from enactment or enforcement of the land use regulation as of the date the Owner makes written Demand for just compensation; and
  - (5) Ballot Measure 37 also provides that in lieu of payment of just compensation a City may, in its discretion, decide to modify, remove or not apply the land use regulation causing the alleged reduction in fair market value instead of payment; and
  - (6) Because Ballot Measure 37 imposes an unfunded duty on the City to review Demands for compensation and make decisions on disposition of those Demands, Ballot Measure 37 and the public interest requires that such determinations be based on substantial factual information and analysis, provided by a present real property Owner at the time a written Demand is made for compensation; and
  - (7) It is in the best interests of the City to establish a process to consider such Demands in a timely manner by establishing, among other things, a procedure that requires a minimum amount of factual and analytical information be included with the Demand for compensation at the time the City accepts any written Demand for compensation.
  - (8) These provisions establish a prompt, open, thorough and consistent process that enables property Owners an adequate and fair opportunity to present their Demands to the City; informs the public of the Demands made and their resolution; preserves and protects limited public funds; and establishes a record of the City's decision capable of circuit court review.
  - (9) In interpreting this Ordinance it is intended that except as may be specifically modified by Ballot Measure 37, the City has all powers of Chapter II of the 2001 Springfield Charter.

**Section 2.920 Definitions.** As used in this Ordinance, the following words and phrases mean:

- (1) **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.
- (2) **City Manager.** The City Manager of the City of Springfield, or his or her designee. Designee may be one or more persons.
- (3) **Demand.** A Demand means the "written Demand for compensation" required to be filed by an Owner of "real property under ORS Chapter 197 as amended by Ballot Measure 37, passed November 2, 2004.
- (4) **Exempt Land Use Regulation.** A land use regulation that:
  - (a) Restricts or prohibits activities commonly known and historically recognized as public nuisances under common law, including but not limited to Springfield Municipal Code Chapter 5 as amended from time to time and the criminal laws of the State of Oregon and the City of Springfield;
  - (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 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;
- (d) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- (e) Statutes and administrative rules regulating farming and forest practices.

**(7) Owner.** The present Owner or Owners of the property, or any interest therein.

**(8) Valid Demand.** A Demand submitted by the Owner of real property pursuant to Springfield Municipal Code Sections 2.900 through 2.995 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 2.925 Optional Pre-Demand Conference.** Before submitting a Demand, the Owner may request and attend a Pre-Demand Conference with the City Manager to discuss the Demand. The Owner is encouraged to contact the City Manager to schedule a conference at mutual convenience. The Optional Pre-Demand Conference is to encourage the Owner to provide a summary of the Owner's Demand to the City Manager and to enable the City Manager to provide information to the Owner about procedures and regulations that may affect the demand.

**Section 2.930 Demand Application.** An Owner seeking to file a Demand under SMC Sections 2.900 through 2.995 shall be the present Owner or present Owners of the property that is the subject of the Demand. The Demand shall be filed with the City

Manager's office, or other City office if so designated by the City Manager. The Owner is responsible for the completeness and accuracy of the application and supporting data. Unless specifically waived by the City Manager, the following information must be submitted on the Demand:

- (1) A completed application form;
- (2) (a) The name, mailing address, telephone number and authorization signatures for all the property Owners or contract Owners; and the designated Owner or agent who is the Owner's designated representative regarding the processing of the application;  
(b) Every Lessee and Lessor of the property and their mailing address and telephone number.
- (1) A legal description and tax lot number of the property as well as a street address for the property (if any);
- (2) A title report issued within 30 calendar days of the application's submittal, including:
  - (a) Title history,
  - (b) A statement of the date the Owner acquired Ownership of the property,
  - (c) The Ownership interests of all Owners of the property,
  - (d) Every person or entity holding a lien against or security interest in the property,
  - (e) Every person or entity holding a future, contingent, or other interest of any kind in the property;
- (1) A statement specifically identifying all the sections of the Springfield Municipal Code, Springfield Development Code, or other current land use regulation that allegedly restrict(s) the use of the real property and allegedly causes a reduction in the fair market value of the property;
- (2) A statement specifying:
  - (a) The proposed use of the property,
  - (b) The amount of the Demand and the fair market value of the property before and after application of the identified land use regulation, and
  - (c) Why the Owner is entitled to compensation under the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The explanation must address the criteria set forth in SMC Section 2.940(1);
- (1) An appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon

supporting the amount of the Demand that addresses the following issues:

