



## City of Portland, Oregon • Measure 49 Services

1900 SW Fourth Avenue, Suite 5000 • Portland, Oregon 97201

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# Measure 49 Claim Instruction Packet

## Measure 49

This information applies to new Measure 49 claims filed after June 28, 2007.

## Eligibility for Claims

Claims may be submitted for land use regulations restricting establishment of single family residential units. Under Measure 49, claims may not be submitted for commercial, industrial, or billboard uses or development.

If the City of Portland approves a claim, under Measure 49 the City may either compensate the claimant for the reduction in the property's fair market value or allow the claimant to use the property without applying the challenged land use regulation to the extent necessary to offset the reduction in the property's fair market.

In order to file a claim, the property owner must have owned the property in question at the time the regulation was enacted.

The City of Portland will only accept Measure 49 claims that are located in whole or in part within the Urban Growth Boundary.

## Regulation Enactment Date

Claims must show that a property owner's use of the property is restricted by one or more non-exempt land use regulations that were enacted after January 1, 2007 and after the property was annexed to the City.

## Claim Filing Date

Claims must be filed within five years of the date of enactment of the land use regulation that is the basis for the claim.

## To Qualify for Measure 49 Claim

Measure 49 requires that a claimant 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 zoned for residential use;
- (d) One or more land use regulations restrict the establishment of single-family dwellings;
- (e) The specific residential use of the property the claimant wishes to carry out, but can't because of the land use regulation(s) identified in the claim;
- (f) The land use regulation(s) identified in the claim has reduced the fair market value of the property as shown in an appraisal that satisfies the requirements of Section 12(2) of Measure 49;
- (g) The highest and best use of the property at the time the regulation(s) was enacted was residential use.

## Development Standards and Transferability

Section 12(6) of Measure 49 provides that a use authorized by an approved Measure 49 claim "has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130." When the use is lawfully established, it may be "continued lawfully in the same manner as provided by ORS 215.130."

## Claim Review Process

A Claim is deemed filed on the date the completed Measure 49 Claim Form and the \$250 fee is received by the City of Portland. Once a claim is received, the City of Portland will review the claim to ensure that it contains all of the required information.

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Within 60 days of receiving the claim, the City will notify the claimant in writing of the information that is missing. The claimant will then have 60 days from the date of the incomplete notice to provide the missing information. If the claimant does not respond, the claim is considered withdrawn.

Once the claim is deemed complete, the City of Portland will provide written notice of the claim to the following:

- All owners identified in the claim
- Owners of record of property within 100 feet of claim site (for sites within the Urban Growth Boundary)
- Neighborhood and business organizations recognized by the City of Portland and whose boundaries include the site
- The Department of Land Conservation and Development
- Metro, if the property is located within the urban growth boundary of Metro
- The County in which the property is located

The City of Portland will issue a staff report, schedule a City Council hearing date, and make a final decision within 180 days of the date the claim is deemed complete. Upon scheduling the City Council hearing a notice will be provided to all owners of the property and all persons described in ORS 197.763(2) indicating the time and location of the City Council hearing. The notice will be mailed at least 30 days before the public hearing on the claim or, if there will not be a public hearing, at least 30 days before the deadline for submission of written comments. Two weeks prior to the scheduled City Council hearing the staff report will be available for public review. The City of Portland will accept public comments thru the City Council hearing or the deadline described in the public notice.

### **Where to Research, Get Information, or File a Claim**

If you are unsure whether your desired development is allowed under current regulations, please contact the Bureau of Development Services for assistance. We are available to help you understand what is required and to assist you in navigating the City's permit and land use processes.

You can conduct land use research at 1900 SW 4th Avenue, 1st Floor in the Development Services Center (DSC). Some of the information you can research yourself at the Research Station. Planning Staff can assist you with zoning information and history. We can also assist you to obtain copies of older regulations that are not available electronically, or to review land use history on a specific piece of property.

Development Services Center (DSC)  
1900 SW 4th Avenue, 1st Floor  
Portland, OR 97201  
503-823-7526

#### **Hours**

Monday, Tuesday, Wednesday and Friday, 7:30 a.m. – 3:00 p.m.  
Thursday, 7:30:00 a.m. – 12:00 p.m.

### **Claim Application Instructions**

Follow the directions for each section of the Claim Form as outlined in this instruction packet. If you need additional space, you may attach additional sheets. On each attached sheet, please identify the section of the claim form to which it relates.

The fee for filing a claim for compensation under Measure 49 is \$250. A check or money order for the claim fee must accompany the completed claim form and must be submitted at the time the claim is filed with the City of Portland. The claim will not be considered complete until the filing fee has been paid.

Mail or deliver your completed claim to:

City of Portland  
Development Services Center – Measure 49 Claims  
1900 SW 4th Avenue, 1st Floor  
Portland, OR 97201

The City of Portland will not accept claims submitted by facsimile or electronically.

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*The instructions below refer to the claim form.*

## **Section 1. Name and Contact Information of the Claimants**

A claimant must be an “owner” of the real property that is the subject of the claim. Measure 49 defines an owner as:

- The owner of fee title of the property as shown in the deed records of the county where the property is located;
- The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
- If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

Each person or entity (such as a corporation or partnership) must be identified separately, even if ownership is jointly held. If an owner is an entity, the claim form must be executed by an individual who has the authority to act on behalf of the entity. If the property has been placed in a trust, the claimant should be the trustee(s) of the trust.

In addition to providing the name and contact information of all non-claimant owners of the property, Measure 49 states that, all non-claimant owners of the property are required to consent to the filing of a claim, even if the owner does not wish to be a claimant. For all non-claimant owners please provide, in writing, consent to the filing of the claim.

Each owner must decide whether he, she or it wants to be a claimant. In deciding whether or not to be a claimant, owners should be aware that only one claim may be filed for the same property regarding the same regulation. Therefore, if an owner chooses not to be a claimant, that owner will not be able to file another claim for the same property regarding the same regulation.

## **Section 2. Name and Contact Information of Primary Contact or Agent**

If the claim is submitted by two or more claimants, designate one of the claimants as the primary contact. If the claim is submitted by an agent on behalf of the claimant (s), identify the name and contact information of the agent and attach a written notarized statement or a Power of Attorney signed by all claimants authorizing the agent to act on behalf of each claimant.

## **Section 3. Identification of Property and Acquisition**

In this section of the claim form, identify the private real property that is the subject of the claim and all contiguous real property owned by the same owner(s). Contiguous real property is any real property that shares a common boundary (including across a road and common corner) with the real property that is subject of the claim.

### **Acquisition Date**

A claimant’s acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.

If the claimant is the surviving spouse of a person who was an owner of the property, the claimant’s acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later.

If a claimant conveyed the property to another person and reacquired the property, the claimants acquisition date is the date the claimant reacquired the property.

In addition to the information required in section 3 of the claim form, you must submit with your claim a title report and a deed card, consistent with the below requirements

### **Title Report**

The claim must include a title report prepared by a title insurer holding a certificate of authority issued by the Director of the Department of Consumer and Business Affairs. The title report must:

1. Identify all owners of fee title and all purchasers under a land sale contract, if any, as of the date of the report as shown in the deed records of the County where the property is located; and

2. Identify the date that each claimant acquired fee title or the date each claimant became a purchaser under a land sale contract, if any, as shown in the deed records of the county where the property is located; and
3. Include a chain of title from the date of the enactment of each land use regulation identified in the claim to the date of the title report, as shown in the deed records of the county where the property is located.

The title report must be accompanied by copies of all deeds, land sale contracts, and other recorded documents that establish the fee title of all owners or the owner as a purchaser under a land sale contract, that establish the date that each claimant acquired fee title or the date each claimant became a purchaser under a land sale contract, and that are referred to in the chain of title. If the claim involves more than one tax lot, the title report must identify and include the information required above for each tax lot.

### **Deed Card or Plat Card**

The claim must include a copy of the deed card or plat card maintained by the county in which the property is located for each tax lot that is the subject of the claim. A deed card or plat card is a written or electronic record maintained by the county for each tax lot containing references to recorded transactions affecting ownership of the tax lot. You may obtain a copy of the deed card or plat card from the assessor of the county in which the property is located.

### **Section 4. Desired Use**

Please describe briefly the desired residential use for the property that has been restricted by the land use regulation or regulations which is the basis for this claim. The desired use must be a residential use.

### **Section 5. City of Portland Land Use Regulations Restricting Desired Use**

The Measure 49 Claim must be based on one or more new land use regulations enacted after January 1, 2007, that restrict the desired use of the property. Claims must be filed within five years of the date of enactment of the land use regulation.

Please identify each land use regulation that restricts the use of the property and the date each regulation was enacted. Describe how each regulation restricts the desired use of the property.

*Attach additional sheets if you need more space.*

### **Section 6. Reduction in Fair Market Value of the Property**

In this section, please state the amount of reduction in fair market value of the property caused by the City's land use regulations that restrict the desired use of the subject property.

### **Appraisal**

The reduction in fair market value must be established by a written appraisal consistent with the requirements of Measure 49 Section 12(2):

- A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest.
- If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value.
- Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.
- The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection.

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The appraisal must:

- (a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;
- (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and
- (c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

Claims that are submitted without a written appraisal will be considered incomplete and will not be processed. (ORS chapter 195. sec. 13)

### **Section 7. Other**

Please indicate if you have submitted another Measure 49 claim to another governmental entity regarding the property listed in this claim.

### **Section 8. Signature(s)**

All claimants and owners must execute the claim form.

