

ORDINANCE NO. 1165

**AN ORDINANCE CONCERNING REAL PROPERTY COMPENSATION;
ADOPTING PROCEDURES FOR PROCESSING DEMANDS AND DECLARING AN
EMERGENCY.**

WHEREAS, the City has developed a sound system of land use planning, which includes regulations that in some cases restrict the uses that can be made of property; and

WHEREAS, the restrictions on use of property have both served the public interest and increased property values by allowing the City to avoid incompatible uses and assure appropriate development; and

WHEREAS, the voters of the State of Oregon adopted Ballot Measure 37 in the November 2004 election adding new sections to ORS 197, which provide that local governments must pay compensation to property owners for reductions in property values resulting from land use regulations that restrict the use of property or forego enforcement by repealing, changing, or not applying restrictions in lieu of payment; and

WHEREAS, some property owners may believe that existing or future land use regulations as applied to their property both restrict use of the property and reduce the fair market value of the property and consequently may bring claims under Measure 37; and

WHEREAS, Ballot Measure 37 explicitly allows local governments to develop procedures for assessing demands made under Measure 37; and

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

NOW, THEREFORE, THE CITY OF CANBY DOES ORDAIN AS FOLLOWS:

Section 1. - Purpose. This Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). 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; preserves and protects limited public funds; and establishes a record of the city's decision capable of circuit court review.

Section 2 – Definitions.

As used in this Ordinance, the following words and phrases mean:

Appraisal. 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 a written certificate.

City Administrator. The City Administrator of the City of Canby, or his or her designee.

Claimant. The property owner who submits a demand to waive a land use regulation or receive compensation for loss of property value under this Ordinance.

Demand. A claim filed under Ballot Measure 37.

Exempt Land Use Regulation. A land use regulation that:

(a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;

(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 subject property prior to acquisition or inheritance by the owner, whichever occurred first.

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.

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; and
- (d) Statutes and administrative rules regulating farming and forest practices.

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

Valid Demand. A demand 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.

Section 3 – Pre-filing Conference.

(1) Before submitting a demand for compensation, the owner must schedule and attend a pre-filing conference with City staff to discuss the demand. The pre-filing conference shall follow procedures set forth by the City. No fee shall be charged for such conference.

(2) The pre-filing conference is for the owner to provide a summary of the owner's demand to the City, and for the City to provide information to the owner about regulations that

may affect the demand. 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.

(3) 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 City may require the owner to schedule and attend another conference before the city will accept a demand.

(4) Following the conference, the City shall provide the owner with an estimate of the cost of processing the owner's demand.

Section 4 – Demand Filing Procedures.

(1) A person seeking to file a demand under sections 1 - 7 of this ordinance must be the present owner of the property that is the subject of the demand at the time the demand is submitted. The demand shall be filed with the City on forms provided for this purpose by the City.

(2) A demand shall include:

(a) 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;

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

(c) 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;

(d) The amount of the demand, 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; and

(e) Copies of the deed and 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.

(f) Documentation that the subject property has been owned by the owner or owner’s family member continuously since before the date the land use regulation(s) in question were adopted.

(g) Statement of relief sought, with specific details.

(3) Notwithstanding a claimant’s failure to provide all of the information required by subsection (2) of this section, the city may review and act on a demand.

(4) The City may retain an appraiser or seek any other outside assistance needed to make a decision, at its discretion.

Section 5 – City Administrator Investigation and Recommendation.

(1) Following an investigation of a demand, the city administrator shall forward a recommendation to the city council that the demand be:

(a) Denied;

(b) Investigated further;

(c) Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or

(d) Evaluated with the expectation of the city acquiring the property by condemnation.

(2) The City Administrator shall also make a recommendation as to whether a public hearing should be held on the demand.

Section 6 -- City Council Public Hearing.

The City Council may choose to conduct a public hearing before taking final action on a recommendation from the City Administrator. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 500 feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property.

Section 7 – City Council Action on Demand.

(1) Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the demand was filed, the City Council shall:

(a) Determine that the demand does not meet the requirements of Measure 37 and this Ordinance, and deny the demand; or

(b) Adopt a Resolution with findings therein that supports a determination that the demand meets the requirements of Measure 37 and this Ordinance, and either direct 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.

(2) The City Council's decision to 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 or modifying the challenged land use regulation with respect to the subject property.

(3) If the City Council removes 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.

(4) A decision by the City 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 to anyone.

Section 8 – Processing Fee.

(1) The city administrator shall maintain a record of the city's costs in processing a demand, including the costs of obtaining information required by section 3 of this ordinance which a property owner does not provide to the city. Following final action by the city on the demand at the local level, the city administrator shall send to the property owner a bill for the actual costs, including staff and legal costs, that the city incurred in reviewing and acting on the demand.

(2) The owner shall reimburse the City for the costs the City incurred in processing the demand. If the costs remain unpaid 90 days after the City provides a detailed invoice demanding reimbursement of costs, a lien for those costs shall be recorded in the City lien docket for the property for which the demand is made.

Section 9 – Private Cause of Action.

(1) 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 claimant, the neighbor(s) shall have a cause of action in state circuit court to recover from the claimant the amount of the reduction, and shall also be entitled to attorney's fees.

Section 10 – Severability.

If any section, phrase, clause, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.


Section 11 – Emergency Declared.

Due to the passage of Measure 37 at the General Election on November 2, 2004 with an effective date 30 days thereafter, the City Council declares it is necessary for the preservation of the public health, welfare and safety for this Ordinance to have immediate effect. Therefore, this Ordinance shall become effective immediately upon its passage by the City Council .

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 17th, 2004; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, December 1, 2004, after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 182 N. Holly, Canby, Oregon.

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 1st day of December, 2004, by the following vote:

YEAS 5 NAYS 0


Melody Thompson, Mayor

ATTEST:


Kimberly Scheafer, City Recorder pro-tem