

CHAPTER 2.21

CLAIMS UNDER ORS 197.352 (BALLOT MEASURE 49)

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2.21.010 Purpose

This chapter establishes a process for treatment of claims for compensation submitted to Metro under Ballot Measure 49. Metro adopts this chapter in order to afford property owners the relief guaranteed them by ORS 197.352 and to establish a process that is fair, informative and efficient for claimants, other affected property owners and taxpayers. It is the intention of Metro to implement the statute faithfully and in concert with its other responsibilities, including its Charter mandate to protect the environment and livability of the region for current and future generations.

(Ordinance No. 07-1168, Sec. 1.)

2.21.020 Definitions

(a) "Appraisal" means a written statement prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308 that complies with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institution Reform, Recovery and Enforcement Act of 1989.

(b) "Department" means the Oregon Department of Land Conservation and Development.

(c) "Land use regulation" means a provision of a Metro functional plan that restricts the residential use of private real property.

(d) "Owner" means:

- (1) The owner of fee title to the property as shown in the deed records of the county where the property is located;

- (2) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
- (3) If the property is owned by the trustee of a revocable trust, the settler of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

(e) "Reduction in value" means a decrease in 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 enactment, plus interest, adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

(f) "Waiver" means action by the Metro Council to modify, remove or not apply one or more land use regulations found to have caused a reduction in value.

(Ordinance No. 07-1168, Sec. 1.)

2.21.030 Filing an Amended Claim

(a) A person may amend a claim that was filed with Metro on or before June 28, 2007.

(b) To qualify for compensation or waiver, a person filing an amended claim under this section must establish that:

- (1) The claimant is an owner of the property;
- (2) All owners of the property have consented in writing to the filing of the claim;
- (3) The property is located, in whole or in part, within the regional UGB;
- (4) 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 Ballot Measure 49;
- (5) The property is zoned for residential use;
- (6) A land use regulation prohibits the establishment of a single-family dwelling;

- (7) The establishment of a single-family dwelling is not prohibited by a land use regulation described in ORS 197.352(3);
- (8) The land use regulation described in paragraph (6) of this section was enacted after the date the property, or any portion of it, was brought into the UGB;
- (9) The land use regulation described in paragraph (6) of this section was enacted after the date the property, or any portion of it, was included within the jurisdictional boundary of Metro;
- (10) The enactment of the land use regulation caused a reduction in the fair market value of the property; and
- (11) The highest and best use of the property was residential use at the time the land use regulation was enacted.

(c) A person filing an amended claim under this section must submit the following information:

- (1) The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
- (2) A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot number(s) of the property, and the date on which the owner acquired the property interest;
- (3) A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;
- (4) A reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation restricts the use of the property;
- (5) A copy of the city or county land use regulations that applied to the property at the time the challenged land use regulations became applicable to, or were enforced against, the property;

- (6) An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
- (7) A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation;
- (8) If the property is or has been enrolled in one or more of the special assessment programs listed in Section 2.21.020(e), information regarding taxes not paid as a result of the program or programs; and
- (9) A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.

(d) The Chief Operating Officer shall notify all claimants who filed claims on or before June 28, 2007, and whose claims were not decided by the Metro Council prior to January 1, 2008, that they may amend their claims under this section and shall provide a form for amended claims. A claimant must submit an amended claim under this section to the Chief Operating Officer within 120 days after the date of notice under this paragraph or the claimant is not entitled to compensation or waiver.

(Ordinance No. 07-1168, Sec. 1.)

2.21.040 Review of Amended Claim by Chief Operating Officer

(a) The Chief Operating Officer (COO) shall review a claim filed under Section 2.21.030 to ensure that it provides the information required by Section 2.21.030(c). If the COO determines that the claim is incomplete, the COO shall, within 15 business days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the COO does not notify the owner that the claim is incomplete within the prescribed 15 days, the claim shall be considered complete on the date it was filed with the COO.

(b) The COO shall review the claim for compliance with the requirements of Section 2.21.030(b) and prepare a tentative determination of compliance not later than 120 days after the filing of a complete claim. The COO shall provide written notice to the claimant, the department, the city or county with land use authority over the claim property and owners of property within 100 feet of the claim property of the tentative determination as to whether the claimant qualifies for

compensation or waiver and, if qualified for waiver, the specific number of single-family dwellings Metro proposes to authorize. The written notice shall inform recipients they have 15 days to submit evidence or argument to the COO in response to the tentative determination.

(Ordinance No. 07-1168, Sec. 1.)

2.21.050 Filing a New Claim

(a) A person may file a claim after June 28, 2007, and will qualify for compensation or waiver, if:

- (1) The claimant is an owner of the property and all owners of the property have consented in writing to filing of the claim;
- (2) The claimant's desired use of the property is a residential use;
- (3) The claimant's desired use of the property is restricted by a land use regulation enacted after January 1, 2007;
- (4) The enactment of the land use regulation has reduced the fair market value of the property; and
- (5) The highest and best use of the property was residential use at the time the land use regulation was enacted.

