



May 4, 2005

To: Citizen Participation Organizations and Interested Parties

From: Mark Brown, Land Development Services Manager  
Department of Land Use and Transportation

Subject: **PROPOSED ORDINANCE No. 638**

Enclosed for your information is a copy of proposed Ordinance No. 638. Listed below is a description of the ordinance, hearing dates, and other relevant information. If you have any questions about the ordinance, or if you would like additional information, please contact the Land Development Services Division at (503) 846-8761.

### **Ordinance Purpose and Summary**

The purpose of this Ordinance is to accommodate decisions adopted under Measure 37 during the County's development review process. The Ordinance proposes to amend the Community Development Code by adding a new section that sets forth the development review standards that apply when an applicant has had a land use regulation waived in response to a Measure 37 claim.

### **Who Is Affected**

All residents of Washington County are potentially affected.

### **What Land is Affected**

All unincorporated lands in Washington County, both inside and outside the Urban Growth Boundary (UGB) are potentially affected.

### **Key Provisions**

- Exhibit 1 adds a new section, Section 214, to the Community Development Code. Section 214, titled Implementation of Measure 37, sets forth standards for application completeness, development permit approval, and conditions of approval when an applicant has had a land use regulation waived in response to a Measure 37 claim.

### **Initial Public Hearings**

#### **Time and Place**

**Planning Commission**  
**7:00 p.m.**  
**June 15, 2005**

**Board of County Commissioners**  
**6:30 pm**  
**June 28, 2005**

Hearings will be held in the Shirley Huffman Auditorium in the Public Services Building, 155 N. 1st Avenue, Hillsboro, Oregon.

On June 28, 2005, the Board of County Commissioners (Board) may choose to adopt the ordinance, make changes to it, continue the hearing to a future date, or reject the ordinance. If it is adopted, it would become effective on July 28, 2005.

**Urban Comprehensive  
Plan Policies Amended**

- None.

**Community  
Development Code  
Standards Amended**

- A new Community Development Code section, Section 214, will be added to the Community Development Code.

**How to Submit  
Comments**

Submit oral or written testimony to the Board and/or the Planning Commission at one of the public hearings. Written testimony may be mailed or faxed to the Board or Planning Commission in advance of the public hearings in care of the Planning Division. **At this time, we are unable to accept e-mail as public testimony.**

Washington County, Planning Division  
155 N. 1<sup>st</sup> Ave., Suite 350-14, Hillsboro, OR 97124-3072  
Fax: 503-846-4412

Failure to submit oral or written testimony before the Board or Planning Commission may preclude appeal of a decision by the Board to adopt an ordinance as filed or amended.

**Staff Contact**

Suzanne Savin, Senior Planner  
155 N. 1<sup>st</sup> Ave., Suite 350-14, Hillsboro, OR 97124-3072  
Telephone: 503-846-3966 Fax: 503-846-2908  
e-mail: [suzanne\\_savin@co.washington.or.us](mailto:suzanne_savin@co.washington.or.us)

**Proposed Ordinance is  
available at the  
following locations:**

- The Washington County Department of Land Use and Transportation, Planning Division, 155 N. 1<sup>st</sup> Ave., Hillsboro, OR 97124-3072  
Telephone: 503-846-3519
- [www.co.washington.or.us/deptmts/lut/planning/ordhome.htm](http://www.co.washington.or.us/deptmts/lut/planning/ordhome.htm)
- Cedar Mill Community Library and Tigard Public Library
- Citizen Participation Organizations (CPOs); Call 503-725-2124 for a directory of CPOs.

[/wpshare/2005ord/Hearing Notices/ORD638](#)

WASHINGTON COUNTY ENACTED ORDINANCE

7  
Pages



**ORDINANCE**

**638**

FOR WASHINGTON COUNTY CLERK'S USE ONLY



**FILED**

JUN 29 2005

Washington County  
County Clerk

Rec.

