

ORDINANCE BILL NO. 1 FOR 2008

ORDINANCE NO. 1198

AN ORDINANCE AMENDING SWEET HOME MUNICIPAL CODE CHAPTER 3.30 FOR PROCESSING DEMANDS FOR COMPENSATION MADE UNDER OREGON REVISED STATUTE 197.352, AS AMENDED BY INITIATIVE MEASURE 49 ENACTED INTO LAW BY THE VOTERS ON NOVEMBER 6, 2007, REPEALING SWEET HOME ORDINANCE NUMBER 1163, AND DECLARING A NEED FOR EXPEDIENCY.

WHEREAS, Ballot Measure No. 49, providing for the amendment of Oregon Revised Statute (ORS) 197.352, was submitted to, and approved by, qualified electors of the State of Oregon on November 6, 2007, and becomes effective December 6, 2007, and

WHEREAS, the provisions of Measure 49 provides that if the City enacts one or more land use regulations 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 entitled to just compensation equal to the reduction of the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim, and

WHEREAS, Measure 49 allows the City to develop procedures for processing claims on a Demand For Compensation, and

WHEREAS, in order to do so, it is necessary that the City of Sweet Home shall have and receive from any such claimant full and adequate information by means of which the City can evaluate and determine the validity and value of such Demand For Compensation, and

WHEREAS, the City of Sweet Home desires to comply with the requirements of Measure 49 in an appropriate and timely manner,

THEREFORE, The City of Sweet Home does ordain as follows:

Section 1.

1. **Purpose.** ORS 197.352 (5) authorizes the City to establish procedures governing new claims on Section 12 to 14 of Measure 49. These provisions are in addition to and not in lieu of the requirements of Ballot Measure 49.
2. **Definitions.** As used in this Ordinance, the following words and phrases mean:
 - a. **Ballot Measure 49.** Ballot Measure 49 means the measure enacted by the voters at the November, 2007 General Election, which amended ORS197.352.
 - b. **City Manager.** The City Manager of the City of Sweet Home, or designee.
 - c. **Claim.** A claim filed under ORS 197.352 as amended by Ballot Measure 49.
 - d. **Claimant.** The claimant is the person or persons filing a claim. The claimant must be a current owner of the property that is the subject of the claim.

- e. Exempt Land Use Regulation. A land use regulation that:
 - i. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 - ii. 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;
 - iii. Is required in order to comply with federal law;
 - iv. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
 - v. Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner.
- f. Fair Market Value. Fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements.
- g. 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.
- h. Just Compensation. If a claim is valid, just compensation is one of the following:
 - i. An amount of money equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest.
 - (1) Interest shall be computed using the average interest rate for a one year United States Government Treasury Bill on December 31st of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1st of each year of the period.
 - ii. Authorization to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.
- i. Land Use Regulation. Includes the City of Sweet Home's Comprehensive Plan, Zoning Ordinance, Land Division Ordinance, and Transportation Ordinance.
- j. Owner. The present owner of the property, or any interest therein.
- k. Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted 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.

1. Zoned for Residential. Zoned for Residential means zoning that has as its primary purpose single-family residential use.

 3. **Claims.** A person may file a claim for just compensation if:
 - i. The person is an owner of the property and if there is more than one owner, each owner has signed a written statement of consent to the filing of the claim;
 - ii. The property is wholly within the boundaries of the City of Sweet Home;
 - iii. The property is zoned for residential use;
 - iv. The person's desired use of the property is a residential use or a farming or forest practice;
 - v. The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007;
 - vi. The claim must be filed within five years after the date the land use regulation was enacted; and
 - vii. The enactment of one or more land use regulations after January 1, 2007, has reduced the fair market value of the property, other than an exempt land use regulation.

 4. **Claim Denial.** The City shall deny a claim if:
 - a. It is not filed within five (5) years from the date the land use regulation was enacted, or
 - b. An application for a Comprehensive Plan or Zoning amendment is approved for the subject property.

 5. **Transferability.**
 - a. Authorizations to partition, subdivide or establish a dwellings on a property run with the property and are transferable.
 - b. There is no time limit on when the authorization must be carried out, with the following exception:
 - i. When the owner who obtains the authorization conveys the property, the subsequent owner must create the lots or parcels and establish the dwellings authorized within ten (10) years of the conveyance.
 - c. If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later.

