

TITLE 2

COUNTY GOVERNMENT; ADMINISTRATION

CHAPTER 225

MEASURE 37 COMPENSATION CLAIMS CODE

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I. GENERAL PROVISIONS

225.005 Title; short titles

LCC 225.005 to 225.900 set forth in this Chapter shall be known as the “Linn County Measure 37 Compensation Claims Code.” This Chapter may also be referred to and cited as the “M37 Claims Code.”

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.010 Purposes and policies

(A) LCC 225.005 to 225.900 implement the provisions added to Chapter 197 of Oregon Revised Statutes by Measure 37. These provisions:

(1) establish a prompt, open, thorough, consistent, and courteous process that enables property owners an adequate and fair opportunity to present their claims to the county;

(2) preserves and protects limited public funds;

(3) establishes a record of the county’s decision capable of circuit court review; and

(4) protects the public safety and health of the citizens of Linn County and the integrity of the *Comprehensive Plan* and land use regulations enacted by Linn County.

(B) As a courtesy to the claimant, another purpose is to inform claimants that a decision of the Board whether to pay just compensation or to

waive a restrictive land use regulation enacted by the County that has reduced the fair market value of claimant's property shall be a final decision. However, whether the decision is to pay or waive a discretionary land use regulation or a non-discretionary land use regulation, such as a state statute imposing a requirement on the County to enforce the state enactment, the decision of the Board on the claim, although final as to the claim on the County, does not address the developability of claimant's property. Developability of property land under a waiver granted under LCC 225.005 to 225.900 remains subject to:

(1) in the case of all final decisions made by the Board regarding non-discretionary enactments and enforcements, claimant's obtaining the appropriate decision from any other governmental entity that has enacted or enforces its laws or rules whether directly or through the County; and

(2) in the case of all final decisions made by the Board, any and all land use development standards and public health and safety standards applicable to the development and use.

(C) It is the policy of Linn County to accept filing of claims derived from its discretionary legislative acts or from its regulatory actions arising out of enforcement of those acts and policies.

(D) Whenever legislative acts or regulatory actions derive from non-discretionary enactment or enforcement by the County of the laws, regulations, or decisions of the State of Oregon or the United States of America, it is the policy of the county to refer such claims to the appropriate jurisdiction.

(E) In recognition that all land-use planning authority of Linn County ultimately derives from the laws and policies of the State of Oregon and because the initiative does not address the relationship nor allocate responsibilities among the various layers of enacting and enforcing jurisdictions, claimants must understand that other jurisdictions may govern the uses allowed on their property and, if so, claimants may need to file a

claim on those other jurisdictions before development may occur on their property.

225.050 Definitions

(A) A non-technical term not defined in this Development Code shall have its ordinary accepted meaning within the context in which it has been used. The most current edition of *Webster's New Collegiate Dictionary* shall be considered the source of accepted meanings. A technical term shall have the meaning used in the industry commonly, customarily, and reasonably using that term.

(B) As used in LCC 225.005 to 225.900, the following words and phrases mean:

(1) "**Clerk**" means the Linn County Clerk, or designee thereof.

(2) "**County agency**" or "**agency**" means a Linn County department or elected official.

(3) "**Appraisal**" means a written statement prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674. In the case of commercial or industrial property, the term Appraisal additionally means a written statement prepared by an appraiser holding the MAI qualification, as demonstrated by written certificate.

(4) "**Assessor**" means the Linn County Assessor, or designee thereof.

(5) "**Board**" means the Linn County Board of County Commissioners.

(6) "**Claim for compensation**" or "**claim**" mean a written demand for compensation filed with the County purporting to be filed under and in accordance with Measure 37 and this Chapter.

(7) "**Claimant**" means the sole owner of property, or the representative of all joint owners, as the case may be, who files a claim with the County pursuant to the provisions of this Chapter.

(8) "**County Administrative Officer**" means the Linn County Administrative Officer.

(9) “**County Counsel**” means the Linn County Attorney/Chief Civil Deputy District Attorney, or designee thereof.

(10) “**Developable property**” means property upon which development is authorized because the property meets the requirements for development under the Linn County Land Development Code and its development standards and public health and safety regulations exempted by Measure 37.

(11) “**Family member**” includes:

(a) 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;

(b) an estate of any of the foregoing family members; or

(c) a legal entity owned by any one or combination of these family members or the owner of the property.

(12) “**Joint-owners in fee**” means the owners of the property, if any, in addition to the claimant, such as co-owners, estates, and legal entities, whose ownership interest, including other fee interests such as future and contingent interests, in the property represents the entire fee ownership.

(13) “**LCC**” means the Linn County Code, including the *Comprehensive Plan* and Land Development Code which are contained in Volume 2 of the LCC.

(14) “**LCP**” means the Linn County Policy, a collection of over 30 policies adopted by the Board and found in Volume 3 of the LCC.

(15) “**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;

(c) Linn County’s *Comprehensive Plan*, zoning ordinances, land division ordinances, and transportation ordinances; and

(d) Statutes and administrative rules regulating farm and forest practices.

(16) “**Less-than-fee interest holders**” means all persons who represent all recorded and non recorded non-fee interests in property, such as but not limited to: leasehold owners, lien holders, and security interest holders;

(17) “**Measure 37**” means the amendments to ORS 197 adopted by the People of the State of Oregon on November 2, 2004, effective December 2, 2004.

(18) “**Owner**” means the present owner of real property, or any interest therein that is the subject of the claim for compensation.

(19) “**Planning Department**” means the Linn County Planning and Building Department.

(20) “**Planning Director**” means the director of the Linn County Planning and Building Department, or designee thereof.

