

**A BILL FOR AN ORDINANCE TO ESTABLISH )  
A NEW SECTION 1.20 IN THE LEBANON )  
MUNICIPAL CODE ENTITLED "REVIEW OF )  
DEMANDS FOR COMPENSATION UNDER )  
OREGON REVISED STATUTES CHAPTER 197, )  
AS AMENDED BY BALLOT MEASURE 37 )  
PASSED NOVEMBER 2, 2004," AND DECLARING )  
AN EMERGENCY )**

**Ordinance Bill No. 13  
for 2004**

**Bill Number 2366**

Whereas, on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 that amended Oregon Revised Statutes Chapter 197; and

Whereas, 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, enforcing or applying a land use regulation that allegedly restricted the use of their property and has allegedly had the effect of reducing the fair market value of the property; and

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

Whereas, Ballot Measure 37 imposes an unfunded mandated duty on the city to review demands for compensation and make decisions on disposition of those demands. Prudent management of the public treasury, and fairness all taxpayers of Lebanon requires that a person submitting a claim for compensation under Ballot Measure 37 pay the actual costs of processing the claim, and

Whereas, Fairness to persons making claims under Ballot Measure 37 and the public interest mandates that determination of any claim made under Ballot Measure 37 be based on substantial factual information and analysis, which can only be provided by a present real property Owner at the time they make a written demand for compensation; and

Whereas, it is in the best interests of the city to establish a process to assess such demands in a timely manner by establishing, among other things, a procedure that requires the necessary factual and analytical information be included with the demand for compensation at the time the city accepts any written demand for compensation; and

Whereas, The Lebanon City Council finds that the City's regulations, ordinances, policies, standards and specifications that regulate construction and performance standards for water, wastewater, transportation or public utility systems are necessary for the protection of the public health and safety; and

Whereas, Ballot Measure 37 takes effect on December 2, 2004.

**THE CITY OF LEBANON ORDAINS AS FOLLOWS:**

**Section 1.** Chapter 1.20 of the Lebanon Code is adopted as follows:

**Chapter 1.20 REVIEW OF DEMANDS FOR COMPENSATION UNDER OREGON REVISED STATUTES CHAPTER 197 AS AMENDED BY BALLOT MEASURE 37 PASSED NOVEMBER 2, 2004.**

**1.20.010 Purpose.**

The purpose of this section is to accomplish the following regarding demands for compensation under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004: Process demands for compensation quickly, openly, thoroughly, and consistently with the law; enable present real Property Owners making demands for compensation to have an adequate and fair opportunity to present their demands to the city's decision-maker; provide the city's decision-maker with the factual and analytical information necessary to adequately and fairly consider demands for compensation, and take appropriate action under the alternatives provided by law; preserve and protect limited public funds; preserve and protect the interests of the community by providing for public input into the process of reviewing demands; and, establish a record of decisions capable of withstanding legal review.

**1.20.020 Definitions.**

For purposes of this Section the following definitions shall apply:

(a) Appraisal. Means a written statement prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674. In the case of commercial or industrial Property, the term "Appraisal" additionally means a written statement prepared by an appraiser holding the MAI qualification, as demonstrated by written certificate.

(b) Demand. Means the "written demand for compensation" required to be made by an "Owner" of "real Property" under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004. Demands shall not be considered "made" under Ballot Measure 37 until the city accepts the Demand after the requirements for making a Demand under this Section are fulfilled by the Owner of real Property.

(c) Exempt land use regulation. Means:

(1) A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law, including Lebanon Municipal Code Title 8, as amended from time to time, and the criminal laws of Oregon and other offenses enumerated in the Lebanon Municipal Code;

(2) A regulation restricting or prohibiting activities for the protection of public health and safety, including, but not limited to: fire and building codes; health and sanitation regulations; solid or hazardous waste regulations; a regulation, ordinance, policy, standard or specification that regulates construction and performance standards for water, wastewater, transportation or public utility systems; and pollution control regulations;

- (3) A regulation required to comply with federal law;
- (4) A system development charge;
- (5) A regulation restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or
- (6) 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.

**(d) Family Member.** Means an immediate family member of the claimant, such as, but not limited to 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.

**(e) Land use regulation.** Means any comprehensive plan, zoning ordinance, land division ordinance, or transportation ordinance of the City of Lebanon. The term "Land use regulation" does not include "Exempt land use regulations" as defined by this Section.

**(f) Owner.** Means the present Owner of real Property that is the subject of the Demand for compensation, or any interest therein. The Owner must be a person who is the sole fee simple Owner of the real Property or all joint Owners whose interests add up to a fee simple interest in Property including all persons who represent all recorded interests in Property, such as co-Owners, holders of less than fee simple interests, leasehold Owners, and security interest holders.

