

ORDINANCE NO. 903

AN ORDINANCE AMENDING STAYTON MUNICIPAL CODE (SMC) TITLE 3, CONCERNING REAL PROPERTY COMPENSATION; ADOPTING NEW PROCEDURES FOR PROCESSING CLAIMS UNDER OREGON BALLOT MEASURE 49; AND DECLARING AN EMERGENCY.

RECITALS:

WHEREAS, statewide Ballot Measure 49, which added to and amended within ORS Ch. 195 various provisions formerly found in ORS Ch. 197 as enacted under former Ballot Measure 37, was voted into law November 6, 2007, and became effective December 6, 2007;

WHEREAS, the City of Stayton had established under former statewide Ballot Measure 37 as part of the SMC Title 3, Chapter 3.08, "Private Property Subject to Regulation," in order to establish a prompt, open, thorough and consistent process that enabled property owners an adequate and fair opportunity to present certain property claim(s) to the City, while allowing the City to preserve and protect limited public funds, and established a procedure for recording the City's decision;

WHEREAS, it is appropriate to amend the provisions of SMC Title 3, Chapter 3.08 to reflect the provisions and requirements of statewide Ballot Measure 49;

WHEREAS, a subsequent ordinance enacted by the City Council erroneously enacted a duplicate Chapter 3.08 in Title 3 of SMC; and

WHEREAS, it is appropriate that an emergency be declared, as Ballot Measure 49 is already in effect.

NOW, THEREFORE, THE CITY OF STAYTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. SMC Title 3, Chapter 3.08, "Private Property Subject to Regulation," is hereby recodified as SMC Title 3, Chapter 3.10, "Private Property Subject to Regulation," and amended as follows:

~~Section 1.~~ 3.10.010 - PURPOSE.

This Chapter is intended to implement the provisions added to Chapter ~~197-195~~ of Oregon Revised Statutes by Ballot Measure ~~37-49~~ (November ~~26, 2004~~ 2007). As it relates to claims within a City, Ballot Measure 49 permits compensation claims only when a nonexempt City land development regulation, enacted after January 1, 2007, restricts the residential use of private real property zoned for primarily single family residential use and it can be demonstrated in a qualified appraisal that the restriction reduces the fair market value of the real property. ~~These provisions~~ This Chapter establishes a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present claims, while at the same time allowing the City to review the claim and make an appropriate determination of its validity and what remedy might be available; establishes a record for the City's administration of its land use program in the future; and, collects sufficient information to be capable of judicial review. Adoption of this Chapter is authorized by ~~Ballot Measure 37, Oregon Revised Statutes, Chapter 195.305(5)-Section 7.~~

~~Section 2.~~ 3.10.020 - DEFINITIONS

Any word or term defined in ORS 195.300 shall have the meaning assigned to it by state law, unless defined below. ~~As~~ Otherwise, as used in this Chapter, the following words and phrases mean:

1. **Ballot Measure 49.** The measure enacted by the voters on November 6, 2007, which amended Oregon Revised Statutes Chapter 195.

2. **City Administrator.** The City Administrator of the City of Stayton, or designee.

~~Claim.~~ Any claim filed under the provisions of this Chapter.

3. **Claimant.** The property owner making a claim under this Chapter, or their designee, so long as written authorization is provided to the City by the property owner for the designee to represent the property owner in making a claim.

4. **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, pollution control regulations, wetlands and floodplain regulations, grading and fill regulations, landslide hazard regulations, and street regulations, ~~wireless communication facility siting regulations, tree preservation Ordinances, sign code, setback and fencing regulations and natural resource regulations-~~ to the extent these enumerated regulations and others which are similar, to the extent they are determined necessary for fire and safety reasons;
- (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;
- (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;~~ or
- (f.) Imposes any development fee or systems development charge for construction, parks, sewer or water. ~~This exemption does not apply to any such fee that is imposed as a result of any transportation Ordinance.~~

~~**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.~~

5. **Interest.** The average interest rate for a one year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

~~**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 as applicable to lands in the City;~~
- (e) ~~Any intergovernmental agreement or urban growth boundary agreement that affects the use of land.~~

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

- 6. Reduction in fair market value. The difference, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest.
- 7. Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by the City that restricts the use of the private real property in a manner that ~~reduces the results in the reduction in~~ fair market value of the real property as determined by the City pursuant to the terms of this Chapter.
- 8. Zoned for Residential Use. The Low Density Residential Zone as described in Stayton Municipal Code Title 17, Chapter 17.16 and shown on the Official Zoning Map.