(21) “**Property**” means any private real property that was lawfully created.

(22) “**Reduction in fair market value**” or similar terms, mean the loss in the fair market value of the property, or any interest therein, that has resulted from the enactment or enforcement of a land use regulation calculated as of the date the claimant makes written demand for compensation under Measure 37 and this Chapter.

(23) “**Restricts**” or **restriction**,” or similar terms, mean, the resultant prohibition caused by a land use regulation enacted or enforced by the County after the claimant, and where applicable, after the family member of the claimant, acquired the property that prohibits a particular use of claimant’s property, or interest therein.

(a) The terms do not include the effects caused by any of the exemptions described in Measure 37 such as, but not limited to, public health and safety standards such as, but not limited to, the form of development, how a structure must be constructed, or how grading or fill is to be conducted, such as yard setback requirements, height limitations, sanitation and waste water controls, erosion control measures, and building code standards, or regulations.

(b) The terms do not include the effects caused by resolutions or orders requiring or setting fees to be charged in the land use planning process.

(24) “**Roadmaster**” means the Linn County Roadmaster, or designee thereof.

(25) “**Valid claim**” means a claim that the Board has determined in a public meeting process to be timely filed with the County under Measure 37 and this Chapter and to have met the requirements for compensation pursuant to Measure 37 and this Chapter.

(a) The term may not be construed as a representation of the State’s interests in, or the State’s jurisdiction over, the claim. A claim may be a valid claim with respect to land use regulations enacted in the discretion of Linn County, yet claimant’s use may still be subject to state statutes and rules for which the claimant must seek and obtain independent claim relief.

(b) The term may not be construed to mean that the property subject to a claim, is developable property. Developability of the property depends on other factors described in this Chapter.

(26) “**Waive**” or “**waiver**” includes the act or decision to modify, remove, or not apply a restrictive land use regulation that has the result of reducing the fair market value of claimant’s property.

[Adopted 04-468 §1 eff 12/2/04; amd 2005-247 eff 6/7/05]

II. CLAIM SUBMISSION

225.100 Claim for compensation

(A) According to, and subject to the provisions of, Measure 37, effective December 2, 2004, an owner of private real property located in Linn County may file a claim for compensation with Linn County if the owner believes:

(1) that Linn County:

(a) has enacted or has enforced a land use regulation after December 2, 2004; or

(b) is enforcing an existing land use regulation enacted prior to December 2, 2004; and

(2) that such regulation restricts that owner’s use of that property or any interest therein and has the effect of reducing the fair market value of the property or any interest therein for which there is no exemption as described in Measure 37 and this Chapter.

(B) A claim accepted by the County for processing, or a claim being processed by the County shall in no way may be construed as a statement that the claim has merits or is a valid claim. Accepting and processing a claim shall not be construed by any one in any manner that would act to estop the County from arguing that the claim was or is an invalid claim for any reason. The merits and validity of a claim are not decided until the Board so determines and so states in its final decision on the matter in the public meeting process described in LCC 225.300.

(C) *Claims for compensation.* If a claim is based on payment of compensation or a decision is made to pay compensation:

(1) *Supportive documents.* The land use regulations needed by the claimant to support a claim for compensation include at least one or more of the following the land use regulations first enacted after the earliest of the acquisition of the property:

(a) by the claimant; or

(b) if the claimant is basing the claim on a family member, by that family member.

(2) *Basis to determine just compensation for payment.* The compensation shall be equal to the reduction in the fair market value of the affected property interest as of the date the owner makes written demand for compensation under Measure 37 that resulted from enactment or enforcement of the land use regulation described in paragraph (1) of subsection (C) of this section.

(D) *Issuance of a waiver.* If a Board decision is to issue a waiver and allow a use:

(1) *Supportive documents.* The land use regulations that may be needed by the claimant to support a grant of waiver at least includes:

(a) the land use regulations in place when the claimant acquired the property; and

(b) the land use regulations enacted or enforced after the claimant took possession of the property.

(2) *Basis for determining a use allowed if a waiver is issued.* Measure 37 allows the Board, in lieu of making payment of compensation, to waive a restrictive land use regulation enacted after the claimant acquired the property to allow a use permitted at the time claimant acquired the property. The process to be followed on each claim in order to make a decision to waive or not to waive a restrictive land use regulation is legislative and policy making.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.150 Time limitations for filing claim

(A) *Timely filing required.* No claim for compensation shall be recognized as a valid claim if such claim is not timely filed. A timely filing occurs if the claim is filed with the County prior to:

(1) For claims arising from land use regulations enacted prior to December 2, 2004, the later of within two years of:

(a) December 2, 2006; or

(b) the date Linn County applies the land use regulation as an approval criteria to an application submitted by the owner of property.

(2) For claims arising from a land use regulation enacted after December 2, 2004, the later of within two years of:

(a) the date of the enactment of the land use regulation; or

(b) the date the owner of the property submits a land use application in which the land use regulation is an approval criteria.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.170 Severability; consolidation of claims

(A) *Severability.* The Board may sever claims whenever such claims are determined to

relate to multiple unrelated properties or to multiple or unrelated owners or to unrelated enactments or enforcement of land use regulations. When claims are severed, the Board may require payment of additional filing fees for processing additional claims.

(B) *Consolidation.* The Board may consolidate claims that relate to multiple related properties, multiple related owners, or multiple related enactments or enforcements of land use regulations or when it serves the purpose of accomplishing the intent of Measure 37.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.180 Certain regulations exempt from claims for compensation

A claim for compensation filed under Measure 37 and this Chapter shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. These nuisances shall be construed narrowly in favor of a finding of compensation under Measure 37 and this Chapter;

(B) Restricting or prohibiting 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) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this definition, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) 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.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.200 Claim submission procedure

(A) The claimant must be an owner and shall file a claim in accordance with the provisions of this Chapter.

