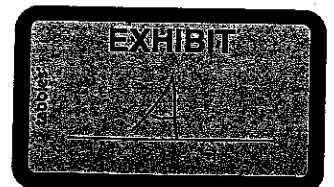


The following provisions are added to and made a part of ORS chapter 197:

- (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
- (2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.
- (3) Subsection (1) of this act shall not apply to land use regulations:
 - (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;
 - (B) Restricting or prohibiting 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) To the extent the land use regulation is required to comply with federal law;
 - (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
 - (E) 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.
- (4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.
- (5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land



use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

- (6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.
- (7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.
- (8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.
- (9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).
- (10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.
- (11) Definitions – for purposes of this section:
 - (A) “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 or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

- (i) Any statute regulating the use of land or any interest therein;
- (ii) Administrative rules and goals of the Land Conservation and Development Commission;
- (iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
- (iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- (v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

RECEIVED
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BILL BRADBURY
SECRETARY OF STATE

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An ordinance establishing a procedure)
for claims related to real property)
compensation arising under Ballot)
Measure 37, passed November 2, 2004,)
repealing Ordinances Nos. 1206 and)
1207, and declaring an emergency.)

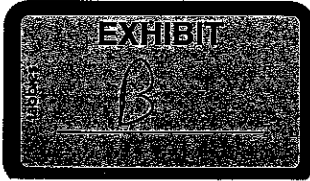
ORDINANCE NO. 1209

THE MARION COUNTY BOARD OF COMMISSIONERS MAKES THE FOLLOWING
FINDINGS:

A. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment of just compensation to landowners if a government land use regulation reduces property value. In lieu of payment of just compensation, Ballot Measure 37 authorizes the governing body of a local government to modify, remove or not apply the land use regulation.

B. Ballot Measure 37 became effective December 2, 2004. Ballot Measure 37 permits owners of private real property to apply for compensation for the reduction of property value resulting from imposition of a land use regulation that restricts the use of private real property and the government has 180 days from such application to deny or pay the claim or take action to modify, remove, or not apply the regulation on the property. Since Ballot Measure 37 does not set forth a specific process for review of applications for compensation, it is in the best interest of Marion County to establish a process in order to be able to assess such claims in a timely manner.

C. The provisions of this ordinance implement the provisions added to ORS Chapter 197 by Ballot Measure 37. The purpose of this ordinance is to establish a prompt, thorough and consistent process that enables property owners to present



their legitimate Ballot Measure 37 claims consistent with the Oregon and U.S. Constitutions; enable persons with claims to have an adequate and fair opportunity to present them to the County; preserve and protect limited public funds; and establish a record of decision capable of review by courts of competent jurisdiction.

D. Although Commissioner Milne objects to various parts of this ordinance, in particular those provisions in Sections 3 (1), 4(1)(g), 6(1) and 15, that authorize or relate to the imposition of fees for Ballot Measure 37 claims, she recognizes that Ballot Measure 37 was approved by the voters on November 2, 2004 and became effective December 2, 2004. In recognition of the effective date, and in recognition of the statutory requirement for unanimity of the Board in adopting an emergency ordinance under ORS 203.045, Commissioner Milne is willing to vote "aye" on adoption of this ordinance. NOW, THEREFORE,

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. TITLE

This ordinance shall be known as the Ballot Measure 37 Procedure Ordinance of Marion County.

SECTION 2. PURPOSE

The purpose of this ordinance is to establish a procedure for evaluation of claims for real property compensation under the terms of Ballot Measure 37, approved by the voters, November 2, 2004. A claim for just compensation may be made based upon restrictions on the use of private real property that reduce the fair market value of the property or any interest therein. The prompt and thorough processing of claims will include consideration of the applicant's property rights, the remedies to preserve and protect limited public funds, the preservation and protection of the interests of the community by providing for public input into the process, and the establishment of an adequate record for judicial review.

SECTION 3. DEFINITIONS

As used in this ordinance, words and phrases shall have the same meaning as those added to ORS Chapter 197 by Ballot Measure 37, passed November 2, 2004, unless differently defined herein.