 6. **Application Process.** The Demand For Compensation, accompanied by the deposit set by separate Council Fee Resolution, shall be submitted to the City Manager, in writing.
 - a. All of the owner(s) of the subject property, shall be the claimant(s).
 - b. If not all owners are to be the claimant, the application shall be subscribed by at least one of the property owner(s) and accompanied by the written consent of the other owners to the submission of the Demand for Compensation claim. Such application for compensation shall be verified under the claimants' oath
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or affirmation, under penalty of perjury, that the information contained in the application for compensation and supporting materials is true and correct.

- c. The application shall contain or have attached thereto the following information and materials at a minimum:
- i. A description, sufficient for identification, of the regulation asserted by the claimant to have restricted the use of the private real property.
 - ii. The street address, township, range and section of the property, Linn County Assessor's Tax Lot number, and a description in compliance with the provisions of ORS 93.600, sufficient to identify and permit location of the private real property, the use of which is alleged to have been restricted by such regulation.
 - iii. A copy of the instrument conveying the property to the claimant.
 - iv. The true and correct names, mailing addresses, telephone numbers, accompanied by a title chain report, in the form of a litigation guarantee, completed within 30 days of the application which includes the title history, all restriction on the use of the property unrelated to the land use regulations, and a statement of the date the claimant acquired ownership of the property, and that shows the ownership interests of all owners of the property.
 - v. A completed Department of Treasury, Internal Revenue Service, Form W-9, Request for Taxpayer Identification Number and Certification, which will be held in confidentiality with the City's Finance Director;
 - vi. A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow identification of the specific land use regulation that is the basis for the claim.
 - vii. A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation.
 - viii. Relief may not be granted if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.
 - ix. A statement of the amount claimed to be due for compensation;
 - x. A statement of the manner in which the fair market value of the property has been reduced.
 - xi. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment.
 - xii. The appraisal must be accompanied by a copy of the detailed written appraisal report by an MAI appraiser, qualified, certified and licensed as such in the State of Oregon for the type of property under consideration, 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 regulation(s).
 - xiii. Appraisals must meet the uniform standards of Professional Appraisal Practice (USPAP) and be performed by an appraiser who meets the Competency Rule of USPAP. The appraisal must be in a self contained

format and must be “complete”, not “limited”.

- xiv. The appraisal shall expressly determine the highest and best use of the property at the time the land use regulation was enacted.
- xv. The cost of preparing the claim, including the appraisal, not to exceed \$5,000 may be added to the calculation of the reduction in fair market value.
- xvi. If the claim is for more than \$10,000, copies of two separate detailed appraisal reports must be included. If the claim is for \$10,000 or less, one detailed appraisal report must be included.
- xvii. A statement that the restriction is not related to an exempt land use regulation, and
- xviii. Any additional information which would aid in the determination of the validity and value of the claim, or any decision to release the restriction.

7. **Application Review.** The City Manager shall conduct a completeness review within 60 days after submittal of the Demand For Compensation and shall advise the claimant, in writing, of any material remaining to be submitted.

- a. A claim is complete when any of the following information and the required fee are received:
 - i. Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or
 - ii. Written notice from the claimant that none of the missing information will be provided.
 - iii. If claimant not notified within the 60 days, or the fee is missing, the claim is deemed complete when filed.
- b. A claim is deemed withdrawn if after notice of missing information the claimant does not comply with the requirements to complete the application.

8. **Notice of Public Hearing for Consideration by Council.**

- a. A notice of the claim shall be provided at least 30 days before the deadline for submission of written comments to the following:
 - i. All owners identified in the claim.
 - ii. To owners of record of property on the most recent property tax assessment roll.
 - iii. To owners within 100 feet of the property which is the subject of the notice.
 - iv. To any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
 - v. To the Department of Land Conservation and Development.
 - vi. To Linn County.
- b. The notice must describe the claim and state the following:
 - i. The date, time and location of the public hearing for consideration of the claim, that this is not a public hearing, and the final date for submission of written evidence and arguments relating to the claim;
 - ii. That judicial review of the final determination of the City on the claim is limited to the written evidence and arguments submitted; and,

- iii. That judicial review is available only for issues that are raised with sufficient specificity to afford the City Council an opportunity to respond.