**(g) Property.** Means any real Property or interest therein. It includes only a single parcel or contiguous parcels in single Ownership. It does not include contiguous parcels or parcels not contiguous that are under different Ownerships.

**(h) Reduction in Value.** Means the difference in the fair market value of the Property before and after enactment, enforcement or application of a land use regulation.

**(i) Administrator.** Means the City Administrator of Lebanon or his/her designee.

**(j) Measure 37.** Means those amendments to Oregon Revised Statutes Chapter 197, made by Oregon Ballot Measure 37, Passed November 2, 2004.

#### **1.20.030 Pre-filing Conference.**

**(a)** Before submitting a Demand for compensation, the Owner must schedule and attend a pre-filing conference with the City Administrator to discuss the Demand. The pre-filing conference shall follow the procedure set forth by the City Administrator and may include a filing fee, and notice to neighbors, other organizations and agencies. The filing fee shall be set by council resolution.

**(b)** To schedule a pre-filing conference, the Owner must contact the City Administrator and pay the appropriate conference fee. The pre-filing conference is for the Owner to provide a summary of the Owner's Demand to the City Administrator, and for the City Administrator to provide information to the Owner about regulations that may affect the Demand. The City Administrator may provide the Owner with a written summary of the pre-filing conference within 10 days after it is held.

(c) The City Administrator is not authorized to settle any Demand at a pre-filing conference. Any omission or failure by staff to recite to an Owner all relevant applicable regulations will not constitute a waiver or admission by the city.

(d) A pre-filing conference is valid for six months from the date it is held. If no Demand is filed within six months of the conference, the Owner must schedule and attend another conference before the city will accept a Demand. The City Administrator may waive the pre-filing requirements if, in the City Administrator's opinion, the Demand does not warrant that step.

#### **1.20.040 Demand Requirements.**

(a) Form, Completeness, Completeness Review, Extension and Tolling of 180-Day Period under Measure 37.

(1) A Demand shall only be submitted and accepted for review upon forms established by the City Administrator. A Demand shall consist of all materials required by this Chapter. A Demand will not be accepted until found to be complete by the City Administrator after all materials required by this Chapter have been submitted.

(2) The City Administrator shall conduct a completeness review within 15 days after submittal of the Demand and shall advise the Owner, in writing, of any material remaining to be submitted. The Owner shall submit the material needed for completeness within 30 days of the written notice that additional material remains to be submitted. If the Owner fails to provide the materials necessary to make the Demand complete within the 30 day period the Demand shall not be accepted for filing.

(3) The 180-day period required to pass prior to any cause of action being available to Owner in circuit court specified Measure 37, shall only commence on the date the City Administrator deems the Demand complete, and accepts it for filing. The City Administrator shall note the date of completeness and filing, in writing, upon the Demand.

(b) The Owner may request an extension for filing a complete Demand. A request for an extension or continuance shall be deemed to extend the 180-day period required to pass prior to any cause of action being available to the Owner in circuit court specified in Measure 37, and this Chapter.

(c) Information and Other Matters Required to be Submitted as Part of the Demand. A Demand shall be for a single Property and shall be submitted on forms established by the City Administrator, and shall consist of all materials required by this Chapter. A Demand will not be accepted for filing without all of the following information:

(1) Fee. An application fee to be paid in advance of acceptance for filing to cover the costs of completeness review and Demand processing. The City shall record its actual costs for processing the Demand, and, in the event that the advance payment is not sufficient to cover all of the City's costs,

then the Owner shall pay the balance owed, if any, upon receipt of an appropriate billing statement from the City. The City may send the Owner periodic billing statements. If the Owner does not pay on the billing statements when due, the Owner will be deemed to have abandoned the Demand. If the advance fee is more than the amount of the City's actual costs in processing the claim, then the excess shall be returned to the Owner. This fee shall be established by City Council resolution. In the event that the fee is not paid in full, the City of Lebanon shall have a lien against any Property owned by the Owner(s), and the City may take any enforcement actions to collect such fee as provided by law.

(2) Form. A completed Demand form.

(3) Identification of Owner. Identification of the name, physical address, street address, and phone number of the Owner. If the applicant is not the Owner, this information must also be provided for the Owner and authorization to act on behalf of the Owner must be provided

(4) Property Description. A legal description of the Property as well as a common address for the Property.