- (a) The appraisal must expressly note all existing infrastructure limitations and value the property without an assumption that the infrastructure will be improved at governmental expense or through discretionary governmental action.
  - (b) The appraisal must expressly address and indicate the amount of the alleged reduction in the fair market value of the property at the time a complete Demand is submitted to the City by showing the difference in the fair market value of the property resulting from enactment or enforcement of each of the identified regulations individually identified in the Demand and after the application of all of the identified regulations cumulatively.
  - (c) The appraisal must expressly consider the effect of the aforesaid Ballot Measure 37 on the availability of other real property including the extent to which the supply of such other real property is or will be increased due to the non-enforcement, discontinuance, repeal or waiver of regulations following the passage of Ballot Measure 37.
- (1) 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.
  - (2) Written permission for access to the property by the City Manager including but not limited to agents or appraisers necessary to evaluate and appraise the property and the Demand for purposes of determining whether or not regulation(s) have had the effect of reducing the fair market value of the property.
  - (3) A statement indicating to whom any compensation determined must be paid.
  - (4) (a) A Demand shall include payment of a fee in the amount established by separate Resolution of the City Council to at least partially cover the City's cost of processing the Demand. The City Manager may waive the fee if the Owner is unable to pay the fee or for other purpose necessary for the public health, safety and welfare.  
(b) The City Manager shall maintain a record of the City's actual cost of processing the Demand, including the cost of obtaining any information required by SMC Section 2.930 which the Owner does not provide to the

- City.
- (c) In the event that the fee is not sufficient to cover all of the City's costs or in the event the Owner fails to pay any fees not waived, then the Owner shall pay the fee or balance owed, if any, upon receipt of an appropriate billing statement from the City.
  - (d) If the fee paid is more than the amount of the City's actual costs in processing the Demand, then the excess shall be returned to the Owner.
  - (e) In the event that the fee is not paid in full within 30 calendar days after receipt of billing, the City may take any enforcement actions provided by law to collect such fee including but not limited to filing a lien on the property.
  - (f) If a Demand is determined to be a Valid Demand the City shall reimburse the Owner for any fee paid.

**2.935 Completeness Review.** The City Manager shall review a Demand application and, within 10 business/working days of its receipt, notify the Owner as to whether the application is complete.

- (1) If the City Manager determines that the application is complete, the City Manager shall begin the application review process.
- (2) If the City Manager determines that the application is incomplete, the City shall advise the Owner in writing of the necessary missing information. Within 10 calendar days of the mailing of a notice of missing information, the Owner may submit to the City a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement indicating an intent to submit missing information shall constitute a waiver of the 180 calendar day deadline contained in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for a period of time equal to the time it takes to supply the missing information. The City shall accept the application and begin review either upon:
  - (a) Receipt of all of the missing information requested by the City;
  - (b) Receipt of a written statement from the Owner indicating that the missing information will not be provided; or
  - (c) The 20<sup>th</sup> calendar day after mailing the notice of missing information referred to above, if the Owner

has not responded; WHICHEVER SHALL FIRST OCCUR.

**2.940 Application Review Criteria.**

- (1) The City Manager shall review any Demand for compensation. The City Manager may establish procedures and take all actions necessary to facilitate such review which are consistent with Section 2.910 "Findings and Purpose" of this Ordinance. An application qualifies for compensation consideration if the Owner has shown that all of the following criteria are met:
  - (a) The City has either enacted or enforced a land use regulation that restricts the use of private real property or any interest therein;
  - (b) The restriction on use has the effect of reducing the fair market value of the subject property or any interest therein;
  - (c) The identified land use regulation was enacted, enforced or applied after the current Owner of the property (the Owner) became the Owner; and
  - (d) The identified regulation is not an exempt regulation as defined in SMC Section 2.920(4).
- (2) If the Owner does not qualify for compensation consideration, the City Manager shall so inform the Owner.

