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Chapter 1

GENERAL PROVISIONS

CODE ADOPTION

1.010 Adoption. There is hereby adopted the "West Linn Municipal Code" as published by the City of West Linn. [Ord. 1368, enacted 11/28/94]

1.015 Title--Citation--Reference.

This code shall be known as the "West Linn Municipal Code" and it shall be sufficient to refer to the code as the "West Linn Municipal Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the "West Linn Municipal Code." Further reference may be had to the titles, chapters, sections and sub-sections of the "West Linn Municipal Code," and such references shall apply to that numbered title, chapter, section or subsection as it appears in the code.

1.020 Contents. This code consists of all the regulatory and penal ordinances and certain of the administrative ordinances of the City of West Linn, Oregon.

1.025 Reference Applies to All Amendments. Whenever a reference is made to this code as the "West Linn Municipal Code" or to any portion thereof, or to any ordinance of the City of West Linn, Oregon, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made.

1.030 Title, Chapter, and Section Headings. Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any

manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.

1.035 Reference to Specific Ordinances. The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code.

1.040 Effect of Code on Past Actions and Obligations. Neither the adoption of this code nor the repeal or amendment hereby of any ordinance or part or portion of any ordinance of the city shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee, or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee, or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance and all rights and obligations thereunder appertaining shall continue in full force and effect.

1.045 Effective Date. This code shall become effective 12:00 a.m. on January 1, 1995.

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1.050 Severability.

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The council hereby declares that it would have passed this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

GENERAL PROVISIONS

1.100 Definitions.

The following words and phrases, whenever used in the ordinances of the City of West Linn, Oregon, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

City. The City of West Linn, Oregon, or the area within the territorial limits of the City of West Linn, and such territory outside of the City of West Linn, over which the City of West Linn has jurisdiction or control by virtue of any constitutional or statutory provision.

City Engineer. The City Engineer of West Linn, Oregon, or his or her designee.

City Manager. The administrative head of the city's government appointed by the city council, or his or her designee.

Council. The city council of the City of West Linn, Oregon. "All its members" or "all council members" means the total number of council members holding office.

County. The county of Clackamas.

Law. Applicable federal law, the Constitution and statutes of the state of

Oregon, the ordinances of the City of West Linn, and, when appropriate, all rules and regulations which may be promulgated thereunder.

May. Permissive.

Month. A calendar month.

Must and shall. Mandatory.

Oath. Includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Owner. Applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, or contract purchaser of the whole or a part of such building or land.

Person. Includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

Personal property. Includes money, goods, chattels, things in action and evidences of debt.

Preceding and following. Next before and next after, respectively.

Property. Includes real and personal property.

Real property. Includes lands, tenements and hereditaments.

Sidewalk. That portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

State. The state of Oregon.

Street. Includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property as designated in any law of this state.

Tenant and occupant. Applied to a building or land, include any person who occupies the whole or a part of such building or land, whether alone or with others.

Written. Includes printed, typewritten, mimeographed, multigraphed, or otherwise reproduced in permanent visible form.

Year. A calendar year.

[Section 1.100 amended by Ord. No. 1407, enacted 10/13/97]

1.105 Title of Office.

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the City of West Linn.

1.110 Interpretation of Language.

All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

1.115 Grammatical Interpretation.

The following grammatical rules apply in the ordinances and code of the City of West Linn, unless it is apparent from the context that a different construction is intended:

(1) Gender. Each gender includes the masculine, feminine and neuter genders.

(2) Singular and Plural. The singular number includes the plural and the plural includes the singular.

(3) Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable.

1.120 Acts by Agents.

When an act is required by an ordinance, the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent.

1.125 Prohibited Acts Include Causing and Permitting.

Whenever in the ordinances of the City of West Linn, any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

1.130 Computation of Time.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is Sunday or a holiday, in which case it shall also be excluded.

1.135 Construction.

The provisions of the ordinances and code of the City of West Linn and all proceedings under them are to be construed with a view to effect their objects and to promote justice.

1.140 Repeal Shall Not Revive Any Ordinances.

The repeal of an ordinance shall not repeal the repealing clause of an ordinance or revive any ordinance which has been repealed thereby.

GENERAL PENALTY

1.205 Penalty Designated.

Any person violating any of the provisions or failing to comply with any of the mandatory requirements of any ordinance of the city, where a specific penalty is not specified in the ordinance for the violation, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the ordinances of the city where a specific penalty is not elsewhere established, shall be punished by a fine of not to exceed \$500 or by imprisonment, not to exceed 30 days, or by both such fine or imprisonment.

