

ORDINANCE NO. 268

AN ORDINANCE AMENDING EXISTING CHAPTER 37 WITHIN THE DUNES CITY CODE OF ORDINANCES ENTITLED “REVIEW OF DEMANDS FOR COMPENSATION UNDER OREGON REVISED STATUTES CHAPTER 195 AND 197 AS AMENDED BY BALLOT MEASURE 37 PASSED NOVEMBER 2, 2004 AND FURTHER AMENDED BY BALLOT MEASURE 49, EFFECTIVE DECEMBER 6, 2007; REPEALING ORDINANCE NO. 172 OF THE DUNES CITY CODE OF ORDINANCES, ADOPTED NOVEMBER 22, 2004, AND DECLARING AN EMERGENCY.

WHEREAS, on November 2, 2004, Ballot Measure 37, amending Oregon Revised Statutes Chapter 197 regarding the review of demands for compensation; and

WHEREAS, on December 6, 2007, Ballot Measure 49, amending ORS Chapter 197 and Ballot Measure 37, went into effect; and

WHEREAS, Ballot Measure 49 and ORS 195.305(5) authorize local governments to adopt and apply procedures for the processing of Measure 49 claims filed under ORS 195.305 and 195.310 to 195.336. Such local procedures are in addition to and not in lieu of any Ballot Measure 49 requirements; and

WHEREAS, pursuant to ORS 195.312(3), cities may impose a fee for the review of a claim filed under ORS 195.310 in an amount not to exceed the actual and reasonable cost of reviewing the claim; and

WHEREAS, the Dunes City Council finds it in the best interests of the residents of Dunes City to update its Code provisions to comply with Ballot Measure 49 in instances where a claim is filed under ORS 195.305 and 195.310 to 195.336.

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. *Repeal.* Ordinance No. 172, which contains Chapter 37 of the Dunes City Code of Ordinances, is hereby repealed, effective on the day this Ordinance becomes effective.

Section 2. *Adoption.* Title III, Administration, Chapter 37 is amended to read as found in Exhibit A. attached hereto and incorporated by reference herein;

Section 3. *Effective Date.* This Ordinance shall take effect on the 30th day after its adoption.

Section 4. *Severability.* If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations or decisions, the remainder of this Ordinance shall not be affected thereby but shall be deemed a separate, distinct and independent provision, and such holding shall not affect

the validity of the remaining portions of this Ordinance, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant, and any portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or State law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding without the requirement of further action on the part of the City.

Section 5. Other Remedies. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity for enforcement of this Ordinance. Non-exclusive remedies for enforcement are all those available under State and County laws including seizure of property, civil and criminal proceedings.

Section 6. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 7. Scrivener's Errors. Any Scrivener's errors in this Ordinance may be corrected by Resolution of the City Council.

Passed at the first reading in regular meeting of the City Council of Dunes City, Oregon on the 21st day of February, 2024

Ayes: 5 Nays: _____ Abstain: _____ Absent: 1 Vacant: _____

Passed on second reading and placed on final passage, and adopted by the City Council of Dunes City on the 21st day of February, 2024.

Ayes: 5 Nays: _____ Abstain: _____ Absent: 1 Vacant: _____

ADOPTED BY THE DUNES CITY COUNCIL THIS _____ DAY OF _____, 2024.

Ed McGuire
Ed McGuire, Mayor

ATTEST:

Jamie Mills
Jamie Mills, City Administrator and Recorder

EXHIBIT A. TO ORDINANCE NO. 268

§ 37.010 Findings

The City Council for Dunes City finds:

- A. On November 2, 2004, Ballot Measure 37 passed an amendment to Chapter 197 of the Oregon Revised Statutes (ORS); and
- B. Ballot Measure 49 and ORS 195,305(5) authorize local governments to adopt and apply procedures for the processing of Measure 49 claims filed under ORS 195.305 and 195.310 to 19.336. Such local procedures are in addition to and not in lieu of any Ballot Measure 49 requirements; and
- C. Pursuant to ORS 195.312(3), cities may impose a fee for the review of a claim filed under ORS 195.305 and 195.310 to 195.336. These provisions are in addition to and not in lieu of any such statutory requirements.

