



## FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER  
4755 SW GRIFFITH DRIVE  
BEAVERTON, OR 97005

SPECIAL MEETING  
NOVEMBER 22, 2004  
5:30 p.m.

CALL TO ORDER:

ROLL CALL:

EXECUTIVE SESSION:

In accordance with ORS 192.660 (1) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (1) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (1) (f) to consider information or records that are exempt by law from public inspection and in accordance with ORS 192.660 (1) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

CONSENT AGENDA:

04238      A Resolution Establishing Fees for Measure 37 Claims (Resolution No. 3791)

ORDINANCES:

Second Reading:

04237      An Ordinance Amending Chapter 2 of the Beaverton City Code by Establishing a Process for Evaluating Claims for Compensation Under the Amendments to Oregon Revised Statute Chapter 197 As Approved Under Ballot Measure 37 in the 2004 General Election and Declaring an Emergency (Ordinance No. 4333)

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.

## AGENDA BILL

Beaverton City Council  
Beaverton, Oregon

**SUBJECT:** A Resolution Establishing Fees for Measure 37 Claims.

**FOR AGENDA OF:** 11-22-04 **BILL NO:** 04238

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** CDD 

**DATE SUBMITTED:** 11-18-04

**CLEARANCES:** Devel Serv 

City Attorney 

**PROCEEDING:** Consent Agenda

**EXHIBITS:** 1. A Resolution establishing fees for evaluating claims pursuant to Ballot Measure 37 and to Chapter 2.07 of the Beaverton Municipal Code.

### **BUDGET IMPACT**

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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### **HISTORICAL PERSPECTIVE:**

On November 15, 2004, the City Council conducted a first reading of "An Ordinance Amending Beaverton City Code Chapter 2 by Establishing A Process For Evaluating Claims For Compensation Under the Amendments To Oregon Revised Statute Chapter 197 As Approved Under Ballot Measure 37 In The 2004 General Election and Declaring An Emergency" which will add Chapter 2.07 to the Beaverton City Code. The proposed ordinance establishes a process for evaluating claims that a City regulation reduces property value.

### **INFORMATION FOR CONSIDERATION:**

The new "Ballot Measure 37 Ordinance" is anticipated to become effective on December 2, 2004. In preparation for this effective date, staff propose a fee schedule for the consideration of claims pursuant to Ballot Measure 37. The purpose of the fee schedule is to collect funds to recover costs associated with the processing of such claims. The proposed fees have been developed by projecting the amount of staff time that will be required in considering the claims.

In addition to the proposed fee, the claimant may request a Pre-application Conference and an appraisal deposit is also proposed. Staff anticipate that an independent appraisal may be required in some cases when considering claims for compensation. If an independent appraisal is found to be necessary, the claimant shall be responsible for paying for such an appraisal. Because this is a deposit, any unused funds would be returned to the claimant upon resolution of the claim.

### **RECOMMENDED ACTION:**

Staff recommend that the City Council approve the attached resolution establishing a new fee schedule for claims pursuant to Ballot Measure 37 and to Chapter 2.07 of the Beaverton City Code.

**Agenda Bill No:** 04238

**RESOLUTION NO. 3791**

**A RESOLUTION ESTABLISHING FEES FOR  
BALLOT MEASURE 37 CLAIMS**

**WHEREAS**, on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 which amended Oregon Revised Statute Chapter 197 to require, under certain circumstances, payment to property owners if government regulation reduces property value; and

**WHEREAS**, on November 22, 2004 the City Council adopted Ordinance 4333 that established a process by which such claims of reduction in property value shall be reviewed and acted upon; and

**WHEREAS**, Section 2.07.015.C.12 of the Beaverton City Code provides that the City may charge and collect fees as established by resolution of the Council in order to defray expenses incurred in connection with processing, preparing reports, publishing notices, issuing orders and other matters of claims for compensation when a City regulation reduces property value; and

**WHEREAS**, it is City policy to annually adjust fees for applications, appeals, and other matters to reflect inflation and processing expenses; and

**WHEREAS**, the Beaverton City Council has directed that all fees be adjusted according to the Consumer Price Index (CPI) for the West-C city size class for urban wage earners and clerical workers; and

**WHEREAS**, the Community Development Director has provided information for establishing a claim for compensation fee to allow cost recovery for actual expenses for processing, reporting, and considering claims for compensation when a City regulation reduces property value; and,

**WHEREAS**, the fee schedules currently in use by the City are insufficient to recover costs of such process; now therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON,  
OREGON:**

**Section 1:** The Council adopts the fee schedule for a claim filed pursuant to Ballot Measure 37 and under Chapter 2.07 of the Beaverton Municipal Code for claims that a City regulation reduces property value as shown in Exhibit A to this Resolution, attached and incorporated herein by this reference. The fee schedule shall be effective on and after December 2, 2004.