1.210 Violation Deemed Separate

Offense. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the City of West Linn is committed, continued or permitted by any such person, and he is punishable accordingly.

1.215 Establishment and Purpose.

(1) A procedure to handle violations of city ordinances as civil infractions, subject to the provisions set forth in sections 1.215 through 1.260, is established, pursuant to the home rule powers granted the city by Article IV, section 1, and Article XI, section 2 of the Oregon Constitution and by sections 4 and 5 of the West Linn City Charter.

(2) A civil infractions procedure has been established for the purpose of decriminalizing penalties for violations of certain civil ordinances and for the purpose of providing a convenient and practical forum for the civil hearing and determination of cases arising out of said violations.

1.220 Definitions. For the purpose of sections 1.215 to 1.260, the following definitions apply:

(1) City Infractions. An offense against the city in the form of a violation of one of the city ordinances or section thereof designated in section 1.225, constitutes a city infraction and shall be handled in accordance with the procedures established by sections 1.215 to 1.260. When an infraction is of a continuing nature, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist and a separate citation may be filed for each such infraction.

(2) Forfeiture--Forfeiture Schedule. The only penalty to be imposed for an infraction is a monetary penalty called a forfeiture. The municipal court shall, however, possess the additional enforcement powers set forth in section 1.250. The appropriate forfeiture to be assessed for a specific infraction will be determined from the forfei-

ture schedule in section 1.255. The procedure prescribed by sections 1.215 to 1.260 shall be the exclusive procedure for imposing forfeiture; however, this section shall not be read to prohibit in any way any other alternative remedy set out in ordinances covered by this infraction procedure which is intended to abate or alleviate ordinance violations, nor shall the city be prohibited from recovering, in a manner prescribed by law, any expense incurred to it in abating or removing ordinance violations pursuant to said ordinances.

(3) Person. As used in sections 1.215 to 1.260, shall be construed to include any person, firm, partnership, corporation, or association of persons.

1.225 Application. The civil infraction procedure prescribed by sections 1.215 to 1.255 applies to those code sections listed in section 1.260.

1.230 Infraction Procedure--Reporting.

All reports of infractions covered by sections 1.215 to 1.260 will be made to the city manager.

1.235 Infraction Procedure--Uniform Infraction Citation and Complaint.

(1) A uniform infraction citation and complaint signed by the city manager may be filed with the municipal court, charging the recipient with a civil infraction and setting a date for said person to appear before the municipal court to answer the complaint.

(2) The city manager shall prescribe the form of the uniform infraction citation and complaint but it shall consist of at least three parts. Additional parts may be inserted for administrative purposes by those charged with the enforcement of the ordinances. The required parts are:

- (a) The complaint;
- (b) The city department record;
- (c) The summons.

(3) Each of the three parts shall contain the following information:

(a) The name of the court and the court's file number;

(b) The name of the person or persons cited;

(c) The infraction with which the person is charged, the date, time and place the infraction occurred, or if the infraction is of a continuing nature, the date, time and place the infraction was observed by the city manager or a citizen of the city, the date on which the citation was issued, and the name of the complainant;

(d) The scheduled forfeiture for the alleged infraction;

(e) The time and place at which the person cited is to appear in court.

(4) The complaint shall contain either:

(a) A signed statement that the City Manager has reasonable grounds to believe, and does believe, that the person cited committed the infraction; or

(b) A signed statement that the citizen of the city has reasonable grounds to believe, and does believe, that the person cited committed the infraction, which shall be signed and sworn to before a notary public or the court clerk.

(5) The summons shall also contain notice to the person cited that a civil complaint will be filed in the municipal court of the city.

(6) For purposes of this section, "city manager" includes the City Manager as defined in Section 1.100 and all persons authorized by the City Council or the City Manager to issue citations. All City police officers are authorized to issue citations for any violations. All City code enforcement officers are authorized to issue citations for any violation of any City Code other than traffic and criminal violations. Department heads of the City's Engineering, Public

Works, Parks and Recreation, Planning and Building Departments and associate planners are authorized to issue citations as to violations of code provisions that they are responsible for administering.

[Section 1.235 amended by Ordinance No. 1485, adopted April 17, 2002.]

1.240 Infraction Procedure--Answer to Summons.

(1) A person who receives a summons for an infraction shall answer such summons by personally appearing to answer at the time and place specified therein, except an answer may be made by mail or personal delivery within ten days of the date of the receipt of the summons as provided in subsections (2) and (3) of this section.