Section 33.10.030 – CLAIM FILING PROCEDURES

- (1.) 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 Administrator's office, or another City office if so designated by the City Administrator.
- (2.) A claim shall include a completed claim form, which will be provided by the City, together with the following additional information:
 - (a.) The name(s), address(es), ~~and telephone number(s)~~ and email addresses of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees or easement holders, and a description of the ownership interest of each;
 - (b.) The address, tax lot, and legal description of the real property that is the subject of the claim, a copy of the instrument conveying the property to the claimant, together with a title report issued by a title company no more than 30 days prior to the submission of the claim that reflects the ownership interest in the property, or other documentation reflecting sole ownership of the property by the claimant, and the date the property was acquired by the present owner;
 - (c.) The specific current land use regulation(s) enacted after January 1, 2007, cited by reference to the Stayton Development Municipal Code number, that Claimant alleges restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;
 - (d.) The amount of reduction in fair market value alleged for each regulation at issue plus interest;
 - e. An appraisal providing the fair market value of the property one year before the enactment of each land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, evidenced by receipts, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value. The appraisal must:

- i. be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;
 - ii. comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
 - iii. expressly determine the highest and best use of the property at the time the land use regulation was enacted;
- f. The claimant shall specify the remedy sought. Claimant may specify alternative remedies. ~~In the event the claimant is seeking just compensation, the amount of the claim, based on the alleged reduction in value of the real property shall be supported by an appraisal by an appraiser licensed by the State of Oregon establishing the reduction in the fair market value of the property as of the date of the claim;~~
- (~~eg.~~) 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, or which would affect its valuation;
- (~~fh.~~) Identification of the particular use that is proposed for the real property and proof that the requested use was allowed as proposed at the time the owner acquired the real property. Where necessary, the City may require a site plan, elevation drawings, or other detailed description of the proposed use in order to determine the validity of the claim;
- i. Whether a previous permit was issued for development of the property including a description of the use and case file number;
 - j. Whether a claim was filed for the subject property with the state or any other government;
- (~~gk.~~) ~~State~~ A statement that any and all claims under this Chapter are included in this claim, or that if overlapping claims for the same property with other governmental entities (such as the state) exist, that they are being filed with the appropriate entity contemporaneously with the claim filed with the City. Where there ~~are~~ is more than one claim filed on a single tract of land, the City shall have the right to consolidate those claims for determination;
- (~~hl.~~) Evidence the City has enforced current land use regulations against claimant's real property in such a way as to restrict the use of that real property with the effect of reducing the fair market value of that real property. In the determination of fair market value, market conditions shall be taken into account, and shall be valued as of the date of acquisition by the present owner thereof. A claim shall be considered ripe for submission when a claimant produces evidence of a land use decision that denies or conditions an approval for a use on the subject property, or citation or denial of building permit or other approval that meets the test of this Chapter for validity of a claim. The simple existence of a current land use regulation, without some affirmative enforcement thereof by the City, is not sufficient to satisfy this application requirement;
- (~~im.~~) A list of names of property owners, certified by either a title company or the Marion County Assessor, or all current owners of record of all properties that lie within 300 feet of the perimeter boundary of the real property subject to the claim. Two copies of the list prepared on mailing labels shall be submitted;

(j~~n~~.) A narrative statement from the claimant or designee which provides information about the history of the property and its ownership as well as explanation and justification for why the claim is valid, and stating precisely what remedy is being requested from the City. The narrative should include as much detail as possible about the use that is proposed, which is restricted and devalued by present land use regulations;

