

New Measure 49 Claims

As noted above, the second part of Measure 49 concerns new land use regulations (those enacted after January 1, 2007). You may file a new Measure 49 claim for a new land use regulation if it has reduced the value of your property. You have five years from the date the new regulation was enacted to file a new claim. Measure 49 requires public entities to compensate claimants for the effect of new land use regulations or to waive those regulations “to the extent necessary to offset the reduction in the fair market value of the property.” The types of regulations that could trigger claims include the following:

- State statutes that establish a minimum lot or parcel size
- State statutes in ORS chapter 215 (counties) and ORS chapter 227 (cities) that restrict the residential use of private real property
- Provisions in city comprehensive plans, zoning ordinances or land division ordinances that restrict the residential use of private real property “zoned for residential use”
- Provisions in county comprehensive plans, zoning ordinances or land division ordinances that restrict the residential use of private real property
- Certain statutes and rules that restrict forest practices or farming practices
- Statewide planning goals and administrative rules of the Land Conservation and Development Commission
- Provisions of a Metro functional plan that restrict the residential use of private real property

Are any regulations exempt from Measure 49?

Yes. Measure 49 does not apply to land use regulations that were enacted prior to the claimant’s acquisition date or to land use regulations:

- (a) That restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- (b) That restrict or prohibit activities for the protection of public health and safety;
- (c) To the extent the land use regulations are required to comply with federal law;
- (d) That restrict or prohibit the use of a property for the purpose of selling pornography or performing nude dancing;
- (e) That plan and rezone land to an industrial zoning classification for inclusion within an urban growth boundary; or
- (f) That plan and rezone land within an urban growth boundary to an industrial zoning classification.

What is fair market value?

For the purposes of Measure 49, “The fair market value is the actual value of property, with all of the property’s adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements.” ([ORS 195.332](#))

How do I prove that the fair market value of my property was reduced?

The landowner must submit an appraisal that meets very specific requirements, including who is qualified to write the appraisal. See [ORS 195.310-336](#).

Where do I file a claim?

A claim must be filed with the local government that enacted the land use regulation. If state government enacted the regulation, file with DLCD. Claim forms and additional information are available on [the Measure 49 website](#).

What do I get if my claim is approved?

- (a) Compensation for the reduction in the fair market value of the property; or
- (b) Authorization for the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

What is the legal status of a development under New Measure 49?

A use authorized by a new Measure 49 claim has the legal status of a lawful nonconforming use and is subject to [ORS 215.130](#) including provisions for interruption and abandonment of the use (see [ORS 195.310\(7\)](#)).

Can a subsequent owner of the property use the Measure 49 development rights?

No. New Measure 49 relief authorizes only the claimant to develop the use of the property (see [ORS 195.310\(5\) & \(6\)](#)). There is no provision for transfer of this authorization to a subsequent owner (note exception for forest practices, [ORS 195.310\(8\)](#)). Once the use has been lawfully established, it is subject to [ORS 215.130](#) (see above).