**Section 2:** The Council directs the Mayor to cause the adjustment of the fee schedule adopted by this Resolution effective for claims of compensation when a City regulation reduces property value received on and after July 1 of each succeeding calendar year according to the Consumer Price Index (CPI) for the West-C city size class for urban wage earners and clerical workers for the interval last preceding that effective date.

Adopted by the Council this \_\_\_\_ day of \_\_\_\_\_, 2004.

Approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2004.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Attest:

Approved:

\_\_\_\_\_  
Sue Nelson, City Recorder

\_\_\_\_\_  
Rob Drake, Mayor



**EXHIBIT A**

Resolution No. 3791

<b>CITY OF BEAVERTON</b>	
<b>CLAIM PURSUANT TO BALLOT MEASURE 37 FEE SCHEDULE</b>	
<b>DECEMBER 2, 2004 TO JUNE 30, 2005</b>	
	<b>Fees</b>
<b>PRE-APPLICATION CONFERENCE*</b>	\$ 107
<b>CLAIM PURSUANT TO BALLOT MEASURE 37** (Deposit)</b>	\$ 1,000

\* An optional Pre-application Conference may be requested by the Claimant.

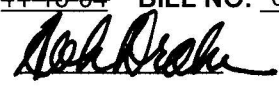
\*\* This fee is a deposit to cover the cost of staff time to process any claim. The deposit may also include the cost of obtaining an independent appraisal of the claim. All staff costs and appraisal fees will be borne entirely by the Claimant. Any unused money deposited shall be returned to the Claimant.


## AGENDA BILL

### Beaverton City Council Beaverton, Oregon


**SUBJECT:** An Ordinance Amending Beaverton City Code Chapter 2 By Establishing A Process For Evaluating Claims For Compensation Under the Amendments to Oregon Revised Statute Chapter 197 as Approved Under Ballot Measure 37 in the 2004 General Election and Declaring an Emergency.

**FOR AGENDA OF:** <sup>11/22/04</sup>~~11-15-04~~ **BILL NO:** 04237

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** City Attorney 

**DATE SUBMITTED:** 11-15-04

**CLEARANCES:** CDD 

**PROCEEDING:** ~~First Reading.~~  
Second Reading & Passage

**EXHIBITS:** Ordinance

### **BUDGET IMPACT**

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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### HISTORICAL PERSPECTIVE:

Ballot Measure 37 passed on November 2, 2004. The Measure provides a requirement that the City either waives or pays for its land use regulations that are imposed on property before the current owner or any member of the current owner's family purchased the property.

### INFORMATION FOR CONSIDERATION:

The proposed ordinance provides a process in which a person can submit a claim under Ballot Measure 37. If applicants follow this process it will provide the information that the City needs to determine whether the claim is valid and if so, whether to pay the claim or to waive or modify the land use regulations that cause a reduction in the property's value.

### RECOMMENDED ACTION:

~~First reading.~~  
Second Reading & Passage

ORDINANCE NO. 4333

AN ORDINANCE AMENDING BEAVERTON  
CITY CODE CHAPTER 2 BY ESTABLISHING A  
PROCESS FOR EVALUATING CLAIMS FOR  
COMPENSATION UNDER THE AMENDMENTS  
TO OREGON REVISED STATUTE CHAPTER 197  
AS APPROVED UNDER BALLOT MEASURE 37  
IN THE 2004 GENERAL ELECTION AND  
DECLARING AN EMERGENCY.

**WHEREAS**, On November 2, 2004 the voters of the state of Oregon approved Ballot Measure 37 which amends Oregon Revised Statute Chapter 197 to require, under certain circumstances, payment to property owners if government regulation reduces property value; and

**WHEREAS**, Ballot Measure 37 provides that a property owner, in order to receive compensation, must apply for compensation to the government whose regulation allegedly has caused a reduction in the fair market value of property and the government has 180 days from such application to deny or pay the claim, take action to waive the application of the regulation to the property, or enforce the regulations subject to civil right of action; and

**WHEREAS**, Ballot Measure 37 does not set forth a specific process for review of applications for compensation and it is in the best interest of affected governments, including Beaverton to establish such a process in order to be able to assess such claims in a timely manner; and

**WHEREAS**, since Measure 37 is anticipated to take effect on December 2, 2004 and could result in a significant number of claims for compensation or waivers of City regulations, the City finds it is immediately necessary and in the public interest to declare an emergency, to adopt this ordinance without extensive notice and public hearings and to provide for its effectiveness immediately upon its passage pursuant to the City Charter and state law.