(k~~o~~.) A list of any and all overlay or special Ordinances (such as landslide hazards, floodplain, wetlands, etc) that apply to the subject property, as well as any special designations that may apply to the subject property (such as downtown, historic district, LID, etc.). If the proposed use includes any development or activity that would otherwise be excluded from this Chapter, that exclusion should be specified by the claimant;

(l~~p~~.) Copies of any prior land use decisions or land use or building permits issued for or relating to the subject property;

(m~~q~~.) Signatures of all owners or those claiming ownership in the real property over which the claim is being made; and

(n~~r~~.) A deposit for costs in the amount of \$~~500~~1,300, or such other amount determined by the City Administrator, and which is administered, billed and collected as provided for in this ~~Ordinance~~Chapter.

(3.) No period of time relative to the filing of a claim shall be considered to have accrued until such time as the City has reviewed the Claim and submission requirements and deemed them to have been complete. The City shall, within 60 days of receiving the claim, notify the claimant in writing that the claim is complete or what information or fee is missing. If the initial submission is not complete, the claim shall be considered complete when the City receives

a. The missing information;

b. Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

c. Written notice from the claimant that none of the missing information will be provided.

A claim shall be deemed withdrawn if the City does not receive a written response from the claimant within 90 days of the notice of an incomplete claim. Notwithstanding a claimant's failure to provide all of the information required herein, the City may review and act on a claim that has not been deemed complete if it appears to the City in its sole discretion that no further information will be provided.

(4.) The burden of proof of the validity of a claim lies with the claimant. The burden of presenting sufficient evidence for which the City can legitimately apply the provisions of this Chapter also lies with the claimant.

Section 43.10.040 – CITY ADMINISTRATOR INVESTIGATION AND RECOMMENDATION.

(1) Following an investigation of a claim, the City Administrator or designee shall forward a recommendation to the City council-Council. The staff report will be available at least 14 calendar days prior to the hearing addressing that the claim be:

(1a.) whether the claim filed is complete~~Denied as not being a valid claim under this Chapter;~~

~~(2b.)~~ a recommendation as to

- a. whether and how much to pay in compensation and the basis upon which the recommendation compensation was calculated; or
 - b. in lieu thereof, a recommendation regarding the number of dwellings and lots that may be approved and the specific land use regulation(s) that should be waived~~Investigated further to ascertain validity or appropriate remedy.;~~
- ~~(c) Declared valid, and thereafter to recommend whether the remedy requested is appropriate, or whether some alternative remedy allowed by this Chapter is appropriate. In the event of a recommendation for compensation, the amount therefore and the basis upon which said recommendation valuation was arrived at. In the event of a recommendation for waiver or modification of the restrictive the land use regulation, the details of the scope and extent of the waiver or modification shall be set forth; or~~
- ~~(2) The City Administrator's recommendation shall be issued within 30 days of the date the claim is deemed to be complete. The recommendation shall be forwarded to the claimant and to the City Council, and a hearing as hereinafter provided for shall be conducted.~~

Section 53.10.050 -- CITY COUNCIL PUBLIC HEARING.

1. The City Council shall conduct a public hearing before taking final action on a recommendation from the City Administrator. At least 30 days prior to the public hearing, 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, neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property, the Department of Land Conservation and Development, Marion County Planning Division, and to any other person or entity that makes written request for notice of hearing. The normal council rules for the conduct of public hearings~~Rules of Procedure for Public Hearings on Land Use Issues, as last adopted by the City Council,~~ shall apply to hearings held under this Chapter.
2. The notice required under subsection 1 of this section must describe the claim and state:
 - a. The date, time and location of the hearing and the final date for submission of written evidence and arguments relating to the claim;
 - b. That judicial review of the final determination of a public entity on the claim is limited to the written evidence and arguments submitted to the City; and
 - c. That judicial review is available only for issues that are raised with sufficient specificity to afford the City an opportunity to respond.
3. Except as provided in subsection (4) of this section, written evidence and arguments in proceedings on the claim must be submitted to the City not later than:
 - a. The close of the final public hearing on the claim; or
 - b. If a public hearing is not held, the date that is specified by the public entity in the notice required under subsection (1) of this section.
4. The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

5. The City shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in subsections 3 and 4 of this section.
6. The City shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record. The City shall forward to Marion County, and the County shall record, a memorandum of the final determination in the deed records.

