

## CHAPTER 10

# REAL PROPERTY COMPENSATION

### SECTION 10.010 Purpose

This Chapter shall be referred to as the “Real Property Compensation Ordinance” and is intended to implement ORS 195.300 - 336 for Ballot Measure 49 (November 6, 2007). The provisions of this Chapter establish a prompt, open, thorough and consistent process that enables property owners to make a claim that just compensation be provided, or a waiver granted, for unfair burdens caused by land use regulations enacted after the date the current owner/claimant acquired the property. The provisions of this Chapter also provide an adequate and fair opportunity for property owners to present their claims to the County; preserves and protects limited public funds; and establishes a record of the County’s decision capable of Circuit Court review.

### SECTION 10.020 Definitions

As used in this Chapter, the definitions of ORS 195.300 shall apply.

### SECTION 10.025 Determination of Common Law Vested Right

A claimant who filed a claim under the provisions of Ballot Measure 37, and was issued a waiver before December 6, 2007, may complete and continue the use described in the waiver if: 1) the claimant’s use of the property complies with the waiver; and 2) the claimant has provided sufficient demonstration to the Director that claimant has a common law vested right (as of December 6, 2007) to proceed with the development authorized by the waiver. A vesting review, conducted by the Director, is not a land use decision.

### SECTION 10.035 Claim Filing and Review Procedures for New Claims

All claims for just compensation or a waiver shall be subject to the provisions of this section. All such claims are referred to as “new claims” and shall be reviewed as administrative actions under §2.060.1 of this Ordinance.

1. New claims may be filed under this section if the claimant establishes the following:
  - a. The claimant is an owner of the property and all other owners of the property (if any) have consented in writing to the filing of the claim;
  - b. The claimant’s desired use of the property is a residential use or a farming or forest practice;
  - c. The claimant’s desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and
  - d. The claimant’s desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

- e. The enactment of one or more land use regulations after January 1, 2007, other than exempt land use regulations, has reduced the fair market value of the property (as established in subsection 5.b).
2. Claims subject to the provisions of this section must be filed within five years after the date the land use regulation was adopted by the County.
  3. Relief may not be granted under §10.035 if the highest and best use of the property (as established by the appraisal required in subsection 5.a.7) at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.
  4. If claimant can meet the requirements of §10.035.1 (as determined by the County), and the land use regulation was enacted by Douglas County (excluding those land use regulations required by State statute, goal or rule, and therefore subject to review by the State), then claimant shall initiate the claim filing process with the Director. After review by the Director (as provided in this Section), the County may either:
    - a. Compensate the claimant for the reduction in the fair market value of the property;
    - b. Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property; or
    - c. Deny the Claim if the claimant does not meet the requirements of this Chapter.

The County can only waive land use regulations that are enacted by the County. If the land use regulation was enacted by the State, then the claimant will need to file a Measure 49 claim with the State. If claimant is authorized by the State to use the property without application of the State land use regulation, claimant may then proceed with the local development review process.

5. Required information for new claims filed with Douglas County
  - a. A person seeking relief under this section must be a present owner of the property that is the subject of the claim at the time the claim is filed. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation. In order to be determined complete, the claim shall be submitted in writing, include the appropriate fee, and shall include:
    - (1) Statements and evidence addressing §10.035.1;

- (2) The name, address and telephone number 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;
  - (3) The address (if any), tax lot number, and legal description of the real property that is the subject of the claim;
  - (4) Evidence of the acquisition date of the claimant, including:
    - (a) The instrument conveying the property to the claimant, and
    - (b) A report from a title company identifying:
      - i. the person in which title is vested;
      - ii. the claimant's acquisition date; and
      - iii. a description of exceptions and encumbrances to title that are of record (including any leases or covenants, conditions and restrictions);
  - (5) A citation to the current land use regulation that claimant believes is restricting the claimant's desired use of the real property and is the basis for the alleged reduction in the fair market value of the subject property (the citation must be adequate to allow the County to identify the specific land use regulation that is the basis for the claim);
  - (6) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and
  - (7) An appraisal of the property that complies with subsection 5.b. below, and establishes a reduction of the fair market value of the property to address §10.035.1.d.
- b. Appraisal: The claimant shall provide an appraisal meeting the requirements of ORS 195.310 (2). The appraisal shall be prepared by a certified appraiser and must state the highest and best use of the property at the time the land use regulation was enacted. The appraisal shall calculate the reduction in fair market value as provided in ORS 195.310.
  - c. Claims filed under this section shall be accompanied by a County processing fee equal to that charged for an Administrative Variance.

