

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Adopting Procedures)
to Implement Ballot Measure 37 to Establish a Process)
to Consider Claims for Compensation or Adjustment of) ORDINANCE No. 749
Land Use Regulations for Eligible Claimants; Declaring)
an Emergency; Effective December 2, 2004.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on December 2, 2004, commissioners Kathy George, Mary P. Stern and Leslie Lewis being present.

THE BOARD 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 will become 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 interests of Yamhill County to establish such 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 Stern objects to various parts of this ordinance, in particular those provisions in Section 5 that authorize Board action on a Planning Director recommendation without public notice or a public hearing, she recognizes that Ballot Measure 37 was approved by the voters on November 2, 2004 and becomes effective December 2, 2004. In recognition of

the imminent effective date, and in recognition of the statutory requirement for unanimity of the Board in adopting an emergency ordinance under ORS 203.045, Commissioner Stern is willing to vote "aye" on adoption of this ordinance. NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section 1. Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined in this ordinance shall be given the meaning intended in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), or as those words may be subsequently defined by statute. Words used in this ordinance that are the same as words used in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) shall have the same meaning as the words used in those provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), notwithstanding any different definition in any other regulation. If not defined there, the words shall be given their common and ordinary meaning.

- (1) Claim. A claim filed under Ballot Measure 37 (November 2, 2004).
- (2) Enforced. For purposes of this ordinance only, a land use regulation is "enforced" when one of the following events occurs:
 - (a) The County denies a land use application seeking permission to use an owner's property in a specific way because a land use regulation does not allow the use;
 - (b) The Planning Director issues a written statement determining that the use of an owner's property in a specific way is not allowed by a land use regulation; or
 - (c) An owner has been cited into Circuit Court by the Code Enforcement Officer for violating a Yamhill County land use regulation.
- (3) 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 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.

(4) 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.

(5) 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.

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

(7) Planning Director. The Planning Director or the Planning Director's designee.

(8) Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by Yamhill County that restricts the use of the private real property in a manner that reduces the fair market value of the real property and otherwise satisfies the requirements of Ballot Measure 37 (November 2, 2004) and this ordinance.

Section 2. Application for Claim.

An applicant seeking to file a claim under this ordinance shall be the present owner of the property that is the subject of the claim at the time the claim is submitted. An applicant shall submit an application to the Planning Director consisting of all of the items set out in this section. The Planning Director may waive the submission of any materials if not deemed applicable to the evaluation of the specific claim. Within 20 working days of the date the application is first submitted, the Planning Director may require additional information beyond that listed in this section where necessary to address approval criteria for the claim. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. Unless specifically waived by the Planning Director, the following must be submitted:

- (1) A completed application form with an application fee to at least partially cover the County costs of processing the application. The fee shall be set by Board Order.
- (2) The name, mailing address, and phone number of the property owner filing the application, and of each of the other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each, if any, along with the signature of each of the other owners indicating consent to the application claim;
- (3) A legal description and tax lot number of the subject property as well as a street address for the property (if any);
- (4) A title report or information report issued by a title company licensed to do business in Oregon issued within 30 days of the application's submittal, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a certified copy of the latest deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the application;
- (5) A statement specifically identifying the section of any Yamhill County land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was adopted, first enforced or applied to the subject property;
- (6) A statement of the relief sought by the owner, such as a monetary payment in a specific amount, removal of the applicable regulation, modification of the applicable regulation, or a decision to not apply the regulation to the subject property. If a modification is sought, a description of the desired modification must be included.
- (7) A statement indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of the challenged regulation. If determined necessary by the Planning Director in the Director's sole discretion, the written statement must include a copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004);
- (8) A written statement addressing the criteria listed in Section 4 of this ordinance;
- (9) Copies of any leases or covenants, conditions and restrictions applicable to the subject property if any exist that impose restrictions on the use of the property.

Section 3. Completeness Review.

The Planning Director shall review a claim application and, within 20 working days of its receipt, notify the applicant as to whether the application is complete. If the Planning Director determines that the application is complete, the Planning Director shall begin the application review process. If the Planning Director determines that the application is incomplete, the county shall advise the applicant in writing of the necessary missing information. Within 10 days of the mailing of a notice of missing information, the applicant shall submit to the county a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement indicating an intention to submit missing information shall constitute a waiver of the 180-day deadline contained in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for a period of time equal to the time it takes to supply the missing information. The County shall accept the application and begin review either:

- (1) Upon receipt of all of the missing information requested by the County;
- (2) Upon receipt of a written statement from the applicant indicating that the missing information will not be provided; or
- (3) Upon the 20th day after mailing the notice of missing information referred to above, if the applicant has not responded.

Section 4. Application Review and Recommendation.

(1) The Planning Director shall make an initial determination as to whether the application is a valid Ballot Measure 37 claim that qualifies for compensation consideration by the Board. An application qualifies for compensation consideration if the applicant has shown that all of the following criteria are met:

- (a) Yamhill County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;
- (b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;
- (c) The challenged Yamhill County land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and
- (d) The challenged Yamhill County land use regulation is not an exempt land use regulation as defined in Section 1 of this ordinance.

(2) If an application fails to meet one or more of the criteria in subsection (1) of this section, the Planning Director shall issue a written recommendation to the Board recommending

denial of the claim application and explaining the reason(s) for determining that the application does not qualify for compensation consideration.