(B) *Minimum content of claim.* To assist the claimant, the County shall by resolution approve, and may from time to time amend, a Measure 37 Claim form similar to the one set forth as an example in Appendix 1. The claimant is encouraged to use the form adopted. The claimant, however, may file any written demand for compensation so long as the demand contains the minimum content set forth in the County form. The claimant bears the burden of production of the following minimum information. The form approved by resolution of the County shall at a minimum:

(1) Request that the claimant provide the following minimum essential and necessary information:

- (a) The date the claimant files the claim with the county;
- (b) The name of the claimant;
- (c) The telephone number and, if available, the fax number and email address of the claimant;
- (d) The residential address and, if different, the mailing address of the claimant;
- (e) The identification of the affected property or properties which shall be the legal description of the property or properties in question, identified by township, range, parcel and tax-lot number. In some cases this requirement may be satisfied by street address, subdivision lot number, or any other information that legally identifies the property;
- (f) A copy of the deed describing the transfer of the property to the claimant;
- (g) The name, address, and contact information of the claimant, and if applicable, of each joint-owner in fee and all less-than-fee interest holder;
- (h) The date the claimant, and if applicable, each joint-owner in fee and each less-than-fee interest holder, acquired the property;

(i) If the claimant is going to rely on family members of the claimant to establish a claim, the names of such family members of the claimant and the dates each family member acquired the property;

(j) Identification of the land use regulation(s) and use of claimant's property relied on to establish claimant's claim;

(k) The amount claimed as compensation based on a reduction in fair market value as a result of the restriction on claimant's use caused by a land use regulation. The validity of this claim must be based on one or more appraisals that at some point must be provided by the claimant to the County. The claimant is encouraged to file with the claim all necessary appraisals; and

(l) The signature of the claimant, and if applicable, of all joint-owners in fee.

(2) Provide statements relating to:

(a) matters that may impact the potential on developability under a waiver granted by the County;

(b) a conference (described in LCC 225.300) where the claimant and county officials will discuss the claim and seek to resolve any remaining issues regarding the claim; and

(c) the policy of the Board not to pay compensation, but in lieu of such payment, to waive, if possible, the restrictive land use regulation enacted after the claimant acquired the property.

(C) *County application materials.*

(1) *County materials.* The County will make available to a claimant a claim form submission packet containing at a minimum:

(a) the County form seeking the information listed in subsection (B) of this section;

(b) a copy of this Chapter; and

(c) if applicable and available, forms provided by other governmental entities for making a claim on and providing notice to such other governmental entities having jurisdiction over the land use regulations and having decision-making authority with respect to the property. It

shall be the claimant's responsibility to submit such claims and notices to the affected entities (for convenience of the reader a simple flow chart of the potentially dual filing process is shown in Appendix 2 (attached to but not a part of this Chapter); however, the accuracy of this filing process remains uncertain and may change as the Measure 37 is legally clarified).

(D) *Place of filing claims.* The claim shall be filed with Planning Department, or another county department if so designated by the County Administrative Officer

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.250 Fees and costs

(A) *Filing fee.* At the time claimant files a claim, the claimant shall pay a fee set by resolution of the Board in an amount not to exceed \$100.

(B) *Processing costs.*

(1) In addition to the fee described in subsection (A) of this section, the reviewing officials described in subsection (A) of LCC 225.300 shall maintain a record of the actual reasonable costs in excess of the fee incurred by that reviewing official in processing a claim, including the costs of obtaining information required by LCC 225.200 and identified in LCC 225.300 which a property owner does not provide to the county.

(a) Following final action by the Board on the claim, the County shall send to the property owner a bill for the actual reasonable costs, including staff and legal costs, that the county incurred in reviewing and acting on the claim.

(b) Notwithstanding any provisions to the contrary, the County is under no obligation to seek or to pay for services or materials necessary for the claimant to meet claimant's burden of proving a claim. The County may, but is not obligated to, incur expenses the responsibility for which is the claimant's.

(C) The amount established in subsection (B) of this section shall be due and payable within 60 days of billing the claimant. If the claimant does not pay the amount within 60 days, then the

county may pursue collection, including, but not limited to, filing a lien on the property or deducting that amount from any compensation granted.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

III. CLAIM REVIEW BY STAFF

225.300 Claim review by staff

(A) *Claim distribution.* Following the submission of a claim and any supportive documents by the claimant, the Planning Director shall make copies thereof and distribute them to the following reviewing officials for review and comment:

- (1) Roadmaster;
- (2) Environmental Health;
- (3) Assessor; and
- (4) Administrative Officer.

(B) *Notice to the public and mutli-jurisdictional entities.* The County, in addition to the notice requirements of ORS 192.610 to 192.690, and subject to available resources and time, will endeavor to post on its web site at <http://www.co.linn.or.us/> (with appropriate links to the specific page) and to provide to one or more newspapers of general circulation in Linn County, a list of Measure 37 claims that will be considered in its regular business meetings on the dates and times noted in the web page and newspaper. In addition, the County shall attempt to notify all other governmental entities that, in the opinion of the County, have an interest in resolution of the claim. This attempt may be met by providing a copy of this Chapter to the governmental entity.

(C) *Staff review and comment.*

(1) The reviewing officials identified in subsection (A) of this section shall review and make comments addressing the merits and validity of the claim.

(2) Each reviewing official shall submit such comments with a preliminary recommendation on the merits and validity of the claim to the other reviewing officials.