- (1) "Application" means a statement in writing with the minimum required information as provided in Section 4 below and signed by the owner.
- (2) "Appraisal" means a written report by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon.
- (3) "Enforce" means the denial of a validly submitted land use application, the issuance of a land use verification by the Planning Director declaring the use proposed by the owner to be unlawful or not permitted within the existing zone, or the mandatory removal of an unlawful use within the existing zone.
- (4) "Exempt regulation" includes, but is not limited to:
 - (a) A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
 - (b) A regulation restricting or prohibiting 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) A regulation required to comply with federal law;
 - (d) A system development charge;
 - (e) A regulation restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing;

- (f) 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, whichever occurred first;
 - (g) Any regulation determined or declared by applicable judicial decision or legislative act to be exempt.
- (5) "Fair Market Value" means the price stated in terms of dollars that a willing buyer would pay for the real property without any obligation to buy from a willing seller without any obligation to sell.
- (6) "Just compensation" means an amount of money equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of a land use regulation as of the date the owner makes written demand for compensation under Measure 37.
- (7) "Land use verification" means a written response from the Planning Director to an owner's request to know whether certain uses would appear to be consistent with the land use regulations applicable to the owner's real property.
- (8) "Nuisance" means a structure or condition on property arising from any act or omission, 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 the property that is the site of the nuisance.
- (9) "Owner" means the present person with a recorded interest in private real property that is the subject of a claim for compensation or any interest therein. The owner must be a person who is the sole fee

simple owner of the real property or all joint owners whose interests add up to a fee simple interest in the property.

- (10) "Person" means and includes any individual, partnership, corporation, association, firms, limited liability companies, joint stock companies, governmental subdivision or agency or public or private organization of any kind.
- (11) "Planning Director" means the Marion County Planning Director or designee.
- (12) "Real property" means any lot, parcel or tract or any combination thereof, that is owned by an owner, including structures built or located on the real property, and any recordable legal, equitable, future or contingent interest in all or any portion of the property. Real property does not include public property, personal property or easements over, above or below public property. Unless the context otherwise indicates, property shall mean real property.
- (13) "Reduction in fair market value" means the difference in fair market value of real property, as it exists at the time a claim is made under Measure 37, with and without application or enforcement of a land use regulation.
- (14) "Waiver" means the act or decision to modify, remove, or not apply a land use regulation that restricts the use of applicant's land, and has the result of reducing the fair market value of applicant's land. Waiver includes any conditions attached thereto by the county. Acceptance of a waiver by an applicant precludes compensation or other demand for the Measure 37 claim for which the waiver was granted.

SECTION 4. APPLICATION

(1) An application for just compensation must be signed by the owner and submitted to the Planning Director. The complete application shall include:

- (a) Name, address and telephone number of the owner(s) filing the claim.
- (b) A copy of the conveyance document that shows the date of acquisition and ownership interest of applicant in the property, including a legal description and physical address of the property.
- (c) A copy of the document evidencing a denial of a validly submitted land use application, a land use verification from the Planning Director declaring the use proposed by the owner to be unlawful or not permitted within the existing zone, or an enforcement letter mandating removal of an unlawful use within the existing zone (whichever is applicable).
- (d) A preliminary title report for the property, dated not more than 30 days prior to the date the claim is submitted, from a title insurance company licensed in Oregon.
- (e) Identification of the proposed use that currently is or has been restricted.
- (f) A written statement describing how the applicant believes the fair market value of the property has been reduced by the enactment or enforcement of the land use regulations at issue.
- (g) An application fee to be established by separate board order.

- (h) The Planning Director may elect to process a claim lacking one or more of the requirements above, or may process a claim with the understanding that missing requirements will be provided by a certain date in the future.
- (2) The applicant may provide the following documents or information if the applicant believes that they may be useful in evaluating the claim:
 - (a) Copies of any reports, plans, site plans and other documents submitted to the county for any previous applications for land use, verification, or permit approval, with identification of all efforts at obtaining a variance or release undertaken by the applicant. The Planning Director shall make any documents submitted to the county for any previous applications available to the applicant.
 - (b) Copies of any appraisals, market studies, economic feasibility studies, development schemes, environmental assessments or similar studies relating to the property.

SECTION 5. COMMENCEMENT OF 180 DAY PERIOD

The 180-day period required before applicant may commence a cause of action in circuit court for compensation under Ballot Measure 37 begins on the date a written demand is submitted to the Planning Director in accordance with the requirements of Measure 37.

