

ORDINANCE NO. 757

AN ORDINANCE ADOPTING A NEW CHAPTER OF THE TROUTDALE MUNICIPAL CODE, 2.70, REAL PROPERTY COMPENSATION UNDER CHAPTER 197 OF THE OREGON REVISED STATUTES, AND DECLARING AN EMERGENCY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The voters of the state adopted Ballot Measure 37 in the November 2004 election adding new sections to chapter 197 of the Oregon Revised Statute ("Measure 37").
2. Measure 37 authorizes property owners to file a claim for compensation if a land use regulation restricts the uses of their property and reduces the fair market value of their property.
3. Measure 37 provides that local governments may compensate property owners for the reductions in property values resulting from a land use regulation that restricts the uses of property and reduces the fair market value of the property, or in the alternative, local governments may waive or modify such land use regulations.
4. Measure 37 acknowledges local governments' authority to adopt procedures to process claims for compensation.
5. It is in the City's best interest to establish a process for Measure 37 claims.
6. Measure 37 takes effect December 2, 2004.
7. The City Council is not scheduled to meet again until after December 2, 2004. In accordance with Section 30 of the Troutdale Charter, it is necessary that this ordinance be considered for immediate adoption. Copies of this ordinance have been distributed to the Council and made available for public inspection at least twenty-four (24) hours before its adoption.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. Title 2 of the Troutdale Municipal Code is amended to add a new chapter, 2.70, Real Property Compensation under chapter 197 of the Oregon Revised Statutes, to read as follows:

Chapter 2.70

REAL PROPERTY COMPENSATION UNDER CHAPTER 197 OF THE OREGON REVISED STATUTES

Sections:

2.70.010	Purpose
2.70.020	Definitions
2.70.030	Filing a Claim
2.70.040	Claim Procedure
2.70.050	Appraisal Requirements
2.70.060	Claim Evaluation
2.70.070	City Authority to Waive or Modify the Application of a Regulation
2.70.080	Waiver and Modification
2.70.090	Claim Adjudication Procedure
2.70.100	Claim Criteria

2.70.010 Purpose

The purpose of this chapter is to provide property owners in Troutdale a process to submit claims for compensation under provisions added to chapter 197 of Oregon Revised Statutes by Ballot Measure 37, passed on November 2, 2004.

2.70.020 Definitions

"Appraisal" means a written statement of an opinion of the value of real property prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, and who holds the applicable certification for the type of appraisal being conducted.

"City" means the City of Troutdale, and its officers, employees, or agents.

"City Administrator" means the City Administrator for the City of Troutdale or the City Administrator's designee.

"Claim" means a claim filed under Ballot Measure 37 that fulfills the requirement of Section 2.70.030 of this Chapter.

"Claimant" means a property owner that has filed a claim under this Chapter.

"Director" means the Director of Community Development for the City of Troutdale.

"Exempt Regulation" means a land use regulation that: restricts or prohibits activities commonly and historically recognized as public nuisances under common law; 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; is required in order to comply with federal law; restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or was enacted prior to the date of acquisition of the property by the owner or a family member of the owner.

"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 property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members of the owner of the property.

"Modification" means the City Council's fiscal decision to change the manner in which a land use regulation is applied to a specific property following consideration of a claim for compensation.

"Owner" means a person who presently holds a fee simple interest in property that is the subject of a claim under this Chapter, as reflected in the deed records of Multnomah County, Oregon, or the person who holds any interest in real property that is the subject of a claim under this Chapter as reflected in a written instrument conveying or creating the interest.

"Person" means any individual, sole proprietorship, partnership, corporation, association, other organization or legal entity.

"Proposed Use" means the lawful use of real property proposed by a claimant.

"Reduction in the Fair Market Value" means the difference in the fair market value of the property before and after application of a regulation.

"Land Use Regulation" means any statute regulating the use of land or any interest therein; administrative rules and goals of the Land Conservation and Development Commission; local government comprehensive plans, zoning ordinances, land division ordinances and transportation ordinances; metropolitan service district regional framework plans, functional plans, planning goals and objectives; and statutes and administrative rules regulating farming and forest practices.

"Waiver" means the City Council's fiscal decision not to apply or enforce a regulation because the application or enforcement of the regulation would require the City to compensate a property owner under Measure 37.