(2) If a person alleged to have committed an infraction admits the infraction or otherwise desires to pay the forfeiture without appearing in municipal court, he may complete the appropriate answer on the back of each summons and forward the summons to the municipal court. A check or money order in the amount of the forfeiture for the infraction alleged as shown on the face of the summons shall also be submitted with the answer.

(3) If the person alleged to have committed the infraction denies part or all of the infraction, he may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons to the municipal court. Upon receipt, the answer shall be entered and a hearing date established by the municipal court. The municipal court shall notify the person alleged to have committed the infraction by mail, of the date of the hearing.

(4) The court may, in any case, after notice, require the cited person to appear for a hearing.

1.245 Infraction Procedure--Hearing.

(1) Every hearing to determine whether an infraction has occurred shall be held before the municipal court without a jury.

(2) The hearing shall be limited to production of evidence only on the infraction alleged in the complaint.

(a) Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

(b) Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

(c) Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

(d) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

(3) The defendant shall have the right to present evidence and witnesses in his favor, to cross-examine witnesses who testify against him and to submit rebuttal evidence.

(4) The defendant may be represented by counsel, but counsel shall not be provided at public expense. If defense counsel is to appear, written notice shall be provided to the municipal court ten days prior to the hearing date, excluding weekends and holidays.

(5) The city shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.

(6) After due consideration of the evidence and arguments presented at the hearing, the court shall determine whether the infraction as alleged in the complaint has been established. When the infraction

has not been established, an order dismissing the complaint shall be entered in the municipal court records. When a determination is made that an infraction has been established or if an answer admitting the infraction has been received, or the forfeiture otherwise paid by the defendant, an appropriate order shall be entered in the municipal court records.

(7) Unless otherwise provided by ordinance, upon a finding that an infraction has occurred, the court shall assess a forfeiture not to exceed the maximum permissible forfeiture for the specific infraction established in accordance with sections 1.215 to 1.260 plus court costs.

(8) There shall be no administrative appeal or legal review from a determination by the municipal court of an infraction violation.

1.250 Enforcement.

(1) If a cited person fails to answer the summons or appear at a scheduled hearing as provided in sections 1.215 to 1.260, the municipal court may enter a default judgment for the scheduled forfeiture applicable to the charged infraction, or it may issue a warrant for the arrest of the cited person for reason of his nonappearance, or it may do both of the above actions.

(2) After a hearing and determination by the municipal court that an infraction has occurred, the court shall assess the scheduled forfeiture applicable to the determined infraction.

(3) Delinquent forfeitures and those brought to default judgment which were assessed for infractions occurring on real property or for improper use of real property may be held as city liens against said real property and collected in the same manner as other such debts owing to the city.

(4) Nothing in this section shall limit the city from revoking or denying any city license or permit held or desired by a person owing a forfeiture to the city.

(5) Nothing in this section shall limit the inherent power of the municipal court to impose criminal penalties for contempt of court in cases where it deems such sanctions appropriate.

1.255 Schedule of Forfeitures.

(1) Infractions are classified for the purpose of determining forfeitures into the following categories:

- (a) Class A infractions;
- (b) Class B infractions;
- (c) Class C infractions;
- (d) Class D infractions.

(2) An assessment of a forfeiture for an infraction assessment to pay an amount not exceeding:

- (a) Five hundred dollars for a Class A infraction;
- (b) Two hundred fifty dollars for a Class B infraction;
- (c) One hundred dollars for a Class C infraction;
- (d) Fifty dollars for a Class D infraction.

(3) Infractions of city ordinance are classified as set forth in Schedule B attached to the ordinance codified in sections 1.215 to 1.260 and incorporated herein by reference.

1.260 Schedule of Applicable Code

Sections. The civil infraction procedure prescribed by sections 1.215 to 1.255 applies to the code section or sections listed below. The class of infraction for violation of the code section or sections is also indicated below.

(1) Sections 3.250 to 3.280, Street Contractors - Class B Infraction;

(2) Section 5.560, Parks - Class B Infraction;

(3) Sections 5.650 to 5.725, Explosives - Class A Infraction;

(4) Sections 5.750 to 5.785, Blasting - Class A Infraction;

(5) Sections 6.040 to 6.230, Traffic - Class A Infraction;

(6) Sections 6.300 to 6.305, Off-Road Vehicles - Class A Infraction;

(7) Sections 6.400 to 6.405, Motor Vehicles - Class B Infraction;

(8) Sections 7.000 to 7.080, Business Licenses - Class A Infraction;

(9) Sections 8.000 to 8.035, Building Code - Class A Infraction;

(10) Section 8.075, Uniform Fire Code - Class A Infraction;

(11) Sections 8.100 to 8.155, Moving of Buildings - Class A Infraction;

(12) Sections 8.200 to 8.215, Fences - Class A Infraction.