# AGENDA

## WASHINGTON COUNTY BOARD OF COMMISSIONERS

**Agenda Category:** Public Hearing – First Reading and First Public Hearing -  
Department of Land Use and Transportation All CPOs

**Agenda Title:** **PROPOSED LAND USE ORDINANCE NO. 638 – AN ORDINANCE  
AMENDING THE COMMUNITY DEVELOPMENT CODE  
ELEMENT OF THE COMPREHENSIVE PLAN TO IMPLEMENT  
MEASURE 37**

**Presented by:** Mark Brown, Land Development Services Manager  
Chris Gilmore, County Counsel

**SUMMARY (Attach Supporting Documents if Necessary)**

Ordinance 638 proposes to amend Community Development Code (CDC) to add Section 214, Implementation of Measure 37. The purpose of the amendments is to accommodate decisions adopted under Measure 37 during the county’s development review process.

Ballot Measure 37 (M-37), effective on December 2, 2004, allows a property owner to submit a claim for compensation based on loss in the value of their land as a result of a local government enforcing a land use regulation against their property. The county began making M-37 claim decisions in May. A M-37 claim decision is not a land use decision, and therefore, a subsequent land use decision is typically required before development can begin. The CDC does not currently allow using an earlier CDC provision in making a contemporary land use decision, although this is what M-37 provides for when a current regulation is “waived.” The proposed CDC changes will allow the review authority to make land use decisions using a combination of current and older CDC provisions when an applicant has received a M-37 “waiver.”

On June 15, 2005, the Planning Commission will conduct a public hearing on the ordinance.

The staff report and attachments will be provided to the Board prior to the hearing and copies will also be available at the Clerk’s desk.

**DEPARTMENT’S REQUESTED ACTION:**

Read by title only and conduct the first public hearing for Ordinance 638. At the conclusion of the hearing, adopt Ordinance 638 as filed.

**COUNTY ADMINISTRATOR’S RECOMMENDATION:**

I concur with the requested action.

# ADOPTED

Agenda Item No.	<u>4.a.</u>
Date:	06/28/05

APR 25 2005

Washington County  
County Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR WASHINGTON COUNTY, OREGON

ORDINANCE NO. 638

An Ordinance Amending the Community  
Development Code Element of the  
Comprehensive Plan to Implement Measure 37

The Board of County Commissioners of Washington County, Oregon, ordains:

SECTION 1

A. The Board of County Commissioners of Washington County, Oregon, recognizes that the Community Development Code element of the Comprehensive Plan (Volume IV) was readopted with amendments on September 9, 1986, by way of Ordinance No. 308, with portions subsequently amended by Ordinance Nos. 321, 326, 336-341, 356-363, 372-378, 380, 381, 384-386, 392, 393, 397, 399-403, 407, 412, 413, 415, 417, 421-423, 428-434, 436, 437, 439, 441-443, 449, 451-454, 456, 457, 462-464, 467-469, 471, 478-481, 486-489, 504, 506-512, 517-523, 525, 526, 528, 529, 538, 540, 545, 551-555, 558-561, 573, 575-577, 581, 583, 588, 589, 591-595, 603-605, 607-610, 612, 615, 617, 618, 623, 624, 628, 631 and 635.

B. On November 2, 2004 the voters of the State of Oregon passed Ballot Measure 37, thereby amending ORS Chapter 197 to require that the County pay compensation for the reduction in fair market value resulting from the enactment or enforcement of certain land use regulations, as specified therein, or modify, remove, or not apply the land use regulation in lieu of compensation.

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1 C. Subsequent ongoing planning efforts of the County indicate a need for  
2 changes to the Community Development Code element of the Comprehensive Plan to  
3 accommodate decisions adopted under Measure 37 during development review. The  
4 Board takes note that such changes are necessary for the benefit of the health, safety, and  
5 general welfare of the residents of Washington County, Oregon.

6 D. Under the provisions of Washington County Charter Chapter X, the Land  
7 Use Ordinance Advisory Commission has carried out its responsibilities, including  
8 preparation of notices, and the County Planning Commission has conducted one or more  
9 public hearings on the proposed amendments and has submitted its recommendations to  
10 the Board. The Board finds that this Ordinance is based on that recommendation and any  
11 modifications made by the Board, as a result of the public hearings process.

