

CITY OF SISTERS

ORDINANCE NO. 352

AN ORDINANCE CONCERNING REAL PROPERTY COMPENSATION, ADOPTING PROCEDURES TO THE SISTERS MUNICIPAL CODE FOR PROCESSING MEASURE 37 CLAIMS, AND DECLARING AN EMERGENCY.

WHEREAS: On November 2, 2004, the voters of the state of Oregon passed Ballot Measure 37, amending Chapter 197 of the Oregon Revised Statutes; and

WHEREAS: Ballot Measure 37 provides for the adoption by a local government of procedures for the processing of claims under Ballot Measure 37; and

WHEREAS: The City of Sisters intends to establish a prompt, open, thorough and consistent process for property owners to present their Measure 37 claims to the city, to preserve and protect limited public funds, and to establish a record of the decision capable of circuit court review;

NOW, THEREFORE, THE CITY OF SISTERS ORDAINS AS FOLLOWS:

Section 1 Purpose:

This ordinance is intended to implement the provisions added to Chapter 197 of the Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions are intended to establish a prompt, open, thorough and consistent process for property owners to present their claims to the city, to preserve and protect limited public funds, and to establish a record of the decision capable of circuit court review.

Section 2 Definitions:

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

City Manager. The City Manager of the city, or designee.

Claim. A written claim filed under Ballot Measure 37.

Exempt land use regulation. A land use regulation that:

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

(b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(c) Is required in order to comply with federal law;

(d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

(e) Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner.

Family member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Land use regulation. Includes:

(a) Any statute regulating the use of land or any interest therein;

(b) Administrative rules and goals of the Land Conservation and Development Commission; and

(c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances.

Owner. The present owner of the real property, or any person or entity with any present ownership interest in the real property.

Valid claim. A claim submitted by the owner of real property that is subject to a land use regulation, other than an exempt land use regulation, adopted or enforced by the City that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

Section 3 – Claim Filing Procedures.

(1) A person seeking to file a claim under this ordinance must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the City Manager’s office.

(2) A claim shall be submitted in writing and shall include:

(a) A copy of the title report for the property not more than 30 days old, along with a statement showing the names, addresses and telephone numbers of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each person or entity;

(b) The address, tax lot, and legal description of the real property that is the subject of the claim, and the date the property was acquired by each person or entity with an ownership interest;

(c) The current land use regulations that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property along with a description of how the regulation restricts the use of the real property and has caused a reduction in the fair marked value of the real property.

(d) A copy of the land use regulation in effect at the time the ownership interest was acquired or that the owner is seeking to have applied to the real property.

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

(f) Copies of any leases or Covenants, Conditions and Restrictions (“CCR’s) applicable to the real property, if any, that impose restrictions on the use of the property; and;

(g) Such other information as may be requested by the City that the City deems necessary to adequately review the claim.

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

Section 4 – City Manager Investigation and Recommendation.

(1) Following an investigation of a claim, the City Manager shall forward a recommendation to the City Council that the claim be:

(a) Denied;

(b) Investigated further;

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

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

Section 5 – Negotiated Resolutions.

(1) A current owner of real property that is or may be the subject of a claim for compensation and who seeks the waiver of a land use regulation may negotiate a resolution to the claim with the City. The City Manager shall schedule a meeting with

the property owner and appropriate City representatives to review the owner's claim. If the City Manager concludes that the property owner is entitled to some form of compensation or waiver pursuant to the provisions of Measure 37, City staff will work with the applicant in an effort to agree upon the minimum waiver, which will allow the property owner the desired use while minimizing any adverse impact on other properties within the City.

(2) If the property owner and City Manager come to an agreement concerning the property owners' entitlement to a Measure 37 waiver and the terms of that waiver, the City Manager's recommendation under Section 4 will be presented to the City Council as a joint recommendation of the property owner and the City Manager.

(3) If the City Council approves the proposed resolution, the fee provided in Section 7 shall be waived. If approved by the City Council, the agreement shall be recorded against the real property that is the subject of the claim.

Section 6 - City Council Decision.

(1) Once a recommendation is made by the City Manager, the City Council shall take action on the claim as soon as possible. The City Council may conduct a public hearing before taking final action on the claim. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject property, neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property, and such other notice that the City Council deems appropriate. At the time of the public hearing, if any, or at the time of the decision, City Council members shall disclose any contacts with property owners or any conflicts of interest.

(2) Upon conclusion of any hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council shall adopt a resolution or ordinance that:

(a) Determines that the claim is a valid claim and removes or modifies the challenged land use regulations with respect to the subject property;

(b) Determines that the claim is a valid claim and compensation is due to the claimant in an amount set forth in the Council's resolution and establishing any conditions for payment of that compensation;

(c) Determines that the claim is valid and that the City should acquire the property; or

(d) Determines that the claim is not valid and denies the claim.

(3) The City Council's decision to waive or modify a land use regulation or to compensate the owner shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by removing or modifying the challenged land use regulation(s) with respect to the subject property.

(4) If the City Council removes or modifies the challenged land use regulation, it may, at its discretion, put back into effect with respect to the subject property, any or all of the land use regulations in effect at the time the claimant acquired the property or were applicable to the property during that period of ownership.

(5) A decision by the City Council to remove or modify a land use regulation shall be personal to the claimant. Following claimant's transfer of title to the property any use resulting from the removal or modification of the land use regulation shall be deemed a non-conforming use.

(6) If the City Council adopts a resolution under (2)(a) or (2)(b) of this section, the City Manager shall record on the property a copy of the resolution with the Deschutes County Clerk's Office.

Section 7 – Processing Fees.

(1) The City Manager shall maintain a record of the City's costs in processing a claim, including the costs of obtaining information required by Section 3 of this ordinance. Following final action by the city on the claim at the local level, the City Manager shall send to the property owner a bill for the actual costs, including staff and legal costs, that the City incurred in reviewing and acting on the claim.

(2) If the property owner does not pay the amount due within 30 days, then the City shall pursue collection, including filing a lien on the property. In any action on the amounts due to the City under this ordinance, the City is entitled to recover all of its costs including attorney fees at arbitration, trial or on appeal.

Section 8 - Effective Date.

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

Passed by the Common Council of the City of Sisters and Approved by the Mayor this 9th day of December, 2004.

Mayor

ATTEST:

City Recorder