**2.942 Initial Notice of Demand and Recommendation by City Manager.**

- (1) The City Manager shall mail an initial notice of the Demand to:
  - (a) The Owner and to all Owners of record and occupants of the property,
  - (b) All Owners of property within three hundred (300) feet of the property that is subject of the notice, as listed on the most recent property tax assessment roll where such property is located,
  - (c) Notice shall also be provided to anyone with any record interest in the property, including lien holders, trustees, lessors, or lessees as listed on the application, and
  - (d) Additional mailed notice shall be sent to the Oregon Department of Land Conservation and Development, Oregon Department of Justice, Lane Council of Governments and such others as the City Manager may determine.
- (1) The initial notice under this section shall:
  - (a) State the basis of the Demand, the amount of the compensation sought and the regulation(s) that causes the compensation to be alleged to be due.
  - (b) Identify the property by the street address or other easily understood geographical reference;
  - (c) State that persons noticed may provide written comments on the Demand,
  - (d) Provide the date written comments are due,
  - (e) State that a public meeting may be requested, and, if a meeting has been requested pursuant to SMC Section 2.942(4), the date, time and location of the meeting and where oral and written comments may be provided.
  - (f) Include a general explanation of the requirements for submission of written comments or, if a public meeting is to be held, the requirements for submission of comments and the procedure for conduct of public meetings;
  - (g) Identify the City representative and telephone number to contact to obtain additional information; and
  - (h) State that a copy of the Demand and the supporting documents submitted by the Owner are available for inspection at no cost, and that copies will be provided at reasonable cost.

- (1) If there is no request for a public meeting, written comments regarding a Demand may be submitted to the City Manager. The Owner shall have an additional 14 calendar days after the deadline set in paragraph (2d), above, to respond to any written comments received by the City Manager. It is the duty of the Owner to determine if comments have been received by the City Manager.
- (2) The City Manager shall hold a public meeting upon not less than 10 calendar days notice to receive public comment on the Demand:
  - (a) If requested by the Owner in the initial Written Demand; or
  - (b) If requested by another person entitled to notice under SMC Section 2.942(1) of this section, provided that person makes the request within 7 calendar days from the date provided under SMC Section 2.942(2)(e) of this section; or
  - (c) If the City Manager determines that such a public meeting is in the public interest. If the Owner requests a public meeting, the initial notice under SMC Section 2.942(1) and (2) of this section shall provide the date, time and location of the public meeting. If a public meeting is requested by other persons entitled to notice a new notice by the City Manager shall be issued to the remaining persons entitled to notice giving the date, time and location of the public meeting.
- (1) Conduct of requested public meeting:
  - (a) All documents or comments relied upon by the Owner shall be submitted to the City Manager as a part of the Demand. Persons other than the Owner may submit documents or evidence at the public meeting.
  - (b) Any materials to be used at the public meeting shall be available at least 7 calendar days prior to the meeting.
  - (c) The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- (6) The City Manager may, in the City Manager's discretion, retain the services of an Appraiser to appraise the property and evaluate the Demand to assist in determining the validity of a Demand.
- (7) Within 21 calendar days of the close of the period for

written comment or the conclusion of the public meeting if one is requested, the City Manager shall make a recommendation to the City Council, which includes but is not limited to:

- (a) Applying the standards of Oregon Revised Statutes Chapter 197 as amended by Ballot Measure 37, passed November 2, 2004, to the City Council based on all of the information presented.
- (b) Whether modifying, removing or not applying the application of a land use regulation is necessary to avoid entitlement to compensation under the provisions of such act, and if so the extent needed to avoid the entitlement to such compensation and the amount of compensation to which the Owner would be entitled without modifying, removing or not applying the application of a land use regulation.
- (c) Comparing the public benefits from the application of the land use regulation to the private property with the public burden of paying the required compensation to the Owner if a modification or waiver of the land use regulation is not granted taking into consideration the financial resources of the City for such Demands.
- (d) The recommendation may include but is not limited to whether compensation shall be paid, the amount of compensation to be paid, and whether any specific land use regulation should be modified, removed or not applied to the property.
- (e) Should compensation be recommended by the City Manager, the recommendation to the City Council may include establishing any relevant conditions of approval for compensation.
- (f) Recommending any of the actions set forth in SMC Section 2.945.

**2.945 City Council Public Hearing Notice.** The City Manager shall schedule a public hearing with the City Council upon completion of the written recommendation for the Demand.