(13) Section 3.300 – Class A infraction.
[Subsection (13) added by Ordinance No. 1449, adopted 05-22-00.]

(14) Sections 4.500 to 4.526 – Class A infraction.
[Subsection (14) added by Ordinance No. 1452, adopted 06-12-00.]

(15) Section 5.477 – Class A infraction.
[Subsection (15) added by Ordinance No. 1453, adopted 06-12-00.]

STOP WORK AUTHORITY

1.300 Definitions

The following definitions shall apply in Sections 1.300 to 1.360:

A. City official means the city manager, city department heads, city police officers, city code enforcement officers, and professional employees of the city's Engineering, Public Works, Planning, and Building Departments. The city manager, city police officers, and code enforcement officers shall have authority under Section 1.310 as to any violation. Department heads, and professional employees of the city's Engineering, Public Works, Planning and Building Departments shall have authority under Section 1.310 as to code provisions, permits, and approvals that they are responsible for administering.

B. Code includes the West Linn Municipal Code, the West Linn Community Development Code, and all permits and approvals issued by the City of West Linn.

1.310 Authority to issue stop work

orders. When necessary to stop a violation of or to obtain compliance with any Code provision, a city official may issue stop work orders requiring that all work relating to the violation, except work directly related to elimination of the violation, be immediately and completely stopped. The stop work order shall be in writing and shall include:

- A. The date of the order;
- B. Permit number, where applicable;
- C. Site address, legal description or project location;
- D. A description of all violations; and
- E. The conditions, if any, under which the work may resume.

1.320 Scope of Stop Work Orders.

A. A stop work order issued under Section 1.310 shall be effective when posted in a conspicuous location at the site of the work. A copy of the stop work order shall be mailed by certified mail or hand delivered to the owner of the property and to any other person in violation of any code provision. The stop work order shall be effective until:

- 1. The necessary permit is obtained;
- 2. The city manager or the department head with responsibility for administration of the code provision issues a written approval for work to continue based on a finding that the violation has been cured; or
- 3. The stop work order is withdrawn on appeal.

Except as provided in this section, no person may engage in any activity covered by the stop work order while the stop work order is in effect.

B. With the written approval of the city manager or the department head with responsibility for administration of the code provision or permit, any person may undertake work that is necessary to avoid a threat or hazard to persons or property that would result if work is left unfinished.

C. If an appeal is filed with the city manager, the work may continue if a bond is provided in a sufficient amount to pay for the removal of any work and the return of the property to its previous condition and the city manager determines that continuation of the work will not result in irreparable harm. If the stop work order is upheld by the city manager and city council as provided in Section 1.330, all work performed under this subsection shall be removed by appellant within fifteen days of the final decision by the city on the appeal except as otherwise permitted in writing by the city manager.

D. When an emergency condition exists, a city official may issue a stop work order orally. An emergency condition exists at any time when continuing the work would have an irreversible effect. A written notice confirming the oral stop work order must then be issued, posted and mailed within twenty-four hours.

1.330 Appeal.

The owner of the property where the work was performed and any other person affected by a stop work order may appeal the stop work order by filing a written appeal with the city manager at any time while the stop work order is still in effect. The city manager shall decide the appeal within two business days of receiving the written appeal by issuing a written decision and providing copies of the decision to the appellant, the property owner if different, and the city official who issued the stop work order. The appellant may appeal the city manager's decision to the city council by filing a written request for hearing within ten days of the city manager's decision. On receipt of the written request for hearing, the city manager shall set the matter for hearing before the city council at the next city council meeting and shall advise the person requesting the hearing of the date and time of the hearing.

1.340 Appeal Procedures and Standards.

If the matter is appealed to the city council, the city council shall decide the matter after a public hearing at which the appellant and any other person may give evidence and provide argument. The city council shall decide the issue by motion. In deciding an appeal, the issues to be considered by the city manager or the city council are:

- A. Whether work was performed;
- B. Whether a city permit or approval was required for that work;

- C. Whether the required permit or approval was issued; and
- D. Whether the stop work order violated any constitutional, statutory, code, or common law requirements.

Failure of an appellant to raise an issue shall be a waiver of the issue.

1.350 Judicial Review of the City Council Decision.

The city council decision on an appeal of a stop work order is a quasi-judicial decision and is subject to judicial review on the record by writ of review pursuant to ORS Chapter 34 and not otherwise.

