

## **“Measure 37 What’s it mean for small business?”**

*by David Denecke*

Measure 37 may be the biggest single change in the business landscape since zoning started in the 1950’s. Business, in one way or the other, involves real estate: owning, renting, selling, financing, insuring, designing, engineering, constructing, operating, servicing, and so on.

What does Measure 37 really mean for the business owner? Much is unknown at this point, but consider this:

- Reduction in land value due to regulation is the measure of “just compensation” under Measure 37, so dueling real estate appraisers are likely to be involved in any claim.
- Not all land use regulations are covered. Measure 37 defines which are and which are not. Not all attorneys agree, however, on how to interpret Measure 37’s definition.
- Regulations imposing restrictions related to health and safety concerns, building code, public nuisances, pollution control, and federally required laws are exempted from Measure 37.
- Not all land owners will be treated alike. If you bought your real estate since the late 1970s and 1980s, when most land use laws went into effect, chances are you cannot get compensation or a waiver for most restrictions.
- If a business or other property owner near you builds a monstrosity and lowers your real estate value, you probably will have no right to sue for the reduction of your real estate value.
- Financing real estate development may become more complicated. Financial institutions may consider what might be built next door to your property that could affect your property’s value.
- If you get a waiver from local government, your waiver may not be transferable to a buyer of your property. Consequently, you may not be able to get financing for your project, and if you do, your buyer may end up with a non-conforming, or even unlawful, use.
- Lenders may require answers to these new legal issues before accepting appraisals that reflect higher values as a result of waiver of existing land use restrictions.

**Expect Change.** With the uncertainty and frustration that is likely to accompany implementation of Measure 37, the political wheels can be expected to turn again. Measure 37 is a state statute, not a change to the Oregon Constitution. The Legislature can change it, if it wishes. The courts will be presented with many of the questions Measure 37 leaves unanswered, so it may be years before the full implications of the new law are known.

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