

**TITLE 1
CHAPTER 15**

REAL PROPERTY COMPENSATION PROCEDURES

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1-15-1: Purpose. This Title 1, Chapter 15 Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (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.

1-15-2: Definitions. As used in this Chapter, the following words and phrases mean:

City Manager. The City Manager of the City of Florence, or his or her designee.

Claim. A claim filed under Ballot Measure 37.

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.

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, other than an exempt 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.

1-15-3: Claim Filing Procedures.

- A. A person seeking to file a claim under this chapter must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the city manager's office, or another city office if so designated by the city manager.
- B. A claim shall include:
 - 1. The name(s), address(es) and telephone number(s) of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;
 - 2. The address, tax lot, and legal description of the real property that is the 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 ownership of the entire property by the claimant(s), and the date the property was acquired;
 - 3. 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;
 - 4. The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed or certified by the Appraiser Certification and Licensure Board of the State of Oregon; and
 - 5. Copies of any leases or Covenants, Conditions and Restrictions ("CCR's) applicable to the real property, if any, that impose restrictions on the use of the property.
- C. Notwithstanding a claimant's failure to provide all of the information required by subsection B of this section, the city may review and act on a claim.

1-15-4: City Manager Investigation and Recommendation.

- A. Following an investigation of a claim, the city manager shall forward a recommendation to the city council that the claim be:
 - 1. Denied;
 - 2. Investigated further;
 - 3. Declared valid, and that the regulation be modified, removed, or not be applied to the subject property, or that the city compensate the claimant upon completion of an appraisal; or
 - 4. Evaluated with the expectation of the city acquiring the property, by condemnation if necessary.
- B. If the city manager's recommendation is that a claim be denied, and no elected official informs the city manager within 14 days that the official disagrees, then the city manager may deny the claim. If an elected official objects, then the city manager shall wait an additional seven days to see whether two more elected officials object to the proposed denial. If they do, then the city manager shall schedule a work session with the city council. If not, the city manager may deny the claim.

1-15-5: City Council Public Hearing. The City Council may conduct a public hearing before taking final action on a recommendation from the city manager. If a hearing is held, notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property, at least 10 days prior to the hearing.

1-15-6: City Council Action on Claim.

- A. For claims not denied pursuant to Section 1-15-4-B, prior to the expiration of 180 days from the date the claim was filed, the City Council shall adopt a resolution that:
 - 1. Determines that the claim does not meet the requirements of Measure 37 and this chapter, and denies the claim; or
 - 2. Determines that the claim is valid and either:
 - a. Directs that the claimant be compensated in an amount set forth in the resolution for the reduction in value of the property;
 - b. Modifies, removes or directs that the land use regulation(s) not be applied with respect to the subject property to allow the owner to use the property for a use permitted at the time the owner acquired the property; or
 - c. Directs that the city should acquire the property, by condemnation if necessary.
- B. 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.
- C. If the City Council removes or modifies the challenged land use regulation, or directs that it not be applied to the subject property, the Council may, as part of the resolution, put back into effect with respect to the subject property, all of the land use regulations in effect at the time the claimant acquired the property.

1-15-7: Processing Fee.

- A. The city manager shall maintain a record of the city's costs in processing a claim, including staff and legal costs and the costs of obtaining information required by section 1-15-3 of this chapter which a property owner does not provide to the city. Following final action by the city on the claim at the local level, the city manager shall send to the property owner a bill.
 - 1. If all items identified in Section 1-15-3-B were provided to the city with the claim, the bill shall be for the city's actual costs in processing the claim, not to exceed \$1,000.00.
 - 2. If any of the items identified in Section 1-15-3-B were missing from the claim, the bill shall be for the city's actual costs in processing the claim, with no cap.
- B. If the property owner does not pay the amount due within 30 days, then the city shall pursue collection, including, if necessary, filing a lien on the property.

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