Section 63.10.060 – CITY COUNCIL ACTION ON CLAIM:

(1.) Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was deemed complete, the City Council shall:

(a.) Deny the demand based on, but not limited to, any one or more of the following findings and conclusions:

1. The land use regulation does not restrict the use of the private real property;
2. The fair market value of the property is not reduced by the enactment, enforcement or application of the land use regulation;
3. The demand-claim was not timely filed within 5 years from the date the land use regulation was enacted;
4. The owner failed to comply with the requirements for making a demand-claim as set forth in this articleChapter;
5. The owner-claimant is not the present property owner, or the property was not owned by a family member if that is required for compensation, or was not the property owner at the time the land use regulation was enacted, enforced or applied;
6. The land use regulation is an exempt regulation as defined in this Chapter or in ORS 195.308;
7. The land use regulation in question is not an enactment of the City;
8. The City has not taken final action to enact, enforce or apply the land use regulation to the property;
9. The owner is not entitled to compensation under this Chapter, for a reason other than those provided herein; or

(b.) Adopt a Resolution with findings therein that supports a determination that the claim is valid, and determines the appropriate remedy for the claim. The City Council may direct that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property as provided for herein, or the City Council may direct the removal or modification to the challenged land use regulation as it relates to the subject property. In determining the claim is valid, the Council shall find, based on a demonstration from the claimant that:

1. A city enacted land use regulation enacted after January 1, 2007 and after the property was acquired restricts the residential use of the property;
2. The land use regulation has the effect of reducing the fair market value of the property;

3. The highest and best use of the property at the time the property was acquired is the claimant's desired use of the property;
 4. The land use regulation is not an exempt land use regulation;
 5. The time limitations for filing a claim, as specified in Measure 49, have not been exceeded; and
 6. All other requirements of this Chapter and Ballot Measure 49 have been met.
- (2.) The City Council's decision as to the validity of the claim shall be based on the provisions of Ballot Measure ~~37~~49 and as implemented through this Chapter.
 - (3.) The City Council's decision as to the remedy to provide in the event of a valid claim being established 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; the availability of funds; the request of the claimant; testimony and evidence presented during the public hearing; and the recommendation of the ~~City Administrator~~Staff.
 - (4.) 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 acquired the property.
 - (5.) The City Council shall have the right to condition any grant of waiver or modification of land use regulations for any purpose which protects the health, safety and welfare of the public. Any condition so imposed must be clear and concise and related directly to the claim and the use being proposed therein. Failure to comply with any condition of approval is grounds for revocation of the approval of the claim, grounds for recovering any compensation paid and grounds for revocation of any other action taken under this Chapter. All conditions, time limits or other restrictions imposed with approval of a claim will bind all subsequent owners of the subject property.
 - (6.) A decision by the City Council to remove or modify a land use regulation shall result in the proposed use allowed by the waiver or modification being thereafter considered a non-conforming use under Oregon Revised Statutes 215.130, Oregon Administrative Rules, and the Stayton Land Use Development Code. Upon grant of waiver or modification, the claimant shall cause notice thereof by way of a "License" form provided by the City, to be recorded in the deed records of the subject property so that all future owners thereof are put on notice of the non-conforming use status of the development on the subject property.
 - (7.) Any waiver or modification of land use regulations granted pursuant to this Chapter shall be exercised within six (6) years of the grant of waiver or modification. Any waiver or modification not exercised within six (6) is automatically terminated and of no further force and effect.
 - (8.) ~~No waiver or modification of land use regulations granted pursuant to this Chapter shall be transferred to any third party. Any transfer of the rights granted by the City shall result in the automatic termination of the waiver or modification grant.~~An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under this Chapter runs with the property and may be either transferred with the property or encumbered by another person without affecting the authorization. There is no time limit on when an authorization granted under Chapter must be carried out, except that once the owner who obtained the authorization conveys the property to a person other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the

subsequent owner of the property must create the lots or parcels and establish the dwellings authorized by the waiver within 10 years of the conveyance.