- (1) The City Manager shall mail written notice of the application to all of the following not less than 20 calendar days before the public hearing:
  - (a) The Owner;
  - (b) Other Owners of the property and anyone with any record interest in the property, including lien

- holders, trustees, renters, or lessees, as listed on the application;
- (c) All individuals and entities that provided written comments and/or participated in the City Manager's initial notice including the public meeting, if any.
  - (d) Owners of record on the most recent property tax assessment roll of properties located within 300 feet of the perimeter of the property;
  - (e) Neighborhood groups or community organizations officially recognized by the City Council and whose boundaries include the property; and
  - (f) Other agencies or interested parties as determined by the City Manager.
- (2) The public hearing notice shall include all of the following:
- (a) The street address or other easily understood geographical reference to the property;
  - (b) The criteria for the Council decision;
  - (c) The place, date and location of the hearing;
  - (d) The nature of the application and the proposed use or uses which could be established on the property if the identified land use regulation is waived or modified with respect to the property;
  - (e) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
  - (f) The name and telephone number of a City contact person;
  - (g) A brief summary of the local decision making process for the decision being made.
  - (h) The recommendation of the City Manager.

#### **2.947 City Council Consideration and Decision.**

The hearing before the City Council shall be based upon the recommendation of the City Manager and all information and comments submitted to the City Manager and other materials provided by the City Manager relevant to the application and all other information and comments provided to the City Council subsequent to the City Manager's recommendation. Upon conclusion of any public hearing on a Demand Application and the City Manager's recommendation and prior to the expiration of 180 calendar days from the date a Demand was filed, the City Council

shall take one or more of the following actions on the Demand:

- (1) Deny the Demand based on, but not limited to, any 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 under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004, for a reason other than those provided herein;
  - (d) The Owner failed to comply with the requirements for making a Demand as set forth in this article;
  - (e) The Owner is not the present property Owner, or the property was not owned by a family member if that is required for compensation, or 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, enforce or apply 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) Declare:
  - (a) The Demand is a valid Demand and the amount of compensation, if any, due to the Owner of the property; or
  - (b) The Demand is a valid Demand and the City will, as of the date of the final City Council decision modify, remove or choose not to apply the identified land use regulation(s) in a manner which reduces the value of the property and allows the Owner to use the property for a use permitted at the time the Owner acquired the property.
- (3) Any decision to award compensation, either in the amount requested, or in some other amount supported by the

evidence in the record, is subject to the City Council's sole discretion as to the availability and appropriation of funds for that purpose.

- (4) The City Council may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under SMC Section 2.947 of this Article.
- (5) Determine that the Demand is a valid Demand and the City should acquire the property or a portion thereof in fee or acquire an interest in the property including but not limited to acquisition of an easement.
- (6) Take such other actions as the City Council deems appropriate consistent with Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004.
- (7) If the City Council removes, modifies, or does not apply the identified land use regulations, it may in its discretion put back into effect with respect to the property, all of the land use regulations in effect at the time the Owner acquired the property.
- (8) The Owner shall bear the burden of proof relating to the Demand and entitlement to just compensation. The City shall bear the burden of proof to show that the regulation is exempt under Oregon Revised Statutes Chapter 197, as amended by Ballot measure 37, passed November 2, 2004. The standard of proof shall be by a preponderance of the evidence.
- (9) The final decision on a Demand which is the subject of a City Manager recommendation shall be made by the City Council after review under the standards of Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004, and the criteria enumerated in SMC Sections 2.940, 2.945 and 2.947 above. The Council's decision shall be based upon consideration of whether the public interest would better be served by granting compensation, 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. Within 7 calendar days after the City Council renders a decision on the Demand, a copy of the City Council decision shall be sent by mail to the Owner and to each individual or entity that participated in the City Manager or City Council review process, provided a mailing address was provided to the

City as part of the review process.

- (10) A copy of the City Council decision shall be recorded in Lane County Deeds and Records.

**2.950 Conditions of Approval, Revocation of Decision and Transfer of Approval Rights.**

- (1) Failure to comply with any condition of approval established pursuant to SMC Section 2.947 is grounds for revocation of the approval of the compensation for the Demand, grounds for recovering any compensation paid and grounds for revocation of any other action taken under SMC Section 2.947 of this Article.
- (2) 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 may institute a revocation or modification proceeding before the City Council under the same process for City Manager and City Council review of a Demand under this Article.