(3) The comments shall identify any missing or additional information or issues needed to properly and adequately address the claim.

(4) The County may seek to obtain comments from other governmental entities notified under subsection (B) of this section. This action may be met by providing a copy of this Chapter to the governmental entity.

(5) The reviewing official should indicate in the comments whether or not the official intends on attending the conference described in subsection (D) of this section.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.320 Conference with claimant

(A) The Planning Director shall schedule a conference at a time mutually agreeable to the claimant and the reviewing officials who have indicated in their comments that they wish to participate in the conference. The presence of the claimant while encouraged, and very important, is voluntary.

(B) In addition to the claimant, the reviewing officials may participate in the conference. However, if an issue or item of information is identified during the conference for which that missing official is capable and needed to address the matter, the official shall be contacted by one or more of those officials in attendance and seek the resolution of the matter from the missing official.

(C) Any governmental entities noticed in subsection (B) of this section are encouraged and welcome to attend.

(D) If the claimant is represented by an attorney, County Counsel shall be present.

(E) At the conference, the County, and the claimant (if present) will seek to identify how to best understand and to efficiently and lawfully meet the claimant's objective. This effort may include identifying and obtaining any of the information missing in the claim and those items listed in subsection (E) of this section. The purposes of the conference are to discuss with the claimant matters relating to the claim, to assist the claimant to the degree possible in achieving the claimant's objective, to identify any information needed by the County to adequately and properly address the claimant's objective, to motivate the claimant to satisfy claimant's burdens of production and proof, and to discuss any issues that

hinder adequate or proper processing of the claim. The claimant is encouraged to cooperate in assisting the County throughout the claim process. However, the County may process the claim on the basis of the information provided by the claimant, whether or not the claimant participates or cooperates with the County in providing all information necessary to process the claim.

(F) *Recommended additional information to be provided by claimant.* At the conference described in LCC 225.300, information missing from the claim and any additional information which may be needed to assist the claimant and County in processing the claim will be identified. The claimant must understand that the claimant bears the burden of production and proof with respect to establishing the claim including the proof of a reduction in market value by a restrictive land use regulation. Therefore, unless the claimant voluntarily provides this requested information, the County may be unable to properly and adequately address the claim and to assist the claimant in achieving claimant's objective.

(G) In order for thoroughness, completeness, and fairness to the claimant, and to assist the County in efficiently and expeditiously addressing the claim, the claimant should be prepared to discuss, and to provide or make available to the County information such as, but not limited to, the information set forth in this subsection. To the degree that this information is needed to process the claim properly, the claimant bears the burden of production.

(1) *Ownership and property information.*

(a) A current title report issued no more than 30 days prior to the submission of the claim that reflects all current ownership interests in the property, the date the property interest was acquired by each owner, the title history, easements of record, and the ownership interests of all owners. The title report must also specify any restrictions on use of the property unrelated to the land use regulation including, but not limited to, any restrictions established by covenants, conditions and restrictions (CC&Rs), other private

restrictions, or other regulations, restrictions or contracts; if family member status is claimed it must also be addressed in the title report required by this subsection;

(b) Copies of all leases pertaining to or affecting the property;

(c) Identification of any other property owned by the claimant within 300 feet of the boundary of the property;

(d) information showing that the property was lawfully created.

(2) *Restrictive land use regulation information.*

(a) Copies obtained from the Clerk or Planning Department of all land use regulations that are needed by the claimant to prove that a land use is subject to a Measure 37 claim under this Chapter; NOTE: The intent of the County is, but in no way is it the responsibility, to place on its website a list or an index of the land use regulations it has adopted since land use planning began in Linn County to assist the claimants in identifying which regulations the claimant needs to obtain.

(b) Information why the land use regulations in question are not an exempt land use regulations as defined in LCC 225.150.

(c) Copies of any land use actions, development applications or other relevant applications for permits that have previously been filed in connection with the property and the action taken. Any such actions that represent the required enforcement and/or application of the land use regulation that are prerequisites to making a claim must be described and identified as such.

(3) *Reduction in fair market value information*

(a) Information describing how and to what extent the alleged restriction on claimant's use of property affects the value of the property.

(b) Information describing the extent to which the regulation would need to be waived to avoid the alleged need for compensation.

(c) A copy of a written appraisal or appraisals demonstrating the amount of the al-

leged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after enactment, enforcement or application of the land use regulation in question, and explaining the rationale and factors leading to that conclusion.

(d) Information explaining claimant's understanding of what effect a waiver of the land use regulation would have on the potential development of the property, and information relating to the greatest degree of development that the claimant believes would be permitted on the property if the identified land use regulation were waived;

(4) *Information relating to and potentially impacting claimant's desired use.*

(a) Traffic study information.

(b) Information regarding access permits to public roads.

(c) Information regarding easements of record.

(d) A copy of the site plan and drawings related to the expected use of the property should the land use regulation be waived in a readable/legible 8 ½ by 11-inch format.

(H) *Effect of claimant's failure to meet the burden of production* The claimant bears the burdens of production and of proof regarding all information identified as necessary to process the claim. Notwithstanding a claimant's failure to attend, to provide, or to otherwise cooperate with the County in soliciting claimant's burdens of production and of proof regarding any of the information identified in subsection (E) of this section, the County may review and act on a claim.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.350 Staff recommendation

(A) Following the conference, the reviewing officials shall meet, either in person, by telephone, or by email or by any combination thereof, and make and forward a written recommendation or recommendations supported by comments to the Board.

(B) The comments should contain:

(1) any necessary information not supplied by the claimant; and

(2) comments on multi-jurisdictional matters.