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

**Section 1.** Chapter 2 of the Beaverton Code is amended to add the following as Section 2.07.

**“2.07.001 Short Title.**

BC 2.07.001-.080 shall be known and may be cited as the “Regulatory Claims Procedure Ordinance” and may also be referred to herein as “this section.”

**2.07.005 Purpose and Applicability.**

A. The purpose of this section is to:

1. Establish a process whereby claims under Oregon Revised Statute, Chapter 197 (November 2, 2004 amendment, hereafter “Measure 37”) may be properly submitted by claimants and evaluated by the City quickly, openly, thoroughly and consistently with the Oregon and U.S. Constitution;

2. Enable persons with legitimate claims an adequate and fair opportunity to present such claims to the City, while preserving and protecting limited public funds;
3. Authorize, where appropriate, limitations on the applicability of City regulations, which are shown to cause a significant reduction in property value;
4. Provide a record of decision capable of judicial review.

B. It is not the purpose of this section to amend, repeal or enforce the Comprehensive Plan, Development Code, statewide land use plan or any other land use statute, regulation or policy.

2.07.010 Definitions. As used in this section, the following mean:

Appraisal – An examination of and opinion about the fair market value of real property issued by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board.

Claimant or Applicant – The property owner for which a claim is made pursuant to this section.

Community Development Director or Director – The person designated by the Mayor as Community Development Director or such other person or persons as authorized to act in that capacity.

Enforcement – A land use regulation is enforced only after a property owner makes an application for a land use and a final decision is made by the City under the Beaverton Development Code. A land use regulation will also be “enforced” if a citation is issued to the property owner for a violation of the Beaverton Development Code. The denial of a site development permit is not the enforcement of a land use regulation.

Exempt Regulation – A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law; a regulation restricting or prohibiting activities for the protection of public health and safety; a regulation to implement a requirement of federal law to the extent required; a regulation 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, which ever occurred first; or a regulation that prohibits selling pornography or performing nude dancing.

Fair Market Value – The price stated in terms of dollars that a willing buyer would pay for the property without any obligation to buy from a willing seller without any obligation to sell. “Reduction in fair market value” means the difference in the fair market value of the property before and after application of the regulation.

Family Member – Shall include 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 of a combination of these family members or the owner of the property.

Federal Requirement – Any 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 states or local governments or both an obligation to enact or enforce regulations over the use of real property.

Land Use Regulation - Shall include:

- 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;
- d) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- e) Statutes and administrative rules regulating farming and forest practices.

Measure 37 – The amendment to Oregon Revised Statute 197, as approved by the Oregon electorate on November 2, 2004.

Nuisance – Any act, omission, structure or condition on property, 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 property that is the situs of the nuisance. A “historically and commonly recognized nuisance” shall have the meaning contained in Measure 37, and as construed by the Oregon appellate courts. Without limiting the foregoing, the City may consider whether a use of property is declared by the Beaverton Code or the Beaverton Development Code to be a nuisance.

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

Ownership Interest – A legally recognized interest in the proceeds of any sale of an interest in the property in question.

Public entity – Shall include the state, a metropolitan service district, a city, or a county.

Real Property – All lots, parcels or tracts, or any combination thereof, that are owned by the Claimant, including structures built or located on the property. Real property does not include public property, personal property or easements over, above or below public property. Real property does not include a franchise issued by the City to place or erect public or private utility facilities within or along public right of way.

Restricts the Use – A regulation that restricts the type of use of private real property, but does not include a regulation that effects either the extent of a use or a regulation that governs development or construction.

Use of Property – Any activity that a private property owner can undertake on their property without creating a nuisance, without violating federal law or any local ordinance designed to the minimum extent possible to implement requirements of federal law and without violating any city or county regulation in effect at the time the owner became owner of the property.

Waiver of Enforcement of a Regulation or License – A license issued by the City, pursuant to Section 2.07, suspending City enforcement of the requirements of a City regulation as to a particular property and its owner, which is determined to restrict the owner’s use of property, is not exempt from Oregon Revised State Chapter 197, and for which the City has elected not to pay compensation pursuant to Measure 37.

#### 2.07.012 Pre-Application Conference.

- A. Before submitting an application for a claim pursuant to this section, the claimant may schedule and attend a pre-application conference with the Director to discuss the application. The pre-application conference shall follow the procedure set



forth by the Director. The applicant shall pay the applicable fee as established by resolution of the City Council.