2.70.030 Filing a Claim

Any person seeking compensation pursuant to Measure 37, codified in chapter 197 of the Oregon Revised Statutes, must be the owner of the property that is subject to the claim at the time the claim is submitted. The person shall file the claim on an application form provided by the City for such purpose, signed by all present owners of the property that is the subject of the claim. The claimant shall submit a separate application for each property that the claimant owns. A claim for compensation shall not be deemed filed until the application form is fully and properly completed and submitted to the City with the following:

- A. The names, addresses and telephone numbers of all owners of the property that is the subject of the claim.
- B. A application fee in the amount established by resolution. At the City's discretion, the City may retain the services of an independent appraiser to appraise the subject property and to evaluate the claim to assist in determining the validity of the claim. If the City has an independent appraisal performed for the subject property, the claimant shall pay the City the cost it incurs to have the independent appraisal done. The fee is in addition to the application fee and shall be paid within ten days of the date the City requests payment of the additional fee.
- C. A title report that has been issued no more than six months prior to the date of the claim application. The title report must identify all owners of the property, the date the owners acquired their property interest and shall specify any restrictions on use of the property unrelated to the land use regulation including, but not limited to, any restrictions established by Covenants, Conditions and Restrictions (CC&Rs), other private restrictions, or contracts.
- D. A certified list of the property owners for all parcels within 300 feet of the property that is the subject of the claim, together with mailing labels with the name and mailing address for each of the property owners.
- E. A copy of the existing land use regulation that the claimant believes caused a reduction in the fair market value of the property, including the date the owner claims the land use regulation was first enacted, enforced, or applied to the property, and an explanation regarding the reasons why the land use regulation is not an exempt regulation.
- F. A copy of the land use regulation in existence and applicable to the property when the claimant became the owner of the property.
- G. A narrative explaining the history of the claimant and/or family member's ownership of the property, the history of the relevant land use regulations applicable to the claim, and how the enactment, enforcement or application of the land use regulation restricts the use of the property and causes a reduction in the fair market value of the property.

- H. Proof that the prior owner was a family member of the present owner if the claim is based on descent.
- I. A copy of an appraisal indicating the amount of the alleged reduction in the fair market value of the property and explaining the rationale and factors leading to that conclusion.
- J. A list of all of the land use and building permits that have been issued or sought by the claimant and/or family member for the property that is the subject of the claim, a summary of the disposition of the land use or building permit applications, and a summary of any enforcement actions that involve the claimant's property.
- K. A statement of the claimant's proposed use of the property that is the subject of the claim together with a statement of the claimant's understanding of what effect a modification, or waiver of the land use regulation would have on the potential development of the property, stating the greatest degree of development that the claimant believes would be permitted on the property if the identified land use regulation were modified, or waived.
- L. Any other reasonably requested information deemed necessary by the City to evaluate the claim.

2.70.040 Claim Procedure

- A. A claim for compensation shall be treated as preliminarily filed until the Director of Community Development certifies that the claim is complete. Within 30 days of the receipt of the preliminary claim, the Director shall review the claim and determine whether it is complete. If the claim is deemed complete, a letter of completeness shall be mailed to the claimant informing the claimant that the claim is deemed filed. In the event that a claim is determined to be incomplete, the city shall notify the claimant of the deficiencies in the claim and the preliminary claim shall not be deemed filed until such time as the deficiencies have been corrected. The claimant shall submit the material needed for completeness within 30 days of the written notice that additional material remains to be submitted. If the claimant fails to provide the materials necessary to make the claim complete within the 30-day period, the Director shall deny the claim based on its incompleteness.
- B. All claim application forms shall have the date when the claim is deemed complete and filed noted on it. The 180-day period required to pass prior to any cause of action being available to a claimant in circuit court shall commence on the date a complete claim is filed, as noted on the application.
- C. After a complete claim has been filed, the Director shall set a public hearing before the City Council. The date for the public hearing shall be no later than 60 days from the date the claim was deemed complete.

- D. Notice of the public hearing shall be provided to the claimant and to the owners of property within 300 feet of the property that is the subject of the claim.
- E. A notice of the public hearing shall be posted in at least one conspicuous place within the boundary of the property that is the subject of the claim.
- F. The Director shall make a recommendation to the City Council based on all the information presented with the claim.

