

**ORDINANCE NO. 398**

**AN ORDINANCE PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN CLAIMS FOR COMPENSATION UNDER THE 2004 BALLOT MEASURE 37; AND ADOPTING PROCEDURES FOR PROCESSING CLAIMS.**

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

**WHEREAS**, Measure 37 provides that local governments may pay compensation to property owners for reductions in property values resulting from land use regulations that restrict uses of the property; and

**WHEREAS**, Ballot Measure 37 expressly allows local governments to develop procedures to process and assess claims made under Measure 37; and

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

**NOW, THEREFORE, THE CITY OF DRAIN ORDAINS AS FOLLOWS:**

**Section 1. Purpose** The purpose of this Ordinance is to provide procedures and standards for claims made under Measure 37, 2004.

**Section 2. Definitions** As used in this Ordinance, the following definitions apply:

- a. "Administrator" means the City Administrator or designee.
- b. "Affected Property" means private real property alleged to have suffered a reduction in fair market value as a result of the City's regulation which restricts the use of the property and for which a property owner seeks compensation for reduction in value.
- c. "Demand" means a written demand for compensation that meets the requirements of Section 3 of this ordinance.
- d. "Exempt Regulation" means:
  - (1) Regulations or laws restricting or prohibiting activities commonly and historically recognized as public nuisances under common law and those listed in the Ordinances of the City as nuisances, together with all criminal laws, both in the City ordinances or the laws of the State of Oregon and Federal laws or regulations.
  - (2) Regulations restricting or prohibiting activities for protection of public health and safety, including but not limited to fire and building codes; health and sanitation regulations; solid or hazardous waste regulations, or any regulations governing construction or performance standards for water, waste water, transportation, or public utility systems; and pollution control regulations.

e. "Family Member" means the wife, husband, son, daughter, mother, father, brother, sister, in-laws, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, 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 real property.

f. "Owner" means the present owner of real property that is the subject of a demand for compensation. The owner must be a person who is the sole fee simple owner or all joint owners whose interests add up to a fee simple interest in the property, including all persons who represent all recorded interests in the property, such as co-owners, joint tenants, leasehold owners, security interest holders, and holders with less than a fee simple interest.

g. "Property" means any real property or interest therein within the City Limits of the City, not including contiguous or not contiguous parcels under different ownership.

h. "Regulation" means local government comprehensive plans, zoning ordinances, land division ordinances and transportation ordinances.

### **Section 3. Claim Filing Procedures**

a. A property owner wishing to make a claim against the City under Measure 37 shall first file at the office of the City Administration a written demand for compensation to the City. A written demand for compensation is one that includes:

- (1) Identification of the affected property. Identification shall be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.
- (2) The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date and name that a family member(s) of Claimant acquired the property.
- (3) Identification of the regulation that is alleged to restrict the use of the affected property and the amount of compensation claimed.
- (4) The amount claimed as compensation.
- (5) A statement describing how the restriction affects the value of the property.
- (6) A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation.
- (7) A statement whether the application seeks compensation or a waiver, suspension or modification of the regulation.
- (8) A list of all persons with an ownership interest in or a lien on the property.

b. The City encourages but does not require the person claiming compensation to include the following information with the written demand for compensation:

- (1) An appraisal showing the difference in the property value with and without the regulation.

**Section 4. Pre-Filing Conference** The City Administrator, after receiving a demand from a property owner, may request a conference to discuss and clarify the demand.

**Section 5. City Administrator Investigation** The City Council delegates authority to the City Administrator to deny any claim for the reasons set forth in Section 8.a. of the ordinance. The City Administrator may deny a claim that the City Administrator deems to be invalid or may submit such claim to the City Council for a decision as to whether the claim should be denied. All claims, which the City Administrator does not deny as invalid, shall be submitted to the City Council for hearing.

**Section 6. City Council Proceedings** The City Council shall hold a public hearing on the claim. The public hearing should normally be set within one hundred fifty (150) days of the demand for compensation but may be set at any time. The City Council may hold an executive session on the claim at any time.

**Section 7. Public Hearing** The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The City Council may limit the duration of testimony.

**Section 8. Council Decision** In deciding the claim, the City Council may take any of the following actions:

a. Deny the claim based on any one or more of the following findings:

- (1) The regulation does not restrict the use of the private real property,
- (2) The fair market value of the property is not reduced by the passage or enforcement of the regulation.
- (3) The claim was not timely filed under the provisions of Measure 37.
- (4) The Claimant is not the current property owner.
- (5) The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.
- (6) The regulation is an exempt regulation.
- (7) The regulation regulates pornography or nude dancing.
- (8) The regulation is required by federal law.
- (9) The regulation protects public health and safety.

(10) The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, Ordinance, ordinance, goal or other enactment was not enacted by the City.

(11) The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.

(12) The Claimant is not legally entitled to compensation for a reason other than those listed in subsections (1) through (10). The basis for this finding must be clearly explained.

b. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose.

c. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property. Such waiver shall apply only to the current owner of the property, unless the City Council provides otherwise.

d. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be as to the property only unless the City follows the procedure for a legislative land use decision and the regulation is not required by state law. (See Attorney General's opinion.)

e. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within one hundred eighty (180) days of the date the written demand for compensation was filed. The specified date shall allow the City time to process the contributions and pay compensation.

f. The City Council may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The City Council may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the City Council directs staff to negotiate, the Council shall set the matter for further action no less than one hundred seventy-five (175) days from the date of the notice of claim became complete. If the City Council directs staff to negotiate, it may delegate authority to staff. The Council shall take final action within 180 days of the written demand for compensation. The City shall take actions b. through e. only if it determines the claim is valid.

**Section 9. Authority** The City Council shall have the authority to take the actions listed in Section 8, including the authority to waive or suspend any provision of any City code, Ordinance or ordinance, notwithstanding any inconsistent provision in this code or the Community Development Code. The City may retain an appraiser to assist the Council determination.

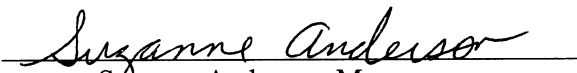
**Section 10. Fees and Reimbursement of Costs** The claimant shall pay a processing fee as specified by resolution of the city council. The Claimant shall further reimburse the City for additional costs, including

legal fees, the City incurs in processing the claim, which exceed the processing fee. If the costs remain unpaid ninety (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 claim is made. The processing fee is non-reimbursable to the claimant.

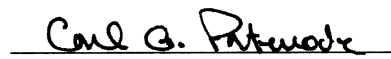
**Section 11. Severability**

- a. 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.
- b. If the State of Oregon finds Measure 37 invalid, any compensation paid to the Claimant by the City shall be reimbursed in full. If not reimbursed in full, a lien may be placed on the property.

**PASSED BY THE CITY COUNCIL OF THE CITY OF DRAIN, DOUGLAS COUNTY,  
OREGON, THIS 11th DAY OF APRIL, 2005.**

  
Suzanne Anderson, Mayor

**ATTEST:**

  
Carl A. Patenode, City Administrator