

## ORDINANCE 199

**AN ORDINANCE REPEALING ORDINANCE 198; ADOPTING THIS SUPERCEDING ORDINANCE CONCERNING REAL PROPERTY COMPENSATION; ADOPTING PROCEDURES FOR PROCESSING CLAIMS TO BE INCLUDED IN THE DETROIT MUNICIPAL CODE; AND DECLARING AN EMERGENCY.**

### RECITALS:

**WHEREAS**, statewide Ballot Measure 37 was addressed by the City of Detroit in Ordinance 198; and,

**WHEREAS**, the City of Detroit adopted Ordinance 198 on December 2, 2004 subject to further review and deliberation anticipating a more comprehensive legislation relating to the procedures for processing claims whereupon this ordinance is intending to supercede and repeal Ordinance 198; and,

**WHEREAS**, it is appropriate that the City of Detroit shall establish a prompt, open, thorough and consistent process that enables 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 establishes a procedure for recording the City's decision; and,

**WHEREAS**, Due to the passage of Measure 37 at the General Election on November 2, 2004, with an effective date 30 days thereafter, the subsequent adoption of Ordinance 198 on December 2, 2004 and the repeal of Ordinance 198 and adoption of Ordinance 199, the City Council declares that it is necessary for the preservation of the public health, welfare and safety for this Ordinance to become effective on December 14, 2004 and therefore it is appropriate that an emergency be declared to insure claims processing after the repeal of Ordinance 198 not be interrupted.

**NOW, THEREFORE, THE CITY OF DETROIT, OREGON HEREBY ORDAINS AS FOLLOWS:**

Section 1 – Repealing Ordinance 198 and substituted by this superceding ordinance.

**Section 2 - Purpose.** This Ordinance is intended to implement the provisions added to Ch. 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 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 Ordinance is authorized by Ballot Measure 37, Section 7.

**Section 3 – Definitions.** As used in this Ordinance, the following words and phrases mean:

**City Recorder.** The City Recorder of the City of Detroit, or assigned designate.

**Claim.** Any claim filed under the provisions of this Ordinance.

**Claimant.** The property owner making a claim under this Ordinance, 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.

**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.

**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.

**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 as determined by the City pursuant to the terms of this Ordinance.

#### **Section 4 – Claim Filing Procedures.**

(1) A person seeking to file a claim under this Ordinance 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.

(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) 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, 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) cited by reference to the Detroit Zoning and Development 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 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;

(e) 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;

(f) 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;

(g) State that any and all claims under this Ordinance 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 is more than one claim filed on a single tract of land, the City shall have the right to consolidate those claims for determination;

(h) 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 Ordinance 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;

(i) 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;

(j) 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) 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 Ordinance, that exclusion should be specified by the claimant;

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

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

(n) A deposit for costs in the amount of \$500, or such other amount determined by the Committee, and which is administered, billed and collected as provided for in this Ordinance.

(3) No period of time relative to the filing of a claim shall be considered to have accrued until  
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such time as the City has reviewed the Claim and submission requirements and deemed them to have been complete. 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 Ordinance also lies with the claimant.

#### **Section 5 – Committee Investigation and Recommendation.**

(1) Following an investigation of a claim, the Committee or designee shall forward a recommendation to the City council that the claim be:

(a) Denied as not being a valid claim under this Ordinance;

(b) 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 Ordinance 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 land use regulation, the details of the scope and extent of the waiver or modification shall be set forth; or

(2) The Committee'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 6 -- City Council Public Hearing.** The City Council shall conduct a public hearing before taking final action on a recommendation from the Committee. 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, and to any other person or entity that makes written request notice of hearing. The normal council rules for the conduct of public hearings shall apply to hearings held under this Ordinance.

#### **Section 7 – 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 was not timely filed;

4. The owner failed to comply with the requirements for making a demand as set forth in this article;

5. The owner 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 Ordinance;

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 Ordinance, 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.

(2) The City Council's decision as to the validity of the claim shall be based on the provisions of Ballot Measure 37 and as implemented through this Ordinance.

(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 Committee.

(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 Ordinance. 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, Oregon Administrative Rules, and the Detroit Land Use Detroit Zoning and 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 Ordinance shall be exercised within six (6) years of the grant of waiver or modification. Any waiver or modification not exercised within six (6) years is automatically terminated and of no further force and effect.

