



Measure 37 and You

Measure 37 Claims: What You Can Do

Measure 37 was adopted by the voters in November 2004. Depending on when your neighbors bought or inherited their property they may no longer have to obey the same basic zoning regulations that apply to you. This pamphlet will help you find out what effect Measure 37 may have on you and how you can get involved to protect your community.

What the law says

Measure 37 says that if a landowner believes that a zoning regulation or other land use protection standard was adopted after the landowner purchased the property and if that standard:

- restricted what the landowner could do with the property, and
- reduced the value of the property,

then the landowner can “make a written demand for compensation” for that loss of value. (See Measure 37, Section (4)) The state or local government must then use our tax dollars or other funding to pay those demands for compensation, or else allow the owner to be exempted from our neighborhood protection standards.

What can happen to my neighborhood?

Measure 37 did not provide any source of funds, and the government does not have extra money to pay these demands. This leaves state and local governments no choice: they are forced by Measure 37 to allow these property owners to ignore the rules that the rest of us have to play by. These special exemptions can lead to significant unplanned development in our communities.

What can I do about Measure 37 threats to my community?

As residents of Oregon, we have repeatedly affirmed at the ballot box that we value the benefits generated by our land use protection system. Being aware and sharing information with others about the threats Measure 37 poses to our own property values and quality of life is the best way to minimize its damage and get positive changes made to this bad law.

The remainder of this pamphlet describes how you can help to do that.

STEP 1: Find out—Is there a Measure 37 demand on land near me?

Although voters were not told this before the election, the law does not require public notice or a public hearing for government actions taken in response to demands for compensation under Measure 37. Even though you live next door, your county or city government might not notify you that your neighbor has filed a demand with them. Many counties and cities restored a notice requirement when

they adopted their local Measure 37 ordinance, but some have not. In Coos County, for example, one property owner complained to the county planning staff that he was not notified when his next-door neighbor filed a Measure 37 demand on property over which he has an access easement.

If you don't already know about any demands filed near you, your first step is to find out if any exist.

a) How do I find out if a Measure 37 demand has been filed in my neighborhood?

You need to contact your local planning office to find out what Measure 37 demands have been filed. To find your local planning office, it helps if you know whether you live within the city limits. You may have an address with a city name in it, but live outside the city limits in the county.

Cities: Call your city planning department and ask whether you are within the city limits. Often the planning department is part of "Community Development." If you have access to the internet, go to <http://www.orcities.org/cityinfo/citybooksMain.cfm> to find out how to contact your planning official.

Counties: If you are outside the city limits check with your county. If you have access to the internet, go to <http://www.aocweb.org/J-C-Roster.htm> to find phone numbers for county commissioners.

If you live close to the city limits you may want to check with the county and the city to see if a Measure 37 demand could affect your property.

b) What do I ask for?

Ask if any Measure 37 demands for compensation have been filed with the jurisdiction you are calling. The files are public information and you cannot be denied access to them. If demands have been filed, you can ask the planning staff to help you find the ones closest to you or in the area that is of greatest interest to you.

The government can charge a reasonable fee for copying and any staff time needed to collect documents for you. This is the law under ORS 192.410-440. ("ORS" stands for "Oregon Revised Statutes" and is the compilation of all of Oregon's laws.) Some local jurisdictions post this information on their websites. If you have internet access, browse the internet for this information (a librarian can help you) or ask your local government if this information is available electronically and where you can find it.

STEP 2: How can I tell if a demand for compensation affects me?

Once you have found the list of demands that have been submitted, you will need to decide which, if any, are of interest to you or your friends and family. The form filed by the property owner should tell you where the property is and it often will identify what kind of development is requested for the property.

There are three primary ways a demand can affect you:

1. **The Measure 37 demand is on the property next door to you.** What your neighbor wants to do could reduce the value of your home. There are demands now for new subdivisions with access through a neighbor's property and one for power lines to cross private property. The added traffic, water, or sanitation needs may affect you. If you are farming or ranching, new

development may create conflicts with what you do, which can affect your costs and your ability to get a business loan.

2. **The Measure 37 demand is on property that is in your area**, but it is not adjacent to you. This can affect your neighborhood and your property values even if you are not next door. There have already been demands filed for a casino and for numerous commercial buildings near people's homes. Look for development that seems substantially different from what exists now.
3. **The Measure 37 demand is on property that is not next to you or in your neighborhood, but it may affect your business or quality of life.** For example, a large subdivision not in your neighborhood may still dump traffic on the road past your house or that you use to take your children to school. The numerous demands to put houses on farmland may not affect your farming or tree growing operations directly, but they might have an impact on agricultural processing facilities in your area by reducing their business and putting their continued operation at risk.

Once you have reviewed the demands, ask whether any of them, taken alone or together, has the potential to impact you in any of the ways described above.

STEP 3: I am affected by a Measure 37 demand for compensation. What do I do now?