(C) The staff recommendation shall be that the claim be:

(1) Investigated further;

(2) Denied;

(3) Declared valid and compensate the claimant;

(4) Declared valid and waive, in whole or in part, the land use regulation; or

(5) Evaluated with the expectation of the county acquiring the property by condemnation.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

IV. DECISION-MAKING PROCESS

225.500 Public meeting conducted by the Board

(A) *Public meeting scheduled.* Following receipt of the recommendations from the reviewing officials, the County Administrative Officer shall schedule a time for the matter to be decided by the Board at a regular public meeting and cause notice thereof to be given pursuant to ORS 192.610 to 192.690 and county policy thereunder.

(B) *Claim to be acted on in a public meeting.* The Board shall consider the claim in a public meeting before taking final action on the claim. The matter will be considered pursuant to ORS 192.610 to 192.690 and under the rules adopted by the Board for the conduct of county business set forth in LCC ch 400 (Committee Code) and LCP 32 (Basic Parliamentary Rules of Order for Linn County Governing Bodies).

(C) *Discretionary comments.* The Board may, but is not obligated to, take comments orally or in writing prior to and at the meeting. The Board may also allow for comments by announcing a time certain limiting submission of written comments following the meeting, however, such time limit, shall in no way impede or adversely impact or threaten to impact the 180-day time limit for acting on the claim. All comments shall

be limited to those issues that are addressed in Measure 37 such as whether the land use regulation at issue is exempted from the definition of land use regulation. Comments specifically aimed at the impacts of the claim on the protection of public health and safety will be encouraged.

(D) *Impact of developability.*

(1) The decision on the claim from the County's perspective shall be final. Notwithstanding the finality of the Board's decision, the developability of the property may depend on other factors such as existing development standards in the Linn County Land Development Code and public health and safety standards. In addition, the developability of the property may depend on the claimant seeking and obtaining the same relief sought from the County from any other governmental entity that has enacted or enforced a land use regulation governing the use of the property.

(2) *Effect of decision by a higher land use authority.* If the claim involves another governmental entity having a higher level of jurisdiction of the uses allowed on the property, such as the State of Oregon, and the claimant has appropriately filed a claim with the other jurisdiction, and the governmental entity has made a decision granting the claimant relief, then the County may, but is not required to expedite the decision-making process and make a similar decision for relief.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.510 Decision of the Board

(A) *Final decision on the claim.* The Board shall consider the matter and make a final decision and adopt a written resolution thereon with findings of fact supporting the decision prior to the expiration of 180 days from the date the claim was filed. Such final decision must do one of the following:

(1) *Denies the claim.* Determines that all information necessary to deem the claim as a valid claim under Measure 37 and this Chapter has not been satisfied and denies the claim;

(2) *Compensates the claimant.* Determines that all information necessary to deem the claim as a valid claim under Measure 37 and this

Chapter has been satisfied and that compensation in whole or in part is due to the claimant established in accordance with LCC 225.100 (C) in an amount set forth in the Board's resolution. The amount shall be supported by the evidence in the record. Payment of any compensation is subject to the availability and appropriation of funds for that purpose;

(3) *Waives the restrictive land use regulation.* Determines that all information necessary to deem the claim as a valid claim under Measure 37 and this Chapter has been satisfied and waives in whole or in part the restrictive land use regulation in accordance with LCC 225.100 (D) for that particular property;

(4) *Seeks public ownership of the property.* Determines that all information necessary to deem the claim as a valid claim under Measure 37 and this Chapter has been satisfied and that the county should acquire the property through negotiation or eminent domain; or

(5) *Other actions.* Take such other actions as the Board deems appropriate not inconsistent with Measure 37 and this Chapter.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.520 Decision criteria

Findings to support a final decision. The Board's final decision shall be based upon a record containing facts and findings supporting its decision. Such facts and findings may include, but are not limited to:

(A) Whether the claimant has demonstrated to the satisfaction of the Board:

(1) that the claimant is the current owner of the property at issue;

(2) that the property complained of is private real property in Linn County;

(3) that all joint-owners in fee and all less-than-fee interest holders have been identified and have signed the claim form demonstrating agreement with the claimant's claim;

(4) what the nature of each interest in the subject property is: of the claimant, and if applicable, of joint-owners in fee and less-than-fee interest holders;

(5) that the property was or the properties were legally created;

(6) that the land use regulations supplied by the claimant supports claimant's claim for compensation and/or a waiver of a restrictive regulation enacted or enforced within the time limitations imposed by Measure 37 and this Chapter.

(7) that the restriction was caused by either the enactment or the enforcement of that land use regulation;

(8) that the restriction complained of had not existed in the land use regulations and had *not* been enforced immediately *prior to* acquisition of the property;

(9) that the use alleged to be restricted by the enactment or enforcement, as the case may be, is provided for in the land use regulation complained of;

(10) that the result of the alleged restrictive enactment or enforcement, as the case may be, is a reduction of fair market value of the property;

(11) that the value of the reduction in fair market value is \$ _____ which is based on one of more appraisals supplied by and reasonably relied on by the claimant;

(B) In addition to the findings described in paragraph (1) of this subsection that the claimant must prove, the Board must find:

(1) whether the claim is a valid claim;

(2) whether the claim is not barred;

(3) whether the processing fee has been paid;

(4) whether the land use regulation complained of is not one of more of the exemptions allowed by Measure 37 and set forth in LCC 225.150;

(5) whether the land use regulation in question was solely enacted by the county or whether the regulation is solely, or is also, an enactment by another governmental entity for which State or Federal laws or rules or regulations law may require the County to enforce or with which the claimant shall comply;

(6) whether the County has or has not taken final action to enact, enforce or apply the land use regulation to the property; and

(7) whether the owner is not entitled to compensation under Measure 37, for a reason other than those provided herein.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.530 Burdens of proof and production

(A) Burdens of production and proof.