SECTION 6. COMPLETENESS REVIEW

- (1) Upon submission of an application for just compensation, the Planning Director will date stamp the application and verify that the appropriate application fee has been paid.

- (2) The Planning Director shall then review the application for completeness. If the application is incomplete, the Planning Director shall notify the applicant within 15 days of receipt of the application that the application is incomplete and what information is needed to make it complete.
- (3) If the applicant provides supplemental information, the Planning Director shall verify within 15 days from the submission of the additional information whether the application, as supplemented, is complete.
- (4) If the applicant does not respond to a notice of incompleteness or refuses to provide required information, the Planning Director shall begin processing the incomplete application no later than 60 days after the initial submission of the application.

SECTION 7. PLANNING DIVISION REPORT

- (1) The Planning Director shall give notice of the application and opportunity to comment to affected agencies and county departments.
- (2) The Planning Director shall prepare a staff report that: describes the application and the claim; summarizes all relevant county department, agency and public comments; describes all pertinent facts; and makes a recommendation on how the claim should be resolved
- (3) The Planning Director may require that the applicant submit an appraisal of the property to:
 - (a) Determine if the identified regulation reduced the fair market value of the property; and

(b) Quantify the amount of the reduction in fair market value resulting from the application of the identified regulation to the property.

(4) The Planning Director's report and recommendation shall be forwarded to the Hearings Officer for initial review and recommendation to the board.

SECTION 8. REVIEW AND RECOMMENDATION

(1) The Marion County Hearings Officer shall review and analyze the staff report prepared by the Planning Director, the information in the record and applicable laws in order to make a recommendation to the Board of Commissioners consistent with the criteria below:

- (a) The challenged regulation is not an exempt regulation as defined in this ordinance;
- (b) The challenged regulation was enacted or enforced after the applicant became the owner;
- (c) The challenged regulation restricts the use of the owner's real property or any interest therein, and no other regulation authorizes an exemption, variance, waiver or other release from the regulation;
- (d) The restriction on use has the effect of reducing the fair market value of the subject property;
- (e) The application for compensation was timely filed;
- (f) The applicant is the current owner; and
- (g) The county is the entity responsible for payment, not some other agency that enacted the challenged regulation.

- (2) If the application fails to meet one or more of the criteria listed above, the Hearings Officer shall recommend denial of the claim.
- (3) If the application meets all of the criteria listed above, the Hearings Officer shall recommend approval of the claim, along with:
 - (a) The specific regulations that would need to be modified, removed or not applied if a waiver is granted, and
 - (b) The amount of reduction in the fair market value of the property if the regulation continues to be applied, as verified by an appraisal or other information, if just compensation is granted.
- (4) The Hearings Officer shall forward the recommendation to the Board of Commissioners for final action.
- (5) The Hearings Officer shall send a copy of the recommendation to the applicant.
- (6) If directed by the board, the Marion County Planning Commission may review the staff report prepared by the Planning Director in order to make a recommendation to the Board of Commissioners consistent with criteria in this section. The Planning Commission's recommendation shall be forwarded to the Board of Commissioners for final action and a copy sent to the applicant.

SECTION 9. PUBLIC HEARING AND NOTICE

- (1) The Board of Commissioners shall conduct a public hearing before taking final action on the recommendation.
- (2) Notice of the public hearing before the Board of Commissioners shall be mailed to the applicant and to the owners of record of real property within 250 feet of the subject property if located in an Urban Growth

Boundary (UGB), 500 feet of the subject property if located on non-resource land outside of a UGB, and 750 feet of the subject property if located on resource land. Notice shall be mailed not less than seven days prior to the scheduled hearing. The notice shall include a summary of the Hearings Officer's recommendation.

- (3) The failure of any person to receive notice shall not affect or invalidate any proceedings under this ordinance.

SECTION 10. BOARD FINAL DECISION

- (1) After the public hearing, the board shall consider the recommendation and all documents and evidence in the record. The board shall enter an order denying or approving the claim.
- (2) The board may deny a claim based on its finding that one or more of the criteria listed in Section 7, subsection (1) above, are not met.
- (3) If the board approves the claim it shall:
 - (a) Pay just compensation in the amount it determines to be appropriate based upon the evidence in the record. If the board approves payment of just compensation, the county shall continue to enforce the regulation against the property. Any compensation shall be paid from funds appropriated for that purpose within two years; or
 - (b) Remove, modify, or not apply the regulation to allow the owner to use the property for a use permitted at the time the owner acquired the property. Any waiver shall apply only to the property that was the subject of the claim.

