

AN ORDINANCE CREATING AMC CHAPTER 2.100 TO ADOPT REGULATIONS AND PROCEDURES CONCERNING CLAIMS FOR COMPENSATION PURSUANT TO THE PROVISIONS OF OREGON REVISED STATUTES CHAPTER 197 AS AMENDED BY BALLOT MEASURE 37 PASSED NOVEMBER 2, 2004; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Albany finds that on November 2, 2004, the voters of the state of Oregon approved Ballot Measure 37 which amended Oregon Revised Statute Chapter 197; and

WHEREAS, Measure 37 provides that, in order to receive compensation, a present owner of real property must make a written "demand for compensation" to the government entity enacting, enforcing, or applying a land use regulation that allegedly restricted the use of their property and allegedly had the effect of reducing the fair market value of the property; and

WHEREAS, Measure 37 authorizes the City to adopt and apply procedures for processing claims for compensation; and

WHEREAS, Measure 37 imposes an unfunded mandated duty on the City to review demands for compensation and make decisions on disposition of those demands. Prudent management of the public treasury and fairness to all taxpayers requires that a person submitting a claim for compensation under Measure 37 pay the actual cost of processing the claim; and

WHEREAS, fairness to persons making claims under Measure 37 and the public interest mandate that determination of claim made under Measure 37 be based upon substantial factual information and analysis, which can only be provided by a present real property owner at the time they make a written demand for compensation; and

WHEREAS, it is in the best interest of the City to establish a process to assess such demands in a timely manner by establishing, among other things, a procedure that requires the necessary factual and analytical information to be included with a demand for compensation at the time the City accepts any written demand for compensation; and

WHEREAS, the City's regulations, ordinances, policies, standards, and specifications that regulate construction and performance standards for water, wastewater, transportation, or public utility systems are necessary for the protection of the public health and safety.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code, Chapter 2.100, is hereby created as follows:

Chapter 2.100

Private Property Compensation Claims

Sections:

2.100.010	Purpose
2.100.020	Definitions
2.100.030	Alternative Claim Resolution
2.100.040	Measure 37 Demands: Claim Accrual
2.100.050	Contents of Demand for Compensation: Place of Filing
2.100.060	Measure 37 Claims Administration Procedure
2.100.070	Modification, Removal, or Waiver of Land Use Regulation
2.100.080	Private Cause of Action
2.100.090	Application Fee/Reimbursement of Costs

2.100.010 Purpose. The purpose of this article is to accomplish the following regarding demands for compensation under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004:

Process demands for compensation quickly, openly, thoroughly, and consistently with the law; enable present real property owners making demands for compensation to have an adequate and fair opportunity to present their demands to the city's decision-maker; provide the city's decision-maker with the factual and analytical information necessary to adequately and fairly consider demands for compensation and take appropriate action under the alternatives provided by law; preserve and protect limited public funds; preserve and protect the interests of the community; and establish a record of decisions capable of withstanding legal review.

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

- (1) "City Manager" means the City Manager of the City, or his or her designee.
- (2) "Claim" means a claim filed under Measure 37.
- (3) "Exempt land use regulation" means 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.

- (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" means the present owner of the property or any interest therein.
- (7) "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 private real property in a manner that reduces the fair market value of the real property.

2.100.030 Alternative Claim Resolution.

- (1) As an alternative to a Measure 37 claim, a current owner of real property who seeks the waiver of a land use regulation may apply to the City Manager for said waiver on a form which the City shall provide for such purpose. Upon receipt of an application for waiver pursuant to this section, the City Manager shall schedule a meeting with the property owner and appropriate City representatives to review the owners 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 his or her desired use while minimizing the negative impact on other properties within the City.
- (2) If the property owner and the City Manager come to an agreement concerning the property owners entitlement to a Measure 37 waiver and the terms thereof, the owner shall thereafter file a formal Measure 37 claim pursuant to section 2.100.040 below which thereafter 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 Alternative Claim Resolution, the application fee provided in section 2.100.090 shall be waived. **In addition, if the City Council concludes, following a public hearing, that it is in the public interest to do so, it may order that the Private Cause of Action** provided in section 2.100.080, shall not apply to any subsequent use of the subject property in conformance with the terms of the Alternative Claim Resolution.

