



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

June 5, 2008



TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Lincoln City Plan Amendment
DLCD File Number 001-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: June 18, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Carmel Bender, Compensation Claim Planning Specialist
Laren Woolley, Dlcd Regional Representative
Richard Townsend, City of Lincoln City

<paa> ya

FORM 2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

DATE STAMP
DEPT OF
MAY 29 2008
LAND CONSERVATION AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: City of Lincoln City Local file number: ZOA 04-07
Date of Adoption: 2/25/08 Date Mailed: 5/28/08
Date original Notice of Proposed Amendment was mailed to DLCD: 2/19/08

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

_____ Amendments to implement Ballot Measure 49 by establishing a procedure for application and _____
_____ review of claims for compensation for properties located in whole or in part inside the City of _____
_____ Lincoln City urban growth boundary. The amendments are not a land use regulation and do not _____
_____ implement the City of Lincoln City Comprehensive Plan. Although the amendments will be _____
_____ codified as part of the zoning ordinance, the placement is for convenience only. _____

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME".
If you did not give Notice for the Proposed Amendment, write "N/A".

No substantive changes.

Plan Map Changed from: n/a to: _____

Zone Map Changed from: n/a to: _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: _____

Was and Exception Adopted? YES NO

DLCD File No.: 001-08 (16667)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Richard Townsend Phone: (541) 996-2153 Extension: _____

Address: PO Box 50 City: Lincoln City

Zip Code + 4: 97367 Email Address: rtown@lincolncity.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 2008-02

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE ZONING ORDINANCE, IMPLEMENTING BALLOT MEASURE 49 (CHAPTER 424, OREGON LAWS 2007) AND ADOPTING PROCEDURES TO DETERMINE VESTED RIGHTS, IF ANY, OF MEASURE 37 WAIVERS GRANTED BY THE CITY OF LINCOLN CITY; AND DECLARING AN EMERGENCY

Recitals

Whereas, the City Council of the City of Lincoln City received claims for compensation under Ballot Measure 37; and

Whereas, in approving claims for compensation, the City Council in lieu of providing relief in the form of monetary compensation elected to grant waivers of land use regulations as defined by Ballot Measure 37 to the extent required to avoid paying compensation, as provided in the respective decisions on claims for compensation; and

Whereas, with the passage of Ballot Measure 49, it is necessary for the City of Lincoln City to implement Sections 5, 9 and 10 of Ballot Measure 49 and determine the vesting of development rights pursuant to any waivers issued by the City Council in approving claims for compensation under Ballot Measure 37.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. ADOPTION OF PROCEDURES

The text attached as "Exhibit A", attached hereto and incorporated herein by reference, is hereby adopted and shall be made a part of the Municipal Code, Title 17 Zoning, Chapter 17 Compensation Claims, notwithstanding the provisions are not "land use regulations" and do not implement the Lincoln City Comprehensive Plan or its Zoning Ordinance.

SECTION 2. TITLE

This ordinance shall be known as "The Lincoln City Measure 49 Vested Rights Ordinance."

EXHIBIT A

Sections:

1. Purpose
2. Definitions
3. Application
4. Planning Department Report
5. Public Hearing
6. Consent Agenda
7. Notice of Public Hearing
8. City Council Final Decision; Appeal

SECTION 1. PURPOSE

The purpose of this ordinance is to establish a procedure for determining whether a property owner who was granted a waiver from land use regulations has a common law vested right to complete and continue the use described in the waiver.

SECTION 2. DEFINITIONS

- (1) As used in this ordinance, words and phrases shall have the same meaning as provided in Ballot Measure 49.
- (2) As used in this ordinance: "Planning Director" means the City of Lincoln City Planning and Community Development Director or designee.
- (3) As used in this ordinance: "waiver" or "Measure 37 waiver" refers to a waiver issued pursuant to a decision on a claim for compensation under Ballot Measure 37, codified at ORS 197.352 (2005) before the statute was amended by the adoption of Ballot Measure 49 (Chapter 424, Oregon Laws 2007), enacted by the voters on November 6, 2007.