(b) A person filing a claim under this section must submit the fee for processing the claim prescribed by the Chief Operating Officer and the following information:

- (1) The name, street address and telephone number of the claimant and all other owners of the property;
- (2) A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property; the deed registry of the instrument by which the claimant acquired the property; the location and street address and township, range, section and tax lot number(s) of the property; the date on which the owner acquired the property interest; and any exceptions and encumbrances to title;
- (3) A written statement signed by all owners of the property consenting to the filing of the claim;

- (4) A citation to the land use regulation the claimant believes is restricting the claimant's desired use that is adequate to allow Metro to identify the specific land use regulation that is the basis for the claim;
- (5) A description of the specific use of the property that the claimant desires to carry out, but cannot because of the land use regulations;
- (6) An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
- (7) If the property is or has been enrolled in one or more of the special assessment programs listed in Section 2.21.020(e), information regarding taxes not paid as a result of the program or programs; and
- (8) A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.

(c) A person filing a claim under this section must file the claim within five years after the land use regulation was enacted.

(Ordinance No. 07-1168, Sec. 1.)

2.21.060 Review of New Claim by Chief Operating Officer

(a) The Chief Operating Officer (COO) shall review the claim to ensure that it provides the information required by Section 2.21.050(b). If the COO determines that the claim is incomplete, the COO shall, within 60 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the COO does not notify the owner that the claim is incomplete within the prescribed 60 days, the claim shall be considered complete on the date it was filed with the COO.

(b) A claim filed under this section shall not be considered complete until the claimant has submitted the information required by this section. If the claimant fails to submit a complete claim within 60 days after the notice prescribed in subsection (a), the claim shall be deemed withdrawn.

(c) The COO shall conduct a preliminary review of a claim to determine whether it satisfies all of the following prerequisites for full evaluation of the claim:

- (1) The property lies within Metro's jurisdictional boundary;
- (2) The land use regulation that is the basis for the claim is a provision of a functional plan or was adopted by a city or county to comply with a functional plan; and
- (3) The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.

(d) If the claim fails to satisfy one or more of the prerequisites in subsection (c) of this section, the COO shall prepare a report to that effect and recommend to the Metro Council that it dismiss the claim following a public hearing under Section 2.21.070.

(e) If the claim satisfies each of the prerequisites in subsection (c) of this section, the COO shall complete the review of the claim to determine whether it satisfied the criteria in Section 2.21.050(a).

(f) The COO may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ORS 197.352 and to assist in the development of a recommendation regarding appropriate relief for a valid claim.

(g) The COO shall prepare a written report, to be posted at Metro's website, with the determinations required by subsection (e) of this section and the reasoning to support the determination. The report shall include a recommendation to the Metro Council on the validity of the claim and, if valid, whether Metro should compensate the claimant for the reduction of value or waive the regulation. If the COO recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the Regional Framework Plan. If the COO recommends waiver, the report shall recommend the specific number of single-family dwellings Metro should authorize to offset the reduction in fair market value of the property.

(h) The COO shall provide the report to the Council, the claimant, the city or county with land use responsibility for the property, and other persons who request a copy. If the Council adopted the regulation in order to comply with state

law, the COO shall send a copy of the report to the Oregon Department of Administrative Services.

(Ordinance No. 07-1168, Sec. 1.)

2.21.070 Hearing before Metro Council

(a) The Metro Council shall hold a public hearing on a claim prior to its final determination. The COO shall schedule the hearing for a date prior to the expiration of 180 days after the filing of a completed claim.

(b) The COO shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, the local government with land use planning responsibility for the property and the department. The notice shall indicate that:

- (1) A copy of the COO's recommendation is available upon request;
- (2) Judicial review of Metro's final determination is limited to the written evidence and arguments submitted to Metro prior to or at the public hearing; and
- (3) Judicial review is available only for issues that are raised with sufficient specificity to afford Metro an opportunity to respond in its final determination.

(c) After the close of the public hearing the Metro Council shall make its final determination on the claim and enter an order with findings of fact and conclusions of law, based upon the record made before Metro, that explain the determination. The COO shall mail a copy of the final determination to the claimant, the county in which the subject property lies and any person who submitted written or oral testimony prior to the close of the public hearing.

(Ordinance No. 07-1168, Sec. 1.)

2.21.080 Fee for Processing Claim

(a) The COO may establish a fee to be paid by a person filing a new claim under Section 2.21.050 at the time the person files the claim. The fee shall be based upon an estimate of the actual cost incurred by Metro in reviewing and processing the claim. The COO may waive the fee if the claimant demonstrates that the fee would impose an undue hardship.

(b) The COO shall maintain a record of Metro's costs in reviewing and processing the claim. After the final determination by the Council under Section 2.21.060, the COO shall determine Metro's total cost and issue a refund to the claimant if the estimated fee exceeded the total cost or a bill for the amount by which the total cost exceeded the estimated fee.

(Ordinance No. 07-1168, Sec. 1.)