9. **Written Evidence**

- a. Written evidence and arguments on the claim must be submitted to the City no later than the date that is specified in the notice.
- b. The claimant may request additional time to submit written evidence and arguments in response to testimony.
 - i. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

10. **Evidence.** The burden of proof of any material element shall be upon the claimant for all matters required to be shown that the claimant is entitled to just compensation and shall be upon the City to show that the regulation is exempt from the obligation for compensation.

11. **Determination By Council**

- a. The City Council shall consider the claim at a regularly scheduled meeting as noticed. At the Council meeting or subsequent meeting the City Council shall, by the concurrence of a quorum, either:
 - i. Determine the claim is not valid, or
 - ii. Determine the claim is valid.

12. **Council Decision.**

- a. If the claimant establishes that the requirements for a claim are satisfied and the land use regulation was enacted by the City, the Council must either:
 - i. Compensate the claimant for the reduction in the fair market value of the property; or
 - ii. Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.
 - (1) A use permitted under this section has the legal status of a legal, nonconforming use.
 - (2) A subdivision or partition or the establishment of a dwelling on property, must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel.
 - (a) The standards must not be applied in a manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel.
 - (3) If the owner is authorized to subdivide, partition or establish dwellings on more than one property the owner may cluster some or all of the dwelling, lots or parcels that would have been located in a farm or forest zone on the property zoned for residential use.

- (4) Regardless of the number of properties subject to a claim, the owner will not be eligible for more than 20 home sites.
 - b. The Council will have a record on review of a claim, including any staff reports, available to the public before the close of the record.
 - c. The decision by the Council is not a land use decision.
 - d. A copy of the final determination shall be mailed to the claimant and to any person who submitted written evidence or arguments before the close of record.
 - e. The City shall forward a memorandum of the final determination to Linn County to be recorded by the County in the deed records.
13. **Council Resolution.** The City Council shall adopt a Resolution as the Final Decision on a claim.
14. **Judicial Review.** A person that is adversely affected by a final determination of the City may obtain judicial review of the decision under ORS 34.010 to 34.100.
- a. A person eligible for a judicial review must be:
 - i. An owner of the property that is the subject of the final decision; or
 - ii. A person who submitted written evidence, arguments or comments to the City prior to the final date for submission of evidence.
 - b. A judicial review is limited to:
 - i. Evidence in the record at the time of the final decision.
 - ii. For issues that are raised with sufficient specificity to afford the Council an opportunity to respond.
15. **Fees.** The claimant shall pay for the cost of processing the application on a Demand For Compensation.
- a. The City Council shall set by Resolution a fee schedule to cover the costs of processing the application.
 - b. The City Manager shall maintain a record of the City's costs in processing a Demand For Compensation claim, including the costs of obtaining necessary information which the claimant does not provide to the City.
 - c. Following the final action by the Council on the Demand For Compensation, the City Manager may send to the claimant a bill for actual costs, including staff and legal costs, that the City incurred in reviewing and acting on the claim.
 - d. If the claimant does not pay the amount due within 30 days, the City may pursue collection, including filing a lien on the property.

Section 2. **Severability.** The provisions of this Ordinance are severable, and if any phrase, clause or part of this Ordinance is found by a court of competent jurisdiction to be invalid or unenforceable, each and every remaining phrase, clause and part shall nonetheless remain in full force and effect.

Section 3. **Repeal.** Sweet Home Ordinance Number 1163 is hereby repealed.

Section 4. **Expediency Clause.** It being deemed by the Council that the amendments to Oregon Revised Statute 197.352, resulting from Ballot Measure 49, were passed November 6, 2007 by the electors of the State and that Measure 49 went into effect on December 6, 2007, the Council determines that there is a need for expediency in establishing the process for reviewing claims exists and it is in the public interest that this ordinance take effect upon its passage by the Council and approval by the Mayor.

**PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 22nd
day of January, 2008.**


Mayor

ATTEST:


City Manager - Ex Officio City Recorder