- B. To schedule a pre-application conference, the claimant must contact the Director. The pre-application conference is for the claimant to provide a summary of the claimant's application for a claim and for the Director to provide information to the claimant about regulations that may effect the application, including this section. The Director may provide the claimant with a written summary of the pre-application conference within 10 days after it is held.
- C. The Director is not authorized to settle any claim at a pre-application conference. Any omission or failure by staff to recite to a claimant all relevant applicable land use regulations will not constitute a waiver or admission by the City.

#### 2.07.015 Application.

- A. An application for a claim may only be filed after there is enforcement by the City of a land use regulation. An application for a claim under this section shall be filed by an owner or the owner's authorized agent, along with such number of copies as the Director may require. The application shall be filed with the Director on an application form as approved by the Director, accompanied by documentation in support of the application, as listed in this subsection. Within 10 days following tender of an application the Director shall review the application to determine whether it is complete and ready for filing. If the Director determines the application is not complete, the Director shall, within that 10 day period, notify the applying owner by sending via first-class mail, of exactly what additional information is necessary to make the application complete and ready for filing. If the Director believes there is doubt, under Measure 37, as to whether the additional information can be required as a condition of acceptance of filing of the application, the Director also may notify the claimant in writing that although the Director considers the application not complete and ready for filing, the Director nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Director, not to exceed 20 days after the date of the notification. The application shall be deemed complete and filed as of the date of receipt of the additional information, except that if the applying owner does not supply the additional information by the date set by the Director, then the application shall be deemed complete and filed as of the date the application was received.
- B. The application shall be signed by the Property Owner(s), including without limitation each person having an ownership interest (as defined herein) in the private real property.
- C. Unless waived by the Director an application shall include the following information:
  - 1. A description by street address, if any, and by Washington County Assessment and Taxation map and tax lot number of the property upon which the regulation is imposed;

2. A description by street address, if any, and by the county property tax assessor's map and tax lot number of each parcel of land owned by the owner or owners of the private real property that is either directly contiguous to the property described in paragraph 1 of this subsection, or is indirectly contiguous through contiguity with another parcel under the same ownership, together with the following:
  - a. The date of acquisition of the property and each contiguous parcel;
  - b. Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the directly or indirectly contiguous parcels as a unified use or as a single economic unit, for example in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land;
  - c. The extent to which application of the subject regulation that is being challenged enhances the value of the property and each contiguous parcels; and
  - d. The amount of any compensation previously paid by any unit of government under Measure 37 in relation to each such parcel.
3. The names and street addresses of the record owners of property on the most recent property tax assessment roll and within 500 feet of the property described in paragraphs 1 and 2 of this subsection;
4. Proof of Ownership. A title report issued within 30 days of the date of the application and by a property title insurance company authorized to conduct business within the State of Oregon and insuring to the City that the claimant is the Property Owner of the Real Property. Such report shall name all persons with legal, equitable and security interests in the property and the date and instrument showing the time and manner in which such property interest or interests were established. Claimant shall also submit a complete list of all other interests or encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist;
5. Identification of the Regulation.
  - a. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the Property. The reference shall identify by number or section the law, rule, ordinance, resolution, goal or other enforceable enactment, or a copy of the regulation for which claim is submitted; and
  - b. A statement whether the claim is based on adoption, first enforcement, or application of the regulation. If based on adoption of the regulation, the date of adoption of the regulation. If based on first enforcement of the regulation, the date and manner of first



enforcement and any documentation establishing the date and manner of first enforcement. If based on application of the regulation, the date and manner of application and any documentation establishing the date and manner of application.

6. A written description addressing the approval criteria, including without limitation the impact of each and every City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the ~~greatest degree of development that would be permitted if the identified regulation were waived by the City; land use that was applied for and the results of that application.~~
7. Amount of Claim.
  - a. A statement of the amount of the claim in dollars based on Claimant's alleged reduction in fair market value resulting from application of the City regulation; and
  - b. An appraisal of the subject property showing the reduction in the fair market value of the property as that reduction is defined under Measure 37. To the extent practicable, the opinion of compensable reduction in fair market value shall be apportioned among each regulation such that the City may separately consider the alleged impact on fair market value of each regulation. The appraisal shall be prepared and signed by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board and shall conform with Uniform Standards for Professional Appraisal Practice. The appraisal shall address the market feasibility of the use for which compensation is sought, taking into account all relevant factors, including the potential impact of Measure 37 on other properties, the availability of necessary public services, probability of obtaining necessary approvals from other governmental bodies and other constraints;
  - c. An itemization of any prior payments made to the Property Owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership;
  - d. Any other relief sought by the claimant from other governments;
  - e. Copies of all appraisals, market studies, economic feasibility studies, development schemes, environmental assessments or similar studies related to the property prepared within the 2-year period prior to submittal of the claim.
8. A waiver of any claims for regulations not identified;
9. Exemptions. A statement, including analysis, as to why the regulations are not exempt from application for compensation under Measure 37, including:

- a. Adoption or enforcement of a nuisance;
  - b. Imposition to the extent required, of a regulation to implement a federal requirement;
  - c. Regulation prohibiting the use of the Property for the purpose of selling pornography or performing nude dancing;
- 10. A copy of all enforcement actions taken by any governmental body as regards the Property;
- 11. All other documents, information or argument to be relied upon by the claimant in support of the application;
- 12. An Application Fee as established by resolution and amended from time to time by the City Council. The City shall refund the application fee if it is determined by the City or by a court that the applicant is entitled to compensation under Measure 37 or that the City cannot make payment of an application fee a condition of acceptance of filing of an application under Measure 37. If the applicant refuses to submit a fee and the claim is processed by the City and it is determined that claim is not valid, the City may submit a bill for the cost to the claimant. If the bill is not paid within 30 days, the City may pursue collection efforts including filing a lien on the property;
- 13. A sworn statement that the information submitted is true and complete to the best knowledge and belief of the claimant.

2.07.020 Notice of Application for Claim.

- A. Upon receipt of a complete application, the Director shall cause notice of the filing of the claim to be given as follows, within 7 days from the date of determination of completeness.
- B. Notice of the hearing under this ordinance shall be made by regular first-class mail to:
  - 1. The Applicant and to owners of record of property on the most recent property tax assessment roll within 500 feet of where such property is located;
  - 2. The Chair of the Neighborhood Association Committee in which the Property is located;
  - 3. The Directors of the following Departments of Washington County: Land Use and Transportation and Assessment and Taxation;
  - 4. The Director of Metro's Growth Management Services;
  - 5. The Director of the Oregon Department of Land Conservation and Development;
  - 6. Such other persons or entities who have expressed an interest in or requested notice of possible waiver of enforcement of regulations under Measure 37; and

7. Any local, state or federal agency, which the Director believes would be affected by a waiver of the regulation from the Property.

The failure of the Director to give notice as provided in this subsection, or the failure of any person to receive notice given under this subsection, shall not invalidate any action of the City Council under this section. The notice provisions of this subsection shall not restrict the giving of notice by other means, including the posting in public places, newspaper publication, radio, television or by posting on the City's web site.

C. The notice provided by this subsection shall:

1. Explain the nature of the application, including the name of the Claimant and the amount of the Claim;
2. List the applicable criteria from this ordinance;
3. List the regulation(s) that is the subject of the claim;
4. Set forth the street address, if available, or other easily understood geographical reference to the claimant's property;
5. State the date, time and location of the hearing at which the City Council will consider the claim as well as evidence bearing on such claim and determine whether compensation should be paid under this section or the subject regulation(s) should be waived as to the claimant;
6. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals or other appropriate appeal tribunal based on that issue;
7. Be mailed at least 20 days before the hearing unless the Director determines that a shorter notice period is required in order to assure that the City Council may make a written decision upon the claim and provide for adequate time for payment of any determined just compensation or license waiving enforcement of a City regulation(s) within the 180-day period required by Measure 37;
8. Include the name of the City staff to contact and the telephone number where additional information may be obtained;
9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost;
10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing (unless reduced in time pursuant to paragraph 7 of this subsection), and will be provided at a reasonable cost;
11. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

D. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. Any staff report shall be made available at least 7 days in advance of the hearing (unless reduced in time pursuant to



paragraph 7 of subsection C), except that any appraisal prepared on behalf of the City, which may be submitted at the hearing.

- E. The claimant may request an extension for filing a complete application, for a continuance of the City's review of such application. A request for extension or continuance shall be deemed a waiver of the 180-day time frame for responding to the application by the amount of any requested extension or continuance.

#### 2.07.025 Review of Application.

The Director, following filing of an application under this section that is deemed complete, and following consideration of the information included in the application and any other evidence, shall determine whether a waiver of enforcement of the regulation may be necessary to avoid the owner or owners being entitled to compensation under Measure 37, and, if so, the extent of the waiver needed and the amount of compensation to which the owner or owners would be entitled without a waiver. If the Director determines that a waiver of enforcement of the regulation is or may be needed to avoid the owner being entitled to compensation, the Director, under the advice of the Finance Director and City Attorney, shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation if a waiver of enforcement of the regulation is not granted, taking into consideration the financial resources of the City for the payment of such claims. Based on this comparison, the Director shall prepare a written report stating the result of its comparison. If the Director has determined that a waiver of enforcement of the regulation may be needed, the report also shall make a recommendation either to grant a waiver that will avoid the owner being entitled to compensation; grant a license waiving enforcement of the regulation that will either avoid compensation or not avoid compensation but will reduce the compensation to which the owner is entitled and pay the amount of reduced compensation to which the Director believes the owner is entitled; deny a waiver of enforcement of the regulation and pay the amount of compensation to which the Director believes the owner is entitled; or take some other appropriate action, such as acquiring the entire private real property or any portion thereof by condemnation.