SECTION 3. APPLICATION

- (1) Any person who wishes to complete or continue any use of property allowed pursuant to a Measure 37 waiver shall file an application for a vested rights determination as required by Ballot Measure 49. Until the City Council's determination of vested rights has been made, no

permits shall be issued, and, if the City of Lincoln City has issued permits, an order stopping work under those permits will be issued.

(2) An application for a vested rights determination must be submitted to the Planning Department in the form prescribed by the planning director and signed by the owner. The complete application shall include the following information:

(a) Name, address, telephone number and signature of the owner filing the application.

(b) A copy of the conveyance document that shows the applicant's interest in the real property and includes a legal description and physical address of the property.

(c) A copy of the orders of City of Lincoln City and the State of Oregon approving a waiver for the property.

(d) A copy of any land use approvals and construction permits issued that allow development of the property.

(e) Identification of expenditures made to develop the property and the dates of those expenditures.

(f) A written statement describing:

(A) How the applicant's use of the property is consistent with the waiver; and

(B) How the applicant has a common law vested right to complete or continue the use described in the waiver.

(g) An application fee to be established by separate resolution of the City Council.

SECTION 4. PLANNING DEPARTMENT REPORT

(1) The planning director will prepare a staff report that describes the vested rights application, sets forth all pertinent facts, and makes a recommendation on how the application should be resolved.

(2) The planning director's report and recommendation shall be forwarded to the City Council of Lincoln City for a public hearing. At any time, the planning director may refer a copy of the report and recommendation to the City of Lincoln City Planning Commission for comment; however, the Planning Commission is not required to review the matter or make a recommendation unless specifically requested to do so by the planning director or City Council.

SECTION 5. PUBLIC HEARING

(1) The City Council shall conduct a public hearing on the application for a determination of vested rights.

(2) After the public hearing, the City Council shall make a decision as follows:

(a) Whether the applicant's use of the property complies with the waiver granted by City of Lincoln City and State of Oregon; and

(b) Whether the applicant had a common law vested right on December 6, 2007, to complete and continue the use described in the waiver.

(3) (a) The City Council decision shall be based on the analysis of the staff report submitted by the planning director and the evidence and testimony contained in the record and the applicable laws.

(b) The planning director's recommendation and City Council decision shall be consistent with Oregon appellate decisions addressing vested rights issues and shall be based on a multifactor test that will include consideration of the factors that the courts have identified as relevant to aid in the equitable balancing test required for a determination of vested rights:

(A) The ratio of expenditures incurred to the total cost of the project;

(B) The good faith of the owner;

(C) Whether the owner had notice of the proposed change in law before starting the improvements;

(D) The type of expenditures, i.e., whether the expenditures have any relation to the completed project or could apply to other various uses of the land;

(E) The nature, location, and ultimate cost of the project;

(F) Whether the actions rise beyond mere preparation; and

(G) Other relevant factors.

(4) A copy of the planning director's report and recommendation shall be mailed to the applicant, the applicant's representative, and any person who submitted a written request for a copy of the report and recommendation. The report and recommendation shall be mailed not less than ten days prior to the date the City Council hearing on the application.

(5) A copy of the planning director's report and recommendation may be given at any time to the Lincoln City Planning Commission for comment. A copy of the Lincoln City Planning Commission comments on the application and recommendation, if any, shall be transmitted in writing to the City Council and made a part of the record at the public hearing under "agency comments".

SECTION 6. CONSENT AGENDA

(1) Notwithstanding Sections 5 and 6 of this ordinance, if the planning director determines that an application establishes both compliance with the waiver and a vested right without the need for additional evidence or analysis, the application will be placed on the City Council's public meeting consent agenda for final action. If an applicant, any City Councilor, or any member of the public requests a hearing on the application, it will be set for a public hearing before the City Council pursuant to Section 6 of this ordinance.

