

# MEASURE 49 RULEMAKING ADVISORY COMMITTEE MEETING PACKET #2



**TO:** Measure 49 Rulemaking Advisory Committee Members  
**FROM:** Sarah Marvin, Senior Planner & Measure 49 Specialist  
**SUBJECT:** RAC Meeting Packet #2

Measure 49 Rulemaking Committee Members,

Included in this packet are materials for your review that will further describe the financial and housing cost impacts, inflation alternatives, and updated proposed revisions to Oregon Administrative Rules. Please review these documents prior to the meeting on **September 15<sup>th</sup> from 1:00 – 3:00pm.**

<b>RAC Meeting Packet #2 Materials List :</b>		
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If you have any questions on the materials in this packet or about the legislation itself, please feel free to contact me via phone or email, my information is listed below. We are grateful for your participation in this important initiative and look forward to working with you!

Thank you,



**Sarah Marvin**, PhD

Pronouns: she/her

Senior Planner

Oregon Department of Land Conservation and Development

(503) 934-0001 | Main: 503-373-0050 | Cell: 503-559-1380

[sarah.marvin@state.or.us](mailto:sarah.marvin@state.or.us) | [www.oregon.gov/LCD](http://www.oregon.gov/LCD)



**Additional DLCD Staff Contacts for the Rulemaking Process:**

Emma Land, Legislative Coordinator and Point of Contact for All RAC Logistics

[Emma.Land@state.or.us](mailto:Emma.Land@state.or.us)

503-934-0627

Casaria Taylor, Rules, Records, and Policy Coordinator

[Casaria.taylor@state.or.us](mailto:Casaria.taylor@state.or.us)

503-934-0065

**Please note:** email correspondence should be sent directly to [Emma.Land@state.or.us](mailto:Emma.Land@state.or.us) who will then distribute to staff or advisory committee members as needed.

# MEASURE 49 RULEMAKING ADVISORY COMMITTEE MEETING #2 PROPOSED AGENDA



1:00 – 3:00pm, September 15, 2020

Zoom

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1. Welcome
  2. Discussion of Inflation Alternatives chart
  3. Discussion of Statement of Need & Fiscal Impact Statement
  4. Discussion of Housing Cost Impact Statement
  5. Discussion of the proposed rule revisions to establish the appropriate base fee and annual inflation adjustment (see Proposed Revisions to OAR 660-041-0520)
  6. Public comment
  7. Conclusion and next steps



Statute 195.312(4) permits the Department of Land Conservation and Development (DLCD) to establish a fee to cover the costs of reviewing claims.

## STATEMENT OF NEED AND FISCAL IMPACT.

### Need for Rule(s):

The rule amendment is necessary to establish a fee for state agencies to review claims for just compensation under Oregon Revised Statutes 195.300 through 195.336, commonly known as Measure 49 claims. When a landowner files a claim that is based on a new land use regulation enacted or administered by a state agency, the agency must review the claim. Reviewing claims requires additional staff time, extensive consultation with the Oregon Department of Justice, and contracting an appraiser. State statute permits the Department of Land Conservation and Development (DLCD) to establish a fee to cover the costs of reviewing claims. The fee must be established through minor amendments to Oregon Administrative Rule (OAR) 660-041-0520.

### Fiscal and Economic Impact:

- 1) The rule amendment establishes a fee to file a claim for compensation against new land use regulations that restrict the residential use of rural property. Any fiscal or economic impact would be the result of the legislature or a state agency enacting a new land use regulation that restricts the residential use of rural property.
- 2) The rule amendment will have a positive fiscal impact on the state by having a fee to cover DLCD's costs of reviewing and issuing decisions on claims.
- 3) The rule amendment will have a negative financial impact on landowners who choose to file a claim for compensation against a new land use regulation that restricts the residential use of their property, because they will have to pay the fee to file a claim.
- 4) If a landowner chooses to file a claim for a new land use regulation, this fee will help DLCD issue a correct decision based on thorough review, thereby reducing the potential for litigation that would incur legal costs for all parties involved in the claim.
- 5) The rule amendment will have a positive economic impact on stakeholders who benefit economically from preventing the incorrect approval of new residential uses on rural lands.
- 6) The rule amendment also establishes a fee to file a claim for compensation against new land use regulations that restrict farm or forest practices. Any fiscal or economic impact would be the result of the legislature or a state agency enacting a new land use regulation that restricts a farm or forest practice.
- 7) The rule amendment will have a positive fiscal impact on the state by having a fee to cover Oregon Department of Forestry (ODF) and Oregon Department of Agriculture (ODA) costs of reviewing and issuing decisions on claims.
- 8) The rule amendment will have a negative financial impact on landowners who choose to file a claim for compensation against a new land use regulation that restricts a farm or forest practice, because they will have to pay the fee to file a claim.
- 9) If a landowner chooses to file a claim for new regulation that restricts a farm or forest practice, this fee will allow ODF and ODA to issue correct decisions based on thorough review, thereby reducing the potential for litigation that would incur legal costs for all parties involved in the claim.
- 10) The rule amendment will have a positive economic impact on stakeholders who benefit economically from preventing the incorrect approval of farm or forest practices that are restricted by the new land use regulations.