~~Section 73.10.070~~ – PROCESSING FEE/DEPOSIT REQUIRED:

- (1.) The City shall maintain a record of the City's costs in processing a claim, including the costs of obtaining information required herein which a property owner does not provide to the City. At such time as the deposit is exhausted, the City Administrator may require an additional deposit in an amount deemed sufficient to complete City action on the claim. Following final action by the City on the claim, the City Administrator shall send to the property owner a final bill showing the total actual costs, including staff and legal costs, that the City incurred in reviewing and acting on the claim, together with the deposits posted, and either refund or bill the balance as dictated by the deposit ledger.
- (2.) If the property owner owes an amount to the City as calculated in Section 3.10.070.7.(1) ~~hereof~~above, and does not pay the amount due within 30 days, then the City shall pursue collection, including filing a lien on the property. The City shall be entitled to costs of collection, including attorney fees, costs and disbursements incurred in collection.

~~Section 83.10.080~~ - APPELLATE RIGHTS:

Any decision under this Chapter is not a land use decision, and none of the formalities required of land use decisions by statute, rule or local Ordinance are necessary. ~~Appeal of any final decision of the City made hereunder shall not be to the Oregon Land Use Board of Appeals, but to Marion County Circuit Court.~~ A person that is adversely affected by a final determination of the City Council under this Chapter may obtain judicial review as provided for in ORS 195.318.

~~Section 93.10.090~~ - RECORD KEEPING:

The City shall keep a central record of all claims made hereunder and the disposition thereof. Specific notation shall be made on the comprehensive plan and zone maps of the existence and extent of any waiver or modification granted under this Chapter. The City shall provide basic information on the filing and disposition of all claims at any central repository established by the Department of Land Conservation and Development.

~~Section 103.10.100~~ - INTERPRETATION/NO THIRD PARTY CAUSES OF ACTION ARE ESTABLISHED:

For all claims filed, the applicable state law is Oregon. Any demand that has not been processed completely under this Chapter shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Chapter shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level. This Chapter is adopted solely to address demands filed under the authority of those provisions of Oregon Revised Statutes Chapter ~~197-195~~ added or made a part of ~~said the~~ Chapter by Ballot Measure ~~3749~~, passed November ~~26, 2004~~2007. This Chapter is not intended to create any cause of action in any third party against either the City or the claimant on account of the issuance of any remedy to any claim determined to be valid hereunder. This extends to neighbors, security interest holders, special interest groups or any other person or entity with an interest in the outcome of any claim.

~~Section 113.10.110~~ - TAX ASSESSMENT:

In the event a claim is determined to be valid, and the remedy granted is waiver or modification of a land use regulation, the Marion County Tax Assessor shall be notified of the change in use.

~~**Section 12 - Emergency Clause.** Due to the passage of Measure 37 at the 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 for this Ordinance to become effective on December 2, 2004, when Ballot Measure 37 takes effect. Therefore, this Ordinance shall become effective on December 2, 2004 upon its passage by the City Council and approval by the Mayor.~~

~~**Section 13 - Severance Clause.** If any phrase, clause, or other part or parts of this Ordinance are found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.~~

Section 2 - Emergency Clause. Due to the passage of Measure 49 at the General Election on November 6, 2007, with an effective date of December 6, 2007, the City Council declares it is necessary for the preservation of the public health, welfare and safety for this Ordinance to become effective immediately upon its passage by the City Council and approval by the Mayor.

Section 3 - Severance Clause. If any phrase, clause, or other part or parts of this Ordinance are found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

ADOPTED BY THE STAYTON CITY COUNCIL this 7th day of April, 2008, and approved and signed by the Mayor this 7th day of April, 2008.

CITY OF STAYTON

Signed 4-7, 2008

By: Virginia L. Honeywell
Virginia L. Honeywell, Mayor

Signed 4-8, 2008

By: Don Eubank
Don Eubank, Interim City Administrator

APPROVED AS TO FORM:

David A. Rhoten
David A. Rhoten, City Attorney