§ 37.020 Purpose

The purpose of this chapter is to establish procedures governing new Measure 49 claims filed under ORS 195.305 and 195.310 to 195.336. These provisions are in addition to and not in lieu of any statutory requirements.

§ 37.030 Definitions

The definitions for Measure 49, set forth in ORS 195.300, are hereby incorporated by this reference.

§ 37.040 Claim for Compensation

- A. *Filing.* All claims shall be filed for review upon forms established by the City and must include all information as required by ORS 195.312; and
- B. Must be accompanied by a fee in an amount as set by Resolution of the City Council from time to time.

§ 37.050 Claim Completeness Review

- A. Upon receipt of a claim, the City shall:
 - 1. Deny the claim if:
 - a. It is not filed within five (5) years from the date the land use regulation was enacted;

- b. An application for a comprehensive plan or zoning amendment is approved for the subject property; or
 - c. Any submittal requirements are not met as set forth in Dunes City Code §37.040.
 - 2. Determine whether a claim is complete within sixty (60) days after receiving the claim.
 - 3. Notify the claimant of any missing information within sixty (60) days after receiving the claim.
- B After providing notice of missing information, the City shall:
 - 1. Deem the application complete if:
 - a. The claimant provides the missing information and the required fee; or
 - b. The claimant provides the required fee and a written statement that some or all of the missing information will not be provided.
 - 2. Deem the application complete if the City fails to notify the claimant of missing information within sixty (60) days after receiving the claim.
 - 3. Deem the application withdrawn if the claimant fails to provide the fee and the missing information, or a written statement that some or all of the information will not be provided within the time specified in the notice of missing information.

§ 37.060 City Administrator Review and Recommendation

- A. Once a claim is deemed complete, the City Administrator shall investigate the validity of the claim. After reviewing all required material and information, the City Administrator may:
 - 1. Further investigate;
 - 2. Recommend denial of the claim;
 - 3. Forward a recommendation of approval of the claim to the City Council.
- B. Notwithstanding the options in subsection A. of this Section, the City Administrator may choose to forward any claim to the City Council for a public hearing and decision in accordance with this Chapter. In making this determination, the Administrator may consider factors including but not limited to:

1. The amount of compensation at issue;
2. The nature of the proposed use or development, if any; and
3. The impact of the proposed use or development.

The decision of the City Administrator to forward a claim to the City Council is final and not subject to appeal. The Council, however, may summarily and without notice or hearing elect to return the claim to the Administrator for a final decision on the claim.

§ 37.070 Opportunity to Comment

- A. Where the City Administrator determines to recommend City Council approval of a claim, a public hearing shall be held to allow an opportunity for public comments.
- B. Where the City Administrator determines denial is merited based upon the submitted material and any additional investigation conducted, the City Administrator will provide an opportunity for written public comment.

§ 37.080 Notice

- A. Notice of the claim and the City Administrator's recommendation will be provided at least Thirty (30) days before a public hearing on the claim or, if there will not be a public hearing, at least Thirty (30) days before the deadline for submission of written comments to:
 1. All owners identified in the claim;
 2. Owners of record of property on the most recent property tax assessment roll where such property is located within 300 feet of the perimeter of the subject property;
 3. Neighborhood groups or community organizations officially recognized by the City Council and whose boundaries include the subject property;
 4. The Department of Land, Conservation and Development (DLCD), unless the claim was filed with that department;
 5. The county in which the property is located, unless the claim was also filed with the county.
- B. The notice required under Section A. of this section must describe the claim and state:
 1. Whether a public hearing will be held on the claim; the date, time and location of the hearing, if any; and the final date for submission of written evidence and arguments relating to the claim;

2. That judicial review of the City's final determination on the claim is limited to the written evidence and arguments submitted to the City and
3. The judicial review is available only for issues that are raised with sufficient specificity to afford the City an opportunity to respond.