(3) If the claim application meets all of the criteria in subsection (1) of this section, the Planning Director shall issue a written recommendation to the Board recommending acceptance of the claim application as a valid claim and explaining the basis for the Director's recommendation. The recommendation shall include at least the following components:

(a) The Planning Director's determination of the amount of compensation to which the applicant may be entitled as a result of a reduction in property value due to the imposition of a land use regulation; and

(b) The Planning Director's determination whether it is necessary to modify, remove or not to apply a Yamhill County land use regulation to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The determination shall include a recommendation on the extent of adjustment of the land use regulation needed to avoid the entitlement to such compensation; and

(c) The Planning Director's determination that the public interest is served by modifying, removing or not applying the subject land use regulation in lieu of paying compensation; taking into consideration the financial resources of the County for the payment of such claims.

(4) The Planning Director shall issue a recommendation to the Board by the 45th day after the application was accepted and review was commenced as provided in Section 3. Notice of the Planning Director's recommendation to the Board shall be mailed to the applicant.

Section 5. Board Consideration of Planning Director's Recommendation.

(1) Within 15 days of the referral of the Planning Director's recommendation to the Board, the Board shall consider the recommendation at an informal session. No public hearing shall be held unless a majority of the Board votes to schedule a public hearing. If a public hearing is scheduled, staff shall comply with the requirements of subsection (2) of this section. If no public hearing is scheduled, the Planning Director's recommendation shall be considered at a later formal Board session as either a consent or non-consent agenda item. Public comment at the time of the non-consent agenda action item shall be allowed only with the consent of a majority of the Board.

(2) If a public hearing is scheduled as provided in subsection (1), written notice of the recommendation and hearing date shall be mailed to all of the following at least 15 days prior to the hearing:

(a) The applicant;

(b) Other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, or lessees, as listed on the application;

(c) Owners of record on the most recent property tax assessment roll of properties located within 500 feet of the perimeter of the subject property; and

(d) Other agencies or interested parties as determined by the Planning Director.

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

(4) The notice shall include all of the following:

(a) The street address or other easily understood geographical reference to the subject property;

(b) The criteria for the decision;

(c) The place, date, and location of the hearing;

(d) The nature of the application and the proposed use or uses sought by the owner if the identified land use regulation is waived or modified with respect to the subject property;

(e) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings; and

(f) The name and telephone number of a county contact person.

Section 6. Board Consideration and Decision; Applicable Procedure Where Use Also Barred by State Land Use Regulation.

(1) Upon conclusion of consideration of a claim application, and not later than 180 days after a claim application is filed with the Planning Director, the Board shall issue a written decision by Board Order that declares:

(a) The claim is not a valid claim; or

(b) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or

(c) The claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply the challenged land use regulation(s) to avoid reducing the fair market value of the property and to allow the owner to use the property

for a use permitted at the time the owner acquired the property. In those circumstances where the Board has decided to modify, remove or not to apply the challenged Yamhill County land use regulation but the use remains prohibited by a State of Oregon land use regulation, the Planning Director shall send notice of the Board's decision to the Director of the Department of Land Conservation and Development. The notice shall include a statement that the County will not accept an application for a building permit related to the newly allowed use of the property until the earlier of the following events: (i) notice by the Department of Land Conservation and Development that it concurs with the Board's decision, or (ii) a date 180 days from issuance of the Board's decision where no response is made to the notice by the Department of Land Conservation and Development.

(2) Where more than one regulation is being challenged, the Board may provide for a combination of the two remedies listed above in subsections 1(b) and 1(c).

(3) The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged Yamhill County land use regulation(s) to the subject property. The final Board decision shall include a statement of the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in this subsection.

(4) Provided all components of this section are satisfied, nothing in this section prevents the Board from accepting the Planning Director's written recommendation as the final Board decision.

(5) Within 5 days after the Board renders a decision, the County shall mail notice of the decision to the applicant. The notice shall include a summary of the decision.

(6) The County shall record notice of the Board decision in the county deed records.

Section 7. Board Decision Effect.

(1) Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in Yamhill County ordinances or regulations, the Board is authorized to modify, remove, or not to apply a challenged land use regulation by Board Order pursuant to this ordinance when the Board, in its discretion, elects to do so rather than paying just compensation to the property owner.

(2) Any modification, removal, or discontinued application of a land use regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner that made application under this ordinance, the discontinued regulation or any subsequent amendments shall be reinstated and apply to the property. Thereafter, the new

property owner shall be deemed to hold the property as a non-conforming use under the Yamhill County Zoning Ordinance No. 310, as amended.

(3) If the Board grants an Order modifying, removing, or discontinuing application of a challenged land use regulation as a means to avoid having to compensate, or as a means to limit compensation to, an owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on a final appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying owner was not entitled to compensation in relation to the modified, removed, or discontinued challenged land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

(4) Any modification, removal, or discontinued application of a challenged land use regulation Order granted under this ordinance shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the modified, removed, or discontinued application of a challenged land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order issued in response to the application.

Section 8. Severability.

All sections, subsections, and paragraphs of this ordinance are severable. If any section, subsection, or paragraph is ruled invalid for any reason by the court of last resort, the other parties of this ordinance shall be unaffected.

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Section 9. Effective date; emergency clause.

The first and second readings of this ordinance were made December 2, 2004. To carry out the intent of this ordinance an emergency is hereby declared to exist. In accordance with ORS 203.045(4) this ordinance shall take effect on December 2, 2004.

AYES: Commissioners George, Stern and Lewis.

DONE at McMinnville, Oregon on December 2, 2004.

ATTEST YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk
Kathy George
Chair KATHY GEORGE

By: *Anne Britton*
Deputy ANNE BRITTON

Mary P. Stern
Commissioner MARY P. STERN

FORM APPROVED BY:
John M. Gray, Jr.
JOHN M. GRAY, JR.
Yamhill County Legal Counsel
Leslie Lewis
Commissioner LESLIE LEWIS

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B.O. 04-827