If you believe you would be harmed by approval of a Measure 37 demand, you will want to participate in the decision process. For a normal land use decision, neighbors would be notified and you would have the right to participate in a public hearing. That is not necessarily the case under Measure 37. Although some counties and cities have adopted ordinances that provide notice to neighbors and a public hearing, some have not.

a) What is the process for making a decision on a Measure 37 demand?

The first step is to find out whether your local government has adopted a Measure 37 ordinance. Find out by calling your local government's planning department and asking them or, in some cases, by going to their website.

Read the ordinance and ask yourself if it is clear how the process is supposed to work. If it is not clear, call the planning department and ask a planner there to answer your questions or walk you through the process. Find out the status of the demands that concern you. Some counties are acting very quickly and the demands that might affect you may have already been approved.

b) How do I make my views known?

Find out when or whether there will be a hearing on the demand where they will take public comment – that's your chance to speak out about your concerns. Governments have the authority to require a hearing for every Measure 37 demand and many are doing so.

In some jurisdictions, the Measure 37 demand is on the agenda for a meeting, but it is only a public meeting and not a hearing. In these cases, you may not have a chance to testify. However, you still have the right to tell your elected officials what you think about the demand and about not having a chance to be heard. You may also be able to submit written comments prior to the meeting or make comments during a "public comment" period at the beginning of the agenda.

If you have to choose between writing comments and participating in the hearing, it is better to show up in person. You will have a greater impact. The best solution is to show up ready to speak and with several copies of your written comments to hand in as well. If you are going to the trouble to organize your thoughts to say in public, putting them on paper will not take any more time.

You do not have to be a lawyer, planner, actor, or expert to testify. Everyone gets nervous before they speak and they do it anyway. What is important for you and your community is that you show up and speak your piece. If you write down your comments, share them with reporters, the state government, your state legislators, and your neighbors.

You will have more impact if you find other friends and neighbors who will be willing to testify or write comments also. Talk to your neighbors and leave them a summary sheet of information about the demand and when and where the hearing will take place. Write letters to the editor to let people in your community know what is proposed and what they can do about it.

c. What do I include in my comments?

Answering the questions listed below will help you analyze a Measure 37 demand and make meaningful comments to your local government. If you have the chance to comment you want to be effective. To do that, your comments need to address specific criteria and not just your personal views about the claim. For more information, see *Measure 37: Summary and Questions*, available online and by contacting 1000 Friends. You can also review the State of Oregon's Q&A on Measure 37, which is available online at <http://www.oregon.gov/LCD/docs/measure37/m37qanda.pdf>.

Try to address as many of the following points as you can.

___ Is the local process democratic and open? If it is difficult to get information about the demands, or if there is no option for a public hearing, comment on that. Request that the process be changed to be more open and democratic. Your comments should specifically request written notice of any hearings, copies of any staff reports, and a notice of the jurisdiction's decision.

___ Does the demand satisfy local procedural requirements? If your local government adopted an ordinance to process Measure 37 demands for compensation, determine whether this demand complies with it. If you are not sure what the ordinance requires, talk to your local planning office and ask them to explain it to you.

___ Is there adequate evidence to support the demand? For a demand to be valid, the claimant must demonstrate that the land use regulation was changed **AFTER** the owner obtained the land, that it **RESTRICTED** the use of the land, and that the restriction **REDUCED** the value of their property. We believe that local governments may require specific information from a claimant to ensure that the demand is valid under the measure. This information should include, at least:

- 1) A legal description of the property for which compensation is claimed,
- 2) A description of each ownership interest, including trustees, lien holders, and lessees,
- 3) The date the claimant acquired ownership of an interest in the real property,
- 4) Proof of that ownership,
- 5) A current title report verifying ownership interest(s),
- 6) Identification of the specific land use regulation(s) that restricts the owner's use of the real property for which compensation is claimed,

- 7) A statement showing the manner and the extent to which the regulation(s) restricts the use of the real property and has the effect of reducing the fair market value of the property, and
- 8) The amount of the demand based on the reduction in fair market value.

If the claimant does not submit sufficient written information to demonstrate that their claim qualifies under Measure 37, a local government can reject the claim. Your comments should urge them to do so.

___ Is the claimant demanding compensation for a specified dollar amount? Measure 37 requires a written demand for compensation, not a demand for a waiver of regulations. If the claimant has not demanded compensation, your jurisdiction cannot waive any regulations “in lieu of compensation.”

___ When did the current owner acquire the property? Measure 37 only allows a jurisdiction to waive or modify a regulation enacted after the *current owner* inherited, purchased, or otherwise acquired the property. It cannot waive a regulation enacted after the family member (a grandparent, for example) acquired the property but before the current owner acquired it. If ownership is or was held by a trust, the date of transfer in or out of the trust is the date of acquisition. Your county clerk’s office will have records of all property transfers in your county and its cities. Their staff can help you look up deeds to determine when the current owner acquired the property.

___ Is the claimant the sole owner? Are all ownership interests, including mortgage holders such as banks, aware of the claim and have all consented to its filing? If not, or if uncertainty exists, be sure to point this out in your comments.