(5) Proof of Present Property Ownership. Proof, acceptable to the Administrator, that the Property is in the exclusive fee simple Ownership of the Owner or that the Owner has the consent of all Owners in the Property. The name and mailing address of all Owners other than the Owner making the Demand must be provided.

(6) Nearby Property Owner Information. The names and addresses of all Owners of property within 300 feet of the Property.

(7) Listing of Nearby Owned Property. Identification of any other property owned by the Owner within 300 feet of the boundary of the Property.

(8) Title Report. A title report, including the title history, a statement of the date the Owner acquired Ownership of the Property, and the Ownership interests of all Owners. The title report must also 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 other regulations, restrictions or contracts.

(9) Copy of Existing Regulation. A copy of the land use regulation that the Owner making the Demand claims restricts the use of the Property, or interest therein, that has had the effect of reducing 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.

(10) Copy of Prior Regulations. A copy of the land use regulation in existence, and applicable to the Property, when the Owner became the Owner of the Property, and a copy of the land use regulation in existence immediately before the regulation that was enacted or enforced or applied to the Property, that the Owner claims restricts the use of the Property and, the Owner claims, caused a reduction in fair market value due to the land use

regulation in question being more restrictive.

(11) Appraisals. A copy of at least one written Appraisal by an appraiser, qualified as such in the State of Oregon, indicating the amount of the alleged reduction in the fair market value of the Property by showing the difference in the fair market value of the Property before and after enactment, enforcement or application of the land use regulation in question, and explaining the rationale and factors leading to that conclusion..

(12) Narrative. The Owner shall provide a narrative describing the history of the Owner and/or Family Member's Ownership in the Property, the history of the relevant land use regulations applicable to the Demand, and how the enactment, enforcement or application of the land use regulation restricts the use of the Property, or any interest therein, and has the effect of reducing the fair market value of the Property, or any interest therein.

(13) A statement Regarding Exceptions. A statement by the Owner making the Demand of why the land use regulation in question is not an "Exempt land use regulation" as defined in this Chapter.

(14) A statement regarding date of acquisition of the Property by the Owner. The statement must explain how the subject land use regulation was enacted prior to the date of the acquisition of the Property by the Owner, or prior to acquisition by a Family Member of the Owner who owned the subject Property prior to the acquisition or inheritance by the Owner [if "Family Member" status is claimed it must also be addressed in the title report required by item (8) of this sub-section].

(15) Statement of the Owner's Understanding of the Effect of Any Modification, Removal or Non-Application of Land Use Regulation. A statement by the Owner explaining their understanding of what effect a modification, removal or non-application of the land use regulation would have on the potential development of the Property, stating the greatest degree of development that the Owner believes would be permitted on the Property if the identified land use regulation were modified, removed or not applied.

(16) Copies of Prior Permit Applications and Description of Enforcement and/or Application Actions by the City. Copies of any land use actions, development applications or other relevant applications for permits that have previously been filed in connection with the Property and the action taken. Any such actions that represent the required "enforcement" and/or "application" of the land use regulation that are prerequisites to making a Demand must be described and identified as such.

(17) Site Plan and Drawings. A copy of the site plan and drawings related to the expected use of the Property should the land use regulation be modified, removed or not applied in a readable/legible 8 ½ by 11-inch format.

(18) **Statement of Relief Sought.** A statement of the relief sought by the Owner.

**1.20.050 Demand Review Process.**

(a) **The City Administrator shall assess any Demand for compensation and make a recommendation to the City Council on the disposition of the Demand.**

(b) **The City Administrator shall mail notice of the Demand to the Owner and to all Owners of record of property, and to 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. 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. The City Administrator may include the cost of this notice in the “fee” assessed under this Chapter, and the Owner may be required to pay such fee prior to notice being given.**

(c) **The City Administrator’s notice under subsection (b) of this section shall:**

(1) **State the basis of the Demand, 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 Demand, and provide the date written comments are due or, if a hearing has been scheduled, 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 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.**

(d) **Written comments regarding a Demand may be submitted to the City Administrator. Any such comments must be received by the City Administrator within 14 days from the date identified in paragraph (c)(3), above. The Owner shall have an additional 7 days after the deadline set in paragraph (c)(3), above, to respond to any written comments received by the City Administrator. It is the duty of the Owner to determine if comments have been received by the City Administrator.**

(e) **The City Council shall schedule a public hearing,**

(f) **At the hearing:**

(1) **All documents or evidence relied upon by the Owner shall be submitted to the City Council as a part of the Demand. Persons other than the Owner may submit documents or evidence at the hearing.**

(2) **Any staff report used at the hearing shall be available prior to the hearing.**

(3) The City Council may reopen a record to admit new evidence or testimony, in the City Council's discretion.