**2.953 City Council Decision Effect.**

- (1) Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the City, and notwithstanding any other procedure for release, exception, or otherwise in the Springfield Municipal Code, the City Council is authorized to modify, remove, or not apply application of a identified land use regulation by Order pursuant to SMC Sections 2.900 through 2.995 when the City Council, in its discretion, elects to do so rather than paying compensation to the property Owner.
- (2) Except as specified in 2.953(3) and (4) unless otherwise stated in the City Council's decision, any action taken under this Article to remove, modify or not apply application of an identified land use regulation runs with the property and is transferred with ownership of the property. All conditions, time limits or other restrictions imposed with the approval of a Demand will bind all subsequent owners of the subject property.
- (3) If the City Council grants an Order modifying, removing or not applying application of an identified land use regulation as a means to avoid having to compensate, or as

a means to limit compensation to, an Owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on an appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying Owner was not entitled to compensation in relation to the modified, removed, or not applied identified land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Council's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the Owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

- (4) Any modification, removal or not applied application of an identified land use regulation Order granted under SMC Sections 2.900 through 2.995 shall terminate automatically on the occurrence of any event which determines the Owner or future Owner of the private real property that is the subject of the modified, removed, or not applied application of a identified land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the City Council Order.

#### **2.955 Ex Parte Contacts, Conflict of Interest and Bias.**

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

- (1) Any factual information obtained by the City Manager or a member of the City Council outside the information provided by City staff, or outside of the formal written comments process or hearing will be deemed an ex parte contact. The City Manager 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 Manager or member of the City Council.
- (2) Whenever the City Manager or a member of the City Council, or any member of their immediate family or household, has a

financial interest in the outcome of a particular Demand or lives within the area entitled to notice of the Demand, that City Manager or member of the City Council shall not participate in the deliberation or decision on that application.

- (3) All decisions on Demands must be fair, impartial and based on the applicable review standards and the evidence in the record. Any City Manager or 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.

#### **2.960 Attorney Fees On Delayed Compensation.**

If a Demand under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004, and this Article is denied or not fully paid within 180 calendar 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, as amended by Ballot Measure 37, passed November 2, 2004, within 180 calendar days of the date of filing a completed Demand, 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.

#### **2.965 Availability of Funds to Pay Demands.**

Compensation pursuant to SMC Sections 2.900 through 2.995 can only be paid based on the City Council's discretion and determination of the availability and appropriation of funds for this purpose.

#### **2.970 Severability.**

If any phrase, clause, or other part or parts of this Article is 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.

**2.975 Applicable State Law, No Independent Rights Created by this Article.**

For all Demands filed the applicable State Law is 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 and/or as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State Administrative Agencies. Any Demand that has not been processed completely under this Article shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Article shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level. This Article is adopted solely to address Demands filed under the authority of those provisions of Oregon Revised Statutes Chapter 197 added or made a part of said Chapter by Ballot Measure 37, passed November 2, 2004. Except as may be specified in SMC Section 2.980, no rights independent of said provisions are created by adoption of this Article.

**Section 2.980. Private Cause of Action.** If the City Council's approval of a Demand by removing or modifying a land use regulation causes a reduction in value of other property located in the vicinity of the property, the Owner of the other property shall have a cause of action in the appropriate Oregon Circuit Court to recover from the Owner of the property subject to the Demand in the amount of such reduction in value. A person who recovers for a reduction in value of property under this section shall also be entitled to recover attorney fees and disbursements from the Owner of the property subject to the Demand. This section does not create a cause of action against the City of Springfield.

**2.985 Timelines/Deadlines.** Except as may be required by those provisions of Chapter 197 added or made a part of said chapter by Ballot Measure 37 (November 2, 2004), all timelines and deadlines imposed by this chapter are for the convenience in the City's process to address the Demands made under such law, and may, in the discretion of the City, be waived by the City Manager or City Council.

**Section 2.990 Notification.** The failure of a person entitled to notice to receive notice as provided in this section shall not

invalidate such proceedings if the City can demonstrate by affidavit that such notice was given.

**Section 2.995 Interpretation.** This Article 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 2.** The City Recorder, at the request of or with the concurrence with the City Attorney, is authorized to administratively correct any references contained herein or other provisions of the Springfield Municipal Code to address provisions added, amended or repealed herein.

**Section 3.** Emergency Clause and Effective date. This Ordinance, being essential to the preservation of the health, safety, welfare and financial integrity of the City with amendments to Oregon Revised Statutes Chapter 197, from Ballot Measure 37, passed November 2, 2004, becoming effective on December 2, 2004, and it is essential to have a process in place for reviewing Demands under the law on the effective date of Ballot Measure 37, an emergency is hereby declared to exist and this Ordinance is effective on December 2, 2004.

Adopted by the Common Council of the City of Springfield this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by a vote of \_\_\_\_\_ in favor \_\_\_\_\_ against.

Approved by the Mayor of the City of Springfield this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Mayor

ATTEST:

City Recorder