

ORDINANCE NO. 575

AN ORDINANCE OF THE CITY OF WILSONVILLE ADDING A NEW SECTION 2.600 TO THE WILSONVILLE CODE, PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN DEMANDS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, LIMITING TRANSFERABILITY OF WAIVER OF REGULATIONS, CREATING A PRIVATE CAUSE OF ACTION FOR NEIGHBORING PROPERTIES FOR LOSS OF FAIR MARKET VALUE, AND DECLARING AN EMERGENCY.

WHEREAS, the City has developed a sound system of land use planning, which includes regulations that in some cases restrict the uses that can be made of property; and

WHEREAS, the restrictions on use of property have both served the public interest and increased property values by allowing the City to develop a harmonious way of avoiding incompatible uses and assuring appropriate development; and

WHEREAS, the voters of the state adopted Ballot Measure 37 in the November 2004 election by adding new sections to ORS Chapter 197, which provide that local governments may pay compensation to property owners for reductions in property values resulting from land use regulations that restrict uses of the property or modify, remove or not apply the regulation in lieu of compensation; and

WHEREAS, some property owners may believe that existing or future land use regulations as applied to their property both restrict use of the property and reduce the fair market value of the property and consequently may bring claims under Measure 37; and

WHEREAS, Ballot Measure 37 explicitly allows local governments to develop procedures for assessing claims made under Measure 37; and

WHEREAS, it is appropriate for the City to provide a Measure 37 claims procedure to limit the transferability of any waiver or modification of regulations, or determination not to apply a regulation, and to create a private cause of action for neighboring properties for loss of fair market value of their property in the event of a waiver or modification of regulations, or determination not to apply a regulation; and

WHEREAS, the Council conducted a public hearing on a proposed claims procedure, and it appearing that the adoption of the below detailed process is in the public interest;

NOW THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. The Wilsonville Code is hereby amended by adding a new Section 2.600 entitled "Measure 37 Compensation Procedures and Standards" in the form of Exhibit A attached hereto and incorporated by this reference.

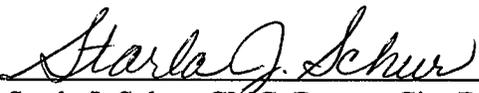
Section 2. Because this ordinance is necessary for the preservation of the health, safety and welfare of the City and is needed to provide a process for claims by December 2, 2004, when Ballot Measure 37 goes into effect, an emergency is declared to exist and this ordinance shall be in full force and effect on December 2, 2004.

SUBMITTED to the Wilsonville City Council and read the first and second times at a special meeting thereof on the 29th day of November, 2004, there being all members of the City Council present, commencing at the hour of 7:00 P.M. at the Wilsonville Community Center.

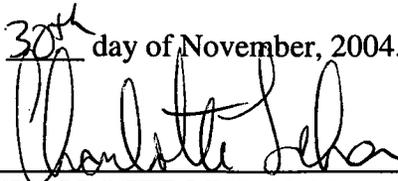

Starla J. Schur, CMC, Deputy City Recorder

Enacted by the City Council on the 29th day of November, 2004, by the following votes:

YEAS: 5 NAYS: 0 ABSTAIN: 0


Starla J. Schur, CMC, Deputy City Recorder

DATED and signed by the Mayor this 30th day of November, 2004.


CHARLOTTE LEHAN, Mayor

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Holt	Yes
Councilor Scott-Tabb	Yes
Councilor Knapp	Yes

EXHIBIT A

to Wilsonville Ordinance No. 575

Section 2.600 Measure 37 Compensation Procedures and Standards

(1) Purpose: The purpose of this section is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

(2) Definitions: As used in this section, unless the context requires otherwise:

(a) "Affected property" means the private real property or any interest therein that is alleged to have suffered a reduction in fair market value as a result of the City's regulation restricting the use of that property or interest and for which a property owner seeks compensation for the reduction in value.

(b) "Claimant" means the present owner or owners of the property or any interest therein, who submits a written claim for compensation under Subsection 2.600(3).

(c) "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.

(d) "Land use regulation" shall have the meaning as set forth in Measure 37 and shall include:

1. Any statute regulating the use of land or any interest therein;
2. Administrative rules and goals of the Land Conservation and Development Commission;
3. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
4. Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
5. Statutes and administrative rules regulating farming and forest practices.

However, the City only has authority to enact those land use regulations listed in Subsection 2.602(2)(d)3. above.

(e) “Manager” means City Manager or designee.

(f) “Restricts the use of property” means prohibiting a particular use of the property or making that use only permissible under certain conditions. Standards that regulate the form of development, how a structure must be constructed, or how grading or fill is to be conducted including, but not limited to, yard setback requirements, height limitations, erosion control measures and building code standards, are not restrictions on the use of property. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

(3) Application for Compensation:

(a) A property owner wishing to make a claim against the City under Measure 37 shall first submit a written demand for compensation to the City Recorder. A written demand for compensation is one that includes:

1. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.
2. The name and contact information of the person making the claim, the date the Claimant acquired ownership in the property or interest therein. If applicable, the date that a family member of Claimant acquired the property, the name of the family member who acquired the property, and the familial relationship of the family member to the claimant.
3. Identification of the regulation or regulations and the date of enactment or enforcement of the regulation or regulations that is/are alleged to restrict the use of the affected property.
4. The amount claimed as compensation.

(b) In order for the City to fairly assess a claim within the 180 day statutory period, the City encourages the person claiming compensation to include the following information with the written demand for compensation:

1. A statement describing how the restriction affects the value of the property;
2. A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation;
3. A statement whether the application seeks compensation or a waiver, suspension or modification of the regulation;

4. A list of all persons with an ownership interest in or a lien on the property;
5. Property records establishing the familial relationship between the claimant and the family member(s) owning the property back to the date of the challenge land use regulation.
6. An appraisal showing the difference in the property value with and without the regulation.

(4) Notice: The City shall provide notice of the hearing required by Subsection 2.600(7) to all owners of the property, lien holders and security interest holders, record owners of property within 250 feet of the property, recognized community participation organizations for the area the property is located, and anyone who has requested notice at least 7 days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim, list a City contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Notice shall be posted on the property identifying the date, time and place of the hearing, the amount of claim, the land use regulation that may be waived, and a City contact person and phone number. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing.

(5) Staff Report: City staff shall prepare a report analyzing the claim. The staff report shall be reviewed by the Community Development Director, Finance Director, and Manager before being submitted to the City Council. Staff may discuss options with the Claimant and may enter into a settlement agreement with the Claimant as to actions within staff's authority. Staff may agree with Claimant that staff will recommend a particular course of action to the City Council if staff lacks authority to commit to the action.

The staff report shall be submitted to the Council, mailed to the Claimant, and to the extent practicable, made available to the public at least 7 days before the public hearing required by Section 2.600(4).

(6) City Council Proceedings: The City Council shall hold a public hearing on the claim. The public hearing shall normally be set within 180 days of the demand for compensation but may be set at any time. The City Council may hold an executive session on the claim at any time.

(7) Public Hearing: The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The City Council may limit the duration of testimony.

(8) Council Decision: In deciding the claim, the City Council may take any of the following actions:

- (a) Deny the claim based on any one or more of the following findings:
1. The regulation does not restrict the use of the private real property;
 2. The fair market value of the property is not reduced by the passage or enforcement of the regulation;
 3. The claim was not timely filed.
 4. The Claimant is not the current property owner(s);
 5. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted;
 6. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing;
 7. The regulation is required by federal law;
 8. The regulation protects public health and safety;
 9. The City is not the entity responsible for payment. The City is not responsible to the extent the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted by the City or was required to be enacted by the City or other governmental agency;
 10. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.
 11. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through g. The basis for this finding must be clearly explained;
 12. The City has not established a fund for payment of claims under Measure 37 or that payment from other funds is not in the public interest to spend such other funds for the claim rather than the purposes of such other funds.
- (b) Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose.

(c) Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property. Unless otherwise determined by the City Council, a decision to waive or not apply the regulation shall be as to the use of the affected property by the Claimant only and not transferable, save and except as a “grandfathered” non-conforming use.

(d) Modify the regulation so that it does not give rise to a claim for compensation. Unless the City follows the procedure for a legislative land use decision, any such modification shall be as to the use of the affected property by the Claimant only and not transferable, save and except as a “grandfathered” non-conforming use,

(e) Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted in accordance with Subsection 8(c) or (d) above if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the written demand for compensation was filed. The specified date shall allow the City time to process the contributions and pay compensation.

(f) In taking any of the foregoing actions in Subsections 8(b)–8(e) above, the Council shall consider:

1. The importance of the regulation alleged to reduce the value of land in servicing the public interests in avoiding unharmonious uses, assessing appropriate development, or in maintaining property value;
2. The public impact of compensation, waiver or modification of the regulation;
3. The availability of public resources necessary for compensation, waiver or modification.

The Council has discretion to consider other matters, and may give whatever weight and importance to these considerations, as it deems appropriate.

(g) If the City Council waives, modifies, or does not apply a land use regulation, the Council may, at its discretion, put back into effect all of the land use regulations in effect at the time the claimant acquired the property if Measure 37 does not require such effect to occur.

(h) The City Council may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The City Council may negotiate an

acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the City Council directs staff to negotiate, the Council shall set the matter for further action no more than 175 days from the date of the notice of claim became complete. The Council shall take final action within 180 days of the written demand for compensation. The City shall take actions (b) through (e) only if it determines the claim is valid.

(9) Authority: The City Council shall have the authority to take actions listed in Subsection 2.600(8), including the authority to waive or suspend any provision of any City code, ordinance or resolution, notwithstanding any inconsistent provision in this code or the Community Development Code. Such actions shall not constitute land use decisions. The City may retain an appraiser to assist the Council.

(10) Reimbursement of Costs:

(a) If a claim is denied and ultimately determined to be invalid by the City Council, the Claimant shall reimburse the City for the costs the City incurred in processing the 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 for which the claim is made.

(b) If a claim is denied by the City Council and ultimately determined to be invalid by a circuit court or appellate court, the City shall be entitled to recover reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred.

(11) Neighbor Private Cause of Action. If the City Council's approval of a claim by waiving, modifying or not applying a land use regulation causes a reduction in the fair market value of other property located in the vicinity of the Claimant, the neighbor(s) shall have an action in a court of competent jurisdiction to recover from the Claimant the amount of reduction in value and shall be entitled to recover reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect the reduction in value.

(12) Severability. If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

(13) Claim Form. Staff shall provide a claims form to assist a Claimant in the orderly presentment of the claims information set forth herein. To the extent allowable under law, the City shall have a successful land use applicant waive any claims for the enforcement of the applicable land use regulations.