

**MINUTES  
FAIRVIEW CITY COUNCIL WORK SESSION  
FAIRVIEW CITY HALL  
1300 NE VILLAGE STREET  
FAIRVIEW, OREGON 97024**

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**January 5, 2005 -- 5:30pm**

**I. CALL TO ORDER/  
ROLL CALL**

Mayor Weatherby called the meeting to order at 5:30pm.

PRESENT: Mayor Mike Weatherby  
Councilor Darrell Cornelius  
Councilor Barbara Jones  
Councilor Steve Owen  
Councilor James Raze  
Councilor Ken Quinby  
Councilor Jim Trees

STAFF PRESENT: Jan Wellman, City Administrator  
John Andersen, Community Development  
Director  
Pam Beery, City Attorney  
Caren Huson, City Recorder

**II. DISCUSSION -  
Measure 37**

Councilor Raze reported that the Council Sub-Committee on Measure 37 (Cornelius, Raze, Wellman, Andersen, Beery) reviewed the draft ordinance and determined four areas that needed Council input.

Attorney Beery referred to Issue #1, Notice of Council Public Hearing. Attorney Beery stated that in Section 3.30.050(3) there was a sentence notifying the claimant and the public that the City may send notice to other entities, including the Department of Land Conservation and Development and Metro. The Subcommittee determined that the inclusion of this language should be considered by the full Council. Councilor Cornelius commented that if we are required to give notice, then do it; but if we are not required, we should not voluntarily tell anyone else and have them come in and interfere with our case. Mayor Weatherby agreed with Councilor Cornelius. Councilor Raze stated that the sentence does not say we must, it says we may. Councilor Cornelius mentioned that he would like to have an approved list of who notices will be sent to and have it approved by Council. Jan Wellman, City Administrator, suggested adding "as required by law" at the end of the second sentence; Council concurred.

Attorney Beery referred to Issue #2, Status of Properties Subject to Measure 37 Waivers as Nonconforming. Attorney Beery commented that the question is what the designation should be for those

properties falling under a Measure 37 claim; you could eliminate this subsection, describe it as a special category all its own (e.g, "Measure 37 structure"), or text could remain as shown in the draft ordinance. Attorney Beery explained that a Measure 37 claim does not run with the property; when the owner submits a claim, builds whatever, and then sells the property, the claim does not go on to the next property owner. Councilor Cornelius stated that he prefers to let the courts decide what to call Measure 37 properties. Councilor Raze commented that down the road, you have new staff and new Council, and if the property is not recorded or tagged as a Measure 37 claim, it will create problems. Attorney Beery stated that the City would have to tag Measure 37 properties no matter what language was used in the code. Councilor Quinby suggested calling it a "Measure 37 Property"; Councilor Owen concurred. Councilor agreed on that wording and Attorney Beery added that the Measure 37 Property would be treated as an overlay on the zoning map.

Attorney Beery referred to Issue #3, Judicial Review of City Council Decisions on Claims. Attorney Beery explained that Section 3.30.100 sets out how an appeal of the City Council's decision on a Measure 37 claim would proceed in court. The language as proposed uses a standard mechanism for review of City Council decisions called the writ of review. The Subcommittee felt that the decision to include this language should be evaluated by the full Council. Councilor Cornelius stated that the writ of review process does not allow a jury trial; Measure 37 itself does not indicate a writ of review and attorneys will fight for a jury. Councilor Raze commented that the City needs to protect its citizens and their tax funds, and needs to reduce cost to the City as much as possible; Councilor Jones concurred. Councilor Owen suggested that the language be left as Attorney Beery provided in order to save City funds; Council concurred. Attorney Beery stated that the second sentence asks the question if the owner of the property should be a party in court, and in her opinion they should. Councilor Raze agreed that they should be present.

Attorney Beery referred to Issue #4, Private Cause of Action for Adjacent Property Owners. Attorney Beery explained that she had Included this language as protection for the City. Under Section 3.30.110, a private property owner adjacent to a property that receives a wavier of regulation(s) under Measure 37 may bring a claim against the Measure 37 claimant. The Subcommittee felt that this was a policy consideration that should be reviewed by the full Council. Attorney Beery stated that if the language is not included, the adjacent landowners would probably sue the claimant anyway, but the addition of this language just covers the City. Councilor Jones commented that the person filing the claim has to take some responsibility, and we need to have some language in the ordinance that pertains to this. Councilor Cornelius stated that he was troubled by the language. Attorney Beery recommended leaving the language in as it protects the taxpayers money.

Attorney Beery distributed a copy of an Email the City received that has the potential of being a Measure 37 claim.

**III. ADJOURNMENT**

Mayor Weatherby adjourned the meeting at 6:45pm.

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Mayor Mike Weatherby

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Dated:

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Caren C. Huson Quiniones  
City Recorder