

ORDINANCE BILL NO. 2 FOR 2004

ORDINANCE NO. 1163

AN ORDINANCE AMENDING SWEET HOME MUNICIPAL CODE CHAPTER 3.30 FOR PROCESSING DEMANDS FOR COMPENSATION MADE UNDER OREGON REVISED STATUTE CHAPTER 197, AS AMENDED BY INITIATIVE MEASURE 37 ENACTED INTO LAW BY THE VOTERS ON NOVEMBER 2, 2004, REPEALING ORDINANCE NUMBER 1133, AND DECLARING AN EMERGENCY.

WHEREAS, Ballot Measure No. 37, providing for the amendment of ORS Chapter 197, was submitted to, and approved by, qualified electors of the State of Oregon on November 2, 2004, and becomes effective December 2, 2004, and

WHEREAS, the provisions of Measure 37 provide that if the City “enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of Measure 37 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” equal to the reduction of the fair market value of the property resulting from enactment or enforcement of the land use regulation, and

WHEREAS, Measure 37 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 applicant 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 37 in an appropriate and timely manner,

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

Section 1.

1. **Purpose.** Any person filing a Demand For Compensation from the City of Sweet Home under the provisions of Ballot Measure 37, as incorporated into Oregon Revised Statutes, Chapter 197, shall, within the time limit provided by any applicable statute of limitations, submit to the City Manager with true and accurate accompanying information and documentation as necessary to establish the validity and value of such Demand For Compensation, including but not necessarily limited to the information hereafter enumerated, a written Demand For Compensation. Any application so given shall include, but shall separately state, the claims for which they are applying with respect to the property therein described on the date the application is tendered to the City. No application shall set forth claims which do not affect all of the property described in the application. Where multiple Demands For Compensation are sought to be asserted for more than one parcel of real property, the claims shall be stated in separate notices unless

all of the claims set forth affect all of the parcels described in the application.

2. **Definitions.** As used in this Ordinance, the following words and phrases mean:
- a. **City Manager.** The City Manager of the City of Sweet Home, or designee.
 - b. **Claim.** A claim filed under Ballot Measure 37.
 - c. **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.
 - d. **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.
 - e. **Just Compensation.** An amount of money equal to the reduction in the fair market value of real property that is the direct result of the enactment or enforcement of a land use regulation which provides the basis for a valid Demand For Compensation claim.
 - f. **Land Use Regulation.** Includes:
 - i. Any statute regulating the use of land or any interest therein;
 - ii. Administrative rules and goals of the Land Conservation and Development Commission; and
 - iii. City's Comprehensive Plan, Zoning Ordinances, Land Division Ordinances, and Transportation Ordinances.
 - g. **Owner.** The present owner of the property, or any interest therein.
 - h. **Valid Claim.** 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.
3. **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. All of the owner(s) of the subject property, shall be the applicant(s). If not all owners are to be the applicant, 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. If not all owners subscribe or consent to the submission of the application, the application shall contain a statement identifying the owners who have not subscribed or consented to the application, and state that such

owners were provided with a copy of the application and refused to subscribe or consent thereto. Such application for compensation shall be verified under the applicants' oath or affirmation, under penalty of perjury, that the information contained in the application for compensation and supporting materials is true and correct. The application shall contain or have attached thereto the following information and materials at a minimum:

- a. A description, sufficient for identification, of the regulation asserted by the applicant to have restricted the use of the private real property;
- b. The street address, 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;
- c. 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 applicant acquired ownership of the property and that shows the ownership interests of all owners of the property;
- d. 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;
- e. Whether the claim is alleged to arise on account of (1) the adoption of a regulation, (2) the enforcement of a regulation, or (3) the application of a regulation, and the date on which the claim is alleged to have arisen by reason of such event;
- f. A copy of the existing land use regulations that the applicant claims restricts the use of the property, including the date the applicant claims the land use regulation was first enacted, enforced, or applied to the property.
- g. A copy of the land use regulations in existence and applicable to the property when the applicant became the owner of the property, and a copy of the land use regulation in existence immediately before the regulation was enacted, enforced, or applied to the property.
- h. A description of the effect of the regulation on property, including a statement of the manner in which the use of the property is thereby restricted;
- i. A statement of the amount claimed to be due for compensation;
- j. A statement of the manner in which the fair market value of the property has been reduced, and a statement describing any affirmative obligation imposed on the owner which are part of the reduction in fair market value;
- k. The alleged values of the property on the date the claim is alleged to have arisen, including the value the property would have on such date as it is, subject to the restriction, and the alleged value of the property on such date, without the restriction, accompanied by a copy of a 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). 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”. The appraisal shall address the specific limitations set forth in this ordinance. 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.