(2) Notice that an application will be considered on the consent agenda will be mailed to the applicant and to the owners of real property within 250 feet of the subject property.

(3) Notice shall be mailed not less than ten days prior to the date the City Council will consider the consent agenda.

SECTION 7. NOTICE OF PUBLIC HEARING

(1) Notice of a public hearing before the City Council shall be mailed to the applicant and to the owners of record of real property within 250 feet of the subject property. Notice shall be mailed not less than ten days prior to the scheduled hearing.

(2) The notice of the public hearing shall include a summary of the planning director's report, if it was not included in a consent agenda notice.

(3) The failure of any person to receive notice of a public hearing shall not affect or invalidate any proceeding under this ordinance.

SECTION 8. CITY COUNCIL FINAL DECISION; APPEAL

(1) The City Council shall consider the planning director's recommendation and all documents, evidence and testimony in the record. The City Council shall enter an order determining whether the applicant's use of the property complies with the waiver and whether the applicant had a common law vested right on December 6, 2007, to complete and continue the use described in the waiver.

(2) If the City Council determines that the applicant has a common law vested right to complete and continue the use, the city will issue land use and development permits in accordance with federal, state and city laws and regulations.

(3) The decision of the City Council will be subject to review by writ of review as provided in Ballot Measure 49, under ORS 34.010 to 34.102.

COPY

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ORDINANCE NO. 2008-03

**AN ORDINANCE AMENDING THE ZONING ORDINANCE TO IMPLEMENT
BALLOT MEASURE 49 BY ESTABLISHING A PROCEDURE FOR APPLICATION
AND REVIEW OF CLAIMS FOR COMPENSATION FOR PROPERTIES LOCATED
IN WHOLE OR IN PART INSIDE THE CITY OF LINCOLN CITY URBAN GROWTH
BOUNDARY; REPEALING ORDINANCE NO. 2005-07; AND DECLARING AN
EMERGENCY**

Whereas, on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 that amended Oregon Revised Statutes Chapter 197; and

Whereas, on December 1, 2004, the City Council adopted Ordinance No. 2005-07 establishing Chapter 14 of the Lincoln City Zoning Ordinance to provide for review of claims for compensation under Ballot Measure 37; and

Whereas, Ballot Measure 49, which became effective on December 6, 2007, effectively repealed Ballot Measure 37.

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

Section 1. Chapter 14, Title 17 of the Lincoln City Municipal Code is replaced in its entirety as follows:

**CHAPTER 14
REQUIREMENTS AND PROCEDURES FOR FILING AND REVIEWING CLAIMS
PROVIDED FOR IN BALLOT MEASURE 49 FOR PROPERTY THAT IS LOCATED,
IN WHOLE OR IN PART, INSIDE THE CITY OF LINCOLN CITY URBAN
GROWTH BOUNDARY.**

1. Purpose.

The purpose of this section is to adopt a procedure for evaluating claims that are provided for under Ballot Measure 49 including claims that were filed under Measure 37.

2. Definitions.

For purposes of this chapter, the definitions from Ballot Measure 49 apply, along with the following:

“Appraisal” means a written statement prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308.

“Claim” means a written demand for compensation filed under Measure 49 and ORS 197.352, as in effect on and after the effective date of Measure 49.

“Claimant” means the person who has filed a claim. The claimant must be a current owner of the property that is the subject of the claim.

1
2 “Council” means the City Council of Lincoln City.

3 “Department” means the Lincoln City Planning and Community Development Department, or
4 successor entity designated by the Council.

5 “Director” means the Director of the Lincoln City Planning and Community Development
6 Department or designee.

7 “Existing Lincoln City Regulation” means a Lincoln City regulation that was enacted or
8 adopted by Lincoln City with an effective date prior to December 2, 2004.

9 “File” means to submit a document to Lincoln City.