#### 2.07.030 City Council Hearing.

- A. Except as otherwise provided in this subsection, the hearing shall be conducted by the City Council in accordance with the Council rules for the conduct of administrative and quasi-judicial hearings.
- B. At the beginning of the public hearing under this section, the presiding officer or a member of City staff shall state:
  - 1. The applicable substantive criteria;
  - 2. That the hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation, decision;
  - 3. That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that

other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The Mayor may reasonably limit oral presentations in length or content depending upon time constraints. Either the City or the claimant may require that the appraiser or other person relied on by the other party attend the hearing with all relevant materials and be available for questioning by the Council. If the person is not available, the Council may strike from the record any information provided by the person at any stage. Any party may submit written materials of any length while the public record is open;

4. Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the City and all parties to respond to the issue, may preclude appeal on that issue to the appropriate appellate tribunal;
5. Any party wishing a continuance or to keep open the record must make that request while the record is still open;
6. The City Councilors (and the Mayor, if a decision maker) must disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.

- C. Any request made for an opportunity to continue the hearing, to present additional evidence or testimony or to make final written argument shall be subject to restriction or elimination, as the City Council determines convenient or necessary to assure that a written decision is made and sufficient administrative time remains thereafter to cause payment of compensation or waiving enforcement of the regulation within the required 180-days from the date of filing a claim. The Council shall have sole discretion as to whether to admit evidence, but material required to be submitted as part of the application or that the Director should have received and considered at the time of making its review and recommendation shall not be admitted unless the Council finds that extraordinary circumstances beyond the control of the offering party prevented earlier submittal. The Council may condition receipt of new information from the claimant on the claimant stipulating to an extension of time for consideration of the material and a waiver of the 180-day deadline provided for under Measure 37.

- D. The Council shall determine whether the following criteria have been met:
1. The Application is complete;
  2. The claimant is a qualifying Property Owner under Measure 37 as follows:
    - a. The subject property is located within the City and is subject to the ordinance or regulation, which is the basis of the application for claim;
    - b. The use which the claimant alleges is restricted under a City regulation and does not constitute a nuisance;

- c. The City regulation is not required as part of any federal requirement and is not an exempt regulation;
  - d. The owner of the property as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied;
  - e. There is substantial evidence to support the claim of reduction in the fair market value of the subject property;
  - f. The amount of compensation claimed or determined to be potentially due;
  - g. The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest;
  - h. The impact of waiving enforcement of the regulation(s) or otherwise permitting the use on other properties and the public interest; and
  - i. Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.
3. The cited regulation(s) reduce the fair market value of the property and entitle the Owner to compensation or waiver of enforcement of the regulation pursuant to Measure 37.

E. At the conclusion of the hearing the City Council shall announce its decision orally. Such decision shall not be considered the final City decision until the City Council has adopted written findings in support of its decision. The City Council shall determine whether the applying owner may be entitled to compensation under Measure 37 unless the City grants a license waiving enforcement of the regulation and, if so, the amount of compensation that may be due and shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a license waiving enforcement of the regulation is not granted, taking into consideration the financial resources of the City for the payment of such claims. If the City Council has determined that either compensation or a waiver is or may be required, then based on this comparison:

- 1. If the City Council finds that the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, is sufficient to justify denying the public benefit from application of the regulation to the owner's private real property, the City Council may grant a license waiving enforcement of the regulation to the extent necessary to avoid the owner or owners being entitled to compensation;
- 2. If the City Council finds that the public benefit from application of the regulation to the owner's or owners' private real property is sufficient to justify the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, the City Council may deny a license waiving enforcement of the

regulation and identify a specified amount of compensation to be paid;