SECTION 11. EFFECT OF DECISION

- (1) No just compensation shall be due pursuant to the provisions of Ballot Measure 37 if a decision is made to modify, remove, or not apply a county regulation to an applicant's property within 180 days of the submission of an application for compensation.
- (2) A land use regulation may be waived only to the extent that it restricts a use that would qualify for just compensation.
- (3) The ability to develop the property remains subject to the applicant complying with other current land use regulation development standards and regulations that are exempt from Measure 37, and obtaining any needed approvals or permits from either the county or other affected governmental entities.
- (4) Any improvement or development that the county allows based in whole or in part on the board's decision to modify or not apply a regulation under this ordinance, shall be treated as a nonconforming use or structure.
- (5) Nothing contained herein shall be construed as allowing a use of the subject property that was prohibited or restricted by any land use regulation in effect at the time the applicant acquired the property or any regulation that is not among those regulations included in the waiver.
- (6) The applicant's acceptance of the county's payment of just compensation or waiver shall forever satisfy the claim for which the compensation or waiver was granted. Neither the owner nor any subsequent owner shall have a claim for the partial taking caused by the regulation in question and/or its present or future enforcement.

SECTION 12. RECORDING OF DECISION

Notice of the payment of a compensation claim or the issuance of a waiver pursuant to this ordinance shall be recorded in the county deed records.

SECTION 13. APPRAISAL REQUIREMENTS

All appraisals submitted by applicant shall comply with the following:

- (1) The appraisal shall be in writing and prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon;
- (2) The appraisal shall comply with Uniform Standards of Professional Appraisal Practice (USPAP);
- (3) The appraisal shall include:
 - (a) The appraisal assignment, including a complete list of all regulations evaluated,
 - (b) A description of the area and a detailed description of the subject property,
 - (c) A statement of highest and best use of the property assuming the applicability of the regulations at issue and assuming that the regulations are not applied,
 - (d) A statement as to what, if any, regulations the appraiser concludes would restrict the use of the property and not give rise to a claim under Measure 37, and a description of public services and other permits or approvals, if any, that would be required before the use could be developed,
 - (e) A date of compensation valuation and how it was reached, and
 - (f) A detailed explanation of the facts, methodology and analysis used to reach the appraiser's opinion as to the compensable

reduction in fair market value caused solely by the application of the regulation.

- (4) To the extent practicable, the opinion of compensable reduction in fair market value shall be apportioned among each requested use such that the County may separately consider the alleged impact on fair market value of restricting each requested use.

SECTION 14. FUND FOR COMPENSATION

The county may establish a fund for the payment of just compensation claims under Measure 37. The County Treasurer and Business Services Department shall jointly administer the fund.

SECTION 15. PROCESSING FEE

Applicant shall pay a processing fee to be established by separate board order.

SECTION 16. REPEAL OF PRIOR ORDINANCES

Ordinances Nos. 1206 and 1207 are hereby repealed.

SECTION 17. SEVERABILITY

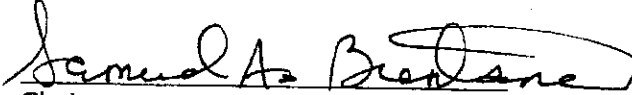
Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

SECTION 18. DECLARATION OF EMERGENCY

This ordinance being necessary for the preservation of the health, safety, and welfare of the community, an emergency is declared to exist and this ordinance will take effect upon its passage.

Adopted this 12 day of January 2005.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

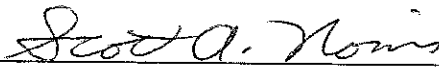
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CERTIFICATE OF MAILING

I hereby certify that I served true and correct copies of the foregoing Motion to Strike on the following persons:

Wallace W. Lien
Attorney at Law
1775 32nd Place NE, Suite A
Salem OR 97303-1674
Attorney for Plaintiffs

by mailing said person copies thereof. I further certify that said copies were placed in a sealed envelope and addressed as noted above, that said copies were deposited in the United States mail at Salem, Oregon, on the 12 day of August, 2005.



Scott A. Norris
Assistant Legal Counsel
Of Attorneys for Defendant