10 “Fair Market Value” as defined in Section 21(b) of Measure 49 means “the amount of money,
11 in cash, that the property would bring if the property was offered for sale by a person who
12 desires to sell the property but is not obligated to sell the property, and if the property was
13 bought by a person who was willing to buy the property but not obligated to buy the property.
14 The fair market value is the actual value of the property, with all of the property’s adaptations
to general and special purposes. The fair market value of property does not include any
prospective value, speculative value or possible value based upon future expenditures and
improvements.”

15 “Interest” means the average interest rate for a one-year United States Government Treasury
16 Bill on December 31 of each year of the period between the date the land use regulation was
17 enacted and the date the claim was filed, compounded annually on January 1 of each year of
the period.

18 “Land Use Application” means an application for a “land use decision,” a “limited land use
19 decision,” or an “expedited land division,” as those terms are defined by ORS 197.015 and
20 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187.

21 “Land Use Regulation” means a provision of Lincoln City’s comprehensive plan, zoning
22 Ordinance or land division ordinance that restricts the residential use of private real property
zoned for residential use.

23 “Lincoln City Measure 37 waiver” means a decision by the City of Lincoln City that was made
24 before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or
25 more Lincoln City land use regulations to allow a Claimant to use the Property for a use that
was permitted when the Claimant acquired the Property.

26 “Measure 37 Waiver” means a decision by a city, a county, Metro or the State of Oregon that
27 was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not
28 apply one or more Land Use Regulations to allow a Claimant to use the Property for a use that
was permitted when the Claimant acquired the Property.

1 "Measure 49" means the ballot measure enacted by the voters on November 6, 2007.

2 "Property" means the private real property described in a Claim and contiguous private real
3 property that is owned by the same owner, whether or not the contiguous property is described
4 in another claim, and that is not property owned by the federal government, an Indian tribe or a
5 public body, as defined in ORS 192.410.

6 "Reduction in Fair Market Value" means the difference, if any, in the fair market value of the
7 property from the date that is one year before the enactment of the land use regulation to the
8 date that is one year after the enactment, plus interest.

9 **(3) Process for Determining Just Compensation for Measure 37 Claims filed on
10 or before June 28, 2007.**

11 The City shall follow the procedure set forth in Measure 49 to evaluate Measure 37 claims that
12 were filed with the City on or before June 28, 2007. Vested rights claims relating to Measure
13 37 waivers shall be determined pursuant to Ordinance No. 2008-02 and Measure 49.

14 **(4) Determination of Compensation and Delegation of Authority for Claims
15 Regarding Land Use Regulations adopted after January 1, 2007.**

16 The City Council shall determine the validity of any claim filed under Measure 49 after June
17 28, 2007.

18 **(5) Claims for Compensation for Claims regarding Land Use Regulations
19 adopted after January 1, 2007.**

20 (A) Filing. All claims shall be filed with the Director in person or by U.S. Mail. The filing date
21 is the date the claim is received by the city.

22 (B) Submittal requirements.

23 (1) Claimant shall file a complete Measure 49 claim form provided by the Department
24 including:

25 (a) the name and address of each owner and the date when the property was acquired;

26 (b) the address, if any, and the assessor's map and tax lot number of the property that is the
27 subject of the claim;

28 (c) a statement of the person's desired use of the property for residential use;

29 (d) a specific reference to each land use regulation enacted after January 1, 2007 that is alleged
to restrict the person's desired use of the property and the date the land use regulations were
enacted;

(e) the amount of reduction in fair market value alleged for each regulation at issue plus
interest;

(f) whether a permit was issued for development of the property including a description of the
use and the case file number;

(g) whether a claim was filed for the subject property with the state or any other government;
and

- 1 (h) any other information reasonably related to the review and processing of the claim as
2 required by the Director of the Planning and Community Development Department or as
3 provided on the Measure 49 claim form; and
4 (i) all information required to be submitted by Measure 49 and any subsequent amendments to
5 Measure 49.