3. The City Council may find that the public benefit from application of the regulation to the owner's private real property is sufficient to justify the public burden of paying some of the required compensation, taking into consideration the City's financial resources for the payment of such claims, but that other of the public benefits are not sufficient to justify the public burden of paying the balance of the required compensation. If so, the City Council may grant a license waiving enforcement of the regulation to the limited extent necessary to avoid the owner being entitled to compensation as to that part of the specified regulation providing public benefit and identify a specified amount of compensation to be paid as to that part of the regulation as to which a waiver from enforcement is not granted; or
4. The City Council may take some other appropriate action, including a resolution of intent to acquire an interest in the property by condemnation;
5. The City Council, in its discretion, may impose a condition that its decision will be effective only if the owner or owners of the private real property sign an agreement, in a form acceptable to the City, that waives any further claims in relation to application of the subject regulation to the private real property as to which a license or compensation is sought;
6. The City Council may take other appropriate action conditional on the City receiving a defined amount of contributions from others, such as persons who believe they would be negatively affected by an exemption, by a specified date. In the event the City Council makes such a conditional decision, then the Finance Department shall establish an account into which it shall deposit all contributions the City has received for the payment of compensation. On the date specified for receipt of the defined amount of contributions, the Finance Department shall certify whether the defined amount of contributions has been received. If the defined amount of contributions has been certified as received, then the compensation shall be paid and the license deemed denied or granted only to the limited extent approved by the City Council, as of the payment date. If the defined amount of contributions has been certified as not received, then the license shall be deemed granted as of the certification date and all contributions received by the City shall be returned to the persons who made the contributions.

- F. If the Council finds the criteria set forth in subsection 2.07.030D have been met, the Council shall adopt a written Order (which may be combined with the written findings and conclusion) either directing that payment of just compensation be made to the Property Owner and to any other persons holding an interest in the Property, in such manner as approved by the City Attorney, or issuing a license

waiving enforcement of the regulation in accordance with subsection 2.07.045 of this section. The City Council may delay, withhold or condition the entry of its written Order (including placement of just compensation funds in escrow) depending upon whether and at what time Measure 37 became effective.

- G. A copy of the findings, conclusion and Order shall be mailed by first-class mail to:
1. The claimant and to all other interested persons who both submitted written testimony or testified before the City Council;
  2. The government agencies that were provided notice of the Claim pursuant to subsection 2.07.020.B.3-5.

**2.07.035 Burden of Proof.**

The burden of proof of any material element shall be upon the claimant for all matters required to show that the claimant is a qualifying Property Owner under Measure 37 and the amount of compensation for reduced property value caused by the cited regulation or regulations. The burden shall be upon the City to establish that the regulation is exempt from the obligation to pay compensation.

**2.07.040 Standards for Interpretation.**

- A. Applications for claims shall be interpreted consistently with statutory laws and judicial decisions under Oregon Revised Statute, Chapter 197.
- B. This section is not intended in any way to expand the rights or remedies available to property owners under Measure 37 or any other law. Neither shall it be construed so as to contravene the express terms of Measure 37.
- C. Any City decision on a claim which is inconsistent with any appellate court ruling under Measure 37 issued after the City's decision may be the subject of a revocation proceeding instituted by the City under subsection 2.05.050 et. seq. of the Beaverton City Code or any other appropriate remedy available by law. If the City Council has taken an action under subsection 2.07.030 and the owner nevertheless files a court action seeking compensation or additional compensation from the City in relation to the specified regulation as it affects the owner's private real property, and if a final court decision determines that the extent of the license provided in the City Council's final order was not sufficient to avoid the owner(s) being entitled to compensation or additional compensation, then the extent of any license granted by the City shall be deemed to be the extent of any license necessary to avoid the owner(s) being entitled to compensation or additional compensation, effective as of the date of the City Council's decision.

**2.07.045 License Waiving Enforcement of City Regulation.**

- A. There is hereby established a City license, which waives City enforcement of one or more specified City regulations found by the Council to reduce the value of a Claimant's Real Property. Such license shall have the following characteristics:



1. It shall be signed by the Director on behalf of the City and issued only to a claimant pursuant to the process set forth in this section;
2. It shall be personal to the owner and nontransferable. The license shall expire upon the licensee's death or in the case of non-natural persons its expiration or termination;
3. It shall remain effective so long as the claimant owns the property to the same extent as at the time the claim was allowed;
4. Such license shall be presented to the City as part of any application for development of the subject property for which a waiver of the subject regulation is sought;
5. The City may record the license or a memorandum of the license in the deed records of the County;
6. Upon termination of the license, any land uses allowed under the waiver shall become non-conforming uses under the Beaverton Development Code.

- B. Issuance of a license under this subsection shall not cause the repeal of the regulation(s) being challenged.
- C. The City Attorney is authorized to prepare an appropriate form of license under this subsection.