2.70.050 Appraisal Requirements

A claimant's appraisal offered to support a claim for compensation pursuant to the terms of this chapter shall comply with the following requirements:

- 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 indicate the amount of the alleged reduction in fair market value of the property;
- C. The appraisal must expressly consider the effect a waiver or modification of land use regulations, as applied to the claimant's and similarly situated properties, will have on the availability of other property, including the extent to which the supply of other property is or will be increased; and
- D. The appraisal shall address any other matters the City determines are reasonably necessary to adequately evaluate the claim for compensation.

2.70.060 Claim Evaluation

- A. After the Director determines that a complete claim has been filed, the Director shall forward a recommendation to the City Council that the claim be:
 - 1. Denied;
 - 2. Declared valid and that the land use regulation be waived or modified;
 - 3. Declared valid and that compensation be awarded in accordance with an appraisal; or
 - 4. Evaluated further with the expectation that the City will acquire the property by condemnation.

2.70.070 City Authority to Waive or Modify the Application of a Regulation

- A. The City acting through the City Council may waive or modify any regulation which the Council determines will entitle an owner to compensation pursuant to Section 2.70.080 of this chapter. The waiver or modification of a regulation shall relieve the owner of the owner's obligation to comply with the regulation to the extent that a waiver or modification is required to avoid paying compensation under Measure 37.
- B. The waiver or modification issued to the claimant shall apply only to the specific property which the Council has determined complies with the criteria in Section 2.70.100 of this chapter and shall be personal to the claimant.
- C. If the Council waives or modifies a regulation, the owner shall enter into an agreement with the City in a form acceptable to the City Attorney. The agreement shall be recorded in the real property records in Multnomah County.

2.70.080 Waiver and Modification

If the Council waives or modifies a regulation and the claimant executes and records an agreement in accordance with Section 2.70.070, the City shall not apply or enforce the regulation against the property owner, as set out in the agreement. No person shall be entitled to compensation pursuant to the provisions of Measure 37, as implemented in this chapter, if the Council waives or modifies a land use regulation within one hundred and eighty (180) days of the date a complete claim was filed.

2.70.090 Claim Adjudication Procedure

- A. When a complete claim for compensation has been filed pursuant to the terms of this chapter, the Director shall schedule a public hearing before the Council in accordance with section 2.70.040.
- B. Upon conclusion of the hearing, and prior to the expiration of one hundred and eighty (180) days after the claim was deemed complete, the Council shall determine whether or not the claim complies with the criteria in Section 2.70.100. If the Council determines that the claim complies with the criteria in Section 2.70.100, the Council shall decide whether or not to pay the claim or grant a waiver or modification. If the Council decides to pay the claim, the Council may authorize payment of an amount that it determines is necessary to compensate the owner for the reduction in fair market value that is a direct result of the application or enforcement of the challenged regulation.

2.70.100 Claim Criteria


The Council may grant a claim for compensation if all of the following criteria have been met:

- A. A complete claim has been properly filed pursuant to the terms of this chapter;
- B. The claimant is the owner of the property that is subject to the claim, or a family member of the owner, and owned the property when the regulation that is the subject of the claim was adopted, first enforced or applied; and
- C. The regulation that is the subject of the claim restricts the claimant's use of the claimant's property and such restriction has reduced the fair market value of the claimant's property;
- D. The regulation that is the subject of the claim is not an exempt regulation; and
- E. The public interest would be best served by compensating the claimant or by waiving or modifying the challenged land use regulation with respect to the subject property.

Section 2. The application fee required in Section 2.70.030(B) is \$2,300. This fee shall sunset on the effective date of the Council Fees and Charges Resolution that is adopted hereafter with a replacement Measure 37 Claim Fee in it.

Section 3. Due to the passage of Measure 37 on November 2, 2004 with an effective date of December 2, 2004, the City Council declares it necessary for the preservation of the public health, safety and welfare for this ordinance to have an effective date of December 2, 2004. Therefore, this ordinance shall become effective on December 2, 2004.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
November 24, 2004

Date



Sarah Greif, Office Support Specialist

Adopted: November 23, 2004