CITY OF MILWAUKIE
ORDINANCE NO. 1940

AN ORDINANCE PROVIDING A PROCESS FOR CONSIDERATION OF WRITTEN DEMANDS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, ADDING A NEW CHAPTER 1.20 TO THE MILWAUKIE MUNICIPAL CODE, AND DECLARING AN EMERGENCY.

WHEREAS, the City has developed a sound system of land use planning, which includes regulations that in some cases restrict the uses that can be made of property; and

WHEREAS, the restrictions on use of property have both served the public interest and increased property values by allowing the City to develop a harmonious way avoiding incompatible uses and assuring appropriate development; and

WHEREAS, the voters of the state adopted Ballot Measure 37 in the November 2004 election adding new sections to ORS Chapter 197, which provide that local governments may pay compensation to property owners for reductions in property values resulting from land use regulations that restrict uses of the property; and

WHEREAS, some property owners may believe that existing or future land use regulations as applied to their property both restrict use of the property and reduce the fair market value of the property and consequently may bring claims under Measure 37; and

WHEREAS, Ballot Measure 37 explicitly allows local governments to develop procedures for assessing claims made under Measure 37; and

WHEREAS, it is appropriate for the City to provide a Measure 37 claims procedure; now, therefore;

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 1.20 in the form of Exhibit A attached hereto and incorporated by this reference.

Section 2. Because this ordinance is necessary for the preservation of the health, safety and welfare of the City and is needed to provide a process for claims by December 2, 2004, an emergency is declared to exist and this ordinance shall be in full force and effect on December 2, 2004.

Read the first time on 11/16/04 and moved to second reading by 4-0 vote of the City Council.

Read the second time and adopted by the Council on November 16, 2004

Signed by the Mayor on November 16, 2004.

Larry Lancaster

Larry Lancaster, Council President

ATTEST:

Pat DuVal

Pat DuVal, City Recorder

Approved as to form:

City Attorney

11/16/04

Date

EXHIBIT A
to Milwaukie Ordinance No. 1940

Chapter 1.20 Compensation for Reduction in Property Value

1.20.010 Purpose

The purpose of this Chapter is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

1.20.020 Definitions

As used in this chapter, unless the context requires otherwise:

"Affected property" means the private real property that is alleged to have suffered a reduction in fair market value as result of the City's regulation restricting the use of that property and for which a property owner seeks compensation for the reduction in value.

"Claimant" means the property owner who submits a written claim for compensation under Section 1.20.030.

"Regulation" shall mean any law, rule, ordinance, resolution, goal, or other enforceable enactment of the City.

"Restricts the use of property" means prohibiting a particular use of the property or making that use only permissible under certain conditions. Standards that regulate the form of development, how a structure must be constructed, or how grading or fill is to be conducted, such as yard setback requirements, height limitations, erosion control measures and building code standards, are not restrictions on the use of property, provided they allow reasonable use of the property for uses permitted at the time the owner acquired the property. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

"Manager" means City Manager or designee.

1.20.030 Application for Compensation

A. A property owner wishing to make a claim against the City under Measure 37 shall first submit a written demand for compensation to the City. A written demand for compensation is one that includes:

1. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.

2. The name and contact information of the person making the claim , the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property.

3. Identification of the regulation that is alleged to restrict the use of the affected property and the amount of compensation claimed.

4. The amount claimed as compensation.

B. The City encourages but does not require the person claiming compensation to include the following information with the written demand for compensation:

1. A statement describing how the restriction affects the value of the property.

2. A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation.

3. A statement whether the application seeks compensation or a waiver, suspension or modification of the regulation.

4. A list of all persons with an ownership interest in or a lien on the property.

5. An appraisal showing the difference in the property value with and without the regulation. The City encourages the use of certified or licensed appraisers.

1.20.040 Notice

The City shall provide notice of the hearing required by Section 1.20.070 to all owners of the property, lien holders and security interest holders, record owners of property within 250 feet of the property, the neighborhood association for the neighborhood where the property is located, and anyone who has requested notice at least 7 days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim, list a city contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing.

1.20.050 Staff Report

City staff shall prepare a report analyzing the claim. The staff report shall be reviewed by the Community Development Director, Finance Director, and Manager before being submitted to the City Council. Staff may discuss options with the Claimant and may enter into a settlement agreement with the Claimant as to actions within staff's authority. Staff may agree with Claimant that staff will recommend a particular course of action to the City Council if staff lacks authority to commit to the action.

The staff report shall be submitted to the Council, mailed to the Claimant, and made available to the public at least 7 days before the public hearing required by Section 1.20.070.

1.20.060 City Council Proceedings

The City Council shall hold a public hearing on the claim. The public hearing should normally be set within 150 days of the demand for compensation but may be set at any time. The City Council may hold an executive session on the claim at any time.

1.20.070 Public Hearing

The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The City Council may limit the duration of testimony.

1.20.080 Council Decision

In deciding the claim, the City Council may take any of the following actions:

1. Deny the claim based on any one or more of the following findings:

    a. The regulation does not restrict the use of the private real property,

    b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.

    c. The claim was not timely filed.

    d. The Claimant is not the current property owner.

    e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.

    f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.

g. The regulation is required by federal law.

h. The regulation protects public health and safety.

i. The City ~~if~~ is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted by the City.

j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.

k. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through g. The basis for this finding must be clearly explained.

l. The City has not established a fund for payment of claims under Measure 37.

2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose.

3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property. The waiver shall limit and/or condition the allowed use to assure conformity with the regulations that were in effect at the time the claimant acquired the property.

4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be as to the property only unless the City follows the procedure for a legislative land use decision.

5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the written demand for compensation was filed. The specified date shall allow the City time to process the contributions and pay compensation.

The City Council may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The City Council may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the City Council directs staff to negotiate, the Council shall set the matter for further action no less than 175 days from the date of the notice of claim became complete. If the City Council directs staff to negotiate, it may delegate authority to staff. The Council shall take final action within 180 days of the written demand for compensation. The City shall take actions 2 through 5 only if it determines the claim is valid.

1.20.090 Authority

The City Council shall have the authority to take the actions listed in Section 1.20.080, including the authority to waive or suspend any provision of any City code, ordinance or resolution, notwithstanding any inconsistent provision in this code. The City may retain an appraiser to assist the Council determination.

1.20.100 Reimbursement of Costs

If a claim is denied and ultimately determined to be invalid, the Claimant shall reimburse the City for the costs the City incurred in processing the claim. If the costs remain unpaid 90 days after the City provides a detailed invoice demanding reimbursement of costs, a lien for those costs shall be recorded in the City lien docket for the property for which the claim is made.

1.20.110 Severability

If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.