(1) The claimant, throughout the proceeding, shall bear the burdens of production and proof as to the claimant's claim. These burdens include:

(a) that the claimants use is restricted by a land use regulation that County:

(i) has enacted or has enforced a land use regulation after December 2, 2004; or

(ii) is enforcing an existing land use regulation enacted prior to December 2, 2004; and

(b) that such restriction to claimant's use of that property or any interest therein has the effect of reducing the fair market value of the property or any interest therein for which there is no exemption as described in Measure 37 and LCC 225.150.

(2) The County may assist, but is under no legal obligation to assist, nor may the claimant rely on any assistance or failure to so assist, the claimant in locating information that goes to the evidentiary question whether a land use regulation is exempted under Measure 37 or LCC 225.150.

(3) The claimant alone bears the burdens of production and proof as to exempt status of land use regulations that claimant is relying on to support claimant's claim. The standard of proof shall be by a preponderance of the evidence.

(4) The failure of the claimant to meet the burdens of production and proof on all elements of the claim will be deemed a fundamental and material failure on the part of the claimant and may likely result in a denial by the County of claimant's claim. Upon judicial review, such failure may be deemed a failure by the claimant to exhaust claimant's available administrative remedies and may therefore be grounds for dismissal of

the claim. The standard of proof shall be by a preponderance of the evidence.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.540 Decision to pay compensation or to waive in lieu thereof

(A) *Decision to pay compensation.* If the Board's final decision is to pay compensation, such compensation shall be calculated based on the difference of fair market value as of the date the claimant acquired the property and the earlier of the enactment of a restrictive land use regulation after:

(1) the claimant acquired the property;

(2) or, if the claimant relies on a family member of the claimant, that family member acquired the property.

(B) *Decision to waive a restrictive land use regulation.* If the Board's final decision is to waive a restrictive land use regulation and to allow a use on claimant's property, that decision shall be based on a use that was permitted at the time the claimant acquired the property.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.550 Recordation of final decision

If the Board adopts a resolution waiving a land use regulation, the Board shall cause to be recorded in the Linn County property records a copy of the resolution. The recorded copy need not contain supporting exhibits so long as such supporting exhibits are on file with the original resolution filed in the commissioners' journal.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.560 Notice of final decision

(A) *Notice of decision.* A copy of the Board decision shall be sent by mail to the claimant and made available for inspection and copying to all persons known to have an interest in the property and to each individual or entity that participated in the County review process including the public meeting.

(B) The County shall also provide notice to any other governmental entities, known to the County to be responsible under Measure 37 to pay compensation or to waive the restrictive use.

(C) The notice to participants, interested persons, and governmental entities may be satisfied by placing the conclusion of the decision on the county web site.

[Adopted 04-468 §1 12/1/04 eff 12/2/04; amd 2005-247 eff 6/7/05]

225.570 Potential impact of land use regulations on decision

(A) A land use regulation may be waived only to the extent that it voids the claim for compensation. Any such waiver shall be as to the particular unit of land subject to the claim unless the County follows the procedure for a legislative land use decision.

(B) The decision by the Board to waive a restrictive land use regulation is a final decision. However, the developability of the property remains subject to the claimant's complying with current land use regulation development standards and public health and safety standards exempted by Measure 37 and seeking and obtaining the appropriate decision from any other affected governmental entities.

(C) The County is not responsible for any law, rule, ordinance, resolution, goal or other enactment if the law, rule, ordinance, resolution, goal or other enactment was not enacted by the County.

(D) The Board may establish any relevant conditions of approval for compensation, should compensation be granted, or for any other action taken under this section.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.590 Role of County Counsel

The Board may request an opinion of County Counsel on any measure 37 matter by submitting a legal request for such information to that office in same manner that other legal requests are submitted.

[Adopted 2005-247 eff 6/7/05]

225.700 Availability of funds to pay claims

Compensation, if granted, may be paid only out of funds duly appropriated and available for this purpose.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.720 Applicable State law

(A) For all claims filed with the County, the applicable state law is Measure 37 as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or in the State administrative rule-making process. Any claim that has not been processed completely under this Chapter shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Chapter shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level.

(B) This Chapter is adopted solely to address claims filed under the authority of the provisions of Measure 37. Except as expressly provided in this Chapter, no rights independent of said provisions are created by adoption of this Chapter.

(C) This Chapter, including any future amendments thereto enacted at the time of the filing of a claim, shall be applied except as otherwise provided for by judicial decree or enactment of legislation by the General Assembly or the People of Oregon.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.740 Land use authority retained

(A) Nothing in this Chapter shall be construed to repeal or modify those laws and regulations of the State of Oregon or of Linn County relating to land use.

(B) A claimant who applies for compensation and is granted a waiver in lieu of compensation is not exempt from applicable land use regulations.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

225.760 Tax status is not a part of this Chapter

The decision of Linn County in any proceeding under this Chapter shall not determine the taxable status of an individual property, but the right to make such determination shall be reserved to the Assessor in consultation with the State of Oregon Department of Revenue and shall be in accordance with the laws and regulations of the State of Oregon.

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

VI. ENFORCEMENT PROVISIONS

225.900 Violating the Terms of the Decision

Failure to Comply with Any Condition of Approval Is Grounds for Seeking Relief under but Not limited to the provisions of LCC 240 (Code Enforcement Code).