§ 37.090 Record

- A. Except as provided in subsection B. of this section, written evidence and arguments in proceedings on the claim must be submitted to the City not later than:
 1. The close of the final hearing on the claim; or
 2. If a public hearing is not held, the date that is specified by the City in the notice required under Section 37.080 of this Chapter.
- B. The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments. The City, in its sole discretion, may choose to grant or deny the claimant's request.
- C. The City shall make the record on review of a claim, including any staff reports, available to the public before the close of the record.

§ 37.100 Final Decision

- A. Either the City Administrator or the City Council shall issue a final decision on a claim after providing notice and an opportunity to comment, within 180 days from the date the claim is deemed completed. The Council may waive some regulations identified in the claim and deny waiver of others. The Council may waive regulations that are not otherwise specified in the claim. The Administrator or Council may impose reasonable conditions on a waiver to protect the public interest. Failure to comply with any condition of approval is grounds for revocation of the Administrator's or City Council's decision.
- B. The final decision shall be in writing and signed by the City Administrator, or Mayor, if the decision was referred to the City Council. The City shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record. The City shall forward to the County, and the County shall record, a memorandum of the final determination in the deed records of the county in which the property is located.
- C. The decision of either the City Administrator or the City Council, if referred to the Council, is final and not subject to local appeal. Judicial Review is available only as provided in ORS 195.318.

§ 37.110 Burden of Proof and Record

The claimant shall have the burden of proof on all matters under this Chapter. The claimant bears sole responsibility for ensuring that the record before the City contains all information and evidence necessary to support the claim. The claimant shall be precluded from submitting information or raising new issues in any subsequent proceeding unless the claimant demonstrates that the information or issue could not reasonably have been entered into the record or raised before the City.

§ 37.120 *Ex Parte* Contacts; Conflict of Interest; Bias

The following rules govern any challenges to the City Administrator's or a member of the City Council's participation in the processing of a claim:

- A. Any factual information obtained by the City Administrator or a member of the City Council outside the information provided by city staff, or outside the formal written comments process or hearing will be deemed an *ex parte* contact. The City Administrator or a member of the City Council that has obtained any material factual information through an *ex parte* contact must declare the content of the contact, and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between city staff and the City Administrator or a member of the City Council.
- B. Whenever the City Administrator or member of the City Council, or any member of their immediate family or household, has a direct financial interest in the outcome of a particular demand or lies within the area entitled to notice of the claim, the City Administrator or member of the City Council shall not participate in the deliberation or decision on that demand.
- C. All decisions on claims must be fair, impartial and based on the applicable review standards and the evidence on the record. The City Administrator or a member of the City Council who is unable to render a decision on this basis must refrain from participating in the deliberation or decision on that claim.

§ 37.130 Reconsideration of Waiver

The Council may, in its sole discretion, reconsider a decision on a claim if it appears that the decision is inconsistent with a subsequent court ruling, administrative rule or other change in law relating to Measure 49. The decision to reconsider may be made without notice of hearing; but the decision on reconsideration shall be made only after notice and opportunity to be heard consistent with the requirements for claim review provided under this Chapter for Council review. At the conclusion of the process, the City Administrator or Council may affirm, modify, or revoke the earlier decision. If the Council modifies or revokes a decision to waive one or more land use regulations, it shall issue an order setting forth such remedy as it deems appropriate to protect the public interest.

§ 37.140 Procedural Error

No procedural effect in processing a claim shall invalidate any proceeding or decision unless the party alleging the error demonstrates prejudice to a substantial right. In advertent failure to provide notice or complete notice shall not be grounds for invalidating a decision.