

**ORDINANCE NO. 1867**

**(An ordinance concerning real property compensation; adding Chapter 3.24 to the Hood River Municipal Code; Declaring an emergency and providing for an immediate effective date)**

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

WHEREAS, Ballot Measure 37 provides that an owner of real property must make a “demand for compensation” to the local government when the property owner believes that existing or future land use regulations as applied to their property both restrict the use of the property and reduce the fair market value of the property;

WHEREAS, Ballot Measure 37 imposes a duty on a city to review claims for compensation and make decisions on those claims;

WHEREAS, Ballot Measure 37 explicitly allows local governments to develop procedures for processing claims made under Measure 37;

WHEREAS, Ballot Measure 37 takes effect on December 2, 2004; and

WHEREAS, it is appropriate for the City to provide a Measure 37 claims procedure;

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 3.24 is added to the Hood River Municipal Code:

3.24.010 Purpose. The purpose of this Chapter is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

3.24.020 Definitions. As used in this Chapter, the following words and phrases shall have the following meaning:

**City Manager.** The city manager of the City, or the city manager’s designee.

**Claim.** A written demand for compensation filed under Ballot Measure 37 (2004). Claims shall not be considered “made” under Ballot Measure 37 until the City accepts the claim after the requirements for making the claim under this Chapter are met by the owner.

**Exempt Land Use Regulation.** A land use regulation that: (a) restricts or prohibits activities commonly and historically recognized as public nuisances under common law, including Hood River Municipal Code Chapter 8.08, and the criminal laws of Oregon and other offenses enumerated in the Hood River Municipal Code; (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, pollution control regulations, and regulations or standards that regulate construction and performance standards for water, wastewater, transportation or public utility systems; (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.

**Family Member.** The wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the 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.

**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; and
- (c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

**Owner.** The present owner of the property, or any interest therein.

**Valid Claim.** A claim submitted by the owner of real property 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.

3.24.030 Claim Filing Procedures; Pre-Application Conference.

A. A person seeking to file a claim under this chapter must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the city manager's office, or another city office if so designated by the city manager.

B. A claim shall be submitted on a form provided by the city and shall include:

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

(2) The address, tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired;

(3) The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;

(4) The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon;

(5) Copies of any leases or Covenants, Conditions and Restrictions (“CCRs”) applicable to the real property, if any, that impose restrictions on the use of the property;

(6) Any other information required by the city manager to be included on the form or with the claim. Without limiting the foregoing, the city manager may require one or more written appraisals in a form prescribed by the city manager.

C. The claim shall include an application fee to cover the costs of processing, including completeness review, and including the cost of one appraisal if required by the city manager.

D. Notwithstanding a claimant’s failure to provide all of the information required by subsection B of this section, the city may review and act on a claim.

E. Prior to submitting a claim, the owner shall schedule and attend a pre-application meeting with the city manager to discuss the claim. The pre-application conference shall follow the procedure set by the city manager and may include a filing fee which shall be set by Council resolution.

(1). The city manager is not authorized to settle any claims at the pre-application conference.

(2). The pre-application conference is valid for six months from the date it is held.

3.24.040 City Manager Investigation and Recommendation.

A. Following an investigation of a claim, the city manager shall forward a recommendation to the city council that the claim be:

- (1) Denied;
- (2) Investigated further;
- (3) Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
- (4) Evaluated with the expectation of the city acquiring the property by condemnation.

B. Prior to making the recommendation in subsection A above, the city manager shall mail notice of the claim to the owner and to all owners of record of property within at least 400 feet of the subject property, as listed on the most recent property tax assessment roll. Additional mailed notice shall be provided to persons requesting notice and to the Department of Land Conservation and Development, Oregon Department of Justice, and such others as the city may designate by Council resolution. The notice shall also be published in the Hood River News at least once prior to the public hearing.

C. The manager's notice under subsection B shall:

- (1). State the basis of the claim, the amount of compensation sought and the regulation that causes the compensation to be alleged to be due.
- (2). Identify the property by street address or other easily understood reference.
- (3). State that affected property owners may provide written comments on the claim, and provide the date written comments are due and the date, time and location of the hearing. Include a general explanation of the requirements for submission of written comments, testimony, and evidence.
- (4). Identify the city representative and telephone number to contact and obtain additional information.
- (5). State that a copy of the claim and supporting documents submitted by the owner are available for inspection at no cost, and that copies will be provided at a reasonable cost.
- (6). The notice shall include the date, time, and location of the public hearing and state that only affected property owners may submit written comments or testimony or participate in the hearing.

