
CHAPTER 1230
MEASURE 49 VESTED RIGHTS

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1230.01 DEFINITIONS.

For purposes of this ordinance, the following definitions apply.

- (a) Applicant - means a person who has obtained Measure 37 relief from the Board and the State of Oregon, where applicable, and has applied to Jackson County Development Services for a Final County Vesting Decision.
- (b) Application - means an application form created by the Jackson County Development Services Director or designee and filed with Jackson County Development Services by an Applicant for a Final County Vesting Decision.
- (c) Argument - means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. Argument does not include facts.
- (d) Board - means the Jackson County Board of Commissioners.
- (e) Completed Application - means an Application deemed complete by the Review Authority.
- (f) County Counsel - means the Jackson County Counsel, or with the County Counsel's consent, the Senior Assistant Jackson County Counsel, or Jackson County Counsel designee.
- (g) Development Services - means Jackson County Development Services.
- (h) Evidence - means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

- (i) Final County Vesting Decision - means a final written decision by the Review Authority on an Application that the Applicant does or does not have a vested right to continue and complete a use allowed under a Board Order granting the Applicant Measure 37 relief.
- (j) Independent Vesting Officer - means an attorney admitted to practice law in the State of Oregon who was hired by the Jackson County Administrator at the request and with the consent of the Jackson County Development Services Director.
- (k) Measure 37 - means Ballot Measure 37 approved by the voters in November, 2004 and codified as ORS 197.352, 2005 replacement part.
- (l) Director - means the Jackson County Development Services Director, or with the Director's consent, the Planning Director or designee.
- (m) Review Authority - is the Jackson County Development Services Director, or with the Director's consent the Independent Vesting Officer; a Jackson County Hearings Officer; or other designee.
- (n) Working Days - means any day other than a federal or state of Oregon legal holiday or a day on which offices of Jackson County are otherwise authorized by law to remain closed.

1230.02 DETERMINATION OF VESTED RIGHTS UNDER HB 3540, SECTION 5(3).

- (a) Review Authority to Make Determination. In accordance with the process described in Section 2.05, the Review Authority shall determine vested rights under HB 3540, Section 5(3) pursuant to the test established by common law as reflected in Section 4.
- (b) Delegation of Authority. The Board hereby delegates authority to the Review Authority to make a Final County Vesting Decision on vested rights under HB 3540, Section 5(3) pursuant to the test established by common law.
- (c) Determination Subject to Judicial Review. The Final County Vesting Decision is subject to Judicial Review as provided in Section 6 of this ordinance.
- (d) Basis of Determination. The Review Authority must base its Final County Vesting Decision on whether the applicant's use of the property complies with a Board Order, and a State DLCDC Order, granting Measure 37 relief, and whether the applicant has a common law vested right as of December 6, 2007, to the relief granted in the waiver.

(e) Process. The Review Authority shall make a Final County Vesting Decision under this ordinance in accordance with the process described in this subsection.

- (1) An Applicant who obtained an order from the Board, and the State DLCD, granting Measure 37 relief and who desires the County to make a vested rights determination under HB 3540, Section 5(3) shall submit an Application to Jackson County Development Services with information necessary to address the factors to establish a common law vested right. The Review Authority is empowered to determine when the Application becomes a Completed Application and may require additional information beyond that originally submitted where necessary to address the factors to establish a common law vested right. All requested additional information shall be provided within thirty (30) calendar days of the date of the Review Authority's request in order to be considered in the vesting analysis. The Applicant is responsible for the completeness, accuracy, and timeliness of all information submitted with the Application and all of the supporting documentation, including any additional information requested by the Review Authority.
- (2) The Review Authority will exercise its best efforts to make a timely decision on a Completed Application.
- (3) If no comments from persons other than the Applicant are received by 4:00 p.m. on the 21st calendar day following issuance of notice under Section 5.01, the record shall be closed and the Review Authority shall make a Final County Vesting Decision on the record as it exists at that time.
- (4) If comments from persons other than the Applicant are received by 4:00 p.m. on the 21st calendar day following issuance of notice under Section 5.01, the record before the Review Authority shall be closed except for rebuttal comments by the applicant. Rebuttal arguments and/or evidence from the Applicant will thereafter be received by the Review Authority until the record is closed on the earlier of (a) the date the applicant notifies the Review Authority in writing that it desires the record closed; or (b) the 35th calendar day following issuance of notice under Section 5.01.

(f) Application Materials. An Applicant shall submit an Application to Jackson County Development Services.

- (1) The Application shall include the following:
 - A. The name, mailing address, and phone number of the applicant and agent, if any.
 - B. A legal description and tax lot number of the subject property as well as a street address for the property, if any.