(8) No waiver or modification of land use regulations granted pursuant to this Ordinance 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.

#### **Section 8 – 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 Committee 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 Committee 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 7(1) hereof, 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 9 - Appellate Rights.** Any decision under this Ordinance 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.

**Section 10 - 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 Ordinance. 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 11 - Interpretation/No Third Party Causes of Action are Established.**

(1) For all claims filed, the applicable state law is Oregon. Any demand that has not been processed completely under this Ordinance shall be subject to any such amendments,

modifications, clarifications or other actions taken at the state level and this Ordinance 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 Ordinance is adopted solely to address demands filed under the authority of those provisions of Oregon Revised Statutes Ordinance 197 added or made a part of said Ordinance by Ballot Measure 37, passed November 2, 2004. This Ordinance 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.

(2) If the city council's removal, modification, or waiver of a land use regulation reduces the value of other property adjacent to a property that is the subject of a claim under this chapter, the adjacent property owner(s) are granted a cause of action in circuit court to recover from the claimant the amount of the reduction. In any such action, the adjacent property owner(s) are entitled to all fees and costs incurred, as well as any sum that a court, including any appellate court, may deem reasonable as attorney fees. This section does not create a cause of action against the City.

**Section 12 - 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 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 14 - Emergency Clause.** This Ordinance 199 shall become effective on December 14, 2004 upon its passage by the City Council and signature by the Mayor.

ADOPTED BY THE DETROIT CITY COUNCIL this 14<sup>th</sup> day of December, 2004, and approved and signed by the Mayor this 14<sup>th</sup> day of December, 2004.

CITY OF DETROIT

Signed December 14, 2004

By:



Mayor Harold M. Hills

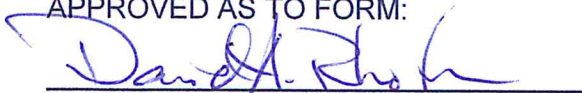
Signed December 14, 2004

ATTEST:



Sandra K. Furbish, City Recorder

APPROVED AS TO FORM:



David A. Rhoten, City Attorney



**Measure 37 Claim Form**  
**City of Detroit**  
**PO Box 589, Detroit, OR 97342**  
**(503) 854-3496 FAX (503) 854-3232**

FILE NO.

**PROPERTY OWNER INFORMATION** (Please type or print legibly in dark ink)

Date Demand Complete and Accepted for Processing

Name of Property Owner \_\_\_\_\_ Name of Representative (If Any) \_\_\_\_\_

Nature of the Claim and Remedy Sought

Name of Firm \_\_\_\_\_ Name of Firm \_\_\_\_\_

Street Address \_\_\_\_\_ Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

**PRIVATE REAL PROPERTY DESCRIPTION**

Tax Lot and Map Number \_\_\_\_\_ Comprehensive Plan and Zone Designation \_\_\_\_\_

Assessor's R# \_\_\_\_\_ Special Purpose District or overlay zone \_\_\_\_\_

Site Address \_\_\_\_\_

Location \_\_\_\_\_ Site Size \_\_\_\_\_

**Claimant's Interest in the Real Property**

Previous Land Use Actions on Subject Property

**CLAIMANT'S CERTIFICATION**

I/We \_\_\_\_\_ depose and say that I/we am/are the owner(s) of the private real property that is the subject of this Claim and all information contained herein, and in the attachments hereto are true as I/we verily believe.

\_\_\_\_\_  
 Claimant Signature

\_\_\_\_\_  
 Claimant Signature

\_\_\_\_\_  
 Representative Signature

*Attach Additional Sheets If Necessary to Include All Those Who Claim an Interest in the Subject Real Property*

**DISCLAIMER NOTICE:**

Acceptance of this Claim does not indicate approval thereof. In the event a claim is granted, approval of compensation or modification, removal or non-application of land use regulation does not warrant or otherwise guarantee that the present property owner of any successors interest can legally use the subject property for the purpose, or in the manner, approved by the City as such use or purpose may impact third parties, including rights established by Covenants, Conditions and Restriction (CC&Rs), other private restrictions, or other regulations, restrictions, or contracts.

