

CHAPTER 37

MEASURE 37 PROCESSING

37.100 SHORT TITLE.

This chapter may be cited as the “Measure 37 Processing Ordinance.”

37.110 PURPOSE.

This chapter provides an internal process for implementing the provisions added to Oregon Revised Statutes, Chapter 197 by Ballot Measure 37 (“Measure 37”) (November 2, 2004). The Measure permits owners of private real property to file a claim and seek monetary compensation for the reduction in the fair market value of the real property, and thereafter permits the governing body to pay the owner compensation for the resulting reduction in the fair market value of the real property, or in the alternative, modify, remove, or not apply the subject land use regulation(s). This chapter provides a prompt, open, and thorough process that enables property owners and others to present their claims and voice concerns consistent with Measure 37.

37.200 DEFINITIONS.

For the purposes of this chapter, the following definitions apply unless the context requires a different meaning.

(1) **APPRAISAL.** Means a written statement as to reduction in the fair market value of the property 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” means a written statement prepared by an appraiser holding the MAI qualification, as demonstrated by written certificate.

(2) **ENFORCE or ENFORCEMENT.** Actual or constructive application of an identified land use regulation against the present owner-claimant.

(3) **ENFORCEMENT WAIVER.** Means real property and owner specific waivers of application and enforcement of identified land use regulations.

(4) **EXEMPT REGULATION.** Means a regulation that is an historically and commonly recognized nuisance law (Polk County Code of Ordinances, Oregon Revised Statutes, common law and Ore Const, Art I, sec 18(b)), a regulation to implement a requirement of federal law to the minimum extent required, a regulation concerning the protection of public health and safety, or a regulation that prohibits selling pornography, and/or performing nude dancing.

(5) **MEASURE 37 RELIEF.** Means real property and owner specific relief which may be granted under this Chapter if a land use regulation that restricts the use of private real property (and has the effect of reducing the fair market value of the real property) is modified, removed, or not applied or in the alternative, the owner is paid compensation for the resulting reduction in the fair market value of the real property.

(6) PERSON. Means any natural person, association, firm, partnership, corporation, or other entity having a legal or equitable interest in real property in Polk County.

(7) PROPERTY OWNER or OWNER. Means the present owner of the real property or any interest therein.

(8) LAND USE REGULATION. As defined by Section 11(B) of Measure 37.

(9) RESTRICTS THE USE. Means prohibiting a particular use of the private real property. Standards that regulate general matters of health and safety, the form of development, how a structure must be constructed, or how grading or fill is to be conducted (such as but not limited to yard setback requirements, height limitations, erosion control measures, access, and building code standards) are not restrictions on the use of property.

37.300 CLAIM PROCESS.

An owner of real property located within the unincorporated area of Polk County may submit a parcel-specific claim for compensation if the owner believes that he/she is entitled to compensation under Measure 37 (November 2004), as the result of the enactment or enforcement of a land use regulation which was not effective on the date that the present owner of the subject real property obtained an ownership interest in the real property.

(1) Claim Form: Polk County Community Development will provide the Measure 37 Claim Form. Polk County will accept the Measure 37 Claim Form when all requested information is provided, and the claim form is dated and signed by the present owner or designated representative.

(2) Fees: No fees are charged for processing Measure 37 Claims.

(3) Notice: Prior to processing a Measure 37 Claim Form, Polk County will provide notice to area property owners, and any affected jurisdiction(s). Notification shall be provided to area property owners identified on the current tax assessment role as follows: (a) within 100' of the property where the subject property is within an urban growth boundary; (b) within 250' of the property where the subject property is located outside an urban growth boundary and not within a resource zone; (c) within 750' of the property where the subject property is located within a resource zone.

(4) Processing: Polk County will process claims in the ordinary course of business. Claimants are required to cooperate with the reasonable requests of County Staff relative to processing of the claim until such time as Polk County determines that the claim is complete as provided in section 37.400.

(5) Determination Decision: Within the time limits provided by Measure 37, County Staff will issue a written decision identifying the Measure 37 Compensation Date and the Measure 37 Waiver Date. The decision will state whether the claimant has established a preliminary reduction in value, and will identify the date, time and location for public hearing before the Board of Commissioners.

(6) Judicial Review: Final decisions of Polk County may be reviewed as provided in Measure 37.

37.307 TIME LIMITATIONS.

The County shall not consider any claim brought under this Chapter, nor any claim brought in any manner seeking relief pursuant to Measure 37, unless the claimant complies with the time limitations contained within the text of Measure 37.