6 (2) Claimant shall also provide:

- 7 (a) evidence of the acquisition date of the claimant, including the instrument conveying the
8 property to the claimant and a report from a title company identifying the person in which title
9 is vested and the claimant's acquisition date and describing exceptions and encumbrances to
10 title that are of record;
11 (b) the written and notarized consent of all of the owners if there is more than one owner;
12 (c) an appraisal showing the fair market value of the property one year before the enactment of
13 each land use regulation and the fair market value of the property one year after the enactment.
14 The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to
15 exceed \$5,000, may be added to the calculation of the reduction in fair market value under this
16 subsection. The appraisal must: (1) be prepared by a person certified under ORS Chapter 674
17 or a person registered under ORS Chapter 308; (2) comply with the Uniform Standards of
18 Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery,
19 and Enforcement Act of 1989; and (3) expressly determine the highest and best use of the
20 property at the time the land use regulation was enacted; and
21 (d) the applicable claim(s) review fee which shall be established by resolution of the City
22 Council.

23 (3) Only one claim for each property may be filed for each land use regulation.

24 (C) Claim review process. The city shall:

25 (1) Deny a claim if:

- 26 (a) it is not filed within five (5) years from the date the land use regulation was enacted;
27 (b) an application for a comprehensive plan or zoning amendment is approved for the subject
28 property; or
29 (c) the highest and best use of the property was not residential at the time the land use
regulation was enacted.

(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;

(4) After providing notice of the missing information, deem the application complete if:

- (a) the claimant provides the missing information and the required fee; or
(b) the claimant provides a written statement that some or all of the missing information will
not be provided and the required fee.

(5) Deem the application complete when filed if the city fails to notify the claimant of missing
information within sixty (60) days after receiving the claim;

1
2 (6) Deem the application withdrawn if the claimant fails to provide the missing information, or
3 fee, or a written statement that some or all of the missing information will not be provided
4 within the time specified in the notice of missing information; and

5 (7) Issue a final determination on a claim within 180 days from the date the claim is deemed
6 complete.

7 **(6) Director Report and City Council Review.**

8 (A) Claims review process. Upon receipt of a filing, the Director shall follow the claims review
9 process under Section (5).

10 (B) Review criteria. The Director shall determine whether to recommend to the City Council to
11 approve or deny the claim based on a demonstration by the owner that:

12 (1) A Lincoln City land use regulation enacted after January 1, 2007 and after the property was
13 acquired restricts the person's desired residential use of the property;

14 (2) The land use regulation has the effect of reducing the fair market value of the property;

15 (3) The highest and best use of the property at the time the property was acquired is the
16 person's desired use of the property;

17 (4) The land use regulation is not an exempt land use regulation under the terms of
18 Measure 49;

19 (5) The time limitations for filing a claim, as specified in Measure 49, have not been exceeded;
20 and

21 (6) All other requirements of law have been met.

22 (C) Acquisition date. The date the property was acquired is:

23 (1) The date the claimant became the owner of the property as shown in the deed records of the
24 county in which the property is located;

25 (2) If there is more than one claimant for the same property under the same claim and the
26 claimants have different acquisition dates, the acquisition date is the earliest of those dates;

27 (3) If the claimant is the surviving spouse of a person who was an owner of the property in fee
28 title, the claimant's acquisition date is the date the claimant was married to the deceased spouse
29 or the date the spouse acquired the property, whichever is later. A claimant or a surviving
spouse may disclaim relief by using the procedure provided in ORS 105.623 to 105.649; and

(4) If a claimant conveyed the property to another person and reacquired the property, whether
by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired
ownership of the property.

(5) A default judgment entered after December 2, 2004 does not alter a claimant's acquisition
date unless the claimant's acquisition date is after December 2, 2004.

(D) Notice of hearing. If a claim is deemed complete and not rejected, the Director shall draft a
staff report and provide notice of opportunity to comment and to request a hearing.

(1) Notice shall be sent to:

(a) The claimant or representative and all owners of the subject property known to the City;

(b) All property owners of record within two hundred fifty (250) feet of the subject property;

(c) The Planning Commission and City Council and the recognized city neighborhood
association in which the subject property is located; and

1 (d) The Department of Land Conservation and Development.