2.100.040 Measure 37 Demands: Claim Accrual.

- (1) The current owner of real property may submit a demand for just compensation under Measure 37 if the City enforces a land use regulation, other than an exempt regulation, against the property; the land use regulation was enacted after the date the current owner or,

in proper case, a family member of the owner acquired the real property; the land use restricts uses permitted on the real property; and the restriction imposed by the land use regulation has the effect of causing a reduction in the fair market value of the real property.

- (2) Any current owner who intends to assert a Measure 37 claim shall make that intention known at the time the owner submits an application for any permit that would result in the use of the land use regulation that would be the basis for the Measure 37 claim as an approval criteria.
- (3) No enforcement shall be deemed to have occurred merely because the current owner has submitted a demand for just compensation to the City and the demand for just compensation was denied. Nothing in this section shall be deemed to prevent the City from engaging in the Alternative Claim Resolution process prior to the date the land use regulation is enforced against the current owners' real property.

2.100.050 Contents of Demand for Compensation: Place of Filing.

- (1) A Measure 37 demand for compensation shall be filed on a form created for such purpose by the City Manager.
- (2) Demands for Measure 37 compensation shall be filed with the City Manager.

2.100.060 Measure 37 Claims Administration Procedure.

The City Council shall determine the procedure for the administration and adjudication of Measure 37 compensation claims by motion, resolution, or amendment to this ordinance.

2.100.070 Modification, Removal, or Waiver of Land Use Regulation.

If the City Council directs that the land use regulation in question be modified, removed, or waived, **with regard to the property subject to the Measure 37 claim**, then the current owner shall be allowed to use the real property for such use as the modification or waiver allows. ~~Successors in interest to the current owner shall be deemed to have a valid non-conforming use subject to the rights and restrictions set forth in the Albany Development Code in the aforesuch cases.~~

2.100.080 Private Cause of Action.

If the City Council's waiver of a land use regulation causes a reduction in value of other property located in the City, the owner(s) of the other property shall have a cause of action in the appropriate Oregon Circuit Court to recover from the owner(s) (of the property subject to the demand) in the amount of such reduction in value **or to seek an injunction**. A person who recovers for a reduction in value of property under this section, **or who obtains an injunction**, shall also be entitled to recover attorneys' fees and costs from the owner(s) (of the property subject to the demand). This section does not create a cause of action against the City of Albany. **In addition, the City Council may provide that a Private Cause of Action not be created against a property owner who obtains a waiver pursuant to the Alternative Claim Resolution procedure set forth in Section 2.100.030 above.** ~~nor does it create a cause of action against the owner of any property who obtains a waiver pursuant to the Alternative Claim Resolution procedure set forth in section 2.100.030 above.~~

2.100.090 Application Fee/Reimbursement of Costs.

If a claim is denied and ultimately determined to be invalid, the claimant shall, pay, as an application fee, an amount necessary to reimburse the City for all of the City's costs incurred in processing the claim. This sum shall include, but not be limited to, the City's attorneys fees, expert witness fees, appraisal fees, employee costs, and any and all other sums necessary to completely reimburse the City for expenses incurred in processing or defending against an invalid claim. If the costs remain unpaid 90 days after the City provides a detailed invoice demanding reimbursement of costs, a lien for those costs shall be recorded in the City lien docket for the property which was the subject of the claim. If the Alternative Claims Resolution process set forth at AMC 2.100.030 results in a joint recommendation for approval which is not approved by the City Council, the City will waive reimbursement of any fee/costs incurred prior to the decision of the City Council.

Section 2: Severability: If any portion of this ordinance is deemed invalid by a court of competent jurisdiction, the invalid portion shall be severed from the ordinance and the rest shall be remain in full force and effect.

Section 3: Emergency Clause: Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany and an emergency is hereby declared to exist; this Ordinance shall take effect and be in full force and effect when signed by the Mayor.