6. Approval criteria: After administrative review, the Director may take appropriate action consistent with §10.035.4, upon finding that claimant has provided sufficient information and evidence addressing the requirements of §10.035.5, and that the evidence provided substantiates that:
  - a. The land use regulation for which a claim is submitted was enacted or enforced by the County after the date of acquisition of the property by the claimant; and
  - b. The claimant's appraisal provides documentation that there has been a reduction in the fair market value of the property resulting from County enactment or enforcement of the land use regulation.
7. If the County waives the land use regulation, allowing the specific use of the property that the claimant desires to carry out, then the use authorized has the legal status of a lawful nonconforming use as provided in ORS 215.130. The claimant may carry out the use authorized by the County, with the exception that the County may waive only those land use regulations that originate with and are adopted and enforced by the County. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided in ORS 215.130.
8. If the County elects to compensate the claimant for a valid claim, then the current land use regulation for which compensation has been paid will fully apply to the owner's property.
9. Exclusions:
  - a. If an owner submits an application for a Comprehensive Plan Amendment or a Zone Change, and the amendment or zone change is approved by the County or a city, the owner is not entitled to relief under the provisions of Chapter 10 of this Ordinance with respect to a land use regulation enacted before the date the Plan Amendment or Zone Change application was filed.
  - b. If an owner files a petition to initiate annexation to a city, and the city approves the petition, the owner is not entitled to relief under the provisions of Chapter 10 of this Ordinance with respect to a land use regulation enacted before the date the petition was filed.
10. Exemptions: This Chapter does not apply to those exempt land use regulations described in ORS 195.300 to 195.336, including ORS 195.305 (land use regulations restricting or prohibiting activities commonly and historically recognized as public nuisances under common law; restricting or prohibiting activities for the protection of public health and safety; to the extent the land use regulation is required to comply with federal law; or restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing) and ORS 195.308 (land use regulations established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691, 561.693,

561.695, 561.995, 570.005 to 570.600, 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes).

#### **SECTION 10.040 Review Process for New Claims filed under Section 10.035**

Claims submitted under the provisions of §10.035 are subject to the following review process:

1. Completeness review:
  - a. A new claim is considered “filed” on the date it is received by the County. A claim is not complete simply because it has been filed. After a new claim is filed, the Director shall have 60 days to review the claim and determine whether it contains the information, appraisal and fee required in §10.035. If the claim is complete, the reviewer shall sign the claim and indicate the date it is found to be complete. If the claim is incomplete, the County shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant 90 days to submit, in writing, the missing information and/or fee. The claim shall be considered complete on the date the County receives the required fee and:
    - (1) The missing information;
    - (2) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or
    - (3) Written notice from the claimant that none of the missing information will be provided.
  - b. If the County does not notify a claimant within 60 days after a new claim is filed, that information or the required appraisal and fee is missing, the claim shall be deemed complete on the date it was filed.
  - c. A new claim filed under §10.035 shall be deemed withdrawn if the County notified the claimant of an incomplete claim and the claimant does not respond in writing, as provided in 1.a. above, within 90 days after the date on the County notice.
  - d. The County shall issue a final determination for claims filed under §10.035 within 180 days after the date the claim was determined to be complete.
2. Notice: At least 30 days before the deadline for submission of written comments, the County shall provide notice of a claim filed under the provisions of §10.035 to:
  - a. The claimant and all owners identified in the claim;

