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2 **BEFORE THE BOARD OF COMMISSIONERS**  
3 **FOR LINCOLN COUNTY, OREGON**

4 ORDINANCE # 524  
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6 **Establishing Local County Procedures for Processing Claims under ORS 195.300-195.336**  
7 **and Declaring an Emergency**

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8 Findings  
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10 WHEREAS, in some situations, land use regulations unfairly burden particular property  
11 owners; and

12 WHEREAS, to address these situations, Oregon has provided for laws (now codified in  
13 ORS 195.300 to 195.336) to provide for just compensation for unfair burdens caused by land use  
14 regulations; and

15 WHEREAS, ORS 195.305(5) provides that “A public entity may adopt or apply  
16 procedures for the processing of claims under ORS 195.310 to 195.336” (Measure 49 Claims);  
17 and

18 WHEREAS, it is appropriate and expedient for Lincoln County to adopt County  
19 procedures for processing of Measure 49 claims; and

20 WHEREAS, pursuant to ORS 195.305(7), a decision by a public entity that an owner  
21 qualifies for just compensation under ORS 195.305-195.336, and a decision by the County on  
22 the nature and extent of the compensation are not land use decisions; and

23 WHEREAS, the local procedures adopted within this Ordinance are not land use  
24 regulations; and

25 WHEREAS, this Ordinance only applies within the unincorporated area of Lincoln  
26 County;

27 **NOW, THEREFORE, THE LINCOLN COUNTY BOARD OF COMMISSIONERS**  
28 **ORDAINS AS FOLLOWS:**

29 **SECTION 1. Adoption of Code Provisions**

30 The attached Exhibit “A” which includes Sections 7.1005 through 7.1040, which are  
31 hereby incorporated by reference, are hereby added to and made a part of Lincoln County Code  
32 (LCC) Chapter 7, General Administration.



## **Exhibit A**

### **LAND USE REGULATION COMPENSATION CLAIMS**

#### **7.1005 Purpose**

The Purpose of LCC 7.1005 to 7.1040 is to establish procedures for the filing, review and final determinations on claims for compensation for land use regulation restrictions on the use private real property in accordance with ORS 195.300-195.336. Nothing in this section is intended to affect or alter rights provided by ORS 195.300-195.336 or the Oregon or United States Constitution.

#### **7.1010 Procedure for Filing Compensation Claim**

(1) Claims for land use regulation compensation claims authorized pursuant to ORS 195.310 shall be filed with the Department of Planning and Development on forms prescribed by the department.

(2) Claims shall be accompanied by all of the information specified on the forms and as described in ORS 195.312, and by the filing fee established by order of the Board.

(3) Upon receipt of a filed claim, the Director of Planning and Development, or his or her designee, hereinafter called "Director" shall review the claim to determine if it is complete in accordance with subsection (2). If the claim is not complete, the Director shall notify the claimant in writing within 60 days of the date the claim was filed what information is missing. The claim shall be deemed complete for purposes of this section upon receipt by the Director of:

(a) The missing information;

(b) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(4) If the Director does not notify the claimant within 60 days of the date the claim is filed that the claim is incomplete, the claim is deemed complete on the date it was filed.

#### **7.1020 Procedure for Reviewing Compensation Claims**

(1) Notice

(a) Upon receipt of a complete claim in accordance with LCC 7.1010 (3), the Director shall provide notice of the claim at least 30 days before the public hearing on the claim. Notice shall be provided to:

(A) All owners identified in the claim;

(B) The owners of record of property on the most recent tax assessment roll of Lincoln County:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part outside an urban growth boundary.

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within the Agricultural Conservation Zone (A-C) or Timber Conservation Zone (T-C).

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within the Agricultural Conservation Zone or Timber Conservation Zone;

(C) The Department of Land Conservation and Development; and

(D) The city, if the property is located within the urban growth boundary of the city.

(b) The notice required pursuant to this subsection shall describe the claim and state:

(A) The date, time and place of the public hearing;

(B) That all written evidence and arguments relating to the claim must be submitted by the close of the public hearing;

(C) That judicial review of the final determination of the county on the claim is limited to the written evidence and arguments submitted to the county; and

(D) That judicial review is available only for issues that are raised with sufficient specificity to afford the county an opportunity to respond.

(2) Public Hearing

(a) The Board or its designee shall hold a public hearing on the claim. The hearing will be conducted in accordance with the Board's rules of procedure. All parties appearing shall be given the opportunity to present and rebut evidence.

(b) Unless additional time is granted by the Board or its designee in accordance with subsection (c) of this section, written evidence and arguments on the claim must be submitted to the county no later than the close of the public hearing on the claim.

(c) 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 the public hearing. Upon such request, the Board or its designee shall grant not less than seven days of additional time after the close of the public hearing for the claimant to submit written evidence and arguments in response to testimony or submittals.

(d) The County shall make the record on review of a claim, including any staff reports, available to the public before the close of the record.

**7.1030 Determination on Compensation Claim**

(1) Upon completion of the public hearing and closure of the record on the claim, the Board or its designee shall make a determination to either approve or deny the claim.

(2) The claim shall be approved if the claimant establishes through substantial evidence that the claim meets all of the following criteria:

(a) The subject property is a lawful unit of land as defined in ORS 195.300.

(b) The claim is based on the enactment by the county of a land use regulation as defined in ORS 195.300.

(c) The subject land use regulation restricts residential use or a farming or forestry practice on the subject property.

(d) The subject land use regulation is not a regulation described in ORS 195.310 (3).

(e) The claim was filed within five years of the date of the enactment of the subject land use regulation.

(f) The claimant's acquisition date of the subject property as specified in ORS 195.328 is prior to the date of enactment of the subject regulation.

(g) The subject land use regulation causes a reduction of the subject property's fair market value as defined in ORS 195.332.

(h) The reduction in fair market value of the subject property caused by the subject land use regulation is documented by an appraisal meeting the standards and requirements of ORS 195.310.

(3) The claim shall be denied if the Board or its designee finds that the claimant has failed to establish through substantial evidence that the claim meets all of the criteria set forth subsection (2).

(4) A final determination on a land use compensation claim made pursuant to this section shall be issued within 180 days after the date the claim is complete in accordance with LCC 7.1010 (3).

**7.1040 Disposition of Approved Compensation Claim**

(1) If a land use regulation compensation claim is approved by the Board or its designee pursuant to LCC 7.1030 (2), the Board, at its sole discretion, shall either:

(a) Authorize payment of compensation to the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the subject land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(2) When a use authorized by subsection (1)(b) is lawfully established, the use may be continued lawfully in the same manner as provided by LCC 1.1701 and ORS 215.130.