

Chapter 2.28

REAL PROPERTY COMPENSATION  
UNDER CHAPTER 197 OF THE  
OREGON REVISED STATUTES

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2.28.010 Purpose. This chapter is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the city; preserve and protect limited public funds; and establish a record of the city's decision capable of circuit court review. (Ord. 457 §1, 2004)

2.28.020 Definitions. As used in this chapter, the following words and phrases mean:

"City recorder" means the city recorder of the city of Cave Junction, or his or her designee.

"Claim" means a claim filed under Ballot Measure 37.

"Exempt land use regulation" means a land use regulation that:

1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
2. 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;
3. Is required in order to comply with federal law;

4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

5. Was 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.

"Family member" means and includes the spouse, 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" means and includes:

1. Any statute regulating the use of land or any interest therein;

2. Administrative rules and goals of the land conservation and development commission;

3. Local government comprehensive plans, zoning ordinances, land division ordinances and transportation ordinances;

4. Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

5. Statutes and administrative rules regulating farming and forest practices.

"Owner" means the present owner of the property or any interest therein.

"Valid claim" means a claim submitted by the owner of real property that is subject to a 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. (Ord. 457 §2, 2004)

2.28.030 Claim filing procedures. A. A person seeking to file a claim under Sections 2.28.010 through 2.28.070 of this chapter 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 recorder's office, or another city office if so designated by the city recorder.

B. A claim shall include:

1. The name(s), address(es), and telephone number(s) of all owners, and anyone with an interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership of each;

2. The street address, assessor's map and tax lot, and legal description of the real property that is the subject of the claim, together with a title report issued no more than thirty days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired;

3. The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;

4. The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the state of Oregon; and

5. 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.

C. Notwithstanding a claimant's failure to provide all of the information required by subsection B of this section, the city may review and act on a claim. (Ord. 457 §3, 2004)

2.28.040 City recorder investigation and recommendation. A. Following an investigation of a claim, the city recorder shall forward a recommendation to the city council that the claim be:

1. Denied;
2. Investigated further;
3. Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
4. Evaluated with the expectation of the city acquiring the property by condemnation.

B. If the city recorder's recommendation is that a claim be denied, and no elected official informs the city recorder within fourteen days that the official disagrees, then the city recorder may deny the claim. If an elected official objects, then the city recorder shall wait an additional seven days to see whether two additional elected officials object to the proposed denial. If they do, then the city recorder shall schedule a work session with the city council. If not, the city recorder may deny the claim. (Ord. 457 §4, 2004)

2.28.050 City council public hearing. The city council shall conduct a public hearing before taking final action on a recommendation from the city recorder. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within three hundred feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the city council whose boundaries include the subject property. (Ord. 457 §5, 2004)

2.28.060 City council on claim. A. Upon conclusion of the public hearing, and prior to the expiration of one hundred eighty days from the date the claim was filed, the city council shall:

1. Determine that the claim does not meet the requirements of Measure 37 and this chapter, and deny the claim; or

2. Adopt a resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.

B. The city council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property.

C. 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, all

of the land use regulations in effect at the time the claimant acquired the property.

D. A decision by the city council to remove or modify a land use regulation shall be personal to the claimant(s) and may become invalid and void upon the transfer of any ownership interest in the subject property by the claimant to anyone. (Ord. 457 §6, 2004)

2.28.070 Processing fee. A. The city recorder shall maintain a record of the city's costs in processing a claim, including the costs of obtaining information required by Section 2.28.030 of this chapter which a property owner does not provide to the city. Following final action by the city on the claim at the local level, the city recorder 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.

B. If the property owner does not pay the amount due within thirty days, then the city shall pursue collection, including filing a lien on the property. (Ord. 457 §7, 2004)

2.28.080 Private cause of action. If the city council's approval of a claim by removing or modifying a land use regulation causes a reduction in value of other property located in the vicinity of the claimant, the neighbor(s) shall have a cause of action in state circuit court to recover from the claimant the amount of the reduction and may also be entitled to attorney's fees. (Ord. 457 §8, 2004)