2 (2) The notice shall contain:

3 (a) the address, if any, and the assessor's map and tax lot number of the property that is the
4 subject of the claim;

5 (b) a statement of the person's desired use of the property for residential use;

6 (c) the number of dwellings, lots or parcels sought by the claimant, as well as the specific
7 regulations alleged to restrict the use of the property;

8 (d) a statement that the claim, staff report and any information submitted is available at the
9 Department for inspection or copying at cost and the phone number of a City staff contact;

10 (e) a statement that all persons may submit written comments and/or request a hearing within
11 thirty (30) days from the date the notice is mailed;

12 (f) a statement that if a hearing is requested, notice of hearing shall be by publication only, at
13 least 20 days prior to the hearing;

14 (g) a statement that judicial review of the final determination on the claim is limited to the
15 written evidence and arguments submitted to the city;

16 (h) a statement that prior to the end of the comment period, the claimant may request an
17 additional seven (7) days to respond to new evidence or to submit final arguments;

18 (i) a statement that judicial review is available only for issues that are raised with sufficient
19 specificity to afford the public entity an opportunity to respond; and

20 (j) any other information as deemed necessary by the Director.

21 (E) At least seven days prior to the City Council initial action on the matter, the Director shall
22 prepare a staff report including a recommendation to approve or deny the claim, and including
23 the appropriate relief to be granted, such as whether and how much to pay in compensation, or,
24 in lieu thereof, a recommendation regarding the number of dwellings and lots that may be
25 approved and the land use regulation(s) that should be waived. If in the opinion of the Director
26 the claim, if granted, has potential to significantly affect existing or future development in the
27 city, the Director may forward the claim and report to the Planning Commission and request
28 the Planning Commission comment.

29 (F) If no request for hearing is made, the claim shall be placed on the City Council consent
30 agenda for action.

31 (G) If a request for hearing is made from a person entitled to notice or otherwise affected or
32 aggrieved, the Director shall schedule the matter for public hearing and publish notice of
33 hearing at least twenty days prior to the hearing. No additional mailed notice is required.

34 (H) In reviewing the claim, the City Council shall consider such factors as the claimed
35 reduction in fair market value; the nature of the proposed use or development, if any, and the
36 impact of the proposed use or development including comments, if any, by the Planning
37 Commission. The City shall consider comments on the record including any comments actually
38 received by the conclusion of the comment period or public hearing, and such other
39 information as the City deems relevant and material.

1 (I) The City Council shall issue a final decision after providing notice and a hearing within 180
2 days from the date the claim is deemed complete.

3 (J) Final decision. The City Council may reject or approve the claim, and determine relief
4 including payment of compensation, a waiver of regulations, or any combination of such
5 remedies. The Council may waive some regulations specified in the claim and deny waiver of
6 others. The Council is not limited to those regulations listed in the claim and may impose any
7 conditions of approval that it deems reasonable and appropriate to protect the public interest.
8 Failure to comply with any condition of approval is grounds for revocation of the approval of
9 the compensation for the Claim, grounds for recovering any compensation paid, and grounds
10 for revocation of any other action taken under this Ordinance.

11 (K) Notice of the Council's final decision shall be mailed to any person who submitted written
12 comments prior to the close of the comment period or who appeared orally or in writing at the
13 public hearing. The city shall send notice and a copy of the decision to the claimant. The notice
14 shall contain a brief description of the decision including the relief granted. If relief includes a
15 waiver, the description shall include a list of all regulations that the City Council decided to not
16 apply and the specific number of dwellings, lots or parcels authorized by the waiver. The
17 notice shall also state that a claim has been, or may need to be, filed with the State.

18 **(7) Burden of Proof and Record.**

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

25 **(8) Effect of Waiver.**

26 (A) A decision of the city to waive a land use regulation shall in no way impact the property
27 owner's obligation to demonstrate compliance with any regulations not expressly provided for
28 in the decision or to obtain any required approvals or permits.