### Statement of Cost of Compliance:

**(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).**

1) If claims for compensation are filed by landowners, DLCD, ODA, and ODF will benefit economically by being able to pay for the costs of reviewing and issuing decisions for claims for compensation.

2) (a) Small businesses may own farm or forest properties. The rule establishes a fee to file a claim for new land use regulations that restrict a farm or forest practice. Currently, no small businesses will be affected by the rule amendment, because no new land use regulations have been enacted that restrict a farm or forest practice. The number of small businesses subject to the rule depends on future legislative actions which cannot be predicted here.

(b) The amended rule only establishes a fee. No expected administrative costs for small businesses to comply with the rule as amended.

(c) The amended rule only establishes a fee. No expected additional costs for professional services, equipment supplies, labor, or increased administration to comply with the rule as amended.

**Describe how small businesses were involved in the development of these rule(s)?**

Small businesses were involved in the development of these rules by participation on a Rules Advisory Committee.

**Documents Relied Upon, and where they are available:**

Oregon Revised Statutes 195.312 and Chapter 424, Oregon Laws 2007 (Ballot Measure 49) – available on the Oregon Legislature website.

**Was an Administrative Rule Advisory Committee consulted? Yes or No? If not, why not?**

Yes

# HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING A \*TYPICAL  
1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.  
(ORS 183.534) FOR *ADMINISTRATIVE RULES*

**AGENCY NAME:** Department of Land Conservation and Development

**HEARING DATES:** Date

**ADDRESS:** 635 Capitol St. NE, Suite 150

**EFFECTIVE DATE:** Date

**CITY/STATE:** Salem, Oregon 97301

**PHONE:** (503) 373-0050

**PERMANENT:**

**TEMPORARY:**

**BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVING OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.**

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED. IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED.

**DESCRIPTION OF PROPOSED CHANGE:** *(Please attach any draft or permanent rule or ordinance)*

This amendment of OAR 660-041-0520 establishes a fee to cover the fair and reasonable cost of reviewing claims for just compensation under Oregon Revised Statutes 195.300 through 195.336, commonly known as Measure 49 claims. Claims may be filed for new land use regulations administered by state agencies that restrict the residential use or a farm or forest practice. Oregon Revised Statute 195.312(4) permits the Department of Land Conservation and Development (DLCD) to establish a fee to cover the costs of reviewing claims.

**DESCRIPTION OF THE NEED FOR, AND OBJECTIVES OF THE RULE:**

The rule amendment is necessary to establish a fee for state agencies to review claims for just compensation under Oregon Revised Statutes 195.300 through 195.336, commonly known as Measure 49 claims. When a landowner files a claim that is based on a new land use regulation enacted or administered by a state agency, the agency must review the claim. Reviewing claims requires additional staff time, extensive consultation with the Oregon Department of Justice, and contracting an appraiser. State statute permits the Department of Land Conservation and Development (DLCD) to establish a fee to cover the costs of reviewing claims. The fee must be established through minor amendments to Oregon Administrative Rule (OAR) 660-041-0520.

**LIST OF RULES ADOPTED OR AMENDED:**

OAR 660-041-0529

**MATERIALS AND LABOR COSTS INCREASE OR SAVINGS:**

No change – this rule amendment does not affect the cost of developing a dwelling on a 6,000 sq ft parcel of land.

**ESTIMATED ADMINISTRATIVE, CONSTRUCTION, OR OTHER COSTS INCREASE OR SAVINGS:**

No change – this rule amendment does not affect the cost of developing a dwelling on a 6,000 sq ft parcel of land.

**LAND COSTS INCREASE OR SAVINGS:**

No change – this rule amendment does not affect the cost of developing a dwelling on a 6,000 sq ft parcel of land.

**OTHER COSTS INCREASE OR SAVINGS:**

No change – this rule amendment does not affect the cost of developing a dwelling on a 6,000 sq ft parcel of land.