- C.** Plot plan drawn to scale and pursuant to County instructions on a 8.5' x 11' paper.
- D.** A copy of the State of Oregon order granting the applicant Measure 37 relief for the subject property.
- E.** A copy of the Jackson County Board Order granting the applicant Measure 37 relief for the subject property.
- F.** A description of the nature of the right claimed Avested@ and a description of how it this is consistent with the State and County M37 final orders. A description in chronological order of actions, construction and/or physical improvements that support the vesting claim. (Please give specific dates if possible).
- G.** A description of why improvements for the use could, or could not be used for purposes allowed by the current zoning of the property.
- H.** Provide a time line describing the sequence of establishing the proposed use or improvements including when certain improvements or other work were committed, began, and when such work was completed.
- I.** Copies of utility records, dated photographs, county property tax appraisal information, dated aerial photographs, tax records.
- J.** Copies of receipts, licenses, bills of sale, contracts, notarized affidavits, etc. to document the date of establishment of the proposed use, structure(s) and/or physical improvement(s), and the continuity of any portions of the use since established.
- K.** A description of the expenditures for work (if any) and why it was initiated, continued or completed after M49 was approved by the voters on November 6, 2007.
- L.** Copies of permit information regarding land use, building, septic, or other permit documents.
- M.** Additional information deemed appropriate by the Applicant to enable the Review Authority to make a Final County Vesting Decision.

1230.03 COMMENTS BY PERSONS OTHER THAN THE APPLICANT.

(a) A person may submit written evidence, arguments or comments to Jackson County Development Services for consideration by the Review Authority until 4:00 p.m. on the 21st calendar day following issuance of notice under Section 5.01. No evidence, arguments or comments from persons other than the Applicant will be received by Jackson County Development Services for consideration by the Review Authority after 4:00 p.m. on the 21st calendar day following issuance of notice under Section 5.01.

1230.04 FACTORS CONSIDERED TO DETERMINE COMMON LAW VESTED RIGHT.

(a) In determining whether the applicant has a vested right to continue and complete a use allowed under a Board Order granting Measure 37 relief, the Review Authority must consider the following factors based on the evidence submitted in the application:

- (1) The amount of money spent or committed by contract on developing the use in relation to the total cost of establishing the use.
- (2) The good faith of the property owner including the date's money was spent or committed by contract.
- (3) Whether and/or when the property owner had notice of the proposed change in law before beginning development and/or improvement(s).
- (4) Whether the improvements could be used for other uses that are allowed under the new law.
- (5) The type of use, location and ultimate total cost of the development/improvement(s).
- (6) Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
- (7) Other relevant factors as determined by the Review Authority.

1230.05 NOTICE OF THE APPLICATION; NOTICE OF THE FINAL DECISION ON APPLICATION.

(a) Notice of the Application. Not later than 5 (five) working days after the Review Authority's determination that an Applicant has submitted a Completed Application, Jackson County Development Services shall provide notice of the Completed Application by first-class U. S. mail, postage prepaid. The date of mailing shall be included in the notice. The notice shall include the name of the Applicant and the location of the subject property. Notice shall be issued pursuant to Jackson County Land Development Ordinance 2.7.5 (B) and Department of Land Conservation and Development Rules.

(b) Notice of the Final County Vesting Decision. Not later than 5 (five) working days after the Review Authority has made and signed a Final County Vesting Decision, Jackson County Development Services shall provide notice of the decision by first class U. S. mail, postage prepaid. The date of mailing shall be included in the notice. Notice shall be issued pursuant to Jackson County Land Development Ordinance 2.7.5 (B) and the Department of Land Conservation and Development Rules.

1230.06 DATE FINAL COUNTY VESTING DECISION DEEMED COMPLETE.

The Final County Vesting Decision is deemed complete at the time the Review Authority has made and signed a Final County Vesting Decision. The Final County Vesting Decision constitutes a final county decision that is subject to Judicial Review as provided in Section 7, below.

1230.07 JUDICIAL REVIEW OF FINAL COUNTY VESTING DECISION.

(a) A Final County Vesting Decision of the Review Authority made under this ordinance is not a land-use decision subject to review by the Land Use Board of Appeals.

(b) A Final County Vesting Decision of the Review Authority made under this ordinance is subject to review by the Jackson County Circuit Court in a Writ of Review proceeding filed under Oregon Revised Statutes Chapter 34 by an Applicant or a person who is adversely affected by a Final County Vesting Decision. A person is adversely affected for purposes of this section if the person is a person who submitted written evidence, arguments or comments to Jackson County Development Services before 4:00 p.m. on the 21st calendar day following issuance of notice under Section 5.01.

(c) Judicial review of a Final County Vesting Decision of the Review Authority is:

- (1) Limited to the evidence in the record before the Review Authority at the time the record is closed in accordance with Section 2.05(2) and (3).

- (2) Available only for issues that are raised before the Review Authority with sufficient specificity to afford the Review Authority and Applicant an opportunity to respond.

(d) For purposes of ORS 34.030, the date of the decision or determination sought to be reviewed is the date notice was issued under Section 5.02.

1230.08 EFFECT OF VESTING RIGHTS DETERMINATION ON SUBSEQUENT OWNERS.

(a) A Final County Vesting Decision by the Review Authority under this ordinance shall apply to a future owner or otherwise run with the land to the fullest extent allowed by law when the Final County Vesting Decision determines that:

- (1) An applicant's use of the property complies with the Measure 37 waiver issued by the Board; and
- (2) The applicant has a common law vested right as of December 6, 2007, to complete and continue the use described in the waiver.

1230.09 RULES FOR COMPUTING TIME.

ORS 174.120, 2007 Edition, applies for purposes of computing time and deadlines under this ordinance.

(E.Ord. 2008-2. Passed 3-12-08. P.Ord. 2008-3. Passed 3-12-08.)