**REQUIRED ATTACHMENTS (SEE REVERSE OF THIS FORM) AND COMPLETENESS**

This Claim and all attachments required on the reverse of this form must be provided before this Claim will be processed by the City.

## REQUIRED ATTACHMENTS TO MEASURE 37 CLAIM

Information listed below is required to be submitted as part of this demand. A demand shall be submitted on this form and shall include all of the following materials. The claim will not be processed without all of the following information being included with the claim form:

- \_\_\_\_\_ 1. **Deposit.** A deposit of \$500.00 to be paid in advance of acceptance for filing to cover the costs of completeness review and demand processing.
- \_\_\_\_\_ 2. **Claim Form.** A completed Claim form.
- \_\_\_\_\_ 3. **Identification of Ownership Interests.** Identification of the name, physical address, street address, and phone number of anyone claiming an ownership interest in the subject property. If the claimant is not an owner, a written authorization by owner to act on behalf of the owner must be provided.
- \_\_\_\_\_ 4. **Property Description.** A legal description of the property as well as a common address for the property, tax lot number and both assessor map and area map.
- \_\_\_\_\_ 5. **Proof of Present Property Ownership.** Proof, acceptable to the manager, that the property is in the exclusive fee simple ownership of the owner or that the owner has the consent of all owners in the property. The name and mailing address of all owners other than the owner making the demand must be provided.
- \_\_\_\_\_ 6. **Nearby Property Owner Information.** The names and addresses of all owners of property within 300 feet of the outside boundary of the subject property.
- \_\_\_\_\_ 7. **Listing of Nearby Owned Property.** Identification of any other property owned by the owner within 300 feet of the boundary of the property.
- \_\_\_\_\_ 8. **Title Report.** A title report which certifies the date the claimant/owner acquired ownership of the property, and the nature of all interests in the subject property. The title report shall include copies of any private restrictions on use of the property unrelated to the land use regulation including, but not limited to, Covenants, Conditions, and Restrictions (CC&R's), liens, easements, contracts or other encumbrances.
- \_\_\_\_\_ 9. **Copy of Existing Regulation.** A copy of the land use regulation that owner making the demand claims restricts the use of the property or interest therein that has had effect of reducing the fair market value of the property, including the date the owner claims the land use regulation was first enacted, enforced, or applied to the property.
- \_\_\_\_\_ 10. **Copy of Prior Regulations.** A copy of the land use regulation in existence, and applicable to the property, when the owner became the owner of the property that the owner claims restricts the use of the property and, the owner claims, caused a reduction in fair market value due to the regulation described in item (9) above being more restrictive.
- \_\_\_\_\_ 11. **Appraisals.** If just compensation is requested as a potential remedy, a copy of a written appraisal or appraisals by an appraiser, qualified as such in the State of Oregon, indicating the amount of the alleged reduction in the fair market value of the property, and showing the methodology for such computation.
- \_\_\_\_\_ 12. **Narrative.** The owner shall provide a narrative describing the history of the owner and/or family member's ownership of the property, the history of the relevant land use regulations applicable to the demand, and how the enactment, enforcement, or application of the land use regulation restricts the use of the property, or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein. Owner shall specify what use the subject property is being sought for that is restricted by current regulations. The narrative should address the relevant criteria in the City's Ballot Measure 37 Ordinance and state the relief sought by the claimant.
- \_\_\_\_\_ 13. **Statement Regarding Exemptions.** A statement by the owner of why the Exemptions to claim are not applicable to this Claim.
- \_\_\_\_\_ 14. **Copies of Prior Permit Applications and Description of Enforcement and/or Application Actions by the City.** Copies of any land use actions, development applications, or other relevant applications for permits that have previously been filed in connection with the property and the action taken. Any such actions that represent the required "enforcement" and/or "application" of the land use regulation that are prerequisites to making a demand must be described and identified as such.
- \_\_\_\_\_ 15. **Site Plan and Drawings.** A copy of the site plan and drawings related to the proposed use of the property should the land use regulation be modified, removed, or not applied in a readable/legible 8½x11-inch format and shall include all buildings, setbacks, access, circulation, parking, loading and all other relevant information necessary for the City to ascertain the extent of the proposed use.