

ORDINANCE NO. 5663

AN ORDINANCE AMENDING AMC CHAPTER 2.100, PRIVATE PROPERTY COMPENSATION CLAIMS, TO ESTABLISH ADDITIONAL PROCEDURES FOR THE PROCESSING OF CLAIMS AND TO ESTABLISH THE TRANSFERABILITY OF A WAIVER OF LAND USE REGULATIONS AND DECLARING AN EMERGENCY.

WHEREAS, ORS Chapter 197, as amended by Ballot Measure 37, passed on November 2, 2004, provides that local governments must pay compensation to property owners for reductions in property values resulting from land use regulations that restrict the uses of the property or waive enforcement of the regulations; and

WHEREAS, the City of Albany adopted Ordinance No. 5583 in response thereto, and through the adoption of said ordinance, created AMC Chapter 2.100; and

WHEREAS, at the time of the adoption of Ordinance No. 5583 it was the intention of the Albany City Council to amend AMC Chapter 2.100, at a later time, when the constitutionality of Ballot Measure 37 had been tested and when the City Council had a better understanding of the nature of claims likely to be presented; and

WHEREAS, the Oregon Supreme Court has subsequently determined that Ballot Measure 37 is constitutional; and

WHEREAS, no legislative or judicial determination has yet been made concerning the assignability or transferability of Measure 37 waivers; and

WHEREAS, it is the intention of the Albany City Council to limit the scope of the assignability or transferability of any waiver granted pursuant to the provisions of Measure 37 and/or AMC Chapter 2.100, to the greatest extent allowable under the terms of the law; and

WHEREAS, the Albany City Council desires, by this ordinance, to clarify the procedures which will be employed for determining whether any particular claim is eligible for Measure 37 consideration and the City's response thereto.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: AMC 2.100.030(3) is amended to read as follows:

2.100.030 Alternative claim resolution.

- (3) If the City Council approves the alternative claim resolution, the application fee provided in AMC 2.100.090 shall be waived. In addition, if the City Council concludes, following a public hearing, **as provided at AMC 2.100.060 (2)**, that it is in the public interest to do so, it may order that the private cause of action provided in AMC 2.100.080 shall not apply to any subsequent use of the subject property in conformance with the terms of the alternative claim resolution.

Section 2: AMC 2.100.060 is amended to read as follows:

**2.100.060 ~~Measure 37 claims administration procedure.~~ Procedure and Criteria for Determining Whether a Claimant is Entitled to Compensation or Waiver of a Land Use Regulation.**

~~The City Council shall determine the procedure for the administration and adjudication of Measure 37 compensation claims by motion, resolution, or amendment to this chapter.~~

- (1) A land use regulation may be waived or compensation paid pursuant to the provisions of this Chapter only if the Albany City Council determines that the claimant is entitled to such relief pursuant to the provisions of Measure 37, ORS 197.352.**
- (2) The determination of a claimant's entitlement to waiver of a land use regulation or compensation shall be made following a public hearing held for that purpose.**
- (3) Notice of the public hearing shall be posted on or adjacent to the property and in two public places in the City of Albany and mailed to property owners of record having property within 100 feet of the claimant's affected property. The notice shall be posted and mailed not fewer than 10 days prior to the public hearing. Failure to give or receive notice shall not invalidate any City Council decision.**
- (4) If a claimant is determined, by the Albany City Council, to be entitled to compensation pursuant to the terms of this Chapter, the Albany City Council shall then determine whether to grant a waiver or pay compensation. This decision is legislative in nature and rests within the legislative discretion of the Albany City Council and should be based upon the Albany City Council's determination of the best interests of the community.**
- (5) The Albany City Council may, by motion or resolution, supplement the procedures and criteria set forth in this section.**

Section 3: AMC 2.100.100 is created to read as follows:

**AMC 2.100.100: Transferability of Land Use Regulation Waiver.**

**No waiver of a land use regulation pursuant to the provisions of this Chapter shall be assignable or transferable to any third party except to the extent required by law.**

Section 4: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany and an emergency is hereby declared to exist; this ordinance shall take effect and be in full force and effect when signed by the Mayor.

Passed by Council: March 28, 2007

Approved by Mayor: March 28, 2007

Effective Date: March 28, 2007

  
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Mayor

ATTEST:

  
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City Clerk