12 E. The Board finds and takes public notice that it is in receipt of all matters  
13 and information necessary to consider this Ordinance in an adequate manner, and that this  
14 Ordinance complies with the Statewide Planning Goals, and the standards for legislative  
15 plan adoption, as set forth in Chapters 197 and 215 of the Oregon Revised Statutes, the  
16 Washington County Charter, and the Washington County Community Development Code.

17 SECTION 2

18 The following exhibit, which is marked as Exhibit 1 (1 page), is hereby adopted  
19 and incorporated herein at Section 214 of the Community Development Code.

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21 ////

22 ////

1     SECTION 3

2             All other Comprehensive Plan provisions that have been adopted by prior  
3 ordinance, which are not expressly amended or repealed herein, shall remain in full force  
4 and effect.

5     SECTION 4

6             All applications received prior to the effective date shall be processed in accordance  
7 with ORS 215.427 (2003 Edition).

8     SECTION 5

9             If any portion of this Ordinance, including the exhibit, shall for any reason be held  
10 invalid or unconstitutional by a body of competent jurisdiction, the remainder shall not be  
11 affected thereby and shall remain in full force and effect, and any provision of a prior land  
12 use ordinance amended or repealed by the stricken portion of this Ordinance shall be  
13 revived and again be considered in full force and effect.

14     SECTION 6

15             The Office of County Counsel and Department of Land Use and Transportation are  
16 authorized to prepare planning documents to reflect the changes adopted under Section 2  
17 of this Ordinance, including deleting and adding textual material and maps, renumbering  
18 pages or sections, and making any technical changes not affecting the substance of these  
19 amendments as necessary to conform to the Washington County Comprehensive Plan  
20 format.

21     /////

22     /////

1 SECTION 7

2 This Ordinance shall take effect thirty (30) days after adoption.

3 ENACTED this 28th day of June, 2005, being the first  
4 reading and first public hearing before the Board of County Commissioners of  
5 Washington County, Oregon.

6 BOARD OF COUNTY COMMISSIONERS  
7 FOR WASHINGTON COUNTY, OREGON

8 **ADOPTED**

9   
10 CHAIRMAN

11   
12 RECORDING SECRETARY

13 READING

14 PUBLIC HEARING

15 First June 28, 2005  
16 Second \_\_\_\_\_  
17 Third \_\_\_\_\_  
18 Fourth \_\_\_\_\_  
19 Fifth \_\_\_\_\_  
20 Sixth \_\_\_\_\_

21 June 28, 2005  
22 \_\_\_\_\_  
\_\_\_\_\_

VOTE: Aye: Duyck, Rogers, Leeper,  
Schouten

Nay: \_\_\_\_\_

Recording Secretary: Barbara Hejtmanek Date: June 28, 2005



The following NEW Section 214, titled IMPLEMENTATION OF MEASURE 37, is added to the Community Development Code:

### **IMPLEMENTATION OF MEASURE 37**

#### **214-1 Completeness**

The Director may determine that an application is complete notwithstanding failure of the applicant to address a county land use regulation if the County previously decided to modify, remove or not apply the land use regulation for the subject property in response to a Measure 37 claim or demand.

#### **214-2 Approval of Development Permit**

Notwithstanding any other provision of this Code, the County may approve an application and development permit without the applicant having first demonstrated compliance with a county land use regulation provided that:

214-2.1 The owner of the property that is the subject of the development permit has obtained a decision from the County to modify, remove or not apply the county land use regulation as provided for by state law and any County implementing ordinance. The applicant shall be required to demonstrate compliance with the land use regulation as modified; or

214-2.2 The development permit is conditioned to prohibit any development until the property owner has obtained a decision to modify, remove or not apply the county land use regulation. If the land use regulation is modified, or if the claim or demand is denied as regards any land use regulation, the applicant must file an application and demonstrate compliance.

#### **214-3 Condition of Approval**

A development approval based on a decision to modify, remove or not apply a county land use regulation does not waive any requirement to comply with other land use regulations, including any other applicable law of the state or other entity. If the Review Authority concludes that a land use regulation continues to restrict or prohibit development of a property in a manner inconsistent with the county approval, the approval and development permit may be conditioned that no grading, building, occupancy or other similar permit shall be issued until the owner of the subject property provides proof that a decision has been made to modify, remove or not apply the regulation.