2.07.050 Payment of Claim.

- A. If the Council determines that a valid claim has been presented and established under this section and sufficient funds are available and appropriated therefor, the Council may authorize payment to the claimant. The amount of payment shall be based on the Council's determination of the diminution in property value attributed to the City regulation.
- B. Payment shall be tendered upon Claimant's recordation in the Washington County Department of Records and Elections of a notice, covenant, or declaration in a form approved by the City Attorney that the cited regulation(s) are applicable to the Property.
- C. Any City payment of compensation under this section shall be to the owner or owners in proportion to their ownership interests in the private real property as to which a waiver of the regulation or compensation was applied for. If there is a dispute among owners as to their proportional interests in the private real property, or if the City otherwise deems it appropriate, the City shall make the payment to an escrow agent in trust for the benefit of the owners, or may interplead the payment in a legal action, for distribution to the owners based on their proportional interests as soon as the owners have resolved their dispute or agreed on the appropriate distribution. The City Council may make a decision to pay compensation under this section conditional on the owner providing title insurance to the City, insuring the City as to the identities of the current owners of all legal, equitable, and security interests in the private real property.

- D. If the Council grants the claim and provides for compensation as the remedy, the claimant shall be entitled to reasonable costs and attorney's fees if compensation is not paid within 180 days of receipt of the complete application. The claimant shall have 14 days after the decision to submit a detailed statement which shall be reviewed and, if approved, paid within 14 days of receipt of the statement by the City.

2.07.055 Record.

- A. The City Recorder shall maintain records of all monies paid and licenses issued pursuant to this section.
- B. The Director shall cause a copy of any license issued under this section to be mailed to the Washington County Director of Assessment and Taxation with a request that such information be considered in determining the assessed value of the subject property.

2.07.060 Conditions Related to Future Court Decisions.

- A. If the City Council grants a license or limited license as a means to avoid having to compensate, or as a means to limit compensation to, an owner or owners under Measure 37, and if, based on a subsequent appellate court interpretation or invalidation of Measure 37, in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the license waiving the regulation was granted, then the waiver or limited waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the waiver or limited waiver. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.
- B. The City Council may make a decision to pay compensation under this section conditional on the owner or owners signing an agreement, in a form acceptable to the City, that, if an appellate court subsequently interprets or invalidates Measure 37, in the same or another case, in a manner such that the owner was or owners were not entitled to compensation in relation to the subject regulation, then the owner or owners will repay the compensation received by the owner or owners to the City, with the repayment obligation being a lien against the subject private real property until paid. Whether or not the owner or owners sign such an agreement, if an appellate court subsequently interprets or invalidates Measure 37, in the same or another case, in a manner such that the owner was or owners were not entitled to compensation in relation to the subject regulation, then the owner or owners shall repay the compensation received by the owner or owners to the City, with the repayment obligation being a lien against the subject private real property until paid. Any such repayment obligation and lien shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.



**2.07.065 No Reapplication.**

If an application is denied or withdrawn prior to the issuance of a final written order by the City Council, no application for the same or substantially similar compensation claim may be made by the owner of the subject property.

**2.07.070 Validity of City Council Action.**

No failure of any person or body to comply with a procedural requirement set out in this section shall invalidate any action of the City Council under this section.

**2.07.075 Private Cause of Action.** If the Council's approval of a claim by waiving or granting a license to waive the enforcement of a regulation causes a reduction in value of other property located in the vicinity of the Claimant, these property owners shall have a cause of action in state circuit court to recover from the Claimant the amount of the reduction, and shall be also entitled to attorney fees.

**2.07.080 Attorney Fees on ~~Delayed~~ Compensation Claims.** If a demand made under Measure 37 and this ordinance is denied or not fully paid within 180 days of the date of filing a completed demand, the owner's reasonable attorney fees and expenses necessary to collect compensation will be added as additional compensation, provided compensation is awarded to the owner. If such demand is denied, not fully paid, or other action taken under Measure 37, within 180 days of the date of filing the completed demand, and the owner commences suit or action to collect compensation, if the City is the prevailing party in such action, then the City shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable 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 attorney fee rates and charges reasonably and generally accepted in Beaverton, Oregon for the type of legal services performed.

**Section 2. Severability.** It shall be the legislative intent that if any part of this ordinance shall be held invalid or unconstitutional, including without limitation compliance with statewide planning goals, the remaining parts of this ordinance shall remain in force and effect.

**Section 3. Emergency Clause.** The Council finds that immediate adoption of this ordinance is necessary to implement a new state law, which is anticipated to take effect on December 2, 2004. The Council therefore declares an emergency to exist, and this ordinance shall take effect immediately on its passage.

First reading this \_\_\_\_ day of \_\_\_\_\_, 2004.

Passed by the Council this \_\_\_\_ day of \_\_\_\_\_, 2004.

Approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2004.

ATTEST:

APPROVED:

\_\_\_\_ SUE NELSON, City Recorder

           ROB DRAKE, Mayor