37.320 CLAIM REQUIREMENTS.

All Measure 37 claims must be submitted at the Community Development Department along with all necessary supporting documentation and information, sufficient to allow County Staff to make a determination as to the status of the Measure 37 claim. The claimant has the burden of proof to establish the basis of his/her Measure 37 claim.

37.330 REQUIRED CLAIM INFORMATION.

A complete Measure 37 Claim Form includes all the materials listed in this section. The Planning Director may waive the submission of any of these materials if deemed not applicable to the specific claim. Within 30 days of when the Measure 37 claim is first submitted, the Planning Director may require additional information beyond that listed in this section where useful to address applicable evaluation criteria. The claimant is responsible for the completeness and accuracy of the claim and all of the supporting documentation. The County will not deem the claim complete until all information required by this chapter and the Planning Director has been submitted. Unless specifically waived by the Planning Director (and subject to any subsequent requirement imposed by the governing body), the following must be submitted:

(1) Documentation establishing that the claimant has exhausted all local land use remedies concerning the alleged restricted use of the subject real property (i.e. allowed uses, conditional uses, variance). Exhaustion of local land use remedies does not require Goal exceptions, Comprehensive Plan amendments, or zone changes.

(2) One copy of a completed Measure 37 Claim Form that includes the following:

- (a) The current deed containing an accurate legal description (including common street address), tax account number(s), current assessor's map, and location of the private real property that is the subject of the Measure 37 claim.
- (b) Name, address, telephone number of each owner (including contract owner) and security interest holder (if any) in the private real property, together with the signature of each such owner (including contract owner) or the signature of an authorized representative (i.e. power of attorney) thereof. If all owners and security interest holders do not sign the application, they shall sign waivers of the right to request and/or receive compensation or other Measure 37 relief.

- (c) The date each owner(s) acquired ownership of the private real property and a chronology of any subsequent ownership changes. A copy of all documents that memorialize ownership changes from the present owner back through and including all ownership documents that the present owner wishes to be considered by Polk County.
- (d) When required by County Counsel, an Affidavit of Ownership.

(3) Identification of the land use regulation(s) alleged to restrict the use of the subject private real property, including the date the regulation was adopted, first enforced or applied.

(4) Current (within 30 days prior to claim submission) documentation from a title company containing a complete listing of all present owners of the subject parcel of real property.

(5) A complete copy of any CC&R (Covenant, Condition & Restriction) or other contractual obligation that applies to the subject real property.

(6) The alleged effect of the land use regulation(s) on the real property, including (unless waived by mutual written agreement of the claimant and the Planning Director) supporting documentation which may include a copy of an appraisal report demonstrating the alleged reduction in fair market value on the property due to the identified restriction(s). When required, the appraisal report must expressly note all existing infrastructure limitations and value of the real property without an assumption that any public infrastructure or services are present or that any such infrastructure will be improved or sustained at governmental or taxpayer expense or through discretionary governmental action. For applicable claims of more than \$100,000, two appraisals are required. One appraisal is required for applicable claims of \$100,000 or less. (Included in the appraisal report(s) must be a detailed narrative describing the manner in which the regulation(s) in question reduces the fair market value of the property.)

- (a) An appraisal report, to the extent required by this chapter and/or the governing body, need not be provided at the time of submission of the Measure 37 claim. The governing body reserves the right to require submission of an appraisal report(s) if deemed necessary for ascertaining fair market value.
- (b) When required, the appraisal report(s) must be in writing and signed by the duly qualified appraiser, must expressly consider the effect of Measure 37 on the availability of other real property, including the extent to which the supply of such other real property is or will be increased thereby.
- (c) The appraisal report(s) shall contain a detailed explanation of the facts, methodology, and analysis used to reach the appraiser's opinion as to the compensable reduction in fair market value caused solely by the application of the land use regulation(s) and as otherwise provided under Measure 37. The opinion of compensable reduction in fair market value shall be apportioned among each land use regulation such that the County may separately consider the alleged impact on fair market value of each land use regulation.

(7) Identification of the relief sought by the claimant, to include a copy of all reports, plans, site plans, and other documents submitted to the County for any previous applications for land use permit approvals relative to the subject real property.

(8) A copy of the site plan and drawings related to the use of the subject property in a readable/legible 8 ½ by 11-inch format for inclusion in the claim record.

(9) Identification of family relationships relevant on the issue of ownership.

(10) Description of all uses that are proposed pursuant to the requested Measure 37 Relief.

(11) A copy of the ordinance(s) that was applicable on the day that the subject property was acquired by the present owner.

(12) A copy of the zoning map that was current on the date of acquisition of the subject property by the present owner.

37.400 COMPLETENESS REVIEW.

(1) Upon submission of a Measure 37 Claim Form, Community Development will date stamp the claim. Community Development staff will then review the Measure 37 Claim Form and evaluate whether the claim form is complete. Completeness Review by Community Development staff will be based upon the requirements described in section 37.330. Community Development staff will complete this completeness review within 30 days of receipt of the Measure 37 Claim Form. If not complete, Community Development staff will provide written notification to the claimant as to what information must be submitted to make the claim complete.

(2) The claim will be deemed complete and the 180-day period provided for in Measure 37 will commence upon receipt of a Measure 37 Claim Form. The 180-day period will be automatically stayed upon notification to the claimant that the claim is not complete. Thereafter, the 180-day period will remain stayed until Community Development staff determines that the claim is complete, or the claimant declares in writing his/her direction to have the claim processed as submitted.

37.410 EVIDENCE.

The claimant has the burden of proof for all issues required for processing and determination of Measure 37 claims. The County has the burden of proof to show that a land use regulation is an Exempt Regulation.

37.500 HEARINGS PROCESS; EXTENSION PERIOD

Measure 37 does not expressly require public hearings in the course of processing Measure 37 claims. However, decisions of the governing body will be made at the conclusion of a noticed public hearing (conducted consistent with ORS Chapter 192). The governing body may

at its discretion allow an extension of up to seven (7) days in which to hold the record open for written submittals. All Measure 37 claims and supporting documentation shall be subject to public review.

37.530 BINDING EFFECT.

Excepting new land use regulations imposed after the date of a Measure 37 final decision, and subject to applicable review rights as permitted by Measure 37, a final decision of Polk County concerning a Measure 37 claim bars a subsequent claim brought against Polk County by the present owner as to the subject parcel of real property.

37.700 RECORDING OF DECISION.

Polk County may impose a requirement that the claimant record with the County Clerk the Measure 37 Final Decision. In such case, the Measure 37 Final Decision will run with the land, be binding on all subsequent owners, and must be placed in the County deed records within 30 days of final County action concerning the Measure 37 claim. Proof of recording must be filed with Community Development. Recording is at the claimant's expense.

37.703 EXERCISE OF RIGHTS.

Any relief provided under this chapter must be timely recorded as described in section 37.700.

37.704 SCOPE OF MEASURE 37 RELIEF.

Relief granted by Polk County pursuant to Measure 37 and/or this chapter is specific to Polk County and is not binding on other jurisdictions. Claimants seeking Measure 37 relief may need to file a Measure 37 claim with the State of Oregon and/or other governmental entities. With respect to compensation, claimants shall not be entitled to multiple recoveries that result in a recovery that is in excess of 100% of "just compensation" as determined pursuant to Measure 37.

37.705 VESTING / TRANSFER OF APPROVAL RIGHTS.

Relief granted under Measure 37 and this chapter is claimant and real property parcel-specific. Accordingly, before any Measure 37 relief that impacts a use can be transferred, that use may first need to be vested as required by state law.

37.710 ENFORCEMENT OF DECISION.

In the event a claimant, or the claimant's successor in interest, fails to fully comply with the Measure 37 Final Decision or conditions therein, the County may institute an enforcement proceeding under this chapter, or as otherwise permitted by law.

37.720 UNDERLYING VALIDITY.

(1) Any relief granted under this chapter shall be automatically deemed void and of no further force and effect from and after the date of Polk County's Measure 37 Final Decision,

without any action on the part of the County in the event of subsequent binding modifications to or court interpretations of Measure 37.

(2) Until the use granted as Measure 37 relief has been vested as determined by state law, any relief granted an owner(s) under this chapter shall not be deemed to nor will it create any protectable property interest or “investment-backed expectation” on the part of a claimant in its continuation. The County shall have the right to compel the owner(s) or their successor-in-interest to comply with any regulation in effect at the time of the County’s final decision on the claim, in the event any subsequent binding modification or interpretation of Measure 37 occurs as a result of court decision, legislative action, or initiative.

37.800 JUDICIAL REVIEW.

Judicial review of Polk County’s Final Decision shall only be taken as permitted by Measure 37.

37.850 AVAILABILITY OF FUNDS.

Compensation can only be paid based on the availability and appropriation of funds for this purpose.

37.900 SUBSEQUENT INVALIDITY.

If any portion of this chapter is declared invalid by a court of competent jurisdiction, then to the extent necessary to implement Measure 37, the remaining portions of this chapter shall remain in full force and effect.