[Adopted 04-468 §1 12/1/04 eff 12/2/04]

Statutory References and Other Authorities:

The People of Oregon at a General Election on November 2, 2004 adopted by initiative process entitled Measure 37 with an effective date of December 2, 2004. The measure amended ORS 197; ORS 197; 203; draft Administrative rules of the State of Oregon, Department of Administrative Services (DAS) set forth at OAR 125-145-0010 to 125-145-0120

Legislative History of Chapter 225:

Adopted 2004-468 12/1/04 eff 12/2/04

Amendments to LCC 225:

#1 2005-247 eff 6/7/05

Appendix 1

Measure 37 Compensation Claim for damages because of alleged land use regulation enacted or enforced against my property

[filed pursuant to M37 & LCC 225]

For official use only:

Date claim filed: _____ \$100 paid? yes no
LCC chapter 225 provided to Claimant? Yes
Deed attached? yes no Appraisal attached? yes no
M37- _____ - _____ Resolution No. 2005- _____

PART ONE (All Claimants must answer the following questions)

My name: _____ Telephone: _____ Date: _____

Identification of the affected property: T _____, R _____, Section _____, Tax-lot(s) _____

The date I acquired the property: _____

The land use regulation that went into effect after I acquired that property that restricts the use of my land: _____

The date that land use regulation was enacted OR enforced against my property: _____

I can show that the current value of my property with the restrictive regulation is: \$ _____

I can show that the value of my property without the restrictive regulation would be: \$ _____

My residence is: _____

My mailing address (if different from # 4) is: _____

Fax: _____ Email address: _____

Are you the sole owner of the property in # 4? yes no

Are there any other interest holders in your property such as lease holders, security holders? no yes

If, so, who? _____

The remedy that I seek is: _____

PART TWO (Only Claimants relying on Family Members need to answer the following questions)

If you are relying on an earlier family member, then complete this section:

The name of the family member who previously owned my property:: _____

Has the property remained in your family between the time that family member acquired the property to the time that you acquired the property? yes no if, not, why? _____

The date the family member acquired the property is: _____

The land use regulation that went into effect after my family member acquired the property that restricted my family member's use of the land: _____

The regulation was enacted OR enforced against my family member on what date: _____

I can show that the value of the property *when owned by my family member* and when the restrictive regulation was enacted or enforced against the property was \$ _____.

Page 2 of 2

Form Explanation: In order to assist in the gathering of information and allow space to answer the questions on page one of the form, please follow the instructions and answer the following questions on a separate sheet of paper:

1. If you are the claimant but you are not the sole owner in fee of the property, please name all the joint owners whose interests add up to a fee simple interest in your property. Please include all persons who represent all recorded interests in property, such as co-owners, holders of less than fee simple interests, leasehold owners, lien holders, and security interest holders. (if any).
2. Provide the dates that each of the joint-owners, and other persons of interest in your property acquired their interest in your property that you listed.
3. Have you provided with this claim, or will you soon provide appraisals that demonstrate a reduction in fair market value to your property that was a result of a land use regulation enacted or enforced by Linn County restricting your use of your property? yes no
4. Have you attached to this claim a copy of your deed on this property? yes no
5. Have you attached to this claim a copies of certified appraisals? yes no
6. Do you desire that the Board make a decision to allow you a use your property in a certain manner (subject to the notices below) in lieu of making payment for just compensation? yes no

NOTICES

NOTICE: You must understand that other jurisdictions may govern the uses allowed on your property and, if so, you need to file a claim on those other jurisdictions before development may occur on your property.

NOTICE: You will be invited to a conference described in LCC 225.300 (D) where additional information may be identified which may be needed to assist you in your claim. It is important to understand that unless you provide this information, the County may be unable to properly and adequately address your claim and to assist you in achieving your objective.

NOTICE: If the decision of the Board, in lieu of paying just compensation, is to modify, remove, or not apply a restrictive land use regulation that has reduced the fair market value of claimant’s property the development under that waiver shall not only be conditioned on the claimant’s obtaining the appropriate decision from other affected governmental entities, but any and all development shall remain subject to all land use regulation development standards and public health and safety standards exempted by Measure 37.

_____ Property Owner signature date	_____ Property Owner signature date	_____ Property Owner signature date
--	--	--

_____ Property Owner signature date	_____ Property Owner signature date	_____ Property Owner signature date
--	--	--

(The signatures of all owners of the property/properties are required)

Appendix 2 — Measure 37 Claim Process
(Flowchart)

