

ORDINANCE NO. 788**AN ORDINANCE ESTABLISHING A PROCEDURE FOR THE PROCESSING OF PRIVATE PROPERTY COMPENSATION CLAIMS PURSUANT TO ORS 197.352 AND DECLARING AN EMERGENCY.**

WHEREAS, The City of Madras is responsible for handling claims brought against it under ORS 197.352, otherwise known as “Measure 37”; and,

WHEREAS, ORS 197.352(7) permits cities to adopt procedural ordinances to assist in the processing of claims.

NOW, THEREFORE, the City of Madras ordains as follows:

ARTICLE I
TITLE, PURPOSE, SCOPE AND DEFINITIONS

SECTION 1.1 TITLE. This ordinance shall be known and may be cited as the Private Property Compensation Claim Ordinance.

SECTION 1.2 PURPOSE AND SCOPE. The purpose of this Section is to establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the City; preserves and protects limited public funds; authorizes, where appropriate, the modification, removal or waiver of City regulations; and establishes a record of the City’s decision capable of judicial review. The provisions of this ordinance shall apply to any claim for compensation by an owner of private real property against the City, which claim is made pursuant to ORS 197.352, and any law or regulation adopted by the State which amends or modifies such measure (collectively referred to herein as “Measure 37”).

SECTION 1.3 DEFINITIONS.

- A. “Claim” means the written demand for compensation or waiver that complies with Section 2.2 below.
- B. “Claimant” means the property owner for which a claim is made pursuant to this Ordinance.

- C. "Claim Eligible" means a finding by the City that the criteria for compensation payment, pursuant to the terms of this Ordinance, have been met.
- D. "Community Development Department" or "CDD" means the City office designated to receive, evaluate and solicit and coordinate public comments concerning Claims submitted under Measure 37.
- E. "Director" means the Director of the Department of Community Development or the Director's designee.
- F. "Exempt Regulation" means a regulation that is any of the following:
1. A historically and commonly recognized public nuisance law;
 2. A regulation which is required in order to comply with federal law or the terms of a federal grant;
 3. A regulation which prohibits or restricts activities for the protection of public health and safety, including fire and life safety and building codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations;
 4. A regulation enacted prior to the date of acquisition of the property by the current property owner or a family member of the current property owner who owned the subject property prior to the acquisition or inheritance by the current owner;
 5. A regulation prohibiting the use of property for selling pornography or performing nude dancing; or
 6. Any regulation determined or declared by judicial decision or legislative act to be exempt.
- G. "Fair Market Value" means the price stated in terms of dollars that a willing buyer would pay for the real property without any obligation to buy from a willing seller without any obligation to sell. "Reduction in fair market value" means the difference in fair market value of the property before and after application or enforcement of the regulation.
- H. "Federal Requirement" means a statute, code or regulation adopted by the U.S. Congress or any federal agency or state agency delegated to act in the name of a federal agency, which imposes upon the state or local

governments or both an obligation to enact or enforce regulations over the use of real property, whether directly or by the terms or conditions of the grant or the receipt of federal funds.

- I. “Nuisance” means a structure or condition on property arising from any act or omission, which unreasonably interferes with a right common to members of the general public and not necessarily related to the use and enjoyment of land by any person other than the owner of the property that is the site of the nuisance.
- J. “Owner” means a person with recorded interest in private, real property, including holders of less than fee simple interests, leasehold owners, and security interest holders.
- K. “Person” means and includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.
- L. “Real Property” means any lot, parcel or tract or any combination thereof, that is owned by a Claimant, including structures built or located on the real property, and any recordable legal, equitable, future or contingent interest in all or any portion of the property. Real Property does not include public property, personal property or easements over, above or below public property. Unless the context otherwise indicates, property shall mean real property.
- M. “Waiver” means a license issued by the City which in accordance with its terms modifies, removes, releases or does not apply certain non-exempt City land use regulations from a property determined to be claim eligible, and which upon acceptance by a Claimant releases the City from any further or future claim, action or demand relating to the Claimant’s real property based upon Measure 37. Waiver includes all terms and conditions attached thereto by the City.

ARTICLE II **CLAIM PROCEDURES**

SECTION 2.1 CLAIM DEADLINES.

- A. For regulations enacted after December 2, 2004 a claim shall be filed no later than two (2) years after the enactment of such regulation.

- B. For regulations enacted before December 2, 2004 or filed more than two (2) years after the enactment of a regulation the Owner must show proof of enforcement of City Regulation that prevents the development sought by providing a copy of the final denial of a land use permit for land division and/or development of the property where the denial is based upon a qualifying land use regulation.