- b. Those adjacent owners listed at §2.065.1.b;
  - c. The appropriate Planning Advisory Committee;
  - d. The State Department of Land Conservation and Development; and
  - e. The appropriate city if the property is located within the UGB or within an adopted urban planning area of the city.
3. The notice required under §10.040.2 must describe the claim and advise:
- a. That a public hearing will not be held on the claim;
  - b. The final date for submission of written evidence and argument relating to the claim;
  - c. That judicial review (ORS 195.318) of the County's final determination on the claim is limited to the written evidence and argument submitted to the County; and
  - d. That judicial review is available only for issues that are raised with sufficient specificity to afford the County an opportunity to respond.
4. Written evidence and argument in support of, or in opposition to, a claim filed under §10.035 shall be submitted to the County not later than the deadline for submission of written comments as specified in the notice sent from the County. The record on the matter shall close on the deadline for submission of written comments. However, the claimant may request additional time to submit written evidence and argument in response to testimony or submittals in the record. The claimant's request for additional time must be made before the deadline for submission of written comments as specified in the required County notice.

### **SECTION 10.050 Planning Director Action on New Claims filed under Section 10.035**

1. Following the close of the record the Director shall make (subject to Board of Commissioner review) a final determination on claims filed under §10.035. The Director may:
- a. Deny the claim;
  - b. Declare the claim valid and waive or modify the land use regulation(s) at issue, authorizing the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property; or
  - c. Declare the claim valid and recommend to the Board of Commissioners that the claimant be compensated for the reduction in the fair market value of the property.

2. The County shall mail a copy of the Director's final determination to the claimant and to any person who submitted written evidence or argument before the close of the record.
3. The Director shall cause the final determination, whether originating from the County or from DLCDC, to be recorded in the deed records of the Douglas County Clerk's Office.
4. If the Director's final determination affects property located entirely outside of a UGB, notice of the final determination shall also be sent to:
  - a. The Douglas County Assessor;
  - b. Any district or municipality that supplies water for domestic, municipal or irrigation uses and has a place of use or well located within ½ mile of the property; and
  - c. The State departments of Land Conservation and Development, Agriculture, Water Resources, and Forestry.
5. If the Director's action is that a claim be denied or the land use regulation be waived or modified and the Board of Commissioners does not inform the Director within 10 days of notice as provided in §10.050.2 that the Board disagrees, then the Director's action shall become final.
6. Development authorization: If the Director has issued a final determination approving the claim, authorizing a specific number of lots, parcels or dwellings – or if DLCDC has issued a final order approving a specific number of lots, parcels or dwellings – and the provisions of §10.060 have been satisfied, the claimant may then seek local approvals or authorizations required by law for the subdivision or partition of the property or for the development of any dwelling.

#### **SECTION 10.060 Board Review of New Claims Filed Under Section 10.035**

1. The Board may on its own motion passed within ten days of the notice given pursuant to §10.050.2 above, review the decision of the Director. If the Board does not do so, then the Board shall be deemed to have ratified the Director's decision.
2. Claims reviewed by the Board shall be reviewed in a public hearing.
3. For claims reviewed by the Board, the Board shall adopt a resolution with findings that support a determination the claim is valid or invalid and shall direct the claimant be compensated in an amount set forth in the resolution for the reduction in the fair market value of the property; or that the challenged land use regulation be modified or not be applied to the property (authorizing the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property); or deny an application as invalid.

**SECTION 10.070 Fees**

1. The Board has established fees applicable to County review of claims for real property compensation. Those fees may be amended from time to time.
2. Any claimant may conduct his or her own research and provide all necessary information on all relevant land use laws applicable to the property when the ownership was acquired. If a claimant would like to hire the County to research and review the land use regulation archive related to claims submitted to the County, the claimant may do so and, in that event, the claimant will need to pay the County the established research fee.

**SECTION 10.080 Supplemental Property Development Standards for Residential Development**

Claims filed under the standards of Measure 37 (excepting those claims where a waiver has been issued and subsequent development is vested) are subject to review under the provisions of ORS 195.300 - 336. Claimants who are granted a waiver under the statute, may then initiate the County's development review process. Residential development is subject to the provisions of Section 11, ORS 195.305 Temporary Provisions relating to previously filed claims.

**SECTION 10.090 State Claims**

Claims for compensation based solely upon laws administered by the state should be filed with the State of Oregon.

**SECTION 10.100 Interpretation**

This Ordinance shall be interpreted and applied consistently with the provisions of ORS 195.300 - 336.