Passed by Council: December 1, 2004


Approved by Council President: December 1, 2004

Effective Date: December 1, 2004



Council President

ATTEST:



City Clerk

Draft

City of Albany – Measure 37 Claim Form Instructions:

- Claims may only be submitted by an Owner or an Authorized Agent of the Owner.
- Claims may only be submitted in person, by private carrier, or by U.S. Postal Service Certified or by Registered Mail to: City Manager, City of Albany, 333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321
- Only Original Signed Claims will be accepted; claims submitted electronically or by facsimile will not be accepted.
- Attach *separate sheets of paper*, as needed, referencing the appropriate *section number of this form*.
- Claim criteria/requirements may be found in Oregon Revised Statutes and in Albany's Measure 37 Claims Ordinance No. 5583, a copy of which is attached hereto.

Important note:

Albany's ordinance makes an owner responsible for all of the costs that the City incurs in processing a Measure 37 claim which is ultimately determined not to be valid. These costs will include staff time, appraisal fees, attorneys' fees, and all other direct and indirect costs accrued during the claims procedure. These expenses could run into the tens of thousands of dollars. In addition, other citizens in the city may have a right to sue you if your use of your property reduces the value of their property. In an effort to minimize some of these risks, Albany has set up an alternative process which allows a property owner to work with City staff in an effort to resolve her/his concerns prior to the filing of a formal Measure 37 claim. If successful, this process may result in the waiver of certain regulations without exposing the applicant to an obligation to reimburse the City for its costs and vulnerability to a Private Cause of Action from other property owners. **If an applicant wishes to explore the Alternative Claim Resolution process which is provided in Albany's Measure 37 Ordinance, he/she should sign this claim form at Section 12 and not at Section 13.** If, on the other hand, the applicant wishes to initiate an immediate Measure 37 claim, he/she should sign this Measure 37 Claim Form at Section 13 and not at Section 12.

- Remember: The more information an applicant can provide to the City, the less money the City will have to spend in gathering the necessary information.

Section 1

NAME AND CONTACT INFORMATION OF CLAIMANT/PROPERTY OWNER

Name of Claimant:	Day Time Phone #:	
Address:		
City:	State:	Zip:

Section 2

NAME AND CONTACT INFORMATION OF PERSON SUBMITTING CLAIM (AGENT).

(IF DIFFERENT THAN IN SECTION 1 ABOVE)

Name of Agent:	Day Time Phone #:	
Address:		
City:	State:	Zip:

Must attach a written notarized statement signed by the owner(s) or a Power of Attorney giving authority to submit this claim. Attachment: Yes No

Section 3

NAMES AND CONTACT INFORMATION OF OTHERS WITH INTEREST IN THIS PROPERTY.

Name:		Day Time Phone #:	
Address:			
City:	State:	Zip:	

Name:		Day Time Phone #:	
Address:			
City:	State:	Zip:	

Name:		Day Time Phone #:	
Address:			
City:	State:	Zip:	

Name:		Day Time Phone #:	
Address:			
City:	State:	Zip:	

Name:		Day Time Phone #:	
Address:			
City:	State:	Zip:	

Section 4

PROPERTY FROM WHICH THE CLAIM DERIVES

Attachment if Applicable

Street Address: <i>if applicable</i>		City:	
County:	State:	Zip:	
Tax Lot #:	County Tax Assessor's Map Reference # & Date:		
Township:			
Range:	Section:		
Other Legal Description Information:			

Section 5

EVIDENCE OF OWNERSHIP

The following is attached as proof of ownership: (list all attachments)	
Date of Acquisition of Property:	
Nature of Ownership of Property: <i>Attachment if Applicable</i> <input type="checkbox"/>	
All Encroachments, Easements, etc. (see ORS 125-145-0040 (8) for further information) <i>Attachment if Applicable</i> <input type="checkbox"/>	

Section 6

NATURE AND MANNER OF RESTRICTION

(CITE EACH AND EVERY LAND USE REGULATION WHICH HAS BEEN ENFORCED AGAINST THE OWNER AND UPON WHICH THE CLAIM IS BASED. INCLUDE EVIDENCE OR INFORMATION THAT DEMONSTRATES HOW THE CITY'S ACTION RE-STRICED THE OWNERS' USE OF HIS OR HER PROPERTY.)

Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Describe how this Land Use Law or Ordinance restricts the use of this property and the action by the City undertaken to enforce the law or ordinance:
Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Describe how this Land Use Law or Ordinance restricts the use of this property and the action by the City undertaken to enforce the law or ordinance:
Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Describe how this Land Use Law or Ordinance restricts the use of this property and the action by the City undertaken to enforce the law or ordinance:
Law or Ordinance : <i>Attachment if Applicable</i> <input type="checkbox"/>		Describe how this Land Use Law or Ordinance restricts the use of this property and the action by the City undertaken to enforce the law or ordinance:

Section 7

DATE ON WHICH EACH CITED LAND USE REGULATION BEGAN TO APPLY TO SUBJECT PROPERTY.

Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Date of Effect:
Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Date of Effect:
Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Date of Effect:
Law or Ordinance: <i>Attachment if Applicable</i> <input type="checkbox"/>		Date of Effect:

Section 8

AMOUNT OF PROPERTY VALUE REDUCTION

Claim Amount:	Basis of Evaluation:
<input type="checkbox"/> Attach evidence or information documenting reduction in property's Fair Market Value.	

Section 9

AUTHORITY TO ENTER PROPERTY

(SIGNATURES OF ALL OWNERS WITH AUTHORITY TO RESTRICT ACCESS.)

I/We Affix Our Signature(s) to this Form Granting Access to the Subject Property in ANY Manner Deemed Appropriate by the City of Albany and its agents or employees for the Review of the Property in Furtherance of the Processing or Handling of this Claim:

Printed Name:	Signature:
<i>Interest in Property:</i>	
Printed Name:	Signature:
<i>Interest in Property:</i>	
Printed Name:	Signature:
<i>Interest in Property:</i>	
Printed Name:	Signature:
<i>Interest in Property:</i>	

Section 10

ATTACHMENTS

Title Report: Yes <input type="checkbox"/> No <input type="checkbox"/>	Deed: Yes <input type="checkbox"/> No <input type="checkbox"/>	Appraisal(s) Yes <input type="checkbox"/> No <input type="checkbox"/>	Covenants, Conditions & Restrictions: Yes <input type="checkbox"/> No <input type="checkbox"/>
Affidavits: Yes <input type="checkbox"/> No <input type="checkbox"/>	Tax Map(s) Yes <input type="checkbox"/> No <input type="checkbox"/>	Tax Deferrals: Yes <input type="checkbox"/> No <input type="checkbox"/>	Tax Reductions: Yes <input type="checkbox"/> No <input type="checkbox"/>
Participating Federal Programs: Yes <input type="checkbox"/> No <input type="checkbox"/>		<input type="checkbox"/> Other Information:(Explain)	

Section 11

Have you submitted a claim to another governmental entity regarding the property listed in this claim? Yes <input type="checkbox"/>
Date: _____ To Whom: _____ No <input type="checkbox"/>

Section 12

I/WE WISH TO APPLY FOR CONSIDERATION UNDER THE CITY'S **ALTERNATIVE CLAIM RESOLUTION PROCESS** (AMC 2.100.030).

(Note: If applying for Alternative Claims Resolution consideration, sign here, but not at Section 13.)

_____	/ /
Owner(s)	Date
_____	/ /
Owner(s)	Date
_____	/ /
Owner(s)	Date
_____	/ /
Owner(s)	Date

Section 13

I/WE WISH TO APPLY FOR MEASURE 37 COMPENSATION.

(Note: Sign here if you do not wish to participate in the City's Alternative Resolution process. In this case, do not sign at Section 12.)

_____	/ /
Owner(s)	Date
_____	/ /
Owner(s)	Date
_____	/ /
Owner(s)	Date
_____	/ /
Owner(s)	Date

ADDITIONAL INFORMATION THAT MAY BE SUBMITTED IN SUPPORT OF THIS CLAIM

1. A report by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from the enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;
2. A statement of the effect of the cited Land Use Regulation(s) on any Owner's tax status, including without limitation any tax deferrals or tax reductions related to the cited Land Use Regulation(s);
3. Citation to each Land Use Regulation(s) in effect at the time the owner acquired the property explaining how the use that is now not permitted by the Land Use Regulation(s);
4. Names and addresses of Owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside and urban growth boundary and not within a farm or forest zone and 750 feet of the Property if the Property is located in a farm or forest zone.