SECTION 2.2 CLAIM CONTENTS.

- A. Fee. A nonrefundable fee of not less than the fee established by resolution of the Madras City Council is to be paid in advance of acceptance for filing. The fee will be used to cover the City's costs of review and processing.
- B. Claimant and property owner information. Identification of the name, mailing address, street address, and phone number of the claimant is required. The above information shall be provided with regard to all owners of the property.
- C. Property Description. A legal description of the property, map and tax lot number, and the common street address for the property is required.
- D. Proof of Ownership. A deed or title report showing all persons with legal, equitable and security interests in the property shall be submitted.
- E. Narrative Statement. The narrative statement shall include the following: the date of acquisition of the property; a correct citation to each City regulation that allegedly restricts the use of the real property and has allegedly caused a reduction in the fair market value of the subject property, including a statement by the Claimant of the date each regulation was first passed, applied or first enforced on the subject property; and, a statement of how the regulation restricts the desired use of the property.
- F. Reduction in Value. Claimant shall provide written evidence of the amount of the claim in dollars based on the alleged reduction in the fair market value of the property resulting from the enforcement of the City's non-exempt land use regulation. The amount of the alleged reduction in the fair market value of the property shall be indicated by showing the difference in the fair market value of the property, determined before and after application or enforcement of the City's non-exempt land use regulation(s).

Written evidence of reduction in value must clearly state:

1. The assumptions related to the regulation(s) restricting the use(s) of the property;
2. The dates of valuation;
3. The method used to determine the reduction in fair market value, including any comparables and assumptions used;
4. The name of the preparer and their qualifications for preparing such evidence;

G. Signature. The claim form shall be signed by all Owners of the property

SECTION 2.3 CLAIM ELIGIBILITY CRITERIA. A claim for compensation shall be deemed claim eligible only if all of the following criteria have been met:

- A. The Claimant is the property owner and the subject property has been owned by the Claimant or by a family member of the Claimant continuously since before adoption or the effective date of the City land use regulation which the Claimant alleges to have caused a reduction in the value of Claimant's property. If the regulation was adopted in any fashion other than an ordinance, the Claimant must establish that he/she was the Owner or a related family member Owner of the property in question on the date that the regulation was first eligible for administrative or judicial enforcement in the City.
- B. It must be determined that the City regulation in question is a nonexempt regulation and the cited regulation(s) is a qualifying land use regulation entitling the property owner to compensation or waiver of the regulation on use of the property under Measure 37.
- C. The provisions of Measure 37 and/or any law or regulation adopted by the State which modifies or implements such measure are in full lawful effect.

ARTICLE III
CLAIM REVIEW PROCEDURES

SECTION 3.1 NOTICE OF CLAIM.

- A. Notice of the Claim shall be sent to all Owners of record of the property, and to all Owners of property within three hundred feet (300') of the Property that is subject of the notice, as listed on the most recent property tax assessment roll where such Property is located. Additional mailed notice shall be sent to the Oregon Department of Land Conservation and Development, Oregon Department of Justice, and such others as the city may designate by council resolution.
- B. The notice under subsection A of this Section shall:
1. State the basis of the Claim, the amount of the compensation sought and the regulation that causes the compensation to be alleged to be due;
 2. Identify the Property by the street address or other easily understood geographical reference;
 3. State that persons notified may provide written comments on the Claim, and the date, time and location of the hearing. Include a general explanation of the requirements for submission of written comments or, if a hearing is to be held, the requirements for submission of testimony and evidence and the procedure for conduct of hearings;
 4. Identify the city representative and telephone number to contact to obtain additional information; and
 5. State that a copy of the Claim and the supporting documents submitted by the Owner are available for inspection at no cost, and that copies will be provided at reasonable cost.
- C. Written comments regarding a Claim may be submitted to the Community Development Department. The Claimant shall have an additional seven (7) days after public comment to respond to any written comments received by the Community Development Department. It is the duty of the Claimant to determine if comments have been received.

- D. The failure of a person entitled to receive notice, as provided in this section, shall not invalidate such proceedings. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television, or other electronic means.

SECTION 3.2 CLAIM REVIEW PROCEDURE.

- A. The Community Development Department shall have the duty to analyze claims for compensation and make a recommendation to the City Council on the disposition of the claim.
- B. Upon the completion of the recommendation the Community Development Department shall submit the same to the City Council, together with written public comments received in writing or via e-mail.
- C. The Claimant or any person entitled to notice in accordance with this ordinance may present oral comments and rebut evidence in the record, including the Community Development Department's report at the City Council meeting in which the recommendation is presented. A public hearing shall not be required.
- D. The City Council shall consider the matter at a regular or special meeting for which notice is given as required by law.

ARTICLE IV **DECISION**

SECTION 4.1 DECISION.

- A. The City Council shall review the CDD recommendation and any testimony, written comments or other documents submitted in support of or opposed to the claim and determine whether or not the claim is, in fact, claim eligible.
- B. The City Council's decision shall be based upon consideration of whether the public interest would be better served by compensating the Claimant, depending upon available resources for payment thereof or by discontinuing to apply the challenged regulation(s) to the use permitted at the time the Claimant acquired the property.

- C. Prior to making a decision, members of the City Council shall not communicate directly or indirectly with any party or the party's representative in connection with any issue involving the pending claim. Should such communication, whether written or oral, occur, the member shall publicly announce for the record the substance of such communication and permit any party the right to rebut the substance of the ex parte communication during the City Council's meeting.
- D. Upon a determination that the claim is claim eligible, the City Council shall do one of the following:
1. Pursuant to Measure 37 authorize by written order the modification, removal, release or waiver of any City land use regulation to the property which is the subject of the claim when the City Council, in its discretion, elects to do so rather than paying compensation to the property; or
 2. Pursuant to Measure 37 declare that compensation is due to the Claimant in an amount determined in the City Council's decision; or
 3. Where more than one regulation is being challenged, the City Council may provide for a combination of remedies listed in this Section.
- E. If the City Council determines that the claim is not claim eligible, it shall adopt an order, including findings of fact and conclusions to explain the basis for its determination. Denial of the Claim may be based on, 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 Claim was not timely filed;
 4. The Claimant 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;
 5. The land use regulation is an Exempt land use regulation as defined in Measure 37 and this ordinance.

6. The land use regulation in question is not an enactment of the City;
 7. The City has not taken final action to enact, enforce or apply the land use regulation to the Property;
 8. The Owner is not entitled to compensation under Measure 37, for a reason other than those provided herein.
- F. 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 manager or City Council review process, provided a mailing address was provided to the 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 subsection
- G. Failure to comply with any condition of approval is grounds for revocation of the approval of the compensation for the Claim, grounds for recovering any compensation paid and grounds for revocation of any other action taken under this Section. A decision to not apply a land use regulation is personal to the Claimant, and shall automatically become void and invalid if the Claimant conveys the Property to another person. Upon completion of a development in a case where the city elected to not apply a land use regulation, the new use shall be a nonconforming use under the City of Madras Zoning or Development Ordinance. A decision to remove, modify or not apply a land use regulation allows the current owner to use the property only for use(s) permitted at the time the owner acquired the property.
- H. In the event the Claimant (or the Claimant's successor in interest, if the development 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.

SECTION 4.2 EFFECT OF A WAIVER.

- A. No compensation shall be due pursuant to the provisions of Measure 37 if a decision is made to modify, remove or waive a City regulation(s) to a Claimant's property within 180 days of the filing of a completed claim for compensation. A decision to modify, remove or not apply one or more City regulations to a given property is not equivalent to approval of a use or development of that property, which shall require separate land use development approval, or the processing of a permit application.

- B. Any improvement or development that occurs based in whole or in part on the City Council's decision that the claim is claim eligible under this ordinance, shall be entitled only to the rights and privileges which Measure 37 provides for a Claimant which establishes a valid claim under Measure 37. Provided however, that nothing contained herein shall be construed as allowing a use of the subject property which was prohibited or restricted by any land use regulation in effect at the time the Claimant acquired the property or any regulation which is not among those regulations included in the waiver.

SECTION 4.3 EFFECT OF PAYMENT OF COMPENSATION CLAIM. The Claimant's acceptance of City's payment of compensation shall forever satisfy the claim of the Owner, and subsequent Owners for the partial taking caused by the regulation(s) in question and/or its present or future enforcement.

ARTICLE V
GENERAL

SECTION 5.1 SEVERABILITY. The provisions of this Ordinance are severable. If any section, sentence, clause or phrase of this Ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of the Ordinance.

SECTION 5.2 CORRECTIONS. This Ordinance may be corrected by order of the City Council to cure editorial and clerical errors.

SECTION 5.3 EMERGENCY CLAUSE. The City Council and the City of Madras, having reviewed the Comprehensive Plan of the City of Madras, and the need for enactment of ordinances to regulate land use within the City, does hereby determine that this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Madras and an emergency is hereby declared to exist, and this Ordinance shall become in full force and effect from and after the date it is enacted and signed by the Mayor.

PASSED by the Council and Approved by the Mayor on May 8, 2007.