

**MEASURE 49**  
**GUIDELINES FOR CITIES**  
JANUARY 2008

On November 6, 2007, Oregon voters enacted Measure 49. Measure 49 substantially limits the types of claims a city can approve under Measure 37, and establishes specific standards and procedures for reviewing past, pending and future claims.

This memorandum sets out in general terms the local process and standards for reviewing claims filed under Measure 37 and Measure 49. The memorandum is divided into the following sections:

- Section I – describes the approval standards for all claims filed prior to June 28, 2007. These standards apply to all claims filed before June 28, regardless of whether a final decision was issued on the claim.
- Section II – describes the process for making a decision on currently pending claims. This includes all claims filed before June 28, 2007, but for which a final decision was not issued.
- Section III - describes the process for reviewing claims filed prior to June 28, 2007, for which the City issued a waiver.
- Section IV - describes the standards for reviewing claims filed after June 28, 2007.
- Section V - describes the process for reviewing those claims.
- Section VI - describes a number of miscellaneous matters of significance.

These descriptions are not intended to be an exhaustive discussion of the issues and particular local circumstances may require additional information and advice. Please feel free to contact us with any questions.

**I. Standards for Claims Filed Prior to June 28, 2007**

1. Eligible regulations. Under Measure 49, a property owner is only allowed to seek relief from local regulations that restrict residential use of residentially-zoned property. Accordingly, any waiver that has already been issued and any pending claims have to be reviewed for compliance with this standard.
2. Approval Standards. Measure 49, Section 9 (5), establishes specific standards for approving a claim.

Section 9 (5): “[T]o qualify for relief under this section, the claimant must establish that:

- “(a) The claimant is an owner of the property;
- “(b) All owners of the property have consented in writing to the claim;
- “(c) The property is located, in whole or in part, within an urban growth boundary;
- “(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of dwellings on the property that are authorized under this section;
- “(e) The property is zoned for residential use;

“(f) One or more land use regulations prohibit establishing the single-family dwellings;  
“(g) The establishment of the single-family dwellings is not prohibited by a land use regulation described in ORS 197.352 (3);  
“(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;  
“(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;  
“(j) If the property is located within a city, the land use regulation that is the basis for the claim was enacted after the date the property was annexed to the city; and  
“(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.”

3. Valuation. As described in Section 9 (5)(k), the challenged regulation must have “caused a reduction in the fair market value of the property.” In Section 9 (6), the measure sets forth a specific methodology for determining the reduction in value. In a nutshell, in order to determine whether there has been a reduction in value, you have to compare the value of the property one year before and one year after the date the regulation was enacted. If there is a reduction in value, you add interest and adjust for any beneficial tax assessments (i.e. special assessment for historic properties) or other regulatory benefits to reach the total amount. Section 9 (7) requires an appraisal consistent with this methodology.
4. The Remedy. If the city determines the claim meets the approval standards, the city may issue a waiver to allow the claimant the lesser of:
  - a. The number of lots/parcels requested in the claim;
  - b. Ten new lots/parcels; or
  - c. A number of lots/parcels equal in value to the amount of the reduction in value.

In addition, the claimant is allowed to construct a house on each lot or parcel and any local regulations that would prohibit the dwellings would not apply. However, the city may impose applicable siting standards and any other regulation that is exempt from relief (i.e. health and safety standards). (See Section 9 (9) and Section 11.)

## **II. Procedure for Pending Claims**

Measure 49, Section 10, provides a process for reviewing pending claims. These are claims that were filed prior to June 28, 2007, but for which the City has not issued a final decision.

1. The City must send a notice to the claimant regarding the claimant’s options prior to Wednesday, March 5, 2008. The notice must:

- a. Explain that the claimant is entitled to seek the relief described above (i.e. 1 to 10 lots/parcels with a dwelling on each);
  - b. Identify the information the claimant must submit to comply with the approval standards; and
  - c. Provide a form for the claimant to use to submit additional information.
2. Within 120 days of the date the City mails the notice, the claimant must inform the City whether the claimant intends to proceed with the claim and submit the necessary information. If the claimant does not respond within 120 days, the claim is considered to be void.
  3. If the claimant responds and submits the necessary information, the City must issue a “tentative” ( i.e. draft or preliminary) decision within 120 days of the date the City receives the information from the Claimant. The claimant has 15 days to respond to the tentative decision. The City must issue a final decision within 180 days of the date the City received the information from the claimant.

### **III. Procedure for Claims When A Waiver Has Been Issued**

Section 10 also provides a process for reviewing claims for which the City has already issued a waiver.

1. Under Section 10 (1), the City must review the information in its records to determine whether the claimant is eligible for the relief described above (i.e. 1 to 10 lots/parcels with a dwelling on each).
2. If the City lacks enough information to determine whether the claim can be approved under the M49 approval standards (see section I. 2. above), the City must send a written request for additional information to the claimant. The claimant must file the requested information within 90 days from the date the claimant receives the request. If the claimant does not respond within 90 days, the City must review the claim based on the information in its records.
3. The City must complete its review and issue a tentative decision before August 4, 2008. The claimant then has 15 days to respond to the tentative decision. The City must issue a final decision no later than October 1, 2008.

### **IV. Standards for New Claims (Filed After June 28, 2007)**

1. The standards for future claims are set out in Section 12. In order to constitute a valid claim after June 28, 2007, the person filing the claim must demonstrate:
  - (a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

- (b) The person's desired use of the property is a residential use or a farming or forest practice;
  - (c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and
  - (d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 197.352 (3), has reduced the fair market value of the property.
2. Note: Significantly, for claims filed after June 28, 2007, the claimant can only challenge a land use regulation that was adopted after January 1, 2007.
  3. Like the process for existing claims, a claim filed after June 28, 2007, must demonstrate that the challenged regulations reduce the fair market value of the property and the valuation process and methodology are similar (see section I. 3. above).
  4. If the City determines the claim is valid, the City can either compensate the owner for the reduction in value or waive regulations to allow a use of the property equal in value to the amount the regulations reduced the value of the property.

**V. Procedure For Action On New Claims (Filed After June 28, 2007)**

Section 13 and 14 set out the process for reviewing claim filed after June 28, 2007.

1. The City may establish a local process for reviewing claims, including a filing fee. See Section 13 (3).
2. Claims must be filed within five (5) years of the date the challenged regulation was enacted. See Section 13 (4).
3. The claim must include:
  - (a) The name and address of each owner of the property;
  - (b) The address, if any, and tax lot number, township, range and section of the property;
  - (c) Evidence of the acquisition date, including a copy the document that conveyed the property to the claimant and a title report;
  - (d) A citation to the specific land use regulation that the claimant believes is restricting the use of the property;
  - (e) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and
  - (f) An appraisal of the property that demonstrates reduction in value according to the required methodology.

4. The City must conduct a “completeness” review and inform the claimant of any missing information within 60 days of receiving the claim. If the City does not notify the claimant within 60 days, the claim is deemed complete when it was filed. If the claimant does not respond to or comply with the request for additional information, the claim is deemed to be withdrawn. Section 13 (9), (10) and (11).
5. The City is required to provide notice of the claim to the property owners within 100 feet of the subject property, DLCDD, the county, and Metro if the City is in the Metro area. Notice is required at least 30 days prior to the first public hearing on the claim or 30 days prior to closing the record if there is not a public hearing. Section 14 (1). The section specifies the contents of the notice.
6. Like the existing land use process, the claimant is allowed to request additional time after the record is closed to everyone else to submit additional evidence or argument. Section 14 (4).
7. The City must issue a final decision on the claim within 180 days after it is deemed complete. Section 13 (5).

**VI. Miscellaneous**

1. Waiver Exceptions. M49 clarifies some of the exceptions described in M37. For example, the “federal law” exception is defined to include “a statute, regulation, order, decree or policy enacted by a federal entity or by a state entity acting under authority delegated by the federal government” and any requirement contained in a federal permit.
2. “Land Use Regulation”. Under M49, a property owner can only seek relief from land use regulations that restrict the residential use of residentially-zoned property, or that restrict farming and forestry practices. In addition, the definition of “land use regulation” is defined to include only:
  - (a) A statute that establishes a minimum lot or parcel size;
  - (b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter 215 that restricts the residential use of private real property;
  - (c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;  
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  - (g) An administrative rule or goal of the Land Conservation and Development Commission; or
  - (h) A provision of a Metro functional plan that restricts the residential use of private real property.

3. Judicial Review. A decision by the City on a claim under Measure 49 is subject to review in circuit court under a deferential process known as the “writ of review.” The appeal must be filed within 60 days of the date the City made the final decision.
4. Attorney Fees. The one-way attorney fee provision in favor of claimants is repealed.