3.24.050 City Council Public Hearing. The City Council shall conduct a public hearing before taking final action on a recommendation from the city manager. Only affected

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property owners may participate in

3.24.060 City Council Action on Claim.

A. Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council shall adopt a resolution that:

(1) Determines that the claim does not meet the requirements of Measure 37 and this chapter, and denies the claim; or

(2) Determines that the claim is valid and either directs that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property (waive); or determines that the city should acquire the property.

B. The City Council's decision to remove, waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing, waiving or modifying the challenged land use regulation with respect to the subject property.

C. If the City Council removes, waives, or modifies the challenged land use regulation, it may, at its discretion, put back into effect with respect to the subject property, all of the land use regulations in effect at the time the claimant acquired the property.

D. A decision by the Council to remove or modify a land use regulation shall be personal to the claimant(s) and shall automatically become invalid and void upon the transfer of any ownership interest in the subject property by the claimant(s) to any person. Following voiding of the decision because of transfer, any use of the property must be consistent with all regulations in effect at the time of transfer, or as thereafter amended. Should a development or use not be consistent with such regulations, then the use may be declared a public nuisance and abated as provided in Chapter 8.08 of this code.

E. The City Council may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under this section.

F. A copy of the City Council's resolution adopted under this section shall be recorded on the property in the deed records of Hood River County.

G. The Planning Department shall be responsible for keeping track of City Council decisions removing, waiving or modifying land use regulations on the City zoning map. Alterations to the City zoning map under this provision are not be land use decisions.

3.24.070 Private Cause of Action. If the City Council's approval of a claim by removing or

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modifying a land use regulation causes a reduction in value of other property in the City, the owner(s) of the other property shall have a cause of action in the appropriate Oregon Circuit Court to recover from the claimant the amount of the reduction, and shall also be entitled to attorney's fees. This section does not create a cause of action against the city.

3.24.080 Availability of Funds to Pay Claims. Compensation can only be paid based on the availability and appropriation of funds for this purpose, unless a person other than the city agrees in writing to compensate the owner for the diminution in value in lieu of the city removing, waiving or modifying the land use regulation causing the diminution, and the person enters into a contract approved by the city attorney among the City, the owner and the person providing for the compensation.

3.24.090 Attorney Fees. If a claim is denied or not fully paid within 180 days of the date of filing a complete claim, and the owner commences suit or action to collect compensation, if the city is the prevailing party in the action, then the city shall be entitled to any sum that a court, including any appellate court, may adjudge reasonable as attorney's fees.

3.24.100 Applicable State Law. For all claims filed with the city, the applicable state law is Measure 37 (2004) as amended, modified, or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State Administrative Agencies. Any claim that has not been processed completely under this chapter shall be subject to any such amendments, modifications, and clarifications or other actions taken at the state level and this chapter shall be read in a manner so as not to conflict. This chapter is adopted solely to address claims filed under Measure 37 (2004) and no rights independent of Measure 37 (2004) are created by adoption of this chapter.

**SECTION 2.** Due to the passage of Measure 37 at the General Election on November 2, 2004 with an effective date of December 2, 2004, the City Council declares it is necessary for the preservation of the public health, welfare and safety to have a procedure in place to implement Measure 37 and for this Ordinance to have immediate effect. Therefore, this Ordinance shall become effective on December 2, 2004 upon its passage by the City Council.

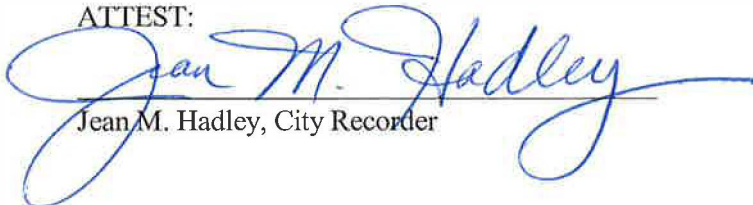
Read for the first time: November 29, 2004.

Read for the second time and passed: November 29, 2004, to become effective December 2, 2004.

Signed 12/1, 2004

  
Paul G. Cummings, Mayor

ATTEST:

  
Jean M. Hadley, City Recorder