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**PREPARER'S NAME:** Sarah Marvin

**EMAIL ADDRESS:** sarah.marvin@state.or.us

DLCD Measure 49 Inflation Alternatives

Time period	Alternative 1	Alternative 2	Alternative 3
	Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items; *for December	Table 1.1.9. Implicit Price Deflators for Gross Domestic Product; *for September	Consumer Price Index for All Urban Consumers (CPI-U): West size-class B/C (Portland-Salem discontinued) by expenditure category; *for December
Most recent data: July 2019-July 2020; Q2 2019-Q2 2020	0.010	0.005*	0.015
NON-COVID, July-July 2019; Q2-Q2 2019	0.018	0.018*	0.026
Dec. 2018-Dec. 2019; Q4-Q4 2019	0.023*	0.016	0.028*
Dec. 2018-Dec. 2019 Increase on base fee of \$12,500	\$287.50	\$203.57	\$345.91
	Source data July 2020 [1982-84=100] unadjusted change in index	Source data August 2020 [Index numbers, 2012=100] Seasonally adjusted.	Source data July 2020 [1982-84=100] unadjusted change in index

# MEASURE 49 CLAIM REVIEW FEE RULES ADVISORY COMMITTEE

## Proposed Revisions to OAR 660-041-0520



### New Claim Rules

(Ballot Measure 49)

**Statutory/Other Authority:** ORS 197.040 & 2010 OL Ch. 8

**Statutes/Other Implemented:** ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353. 2007 OL Ch. 855 & 2010 OL Ch. 8

**History:**

LCDD 8-2010, f. & cert. ef. 8-9-10

#### 660-041-0500

##### **Purpose and Applicability**

The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement ORS 195.300 to 195.336 (2007 Oregon Ballot Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 Claims. These rules apply to Measure 49 Claims filed with the State of Oregon.

**Statutory/Other Authority:** ORS 195.300 - 195.336, 197.040 & 197.065

**Statutes/Other Implemented:** ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353

**History:**

LCDD 4-2008, f. & cert. ef. 5-23-08

LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

#### 660-041-0510

##### **Definitions**

The following definitions apply to OAR 660-041-0500 to 660-041-0530:

- (1) "Agency" has the meaning provided by ORS 183.310.
- (2) "Claimant" means an Owner who filed a Measure 49 Claim.
- (3) "DLCD" means the Department of Land Conservation and Development.
- (4) "DLCD Regulation" has the meaning provided by ORS 195.300(14)(a)–(b) and 195.300(14)(g).
- (5) "Farming Practice" has the meaning provided by ORS 195.300(5).
- (6) "File" or "Filed" has the meaning provided by ORS 195.300(7). The date a document is Filed is the date that it is received by the Public Entity.

(7) "Forest Practice" has the meaning provided by ORS 195.300(8).

(8) "Land Use Regulation" has the meaning provided by ORS 195.300(14). A "New Land Use Regulation" means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency on or after January 1, 2007.

(9) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(10) "Measure 49 Claim" means:

(a) A claim Filed with the State of Oregon under ORS 195.300 to 195.336 after December 5, 2007; and

(b) A claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007 if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007.

(11) "Owner" has the meaning provided by ORS 195.300(16).

(12) "Parcel" means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(13) "Property" has the meaning provided by ORS 195.300(17).

(14) "Regulating Entity" means an Agency that has enacted, or has authority to remove, modify or not apply, the Land Use Regulation(s) identified in the Measure 49 Claim.

**Statutory/Other Authority:** ORS 197.040, 197.065 & 2007 OL Ch. 424

**Statutes/Other Implemented:** ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424

**History:**

LCDD 4-2008, f. & cert. ef. 5-23-08

LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

LCDD 2-2007(Temp), f. & cert. ef.

**660-041-0520**

**Procedures for Measure 49 Claims**

(1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the address provided in this rule, or from DLCD's website, and must contain all information required by the form **and the review fee specified in section (5) of this rule.** ~~Claims may not be submitted by facsimile or electronically.~~

(2) A Measure 49 Claim must be Filed with DLCD at:

Measure 49 Claims

635 Capitol St. NE, Suite 150

- (3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, and if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007, the Measure 37 Claim is deemed Filed on December 6, 2007 for purposes of ORS 195.312.
- (4) DLCD's form for a Measure 49 Claim will require at least the following information:
- (a) The name and mailing address of each Claimant and each Owner of the Property.
  - (b) Evidence establishing that each Claimant is an Owner of the Property.
  - (c) The consent to the Measure 49 Claim by each Owner of the Property if there are Owners of the Property other than the Claimant, which consent must be notarized.
  - (d) A description of the Claimant's specific desired use of the Property, which use must be a residential use or a Farming Practice or a Forest Practice. The description must be sufficiently specific to establish that each Land Use Regulation listed under paragraph (g) of this rule applies to and restricts the Claimant's desired use.
  - (e) The location of the Property by reference to:
    - (A) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;
    - (B) The street address of each Lot or Parcel that makes up the Property, if a street address has been assigned;
    - (C) The county the Property is located in; and
    - (D) If the Property is located within a city, the name of that city.
  - (f) Evidence of each Claimant's Acquisition Date, as provided in ORS 195.328;
  - (g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's desired use of the Property, and for each New Land Use Regulation listed, a description of how that regulation restricts the Claimant's desired use of the property;
  - (h) An appraisal of the reduction in the fair market value of the Property caused by the enactment of each listed New Land Use Regulation as provided in ORS 195.310.

**(5) (a) For calendar year 2021, the review fee is \$12,500a Claimant shall submit a fee of [\$10,000-14,000] to cover DLCD's actual and reasonable cost of reviewing the Measure 49 Claim.**

**(6)(ab) The fee specified in section (5) of this rule shall be adjusted by DLCD shall adjust the review fee annually for inflation, as provided in paragraph (b) of this section.**

**ALTERNATIVE 1: Oregon Minimum Wage statute**

(b) No later than December 31 of each year, DLCDC shall calculate an adjustment of the fee amount specified in section (5) of this rule based upon the increase (if any) from December of the preceding year to December of the year in which the calculation is made in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

(c) The new fee will become effective on January 1 of the following year

**ALTERNATIVE 2: Oregon Department of Water Resources hydroelectric Rule OAR 690-051-0400(7)**

(b) The fee shall be adjusted using the “GDP-IPD”, Gross Domestic Product - Implicit Price Deflator published by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business (See Table 1.1.9 line 1.) for September of each year. If this index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted. If the base year for GDP-IPD is changed or if publication of the index is discontinued, DLCDC shall make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.

(c) The new fee will become effective on January 1 of the following year.

**ALTERNATIVE 3: Oregon Department of State Lands Rule OAR 141-085-0545(9)**

~~(b)~~ By December 1 of each year, ~~the department -DLCDC-~~ will calculate the annual change in ~~consult the Portland-Salem, OR-WA Pacific~~ Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor to determine the appropriate annual fee adjustment. ~~If the index shows an increase, DLCDC will then revise the fee in accordance with the CPI and post the fee on DLCDC’s website.~~

(c) The new fee will become effective on January 1 of the following year.

(7) ~~(5)~~ DLCDC will review a Measure 49 Claim to determine whether it complies with the requirements of ORS 195.310 to 195.312. If the Measure 49 Claim is incomplete, within sixty (60) days of receiving the Claim, DLCDC will notify the person who filed the Claim of the information **or fee** that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCDC receives **the fee required by section (5)-(6) and:**

(a) The missing information;

(b) Part of the missing information and written notice from the Claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the Claimant that none of the missing information will be provided.

~~(8)~~ ~~(6)~~ If a Claimant submits a request in writing for additional time to provide missing information **or the fee**, DLCDC may for good cause shown agree to provide such additional time, which agreement must be in writing. An agreement to allow additional time has the effect of abating the time requirements under ORS 195.312 and 195.314, until the date specified in the agreement.

~~(9)~~ ~~(7)~~ If DLCD does not notify the Claimant within sixty (60) days after a Measure 49 Claim is Filed that information **or the review fee** is missing from the Claim, the Claim is deemed complete when Filed.

~~(10)~~ ~~(8)~~ If the Claimant does not respond in writing to the written notification from DLCD under section ~~(7)~~ ~~(5)~~ of this rule within sixty (60) days of the date the written notification was sent, the Claim is deemed withdrawn.

~~(11)~~ ~~(9)~~ DLCD will provide notice of a Measure 49 Claim as provided by ORS 195.314. The notice will describe the Measure 49 Claim and specify a deadline by which written evidence and arguments must be Filed. The Claimant may respond to the written evidence and argument by Filing a written response within fifteen (15) days of the date specified as the deadline for the initial evidence and argument.

~~(12)~~ ~~(10)~~ DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

### **660-041-0530**

#### **Coordinating with Other Regulating Entities**

(1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute that is administered by an Agency other than DLCD, DLCD will forward the Claim to that Agency.

(2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation for which there is no Regulating Entity, DLCD will forward the Claim to the Department of Administrative Services.

(3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49 Claim, that Regulating Entity will process the Claim using the procedures set forth in OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures for review.

(4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim, DLCD will coordinate the review of the Claim under the procedures set forth in OAR 660-041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted or that it administers as provided in ORS 195.300 to 195.336 and if so what form of relief to grant under ORS 195.310(5) with respect to those regulations.

(5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.

**Statutory/Other Authority:** ORS 195.300 - 195.336, 197.040 & 197.065

**Statutes/Other Implemented:** ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353

**History:**

LCDD 4-2008, f. & cert. ef. 5-23-08

LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

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