1.360 Noncompliance.

A. Failure to comply with a stop work order is a civil infraction punishable by a civil penalty of up to one thousand dollars per day for each day during which work continues after a stop work order is issued. Work performed as authorized under Section 1.320 is not a failure to comply with a stop work order.

B. It is a civil infraction to intentionally remove, obscure, mutilate or otherwise damage a posted stop work order while the order remains in effect.

C. The remedies provided by this chapter are cumulative and are in addition to any other remedies provided by common law, statute or ordinance. Any work performed in violation of this chapter is a nuisance that may be abated as provided in Sections 5.400 through 5.530 of this code.

[Subchapter "Stop Work Authority" added by Ordinance No. 1485, adopted April 17, 2002.]

REAL PROPERTY COMPENSATION

[Sections 1.400 through 1.440 repealed by Ordinance No. 1562, adopted March 10, 2008.]

Deleted: ¶
1.400. Purpose.¶
This Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of the 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; preserve and protect limited public funds; and establish a record of the City's decision capable of circuit court review.¶
¶
1.405. Definitions.¶
As used in Sections 1.400 to 1.435, the following words and phrases mean:¶
¶
City Manager. The City Manager of the City of West Linn or his/her designee.¶
¶
Claim. Written demand for compensation submitted to the City under Ballot Measure 37.¶
¶
Claimant. A person who submits a claim.¶
¶
Elected Official. The Mayor of the City of West Linn and any member of the West Linn City Council.¶
¶
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 who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.¶
¶
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 le... [1]

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- 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 who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

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. The City's land use regulations are limited to the Comprehensive Plan, the Community Development Code, and any transportation ordinances that restrict the use of real property. Land use regulations of other jurisdictions are defined by Measure 37.

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 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 and that is valid under Measure 37.

1.410 Claim Filing Procedures.

(1) A person filing a claim under this ordinance must be a 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.

(2) A claim shall include:

a) The name(s), address(es) and telephone number(s) of the person submitting the claim, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, 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, 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 sole ownership of the property by the claimant and the date the property was acquired;

c) The land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property; and

d) The amount of the claim.

(3) Notwithstanding a claimant's failure to provide all of the information required by subsection (2) of this section, the City may review and act on a claim and shall do so if the claim includes sufficient information for the City to process the claim.

1.415 City Manager Investigation and Recommendation.

(1) Following an investigation of a claim, the City Manager shall forward a recommendation to the City Council that the Council take any of the following actions:

(a) Deny the claim.

(b) Pay compensation in a specified amount.

(c) Waive or modify the land use regulation to allow the property to be used in a way that was permissible at the time the current owner acquired the property.

(d) Acquire the property by condemnation.

(2) If the City Manager's recommendation is that a claim should 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 not, then the City Manager may deny the claim.

(3) The Claimant may appeal a denial by the City Manager to the City Council.

1.420 City Council Public Hearing.

Except as provided in Section 1.415(2), the City Council shall conduct a public hearing before taking final action on a recommendation from the City Manager. Notice of the public hearing shall be provided to the claimant, to owners and occupants of property within 500 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.

1.425 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 filed, the City Council shall:

(a) Determine that the claim does not meet the requirements of Measure 37, and deny the claim; or

(b) Adopt a resolution with findings that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property. The compensation shall be calculated based on the property values as of the date the claim is submitted. Any waiver or modification of the challenged land use regulation shall allow only such use of the property as could have been made at the time the current owner acquired the property.

(2) 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.

1.430 Processing Charge.

The City Manager shall maintain a record of the City's costs in processing a claim. This record may include, but is not limited to, the following: the costs of obtaining information concerning the ownership history and current ownership of the property, researching the regulatory history, obtaining one or more appraisals, and processing the application, including hearing costs.

The Council shall establish a minimum deposit and charges for filing a claim.

1435 Action by Neighboring Property Owners.

If a Claim results in a waiver of enforcement of a regulation and the development allowed by the waiver causes a reduction in value of other property located in the vicinity of the Claimant, those property owners shall have the right to maintain an action against the Claimant in state circuit court to recover the amount of the reduction. The nearby property owners, if successful, shall be entitled to an award of reasonable attorney fees. This section does not create a right of action against the City.

1.440 Emergency Adoption.

Due to the passage of Measure 37 at the General Election on November 2, 2004, with an effective date of 30 days thereafter, the City Council declares it is necessary for the preservation of the public health, welfare and safety for this ordinance to have immediate effect. Therefore, this Ordinance shall become effective December 2, 2004.

[Subsection entitled Real Property Compensation added by Ordinance No. 1511, adopted 12-02-04.]