- l. Whether or not applicant believes the restriction to be related to the prohibition of a historically and commonly recognized nuisance, or to implement a requirement of Federal law, and
 - m. Any additional information which would aid in the determination of the validity and value of the claim, or any decision to release the restriction.
4. **Application Review.** The City Manager shall conduct a completeness review within 10 days after submittal of the Demand For Compensation and shall advise the applicant, in writing, of any material remaining to be submitted. The applicant will submit the material needed for completeness within 30 days of the written notice that additional materials need to be submitted. Notwithstanding an applicants failure to provide all of the information required by Section 3, the City may review and act upon a Demand For Compensation claim.
5. **Notice and Determination By Council.**
 - a. At the next regularly scheduled City Council meeting following provision of notice as required by subsection “b” of this Section, the City Council shall consider the application. At the Council meeting or subsequent meeting the City Council shall, by the concurrence of a quorum, determine whether compensation is granted and the amount of compensation, whether any exceptions to the requirement for compensation apply, or whether the regulation should be modified, removed, or deemed not to apply to the applicants’ property.
 - b. Notice of the City Council’s intent to consider the application shall be mailed to the applicant and property owners within 300 feet of the applicants’ property no later than 7 days prior to the initial meeting at which the Council will consider the application. Failure of any person to receive notice shall not invalidate any action taken or decision made by the Council.
6. **Evidence.** The burden of proof of any material element shall be upon the applicant for all matters required to be shown that the applicant is entitled to just compensation and shall be upon the City to show that the regulation is exempt from the obligation for compensation.
7. **Council Decision.** The 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.
 - a. If the 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 applicant acquired the property.

- b. A decision by the Council to remove or modify a land use regulation shall be personal to the applicants and shall automatically become invalid and void upon the transfer of any ownership interest in the subject property to anyone other than a family member as defined by Measure 37. Following the voiding of the decision because of a transfer, the existing use shall be deemed to be a non-conforming use. Any future use of the property must be consistent with all regulations in effect at the time of the transfer, or thereafter amended.

8. **Council Resolution.** The City Council shall adopt a Resolution prior to the expiration of 180 days from the date the Demand For Compensation was filed. The Council may take, but is not limited to taking, any one or more of the following actions on a Demand For Compensation, as appropriate:

- a. Determines that the claim is a valid claim and removes or modifies the challenged land use regulation(s) with respect to the subject property;
- b. Determines that the claim is a valid claim and compensation is due to the applicant in an amount set forth in the Council's Resolution;
- c. Determines that the claim is valid and that the City should acquire the property through negotiation or eminent domain; or
- d. Denies the Demand For Compensation based on, but not limit to, any one or more of the following findings:
 - i. The land use regulation does not restrict the use of the private real property.
 - ii. The fair market value of the property is not reduced by the enactment, enforcement or application of the land use regulation.
 - iii. The Demand For Compensation was not filed in a timely manner, as follows:
 - (1) Within two years of the effective date of Measure 37 or the date the City applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later.
 - (2) Within two years of the enactment of a 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.
 - iv. The owner is not the present property owner, or the property was not owned by a family member of the current owner at the time the land use regulation was enacted, enforced or applied.
 - v. The land use regulation is an exempt land use regulations as defined in Measure 37.
 - vi. The land use regulation in question is not an enactment of the City.

9. **Private Cause of Action.** If the Council's approval of a Demand For Compensation claim by removing or modifying a land use regulation causes a reduction in value of other property located in the vicinity of the applicant, the adversely affected owners of the property shall have a cause of action in the Oregon Circuit Court to recover from the applicant the amount of the reduction, and shall also be entitled to attorney fees, costs and disbursements in trial and on appeal.

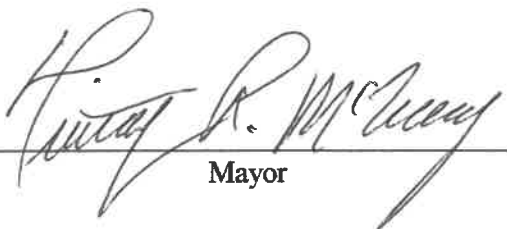
10. **Fees.** The applicant shall pay for the cost of processing the application on a Demand For Compensation. The City Council shall set by Resolution a fee schedule to cover the costs of processing the application. The City Manager shall maintain a record of the City's costs in processing a Demand For Compensation claim, including the costs of obtaining information required by Section 3, which the applicant does not provide to the City. Following the final action by the Council on the Demand For Compensation, the City Manager may send to the applicant a bill for actual costs, including staff and legal costs, that the City incurred in reviewing and acting on the claim. If the applicant 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 1133 is hereby repealed.

Section 4. **Emergency Clause.** It being deemed by the Council that the amendments to Oregon Revised Statutes, Chapter 197, resulting from Ballot Measure 37, were passed November 2, 2004 by the electors of the State, the Council determines that an emergency exists and it is in the public interest and safety that this ordinance take effect December 2, 2004, upon its passage by the Council and approval by the Mayor.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS 30th day of November, 2004.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder