

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED

09/29/2020 3:02 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendment to establish a fee to cover fair and reasonable cost of reviewing claims

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/13/2020 8:30 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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635 Capitol Street
Salem, OR 97031

Filed By:
Casaria Taylor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/13/2020

TIME: 8:00 AM

OFFICER: LCDR

ADDRESS: DLCD

635 Capitol Street

Ste. 150

Salem, OR 97031

SPECIAL INSTRUCTIONS:

Virtual meeting attendance

information available online at

Department's website

<https://www.oregon.gov/lcd/Commission/Pages/Meetings.aspx>

NEED FOR THE 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 authorizes 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 amendments to OAR 660-041-0520.

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.

FISCAL AND ECONOMIC IMPACT:

- 1) The rule amendment establishes a fee to file a claim for compensation for 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 funding the actual and reasonable costs of reviewing the claim.
 - 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) 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.
 - 5) 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.
 - 6) 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.
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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 receiving a fee for the actual and reasonable cost of reviewing 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.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

MATERIALS AND LABOR COSTS INCREASE OR SAVINGS:

No change--ORS 183.534 explains that, "A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel." A 6,000 square foot (0.14 acre) parcel currently zoned to allow a 1,200 square foot dwelling is a typical residential parcel within a city, urban growth boundary, or urban unincorporated area. This rule amendment establishes a fee to file a Measure 49 claim for compensation if the state enacts a land use regulation that restricts the residential use or a farm or forest practice of private real property. State land use regulations almost never restrict residential development on residential parcels within cities, urban growth boundaries, or urban unincorporated areas. Therefore there is virtually no situation in which the fee would be required to develop this type of residential parcel with a dwelling.

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

No change--ORS 183.534 explains that, "A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel." A 6,000 square foot (0.14 acre) parcel currently zoned to allow a 1,200 square foot dwelling is a typical residential parcel within a city, urban growth boundary, or urban unincorporated area. This rule amendment establishes a fee to file a Measure 49 claim for compensation if the state enacts a land use regulation that restricts the residential use or a farm or forest practice of private real property. State land use regulations almost never restrict residential development on residential parcels within cities, urban growth boundaries, or urban unincorporated areas. Therefore there is virtually no situation in which the fee would be required to develop this type of residential parcel with a dwelling.

LAND COSTS INCREASE OR SAVINGS:

No change--ORS 183.534 explains that, "A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel." A 6,000 square foot (0.14 acre) parcel currently zoned to allow a 1,200 square foot dwelling is a typical residential parcel within a city, urban growth boundary, or urban unincorporated area. This rule amendment establishes a fee to file a Measure 49 claim for compensation if the state enacts a land use regulation that restricts the residential use or a farm or forest practice of private real property. State land use regulations almost never restrict residential development on residential parcels within cities, urban growth boundaries, or urban unincorporated areas. Therefore there is virtually no situation in which the fee would be required to develop this type of residential parcel with a dwelling.

OTHER COSTS INCREASE OR SAVINGS:

No change--ORS 183.534 explains that, "A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel." A 6,000 square foot (0.14 acre) parcel currently zoned to allow a 1,200 square foot dwelling is a typical residential parcel within a city, urban growth boundary, or urban unincorporated area. This rule amendment establishes a fee to file a Measure 49 claim for compensation if the state enacts a land use regulation that restricts the residential use or a farm or forest practice of private real property. State land use regulations almost never restrict residential development on residential parcels within cities, urban growth boundaries, or urban unincorporated areas. Therefore there is virtually no situation in which the fee would be required to develop this type of residential parcel with a dwelling.

AMEND: 660-041-0520

RULE SUMMARY: This amendment of OAR 660-041-0520 establishes a fee to cover the fair and reasonable cost of reviewing claims for just compensation under ORS 195.300 through 195.336, commonly known as Measure 49 claims. ORS 195.312(4) authorizes the Department of Land Conservation and Development (DLCD) to establish a fee to cover the costs of reviewing claims.

CHANGES TO RULE:

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. ~~Claims may not be submitted by facsimile or e-mail and the fee specified in section (5) of this rule.~~ ¶¶

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

Measure 49 Claims ¶¶

635 Capitol St. NE, Suite 150 ¶¶

Salem, OR 97301-2540 ¶¶

(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) On and after January 1, 2021, the fee to file a Measure 49 Claim will be \$12,500. ¶¶

(b) DLCD will adjust the fee annually for inflation. By December 1 of each year, DLCD will calculate the annual change in the U.S. City Average, West - Size Class B/C, Consumer Price Index for All Urban Consumers (CPI-U) 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. The new fee will become effective on January 1 of the following year. ¶¶

(c) Within six months of the end of each fiscal biennium, DLCD will determine the average cost incurred by the state to review claims from the prior biennium. If the average cost is higher or lower than the existing fee, then DLCD will submit the calculations and proposed rule amendment to revise the fee to the LCDC. ¶¶

(6) If a Claimant withdraws a Measure 49 Claim within 21 calendar days of submittal, then DLCD will refund the

fee, minus a \$1,000 non-refundable portion.

~~(7)~~ DLCD 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, DLCD 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 DLCD receives the fee required by section (5) 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)~~ If a Claimant submits a request in writing for additional time to provide missing information or the fee, DLCD 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)~~ If DLCD does not notify the Claimant within sixty (60) days after a Measure 49 Claim is Filed that information or the fee is missing from the Claim, the Claim is deemed complete when Filed.

~~(10)~~ If the Claimant does not respond in writing or does not include the fee payment in response to the written notification from DLCD under section ~~(57)~~ of this rule within sixty (60) days of the date the written notification was sent, the Claim is deemed withdrawn.

~~(11)~~ 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)~~ DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

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

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