___ Was the local zoning in place at time of acquisition later found to violate state rules or state law? The Statewide Planning Goals were adopted on January 1, 1975. They protect land in farm and forest zones, land along the coast, and other land as well. Some cities and counties adopted local plans and ordinances after that date that were later found to violate the Statewide Goals. For example, some counties adopted Exclusive Farm Use (EFU) zones with minimum lot sizes too small to comply with Goal 3 (Agricultural Lands) or improperly placed farm or forest land in rural residential zones, and these local provisions were later overturned. In these cases, you can argue that the proposed use still must comply with the Goals, even if it was allowed by the local code at the time of acquisition. For land outside of urban areas that was acquired after January 1, 1975, the proposed use will need to comply with the Statewide Planning Goals.

___ Does state law also govern the proposed use? Most county and some city land use regulations implement state requirements. For almost all land outside of urban growth boundaries (UGBs), the claimant’s proposed use will remain prohibited by state regulation even if a local government allows an otherwise illegal development to proceed. Development cannot legally proceed unless a waiver is also obtained from the state. Examples of this are restrictions on urban uses outside of UGBs and restrictions on residential development in farm and forest zones. If this is the case with a Measure 37 demand in your community, make sure your comments address this issue. Be sure you also notify the state of your concerns regarding this demand. (See Step 4, below.) For more information on this issue, see the Attorney General’s February 24, 2005 opinion that local governments cannot waive state requirements. You can download this letter from <http://www.oregon.gov/LCD/docs/measure37/m37dojadvice.pdf>.

___ Is what the claimant is asking for the only solution? One of the biggest misconceptions about a Measure 37 waiver is that if the government does not pay, then that landowner is allowed to do anything she wants with the property. This is not so.

Section 8 of the law states that absent payment the government may “modify, remove, or not ... apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.” Your local government does not have to approve whatever the claimant demands. Point out what probable impacts there would be (costs to the jurisdictions, existing property owners, etc.), and propose a different allowed use. (For example, if your neighbor wants to put 100 houses on the 100 acres next to you and that will create traffic problems and septic system failures, propose that 20 acre lots, which were also allowed at the time, is a more reasonable scale of development for the neighborhood.)

STEP 4: What happens after my local government decides to approve a Measure 37 demand?

The landowner who submitted and gets approved a Measure 37 demand may later ask for a building permit. To find out if this has happened, you will need to ask your local building department. Sometimes building permits are issued by a different department than the planning department and decisions are not always perfectly coordinated. It is a good idea to check in with both the planning and building departments to make sure you have the correct information.

Keep in mind that most county decisions will also involve state standards, which the county cannot waive. This means that a county cannot legally issue a building permit for a Measure 37 demand that requires a waiver of state rules if the state has not issued such a waiver. (*See Attorney General letter of February 24, 2005*)

Demands are being filed at the state with the Department of Administrative services (DAS). DAS is in the process of setting up a database tracking all such filings. Comments on demands that concern you should be submitted to the Department of Land Conservation and Development: Lane Shetterly, Department of Land Conservation and Development, 635 Capitol Street NE, Salem, OR 97301. Be sure and address the issues covered in your local comments as well as anything specific to state regulations.

STEP 5: Can I submit a claim for a decrease in my property value due to a neighbor’s Measure 37 demand?

Measure 37 does not allow you to seek compensation for the reduction in your property value due to uses allowed by a Measure 37 waiver. However, there may be a private right of action and/or the ordinance adopted by your local government may allow you to seek compensation from the person developing under a Measure 37 waiver. You will need to read the ordinance and ask your local planning department if the ordinance creates a new right to sue your neighbor for a decrease in your property value.

STEP 6: Share information you have.

Please send copies of any comments you submit to your state legislator, your city or county officials, and your local newspaper. You can find your state legislator at <http://www.leg.state.or.us/findlegsltr/findset.htm>.

It also helps to let the House and Senate Committee chairs know what you think about your experience with Measure 37 because they are writing legislation to change the measure.

In the Senate, the Senate Environment and Land Use Committee chairman is Senator Charlie Ringo (D-Beaverton), who can be reached at (503) 986-1717 or sen.charlieringo@state.or.us.

In the House, Rep. Bill Garrard (R-Klamath Falls) is chairman of the House Land Use Committee and he can be reached at (503) 986-1456 or email at rep.billgarrard@state.or.us.

PLEASE e-mail a copy of your comments to: julie@friends.org (write “M37 comments” in the subject line) or mail a copy to 1000 Friends of Oregon, 534 SW Third Avenue, Suite 300, Portland, Oregon 97204.

Note: This material is provided for general information purposes only, and is not intended to serve as legal advice. You are urged to consult a lawyer concerning your own situation and any specific legal

questions you may have. If you have any questions or feedback concerning this summary, contact 1000 Friends of Oregon at 503-497-1000 or info@friends.org.