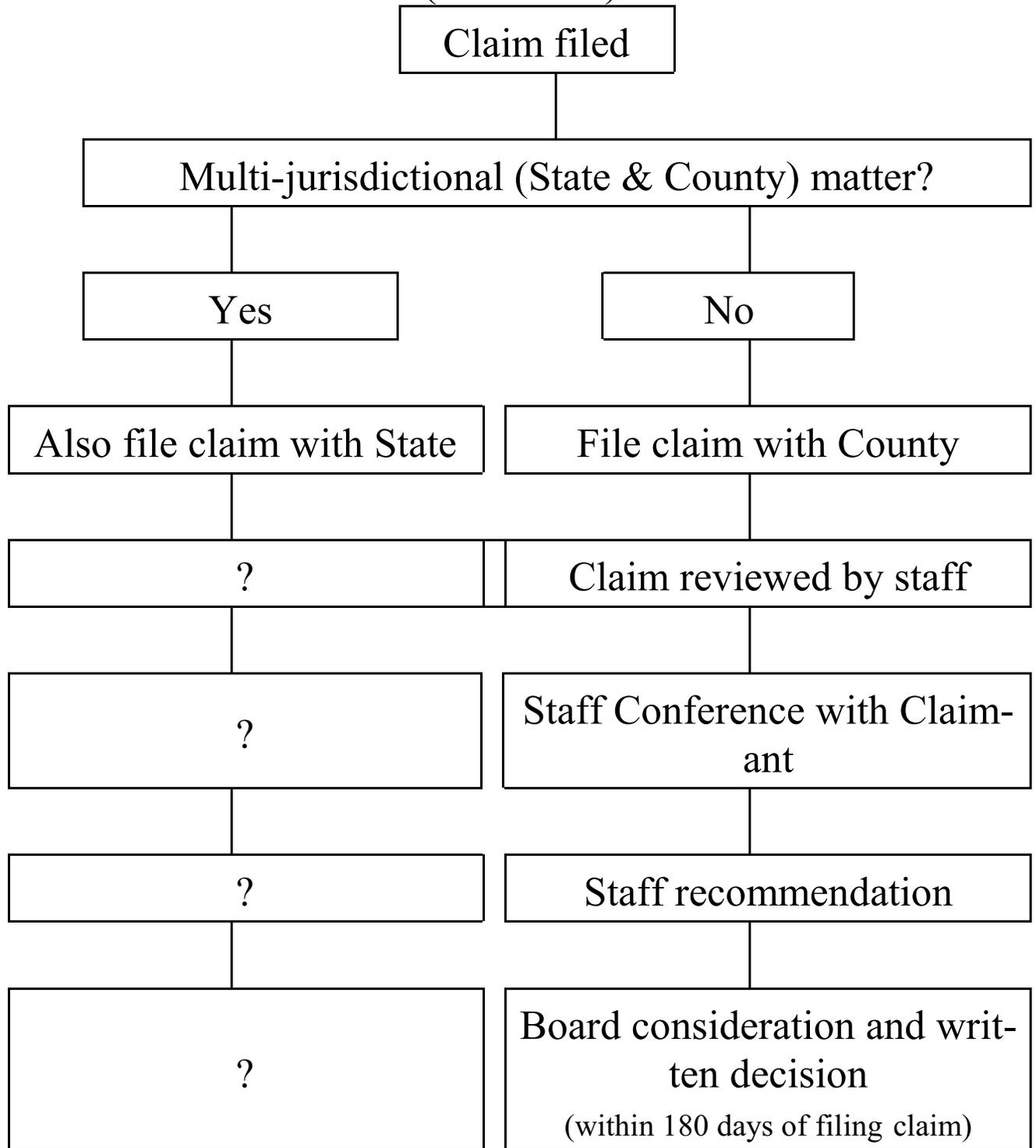


Exhibit 2
Measure 37

Proposed by initiative petition to be voted on at the General Election, November 2, 2004.

Ballot Title

GOVERNMENTS MUST PAY OWNERS, OR FORGO ENFORCEMENT, WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUE

RESULT OF “YES” VOTE: “Yes” vote requires that governments pay owners, or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce owners’ property value.

RESULT OF “NO” VOTE: “No” vote rejects requiring that governments pay owners or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce property value.

SUMMARY: Currently, Oregon Constitution requires government(s) to pay owner “just compensation” when condemning private property or taking it by other action, including laws precluding all substantial beneficial or economically viable use. Measure enacts statute requiring that when state, city, county, metropolitan service district enacts or enforces land use regulation that restricts use of private real property or interest thereon, government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change, or not apply restrictions in lieu of payment; if compensation not timely paid, owner not subject to restrictions. Applies to restrictions enacted after “family member” (defined) acquired property. Creates civil right of action including attorney fees. Provides no new revenue source for payments. Certain exceptions. Other provisions.

ESTIMATE OF FINANCIAL IMPACT: The measure would require state administrative expenditures to respond to claims for compensation of between \$18 million and \$44 million per year.

The measure may require compensation to landowners. The amount of state expenditures needed to pay claims for compensation cannot be determined.

There is no financial effect on state revenues.

The measure would require local government administrative expenditures to respond to claims for compensation of between \$46 million and \$300 million per year.

The measure may require compensation to landowners. The amount of local government expenditures needed to pay claims for compensation cannot be determined.

The effect of the measure on local government revenues cannot be determined.

Exhibit 3 — Text of Measure 37

The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment 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.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting 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) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) 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.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the 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.

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property

to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions - for purposes of this section:

(A) Family member shall include 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.

(B) Land use regulation shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) Owner is the present owner of the property, or any interest therein.

(D) Public entity shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

Exhibit 4 — Measure 37 Explanatory Statement

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the **owner** of private real property is entitled to receive just **compensation** when a **land use regulation** is enacted after the **owner** or a **family member** became the **owner** of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property **owner** proves that a **land use regulation** restricts the use of the **owner's** property, and reduces its value then the government responsible for the regulation will have a choice: pay the **owner** of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the **owner's** property.

The measure allows the state, county, city or metropolitan service district to adopt procedures for processing claims for compensation, but prohibits those procedures from being treated as a prerequisite to the filing of a claim in circuit court.

The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

The measure specifies that compensation is due if the regulation remains in force 180 days after the **owner** makes written demand for compensation. After that time, the present **owner** may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present **owner** is entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect compensation.

The measure provides no new revenue source for payments, if any, required under this measure.

The measure defines several terms that are used in the statute including “**family member**” which is defined as 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.

Committee Members / Appointed by:
David Hunnicutt / Chief Petitioners
Dale Riddle / Chief Petitioners
Bernie Bottomly / Secretary of State
Patricia McCaig / Secretary of State
Jack Roberts / Members of the Committee

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)

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