

## **CITY OF BAY CITY**

### **ORDINANCE NO. 611**

#### **AN ORDINANCE CONCERNING REAL PROPERTY COMPENSATION; ADOPTING PROCEDURES FOR PROCESSING CLAIMS AND DECLARING AN EMERGENCY.**

The City Council of the City of Bay City does ordain as follows:

Section 1. Purpose. This Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 passed November 2, 2004. These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the City; preserves and protects limited public funds and establishes a record of the City's decision capable of circuit court review.

Section 2. Definitions. As used in this Ordinance, the following words and phrases mean:

- 2.1 City Recorder. The City Recorder of the City of Bay City or his or her designee.
- 2.2 Claims. A claim filed under Ballot Measure 37, pursuant to this Ordinance.
- 2.3 Exempt Land Use Regulation. A land use regulation that:
  - (a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
  - (b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
  - (c) Is required in order to comply with federal law;
  - (d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
  - (e) Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject

property prior to acquisition or inheritance by the owner, whichever occurred first.

2.3 Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

2.4 Just Compensation. Just compensation is 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 ordinance.

2.5 Land Use Regulation. Includes:

- (a) Any statute regulating the use of land or any interest therein;
- (b) Administrative rules and goals of the Land Conservation and Development Commission;
- (c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
- (d) Statutes and administrative rules regulating farming and forest practices.

2.6 Owner. The present fee title owner of the property, or any interest therein.

2.7 Valid Claim. A claim submitted by the owner of real property whose ownership interest or family ownership interest is continuous to a time before the effective date of the land use regulation adopted or enforced by the City that restricts the use of the private real property in a manner that reduces the fair market value of the real property. Claims existing as of December 2, 2004, shall be filed by December 1, 2006, or the date the City applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land, use regulations enacted after the effective date of this act, written demand for compensation under Section 3 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.

### Section 3. Claim Filing Procedures.

3.1 A person seeking to file a claim under this ordinance must be the present fee title owner of the property that is the subject of the claim at the time the claim is submitted.

If there are multiple owners, all owners must sign the claim and request the same relief. The claim shall be filed at the Bay City Hall.

3.2 A claim shall include all of the following information to be considered a complete claim:

- (a) The name(s), address(es) and telephone number(s) of all current owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the legal interest of each person; and
- (b) Copy of any trust document applicable to ownership; and
- (c) Deeds or a Chain of Title Report by a title company documenting continuous family ownership of the subject property prior to the effective date of the land use regulation in question; and
- (d) The address, tax lot, and legal description of the real property that is subject of the claim, together with a title report issued no more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting the ownership of the property by the claimant(s), the date the property was acquired and showing all liens and encumbrances on said property; and
- (e) The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property; and
- (f) The amount of the claim, based on the alleged reduction in value of the real property and supported by a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon; and
- (g) Copies of any leases, easements and Covenants, Conditions and Restrictions ("CCR's") applicable to the real property; and
- (h) A request as to the preferred resolution of the claim, (1) a monetary payment in a specific amount; (2) waiver of the applicable regulation as defined in this ordinance, or (3) modification of the applicable regulation(s), including a description of the desired modification.

3.3 Once the owner has submitted the information required by this ordinance and paid the applicable processing fee, the application shall be considered complete.

#### Section 4. City Recorder Investigation and Recommendation.

4.1 Following an investigation of a claim, the City Recorder, in conjunction with the City Planner and the City Attorney, as may be required, shall forward a recommendation to the City Council that the claim be:

- (a) Denied;
- (b) Investigated further;
- (c) Declared valid, and waive or modify the land use regulation, or compensate the claimant upon completion of an appraisal; or
- (d) Evaluated with the expectation of the City acquiring the property by condemnation.

4.2 The City Council shall meet within 180 days of the submitted claim being complete and shall make a determination of the claim.

Section 5. City Council Public Hearing. The City Council shall conduct a public hearing before taking final action on a recommendation from the City Recorder. Notice of the public hearing shall be provided to the claimant(s) and any lien holder(s), to owners of property within 300 feet of the perimeter of the subject property, and to any other person requesting notice. An error in notification shall not invalidate the City's decision.

Section 6. City Council Action on Claim.

6.1 Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council shall:

- (a) Determine that the claim does not meet the requirements of Measure 37 and this Ordinance, and deny the claim; or
- (b) Adopt a Resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.

6.2 The City Council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property, to the extent City funds allow.

6.3 If the City Council removes or modifies the challenged land use regulation, it may, at its discretion, put back into effect, with respect to the subject property, all of the land use regulations in effect at the time the claimant(s) acquired the property.

6.4 A decision by the City Council to remove or modify a land use regulation shall be personal to the claimant(s) and shall automatically become invalid and void upon the

transfer of any ownership interest in the subject property by the claimant to any person not a family member of the owner.

#### Section 7. Processing Fee.

7.1 Claimant shall pay a processing fee of \$1,000.00 at the time of filing the claim at the Bay City Hall. The City Recorder shall maintain a record of the City's costs in processing a claim, including the costs of obtaining information required by section 3.2 of this ordinance which a property owner does not provide to the City. Following final action by the City on the claim, the City Recorder shall send to the property owner a bill for the actual costs, including staff and legal costs, that the City incurred in reviewing and acting on the claim, if such costs exceed the filing fee. The City may, from time to time, change the filing fee by Resolution.

7.2 If the property owner does not pay the amount due within 30 days, then the City may pursue collection, including filing a lien on the property and any other remedies allowed by law. In the event that the City allowed a waiver of any rule, no permit shall be given, including a building permit, until the balance owing to the City is paid in full.

Section 8. Payment of Claims. In the event that the City pays a claim herein, all payments shall be paid within two years from the date of the Council decision, unless any appeal is then pending. In the event that compensation has not been paid in full within said time, the owner shall be allowed to use their property, subject to the regulations in effect at the time of acquisition.

Section 9. Emergency. Due to the passage of Measure 37 at the Statewide General Election on November 2, 2004 with an effective date 30 days thereafter, the City Council declares it is necessary for the preservation of the public health, welfare and safety of the citizens of Bay City for this Ordinance to have immediate effect. Therefore, this ordinance shall become effective immediately upon its passage by the City Council and approval by the Mayor.

Section 10. Claim Limit. There shall only be one claim per property for each regulation. After payment of compensation, a further reduction in value shall not be a basis for a further claim.

Section 11. Appeal. Decisions by the City Council under this ordinance are not land use decisions under ORS 197.015(10), but are reviewable by the state courts.

Section 12. Severability. In the event that any part of this ordinance is declared null and void by a Court or in the event that any provision herein is in conflict with any state and federal rule, law or statute, then the affected provision of this ordinance shall be deemed inoperative and null and void. No ruling or conflict stated above shall invalidate the remaining provisions of this ordinance.

PASSED and Adopted by the City Council this 29<sup>th</sup> day of November, 2004, and  
APPROVED by the Mayor this 30<sup>th</sup> day of November, 2004.

/s/ Shaena E. Peterson  
Shaena E. Peterson, Mayor

Attest:

/s/ Linda Dvorak  
Linda Dvorak, City Recorder

Adopted: November 29, 2004

Ayes: 4

Nays: 0

Abstentions: 1

First Reading: November 29, 2004

Second Reading: November 29, 2004