29 (B) A use authorized by a waiver has the legal status of a nonconforming as provided by law.

(9) Procedural Error.

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

(10) Recordation of Waiver.

The City shall record a memorandum of any decision approving a claim for compensation,
including any waiver of regulations, in the deed records for Lincoln County.

(11) Reconsideration of Waiver.

The City Council may, at 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

1 in the law relating to Measure 49. The decision to reconsider may be made without notice or
2 hearing; but, the decision on reconsideration shall be made only after notice and opportunity to
3 be heard consistent with the requirements for claim and review provided under this Ordinance
4 for Council review, whichever is applicable. At the conclusion of the process, the Council may
5 affirm, modify, or revoke the earlier decision. If the Council modifies or revokes a decision
6 that resulted in payment of compensation, the Council may institute an action for recovery. If
the Council modifies or revokes a decision to modify, remove, or not apply a land use
regulation, it shall issue an order setting forth such remedy as it deems appropriate to protect
the public interest.

7 **(12) Appeals.**

8 (A) A person that is adversely affected by a final determination under this Ordinance may
9 obtain judicial review of that determination as provided in Measure 49, under ORS 34.010 to
43.100. A person is adversely affected if the person is:

- 10 (1) an owner of the property that is the subject of the final determination or;
11 (2) a person who timely submitted written evidence, arguments or comments.

12 (B) Judicial review of a decision under this Ordinance is:

- 13 (1) limited to evidence in the record at the time of the final determination; and
14 (2) available only for issues raised with sufficient specificity to afford an opportunity
15 to respond.

16 **(13) Availability of Funds to Pay Demands.**

17 Compensation can only be paid based on the availability and appropriation of funds for this
18 purpose.

19 **(14) Severability.**

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

23 **(15) Applicable State Law.**

24 For all Claims filed with the City of Lincoln City, the applicable state law is Measure 49 as
25 amended, modified or clarified by subsequent amendments or regulations adopted by the
26 Oregon State Legislature or Oregon State Administrative Agencies. Any Claim that has not
27 been processed completely under this Ordinance shall be subject to any such amendments,
28 modifications, clarifications or other actions taken at the state level and this Ordinance shall be
29 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 Claims filed
under the authority of those provisions of Measure 49.

Section 2. Emergency Clause and Effective date. This ordinance is essential to the
preservation of the health, safety, welfare and financial integrity of the city with amendments
to Oregon Revised Statutes Chapters 195 and 197 from Ballot Measure 49, passed November
6, 2007, and effective December 6, 2007, and it is essential to have a process in place for

1 reviewing Claims under the law. Therefore an emergency is hereby declared to exist and this
2 Ordinance shall apply retroactively to December 6, 2007.

3 **Section 3. Effect of 2007 Ballot Measure 49 on Lincoln City Measure 37 Waivers**

4 Any authorization for a Claimant to use Property without application of a Lincoln City land use
5 regulation as provided in a Lincoln City Measure 37 Waiver will expire as of December 6,
6 2007, as will the effect of any order of City of Lincoln City denying a Claim. A Claimant may
7 continue an existing use of Property that was authorized under ORS 197.352 (2005), or
8 complete a use of Property that was begun prior to December 6, 2007 only if the Claimant has
9 a common law vested right to complete and continue that use on December 6, 2007, and the
10 use complies with the terms of any applicable Lincoln City Measure 37 Waiver.

11 **Section 4.** The provisions contained in Chapter 14 of Title 17, Lincoln City Municipal Code
12 are entirely replaced by this Ordinance. Ordinance No. 2005-07 is repealed.

13 Read for the first and second time this 25th day of February 2008.

14 Adopted this 25th day of February 2008.

15 
16 LORI HOLLINGSWORTH, MAYOR

17 ATTEST:

18 
19 CATHY STEERE, CITY RECORDER