(4) The failure of a person entitled to notice 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.

(g) The City Administrator may make a recommendation, applying the standards of Measure 37 and this Chapter to the City Council based on all of the information presented.

(h) The City Administrator may, in the City Administrator'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. The appraiser's fee may be included in the fee required of the Owner under this Chapter.

(i) In making its decision, the City Council will consider the standards of Measure 37 and this Chapter; the benefit(s) accruing to the public arising as a result of application of the regulation; and the burden to the public in paying compensation to the Owner(s), taking into consideration the available financial resources of the city.

The City Council may take, but is not limited to taking, any one or more of the following actions on a Demand, as appropriate:

(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;

(d) The Owner failed to comply with the requirements for making a Demand as set forth in this Chapter;

(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 land use regulation as defined in Measure 37 and this Chapter;

(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 Measure 37, for a reason other than those provided herein.

(2) Award compensation, either in the amount requested, or in some other amount supported by the evidence in the record. Payment of any compensation is subject to the availability and appropriation of funds for that purpose.

(3) Modify the regulation.

(4) Remove the regulation.



(5) Not apply the regulation.

(6) Acquire the affected Property through negotiation or eminent domain.

(7) Take such other actions as the City Council deems appropriate consistent with Measure 37.

(j) 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 Measure 37, or this Chapter. The standard of proof shall be by a preponderance of the evidence.

(k) 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 Administrator 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

(l) Failure to comply with any condition of approval 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 this Chapter.

(m) A decision to remove or modify a land use regulation is personal to the Owner, and shall automatically become void and invalid if the Owner conveys the Property to another person before development of the Property consistent with the removal or modification of the land use regulation is completed. Development of the Property under this sub-section shall not be deemed to be completed until a certificate of occupancy or other appropriate certificate indicating completion is issued by the City of Lebanon building official.

(n) In the event the Owner (or the Owner's successor in interest, if the development is completed as described in this Chapter) 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.

(o) Unless otherwise stated in the city's decision (and only if the development described in this subsection (m) is completed before the Owner conveys the Property), any action taken under this Chapter runs with the Property and is transferred with Ownership of the Property. All conditions, time limits or other restrictions imposed with approval of a Demand will bind all subsequent Owners of the subject Property.

**1.20.060 Ex Parte Contacts, Conflict of Interest and Bias.** The following rules govern any challenges to a member of the City Councils participation in the review and recommendation motion, or hearings regarding Demands:

(a) Any factual information obtained by 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. A member of the City Council that has obtained any material factual information through an ex parte contact must declare the content of that contact, and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between city staff and the City Administrator or member of the City Council.

(b) Whenever a member of the City Council, or any member of their immediate family or household, has a direct financial interest in the outcome of a particular Demand or lives within the area entitled to notice of the Demand, that member of the City Council shall not participate in the deliberation or decision on that application.

(c) All decisions on Demands must be fair, impartial and based on the applicable review standards and the evidence in the record. Any 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.

#### **1.20.070 Attorney Fees**

If a Demand under Measure 37, and this Chapter is denied or not fully paid within 180 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. In the event the 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 accepted in Lebanon, Oregon for the type of legal services performed.

**1.20.080 Private Cause of Action** If the City 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 vicinity of the Property, the owner(s) of the other property shall have a cause of action in the appropriate Oregon Circuit Court to recover from the Owner(s) (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's fees and disbursements from the Owner(s) (of the Property subject to the Demand). This section does not create a cause of action against the City of Lebanon.

**1.20.090 Availability of Funds to Pay Claims.** Compensation can only be paid based on the availability and appropriation of funds for this purpose.

#### **1.20.100 Severability.**

If any phrase, clause, or other part or parts of this Section 1.950 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.

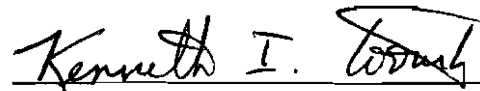
#### **1.20.110 Applicable State Law.**

For all Demands filed with the City of Lebanon, the applicable state law is Measure 37 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 Chapter shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Chapter shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions

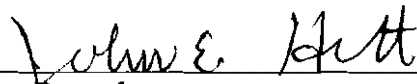
taken at the state level. This Chapter is adopted solely to address Demands filed under the authority of those provisions of Measure 37. Except as expressly provided in this Chapter, no rights independent of said provisions are created by adoption of this Chapter.

**Section 2. 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 upon its adoption.

PASSED by a vote of the Lebanon City Council on this 1<sup>st</sup> day of December, 2004 by a vote of 6 for and 0 against.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder