

W. 5.C.

AGENDA COVER MEMO

DATE: November 9, 2004

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT: LANE COUNTY OFFICE OF LEGAL COUNSEL

PRESENTED BY: Stephen L. Vorhes, Assistant County Counsel



AGENDA ITEM TITLE: ORDINANCE NO. 18-04/IN THE MATTER OF AMENDING CHAPTER 2 OF LANE CODE TO ESTABLISH A REAL PROPERTY COMPENSATION APPLICATION PROCESS RESULTING FROM VOTER APPROVAL OF BALLOT MEASURE 37 (November 2, 2004), AND DECLARING AN EMERGENCY (LC 2.700 through 2.770)

I. MOTION

For November 10, 2004: I move approval of the first reading and setting the second reading and public hearing on Ordinance No. 18-04 for December 1, 2004 at 1:30 p.m.

For December 6, 2000: I move approval of Ordinance No. 18-04.

II. ISSUE OR PROBLEM

Should a process be established in Lane County for receiving and reviewing applications for claims under the provisions added to ORS Chapter 197 by voter approval of Ballot Measure 37 in the November 2, 2004 election?

III. DISCUSSION

A. Background. On November 2, 2004, Oregon voters approved Ballot Measure 37 to add provisions to ORS Chapter 197 to require payment to landowners if a government land use regulation reduces private real property value. When a claim is made, the property owner shall be paid just compensation unless the land use regulation is no longer applied to the property within 180 days of the date the property owner makes a written claim for compensation under the applicable provision of the measure. The effective date of Ballot Measure 37 is December 2, 2004. The provisions added to ORS Chapter 197 by Ballot Measure 37 do not include a specific process for application and review of claims for compensation but they do authorize local government adoption of such a process.

B. Analysis. There are a number of questions raised by Ballot Measure 37 and it will take time to sort out some of the answers. One of the more immediate consequences, however, will

be the potential for compensation claims by private real property owners. When a claim is made, a property owner must be paid compensation under Ballot Measure 37 unless the land use regulation affecting fair market value of the property interest is no longer enforced against the property 180 days after the date the property owner makes a written claim for compensation to the public entity enacting or enforcing the land use regulations. Since Ballot Measure 37 does not specify a method for making claim applications, draft Lane Code provisions have been prepared to establish such a process. Ordinance No. 18-04 presents a claim application process for Board consideration.

A number of policy issues are involved in any action related to Ballot Measure 37. The draft Lane Code provisions attempt to provide a claims process that is simple and direct while leaving many of the questions raised by Ballot Measure 37 to analysis in the context of specific claims. I will try to point out most of the choices included in the draft Lane Code provisions at the first reading to provide opportunity for revisions prior to action setting the second reading and public hearing.

One of the main aspects of the draft Lane Code provisions will be the opportunity for the Board to decide to modify, remove or discontinue application of a land use regulation that reduces property values rather than pay compensation. Because adopting provisions that could lead to that decision may be regarded as an amendment to land use regulations an effort has been made to include the Lane County Planning Commission in the process to review and make a recommendation on the draft Lane Code provisions.

C. Alternatives/Options.

1. Approve Ordinance No. 18-04.
2. Do not approve Ordinance No. 18-04.

D. Recommendations.

I recommend option 1.

E. Timing.

Ordinance No. 18-04 has an emergency clause and will go into effect immediately.

IV. IMPLEMENTATION/FOLLOW-UP

Upon enactment, claims for compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) will be processed according to the provisions of LC 2.700 through 2.770.

V. ATTACHMENT

Ordinance No. 18-04

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 18-04

IN THE MATTER OF AMENDING CHAPTER 2 OF LANE CODE TO ESTABLISH A REAL PROPERTY COMPENSATION CLAIM APPLICATION PROCESS RESULTING FROM VOTER APPROVAL OF BALLOT MEASURE 37 (November 2, 2004), AND DECLARING AN EMERGENCY (LC 2.700 through 2.770)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 2 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

REMOVE THESE SECTIONS

2.700 through 2.710
located on page 2-14 through 2-19
(a total of 6 pages)

INSERT THESE SECTIONS

2.700 through 2.770
located on page 2-14 through 2-20
(a total of 7 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to amend Lane Code Chapter 2 to establish a real property compensation claim application process resulting from voter approval of Ballot Measure 37 (November 2, 2004) (LC 2.700 through 2.770). Until further action by the Board adopting city regulations for application within the Springfield and Eugene Urban Growth Boundaries, the provisions of LC 2.700 through 2.770 shall be applicable in those areas and the terms "County", "County Administrator", and "Board" shall mean "City", "City Manager", and "Council" as necessary for each city to process claims made for property within the Urban Growth Boundary of that city. The Board hereby authorizes city application review and related decisions as necessary for each respective city to respond to those claims.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, shall take effect immediately upon adoption.

ENACTED this _____ day of _____ 2004.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 11-9-2004 Lane County


OFFICE OF LEGAL COUNSEL

(2) The ballot title shall be referred by the Board in the form that it shall appear on the ballot. The title shall consist of a caption of not more than 10 words, a question of not more than 20 words in length, and an explanatory statement of not more than 150 words. The explanatory statement shall contain a concise and impartial statement of the issue presented to the voter.

(3) The general procedure for conducting advisory question elections shall be consistent with ORS Chapter 255. The County Clerk responsible for election matters shall have the authority to take appropriate action to guarantee the submission of the advisory question to the appropriate voter group.

(a) After receipt of the Board referral, the County Clerk shall provide notice of the advisory question in the same manner specified in ORS 255.095.

(b) Advisory questions may be conducted Countywide or within only a portion of the County, however, the areas designated by the Board shall follow precinct boundaries established pursuant to ORS 246.410.

(c) No election contests or recounts, as specified in ORS Chapter 258 shall be permitted.

(d) No challenge to the ballot title, consisting of the caption, the question and explanatory statement, shall be permitted after Board referral to the people under this ordinance.

(e) Advisory questions referred pursuant to this ordinance shall be preceded on the ballot by the following statement:

"Referred to the people by the Board of County Commissioners.
The questions are advisory only and shall have no binding legal effect whatsoever."
(Revised by Ordinance No. 15-78, Effective 8.29.78; 19-81, 1.8.82)

SERVICE DISTRICTS

2.660 Establishment of Local Service District.

Pursuant to Section 7 of the Charter, the method for establishing a local service district and for enlarging such a district already established, shall be as prescribed by the general laws of the State. *(Revised by Ordinance No. 17-72, Effective 9.8.72)*

2.665 Referendum in Local Service District.

Pursuant to Section 7 of the Charter, method for exercising the power of referendum in a local service district shall be as prescribed by the general laws of the State. *(Revised by Ordinance No. 17-72, Effective 9.8.72)*

REAL PROPERTY COMPENSATION/REGULATION APPLICATION PROCESS

2.700 Findings and Purpose.

(1) Findings. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation reduces property value. Ballot Measure 37 permits owners of private real property to apply for compensation for the reduction of property value resulting from imposition of a land use regulation that restricts the use of private real property and the government has 180 days from such application to deny or pay the claim or take action to modify, remove, or not apply the regulation on the property. Since Ballot Measure 37 does not set forth a specific process for review of applications

for compensation, it is in the best interests of Lane County to establish such a process in order to be able to assess such claims in a timely manner.

(2) **Purpose.** The provisions of LC 2.700 through 2.770 implement the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The provisions of LC 2.700 through 2.770 establish a prompt, open, thorough and consistent process that enables property owners to present their legitimate claims consistent with the Oregon and U.S. Constitutions; enable persons with claims to have an adequate and fair opportunity to present them to the County; preserve and protect limited public funds; and establish a record of decision capable of appellate review. The provisions of LC 2.700 through 2.770 shall become operative only when the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) become effective. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.710 Definitions.

For the purpose of LC 2.700 through 2.770 the following terms, phrases, words and their derivations shall have the meaning given in LC 2.710. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined in LC 2.700 through 2.770 shall be given the meaning intended in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), or as those words may be subsequently defined by statute. Words used in LC 2.700 through 2.770 that are the same as words used in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) shall have the same meaning as the words used in those provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), notwithstanding any different definition in any other regulation. If not defined there, the words shall be given their common and ordinary meaning.

Claim. A claim filed under Ballot Measure 37.

County Administrator. The County Administrator or the Administrator's designee.

Exempt Land Use Regulation. A land use regulation that:

- (1) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
- (2) 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;
- (3) Is required to comply with federal law;
- (4) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- (5) Was enacted prior to the date of acquisition of the property by the owner or a family member

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.

Land Use Regulation. Includes:

- (a) Any statute regulating the use of land or any interest therein;
- (b) Administrative rules and goals of the Land Conservation and Development Commission; and

(c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances.

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

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by Lane County that restricts the use of the private real property in a manner that reduces the fair market value of the real property. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.720 Application for Claim.

An applicant seeking to file a claim under LC 2.700 through 2.770 shall be the present owner of the property that is the subject of the claim at the time the claim is submitted. An applicant shall submit an application to the County Administrator consisting of all of the items set out in LC 2.720(1) through (9). The County Administrator may waive the submission of any materials if not deemed applicable to the evaluation of the specific claim. Within 10 working days of when the application is first submitted, the County Administrator may require additional information beyond that listed in LC 2.720(1) through (9) where useful to address approval criteria. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The County will not deem the application complete until all information required by the County Administrator has been submitted. Unless specifically waived by the County Administrator, the following must be submitted:

- (1) A completed application form;
- (2) The name, mailing address, and phone number of the property owner filing the application, and of each of the other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each, if any, along with the signature of each of the other owners indicating consent to the application claim;
- (3) A legal description and tax lot number of the subject property as well as a street address for the property (if any);
- (4) A title report issued within 30 days of the application's submittal, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a copy of the deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the application;
- (5) A statement specifically identifying the section of Lane Code or other land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was adopted, first enforced or applied to the subject property;
- (6) A copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;
- (7) A written statement addressing the criteria listed in LC 2.740(1)(a) through (d);
- (8) A statement by the applicant specifying the amount of the claim, and the fair market value of the property before and after application of the challenged land use regulation(s); and

(9) Copies of any leases or covenants, conditions and restrictions applicable to the subject property if any exist that impose restrictions on the use of the property. Unless waived by the County Administrator, an application also shall include an application fee, in the amount established by Order of the Board, to at least partially cover the County costs of processing the application, to the extent an application fee may be required as a condition of acceptance of filing of an application for a claim under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The County shall refund the application fee if it is determined by the County or by a court that the applicant is entitled to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.730 Completeness Review.

The County Administrator shall review a claim application and, within 10 working days of its receipt, notify the applicant as to whether the application is complete. If the County Administrator determines that the application is complete, the County Administrator shall begin the application review process. If the County Administrator determines that the application is incomplete, the county shall advise the applicant in writing of the necessary missing information. Within 10 days of the mailing of a notice of missing information, the applicant shall submit to the county a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement indicating an intention to submit missing information shall constitute a waiver of the 180-day deadline contained in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for a period of time equal to the time it takes to supply the missing information. The County shall accept the application and begin review either:

- (1) Upon receipt of all of the missing information requested by the County;
- (2) Upon receipt of a written statement from the applicant indicating that the missing information will not be provided; or
- (3) Upon the 20th day after mailing the notice of missing information referred to above, if the applicant has not responded. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.740 Application Review and Recommendation.

(1) The County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the following criteria are met:

- (a) The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;
- (b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;
- (c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and
- (d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

(2) If an application fails to meet one or more of the criteria listed above, the County Administrator shall issue a written final decision denying the claim and explaining the reason(s) for determining that the application does not qualify for compensation consideration and will not be referred to the Board. If the application meets all of the criteria in LC 2.740(1)(a) through (d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion

at LC 2.760(3), that the Board either compensate the applicant for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation to the subject property.

(3) After consideration of the information included in the application and any other evidence obtained or received, the County Administrator shall determine whether modifying, removing, or discontinuing application of a land use regulation is necessary to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if so the extent needed to avoid the entitlement to such compensation and the amount of compensation to which the owner would be entitled without modifying, removing, or discontinuing application of a land use regulation. The County Administrator shall compare the public benefits from application of the land use regulation to the private real property with the public burden of paying the required compensation to the owner if a modification or waiver of the land use regulation is not granted, taking into consideration the financial resources of the County for the payment of such claims. Based on this comparison, the County Administrator shall prepare a written report to the Board stating these determinations and the evidence on which they are based.

(4) If waiver or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a waiver or modification of the land use regulation that will avoid owner entitlement to compensation, grant a waiver or modification of the land use regulation that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a waiver or modification of the land use regulation and pay the compensation to which the owner is entitled.

(5) Notice of the denial or recommendation to Board shall be mailed to the applicant.

(6) The County Administrator shall issue a decision denying the claim or making a referral recommendation to the Board by the 45th day after the application was accepted. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.750 Application Notice.

(1) Within 5 days of the referral to the Board, but no less than 20 days before the Board holds a public hearing, written notice of the application referral shall be mailed to all of the following:

(a) The applicant;

(b) Other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, or lessees, as listed on the application;

(c) Owners of record on the most recent property tax assessment roll of properties located within 500 feet of the perimeter of the subject property located entirely within an urban growth boundary or Rural Community and within 1500 feet of the perimeter of all other subject properties;

(d) Neighborhood groups or community organizations officially recognized by the Board and whose boundaries include the subject property; and

(e) Other agencies or interested parties as determined by the County Administrator.

(2) The failure of any person to receive notice shall not affect or invalidate any proceedings under LC 2.700 through 2.770.

(3) The notice shall include all of the following:

- (a) The street address or other easily understood geographical reference to the subject property;
 - (b) The criterion for the decision;
 - (c) The place, date, and location of the hearing;
 - (d) The nature of the application and the proposed use or uses which could be authorized if the identified land use regulation is waived or modified with respect to the subject property;
 - (e) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
 - (f) The name and telephone number of a county contact person;
- and
- (g) A brief summary of the local decision making process for the decision being made. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.760 Board Consideration and Decision.

(1) Upon conclusion of any hearing on a claim application, and prior to the expiration of 180 days from the date a claim was filed, the Board shall either declare:

- (a) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or
- (b) The claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply the challenged land use regulation(s) in a manner which reduces the value of the subject property and allows the owner to use the property for a use permitted at the time the owner acquired the property.

(2) Where more than one regulation is being challenged, the Board may provide for a combination of the two remedies listed above.

(3) The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulation(s) to the subject property. The Board decision shall be accompanied by a written decision that states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in LC 2.760(3).

(4) Within 5 days after the Board renders a decision, the County shall mail notice of the decision to all parties to the proceeding. The notice shall include a summary of the decision.

(5) The County shall record notice of the Board decision in the county deed records. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.770 Board Decision Effect.

(1) Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in the Lane Code, the Board is authorized to modify, remove, or discontinue application of a challenged land use regulation by Order pursuant to LC 2.700 through 2.770 when the Board, in its discretion, elects to do so rather than paying compensation to the property owner.

(2) Any modification, removal, or discontinued application of a regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner, the discontinued regulation or any subsequent amendments shall be reinstated and apply to the property, and the new property owner

shall, to the maximum extent permitted by law, bring the property immediately into compliance with the reinstated regulation.

(3) If the Board grants an Order modifying, removing, or discontinuing application of a challenged land use regulation as a means to avoid having to compensate, or as a means to limit compensation to, an owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on an appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying owner was not entitled to compensation in relation to the modified, removed, or discontinued challenged land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

(4) Any modification, removal, or discontinued application of a challenged land use regulation Order granted under LC 2.700 through 2.770 shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the modified, removed, or discontinued application of a challenged land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

COUNTY LANDS AND BUILDINGS

2.800 Parking.

(1) The Board may designate by separate order certain locations on County-owned or controlled lands for parking purposes and may further order such regulation of parking considered reasonable and appropriate, including establishing user's fees and administrative charges in connection with such parking.

(2) For purposes of administration of any parking regulations ordered in accordance with LC 2.800(1) above, it shall be presumed:

(a) That a motor vehicle or other transportation vehicle was used with the owner's consent.

(b) That the owner of record was operating the vehicle whenever the actual operator is unknown.

(c) That a vehicle was parked for one-half the chargeable period whenever the actual time period is unknown. *(Revised by Ordinance No. 17-72, Effective 9.8.72; 18-77, 11.23.77)*

FEEES AND ASSESSMENTS

2.900 Fees to be Charged by the County Clerk for Recording and Other Services.

(1) The County Clerk shall charge no fees to Lane County or any of its Departments for recording.

(2) The fee for approval of a plat or a vacation order or ordinance by the county court is \$5.

(3) For recording and indexing any plat, the County Clerk, in whose office the deed records of the County are kept, shall charge \$20 plus \$10 per lot.

(4) The fee charged for the services of the County Surveyor for marking the record of a vacation order or ordinance upon the original plat shall be \$6.

(5) The fee for recording a copy of the location notice for a mining claim is \$5/document.

(6) The fee for recording an affidavit of annual labor upon a mining claim is \$5/page.

(7) The certificate described in ORS 517.280 shall not be issued until the co-owners entitled to it pay to the County Clerk a fee of \$12.50. The fee for recording the certificate shall be the same as for other mining conveyances, \$5 per page.

(8) For the preparation of and processing of a marriage license waiting period waiver request, the fee is \$4.

(9) Pursuant to ORS 203.148 a fee of \$10 shall be charged for recording any instrument under ORS 205.130(2). This fee is in addition to any other fee charged by the County Clerk. All moneys collected under this section shall be deposited in the Public Land Corner Preservation Fund. *(Revised by Ordinance No. 8-79, Effective 7.26.79; 5-84, 6.15.84; 6-86, 6.18.86; 19-86, 2.6.87; 15-87, 9.27.84; 5-03, 7.17.03)*

2.905 Law Enforcement Medical Liability Account Assessment.

Within 60 days of receipt of an assessment levied by Lane County Justice Courts pursuant to Section 5(4)(a) of Ch. 778 of 1991 Or Laws (SB 1142), the assessment shall be transmitted to the Oregon Department of Revenue for placement in the Law Enforcement Medical Liability Account. *(Revised by Ordinance No. 4-92, Effective 6.12.92)*

2.920 Forfeiture Assets.

Property or proceeds distributed to Lane County under Oregon Constitution article XV 10(7)(c) shall be deposited in the General Fund to be available for all lawful General Fund purposes. *(Revised by Ordinance No. 8-02, Effective 7.11.02)*

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Bold indicates material being added
~~Strikethrough~~ indicates material being deleted
2.6602.660 Lane Code

LEGISLATIVE
FORMAT
2.700-2.700

(2) The ballot title shall be referred by the Board in the form that it shall appear on the ballot. The title shall consist of a caption of not more than 10 words, a question of not more than 20 words in length, and an explanatory statement of not more than 150 words. The explanatory statement shall contain a concise and impartial statement of the issue presented to the voter.

(3) The general procedure for conducting advisory question elections shall be consistent with ORS Chapter 255. The County Clerk responsible for election matters shall have the authority to take appropriate action to guarantee the submission of the advisory question to the appropriate voter group.

(a) After receipt of the Board referral, the County Clerk shall provide notice of the advisory question in the same manner specified in ORS 255.095.

(b) Advisory questions may be conducted Countywide or within only a portion of the County, however, the areas designated by the Board shall follow precinct boundaries established pursuant to ORS 246.410.

(c) No election contests or recounts, as specified in ORS Chapter 258 shall be permitted.

(d) No challenge to the ballot title, consisting of the caption, the question and explanatory statement, shall be permitted after Board referral to the people under this ordinance.

(e) Advisory questions referred pursuant to this ordinance shall be preceded on the ballot by the following statement:

"Referred to the people by the Board of County Commissioners.
The questions are advisory only and shall have no binding legal effect whatsoever."
(Revised by Ordinance No. 15-78, Effective 8.29.78; 19-81, 1.8.82)

SERVICE DISTRICTS

2.660 Establishment of Local Service District.

Pursuant to Section 7 of the Charter, the method for establishing a local service district and for enlarging such a district already established, shall be as prescribed by the general laws of the State. *(Revised by Ordinance No. 17-72, Effective 9.8.72)*

2.665 Referendum in Local Service District.

Pursuant to Section 7 of the Charter, method for exercising the power of referendum in a local service district shall be as prescribed by the general laws of the State. *(Revised by Ordinance No. 17-72, Effective 9.8.72)*

REAL PROPERTY COMPENSATION/REGULATION APPLICATION PROCESS

2.700 Findings and Purpose.

(1) **Findings.** On November 72, 2000-2004, the voters of the State of Oregon approved Ballot Measure 37 which amended Article 1, Section 18 of the Constitution of Oregon ~~added~~ **added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation reduces property value. Ballot Measure 37 permits owners of private real property to apply for compensation for the reduction of property value resulting from imposition of a land use regulation that restricts the use of that private real property and the government has 90-180 days from such application to deny or pay the claim or take**

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2.7102-660 Lane Code

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2.710-2.700

action to **modify, remove, or not apply** the regulation on the property. Since Ballot Measure 37 does not set forth a specific process for review of applications for compensation, it is in the best interests of Lane County to establish such a process in order to be able to assess such claims in a timely manner.

(2) Purpose. The provisions of LC 2.700 through 2.770 implement the provisions added to ~~Article I, Section 18 of the Oregon Constitution~~ **ORS Chapter 197** by Ballot Measure 37 (November 72, 20004). The provisions of LC 2.700 through 2.770 establish a prompt, open, thorough and consistent process that enables property owners to present their legitimate claims consistent with the Oregon and U.S. Constitutions; enable persons with claims to have an adequate and fair opportunity to present them to the County; preserve and protect limited public funds; and establish a record of decision capable of appellate review. The provisions of LC 2.700 through 2.770 shall become operative only when the provisions added to ~~Article I, Section 18 of the Oregon Constitution~~ **ORS Chapter 197** by Ballot Measure 37 (November 27, 20040) become effective. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.710 Definitions.

For the purpose of LC 2.700 through 2.770 the following terms, phrases, words and their derivations shall have the meaning given in LC 2.710. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined in LC 2.700 through 2.770 shall be given the meaning intended in ~~Article I, Section 18, subsections (a) through (f) of the Oregon Constitution~~ **the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004)**, or as those words may be subsequently defined by statute. Words used in LC 2.700 through 2.770 that are the same as words used in ~~Article I, Section 18, subsections (a) through (f) of the Oregon Constitution~~ **the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004)**; shall have the same meaning as the words used in those subsections ~~of the Oregon Constitution~~ **provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004)**, notwithstanding any different definition in any other regulation. If not defined there, the words shall be given their common and ordinary meaning.

Claim. A claim filed under **Ballot Measure 37**.

County Administrator. The County Administrator or the Administrator's designee.

Exempt Land Use Regulation. A land use regulation that:

~~is an~~(1) **Restricts or prohibits activities commonly historically and historically commonly recognized as public nuisances under common law;**

(2) **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;**

(3) **Is required to comply with a regulation to implement a requirement of federal law to the minimum extent required;**

(4) ~~or a regulation~~ **Restricts or that prohibits the use of property for the purpose of selling pornography; or performing nude dancing; or, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor.**

(5) **Was enacted prior to the date of acquisition of the property by the owner or a family member** *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

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-

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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.

Land Use Regulation. Includes:

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

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

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by Lane County that restricts the use of the private real property in a manner that reduces the fair market value of the real property. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.720 Application for Claim.

An applicant seeking to file a claim under LC 2.700 through 2.770 shall be ~~an~~ **the present** owner of the property that is the subject of the claim ~~at the time the claim is submitted~~. An applicant shall submit an application to the County Administrator consisting of all of the items set out in LC 2.720(1) through (9). The County Administrator may waive the submission of any materials if not deemed applicable to ~~the evaluation of~~ the specific claim. Within 10 ~~working~~ days of when the application is first submitted, the County Administrator may require additional information beyond that listed in LC 2.720(1) through (9) where useful to address approval criteria. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The County will not deem the application complete until all information required by the County Administrator has been submitted. Unless specifically waived by the County Administrator, the following must be submitted:

- (1) A completed application form;
- (2) The name, mailing address, and phone number of the property owner filing the application, and of each of the other owners of the subject property **and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each, if any, along with the signature of each of the other owners indicating consent to the application claim;**
- (3) A legal description and tax lot number of the subject property as well as a street address for the property (if any);
- (4) A title report issued within 30 days of the application's submittal, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a copy of the deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the application;
- (5) A statement specifically identifying the section of Lane Code or other **land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was adopted, first enforced or applied to the subject property;**
- (6) A copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of

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~~Article 1, Section 18, subsections (a) through (f) of the Oregon Constitution~~
provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and
indicating the amount of the alleged reduction in the fair market value of the property by
showing the difference in the fair market value of the property before and after
application of each of the challenged regulations, individually, and after the application
of all of the challenged regulations, cumulatively;

(7) A written statement addressing the criteria listed in LC 2.740(1)(a)
through (d);

(8) A statement by the applicant specifying the amount of the claim, and the
fair market value of the property before and after application of the challenged **land use**
regulation(s); and

(9) Copies of any leases- or covenants, conditions and restrictions applicable
to the subject property if **any exist that impose restrictions on the use of the property.**
Unless waived by the County Administrator, an application also shall include an
application fee, in the amount established by Order of the Board, to at least partially
cover the County costs of processing the application, to the extent an application fee may
be required as a condition of acceptance of filing of an application for a **claim** under
~~Article 1, Section 18, subsections (a) through (f) of the Oregon Constitution~~
provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).
The County shall refund the application fee if it is determined by the County or by a court
that the applicant is entitled to compensation under ~~Article 1, Section 18, subsections (a)~~
~~through (f) of the Oregon Constitution~~ **the provisions added to ORS Chapter 197 by**
Ballot Measure 37 (November 2, 2004). *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.730 Completeness Review.

The County Administrator shall review a claim application and, within 10 **working** days
of its receipt, notify the applicant as to whether the application is complete. If the County
Administrator determines that the application is complete, the County Administrator shall
begin the application review process. If the County Administrator determines that the
application is incomplete, the county shall advise the applicant in writing of the necessary
missing information. Within 10 days of the mailing of a notice of missing information,
the applicant shall submit to the county a written statement indicating either an intent to
submit the missing information or a refusal to submit the missing information. A
statement indicating an intention to submit missing information shall constitute a waiver
of the 9180-day deadline contained in ~~Oregon Constitution Article 1, Section 18(d)~~
the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for
a period of time equal to the time it takes to supply the missing information. The County
shall accept the application and begin review either:

- (1) Upon receipt of all of the missing information requested by the County;
- (2) Upon receipt of a written statement from the applicant indicating that the
missing information will not be provided; or
- (3) Upon the 20th day after mailing the notice of missing information
referred to above, if the applicant has not responded. *(Revised by Ordinance No. 9-00, Effective
12.6.00)*

2.740 Application Review and Recommendation.

(1) The County Administrator shall make a determination as to whether the
application qualifies for Board compensation consideration. An application qualifies for

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compensation consideration if the applicant has shown that all of the following criteria are met:

- (a) The County has either adopted or enforced a **land use regulation** that restricts the use of private real property or **any interest therein**;
- (b) The restriction on use has the effect of reducing the **fair market value of the property or any interest therein**, upon which the restriction is imposed;
- (c) The challenged **land use regulation** was adopted, ~~first~~-enforced or applied after the current owner of the property (the applicant) became the owner; and
- (d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

(2) If an application fails to meet one or more of the criteria listed above, the County Administrator shall issue a written final decision denying the claim and explaining the reason(s) for determining that the application does not qualify for compensation consideration and will not be referred to the Board. If the application meets all of the criteria in LC 2.740(1)(a) through (d), the County Administrator shall ~~issue a written decision referring~~ the application to the Board and recommending, based on consideration of the criterion at LC 2.760(3), that the Board either compensate the applicant for the reduction in fair market value of the **affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation** to the subject property.

(3) After consideration of the information included in the application and any other evidence obtained or received, the County Administrator shall determine whether **modifying, removing, or discontinuing** application of a **land use regulation** is necessary to avoid owner entitlement to compensation under ~~Article I, Section 18, subsections (a) through (f) of the Oregon Constitution~~ **the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004)**, and if so the extent needed to avoid the entitlement to such compensation and the amount of compensation to which the owner would be entitled without **modifying, removing, or discontinuing** application of a **land use regulation**. The County Administrator shall compare the public benefits from application of the **land use regulation** to the private real property with the public burden of paying the required compensation to the owner if a **modification or waiver discontinuance from application of the land use regulation** is not granted, taking into consideration the financial resources of the County for the payment of such claims. Based on this comparison, the County Administrator shall prepare a written report to the Board stating these determinations and the evidence on which they are based.

(4) If ~~discontinuing application~~ **waiver or modification** of a **land use regulation** is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a **waiver or modification discontinuance of the land use regulation application** that will avoid owner entitlement to compensation, grant a ~~discontinuance~~ **waiver or modification of the land use regulation application** that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a **waiver or modification discontinuance of the land use regulation application** and pay the compensation to which the owner is entitled.

(5) Notice of the denial or recommendation to Board shall be mailed to the applicant.

(6) The County Administrator shall issue a decision denying the claim or making a referral recommendation to the Board by the ~~2045~~th day after the application was accepted. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

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2.750 Application Notice.

(1) Within 5 days of the referral to the Board, but no less than 20 days before the Board holds a public hearing, written notice of the application referral shall be mailed to all of the following:

(a) The applicant;
(b) Other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, or lessees, as listed on the application;

(c) Owners of record on the most recent property tax assessment roll of properties located within 500 feet of the perimeter of the subject property located entirely within an urban growth boundary or Rural Community and within 1500 feet of the perimeter of all other subject properties;

(d) Neighborhood groups or community organizations officially recognized by the Board and whose boundaries include the subject property; and

(e) Other agencies or interested parties as determined by the County Administrator.

(2) The failure of any person to receive notice shall not affect or -invalidate any proceedings under LC 2.700 through 2.770.

(3) The notice shall include all of the following:

(a) The street address or other easily understood geographical reference to the subject property;

(b) The criterion for the decision;

(c) The place, date, and location of the hearing;

(d) The nature of the application and the proposed use or uses which could be authorized if the identified land use regulation application is- waived or modified-discontinued with respect to the subject property;

(e) A statement that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;

(f) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;

(g) A statement that copies of the application and all evidence and documents submitted by or on behalf of the applicant are available for review, and that copies can be obtained at cost;

(h) A statement that failure to raise an issue at the hearing, in person or by letter, or failure to provide statements or evidence with sufficient specificity to enable the decision maker to respond to the issue, precludes an appeal based on that issue;

(if) The name and telephone number of a county contact person;

and

(jg) A brief summary of the local decision making process for the decision being made. (Revised by Ordinance No. 9-00, Effective 12.6.00)

2.760 Board Consideration and Decision.

(1) ~~Within 60 days of accepting~~ Upon conclusion of any hearing on a claim application, and prior to the expiration of 180 days from the date a claim was filed, the Board shall either declare:

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(a) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or

(b) The claim is a valid claim and the County will, as of the date of the final Board the decision, ~~discontinue to modify, remove, or choose not to apply the challenged land use regulation(s) to the subject property~~ in a manner which reduces the value of ~~that the subject property~~ and allows the owner to use the property for a use permitted at the time the owner acquired the property.

(2) Where more than one regulation is being challenged, the Board may provide for a combination of the two remedies listed above.

(3) The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by **modifying, removing, or choosing not discontinuing** to apply the challenged land use regulation(s) to the subject property. The Board decision shall be accompanied by a written decision that states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in LC 2.760(3).

(4) Within 5 days after the Board renders a decision, the County shall mail notice of the decision to all parties to the proceeding. The notice shall include a summary of the decision ~~and an explanation of appeal rights.~~

(5) The County shall record notice of the Board decision in the county deed records. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.770 Board Decision Effect.

(1) Pursuant to **Ballot Measure 37 (November 2, 2004)**, and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in the Lane Code, the Board is authorized to **modify, remove, or discontinue** application of a **challenged land use regulation** ~~upon a property~~ by Order pursuant to LC 2.700 through 2.770 when the Board, in its discretion, elects to do so rather than paying compensation to the property owner.

(2) Any **modification, removal, or discontinued** application of a regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner, the discontinued regulation or any **subsequent amendments** shall be reinstated and apply to the property, and the new property owner shall, to the maximum extent permitted by law, bring the property immediately into compliance with the reinstated regulation.

(3) If the Board grants an Order **modifying, removing, or discontinuing** application of a **challenged land use regulation** as a means to avoid having to compensate, or as a means to limit compensation to, an owner under ~~Article I, Section 18, subsections (a) through (f) of the Oregon Constitution~~ **the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004)**, and if, based on an appellate court interpretation or invalidation of ~~Article I, Section 18, subsections (a) through (f) of the Oregon Constitution~~ **the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004)**, in the same or any other case, the applying owner was not entitled to compensation in relation to the **modified, removed, or discontinued challenged land use regulation**, then the ~~discontinued application Order~~ shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under ~~Article I, Section 18, subsections (a)~~

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through ~~(f) of the Oregon Constitution~~ the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

(4) Any modification, removal, or discontinued application of a challenged land use regulation Order granted under LC 2.700 through 2.770 shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the **modified, removed, or discontinued application of a challenged land use regulation Order** would not be entitled to just compensation under ~~Article I, Section 18, subsections (a) through (f) of the Oregon Constitution~~ the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

COUNTY LANDS AND BUILDINGS

2.800 Parking.

(1) The Board may designate by separate order certain locations on County-owned or controlled lands for parking purposes and may further order such regulation of parking considered reasonable and appropriate, including establishing user's fees and administrative charges in connection with such parking.

(2) For purposes of administration of any parking regulations ordered in accordance with LC 2.800(1) above, it shall be presumed:

(a) That a motor vehicle or other transportation vehicle was used with the owner's consent.

(b) That the owner of record was operating the vehicle whenever the actual operator is unknown.

(c) That a vehicle was parked for one-half the chargeable period whenever the actual time period is unknown. *(Revised by Ordinance No. 17-72, Effective 9.8.72; 18-77, 11.23.77)*

FEES AND ASSESSMENTS

2.900 Fees to be Charged by the County Clerk for Recording and Other Services.

(1) The County Clerk shall charge no fees to Lane County or any of its Departments for recording.

(2) The fee for approval of a plat or a vacation order or ordinance by the county court is \$5.

(3) For recording and indexing any plat, the County Clerk, in whose office the deed records of the County are kept, shall charge \$20 plus \$10 per lot.

(4) The fee charged for the services of the County Surveyor for marking the record of a vacation order or ordinance upon the original plat shall be \$6.

(5) The fee for recording a copy of the location notice for a mining claim is \$5/document.

(6) The fee for recording an affidavit of annual labor upon a mining claim is \$5/page.

(7) The certificate described in ORS 517.280 shall not be issued until the co-owners entitled to it pay to the County Clerk a fee of \$12.50. The fee for recording the certificate shall be the same as for other mining conveyances, \$5 per page.

(8) For the preparation of and processing of a marriage license waiting period waiver request, the fee is \$4.

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(9) Pursuant to ORS 203.148 a fee of \$10 shall be charged for recording any instrument under ORS 205.130(2). This fee is in addition to any other fee charged by the County Clerk. All moneys collected under this section shall be deposited in the Public Land Corner Preservation Fund. *(Revised by Ordinance No. 8-79, Effective 7.26.79; 5-84, 6.15.84; 6-86, 6.18.86; 19-86, 2.6.87; 15-87, 9.27.84; 5-03, 7.17.03)*

2.905 Law Enforcement Medical Liability Account Assessment.

Within 60 days of receipt of an assessment levied by Lane County Justice Courts pursuant to Section 5(4)(a) of Ch. 778 of 1991 Or Laws (SB 1142), the assessment shall be transmitted to the Oregon Department of Revenue for placement in the Law Enforcement Medical Liability Account. *(Revised by Ordinance No. 4-92, Effective 6.12.92)*

2.920 Forfeiture Assets.

Property or proceeds distributed to Lane County under Oregon Constitution article XV 10(7)(c) shall be deposited in the General Fund to be available for all lawful General Fund purposes. *(Revised by Ordinance No. 8-02, Effective 7.11.02)*