

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE) Ordinance No. 07-1168
CHAPTER 2.21 (CLAIMS UNDER ORS 197.352) TO)
IMPLEMENT BALLOT MEASURE 49, AND) Introduced by Chief Operating Officer
DECLARING AN EMERGENCY) Michael Jordan with the Concurrence of
Council President David Bragdon

WHEREAS, the voters of Oregon enacted Ballot Measure 49 on November 6, 2007, which amends ORS 197.352 (Ballot Measure 37) and requires Metro to provide relief to owners of property under circumstances set forth in the measure; and

WHEREAS, the Metro Council enacted Metro Code Chapter 2.21 by Ordinance No. 05-1087A (For the Purpose of Adopting a Process for Treatment of Claims Against Metro Under Ballot Measure 37 by Adding Chapter 2.21 to Title II of the Metro Code), effective December 21, 2005, to implement Ballot Measure 37; and

WHEREAS, the Council wishes to revise Chapter 2.21 to conform to the requirements of Ballot Measure 49; and

WHEREAS, the Council held a public hearing on the proposed amendments on November 29, 2007; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. Chapter 2.21 of the Metro Code is hereby amended as indicated in Exhibit A, attached and incorporated into this ordinance, in order to implement Ballot Measure 49.
- 2. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, explain how these amendments comply with the Regional Framework Plan and statewide planning laws.
- 3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because the effective date of Ballot Measure 49 is December 6, 2007, after which date property owners may file claims under the measure. An emergency is, therefore, declared to exist, and this ordinance shall take effect on December 6, 2007, pursuant to Metro Charter section 39(1).

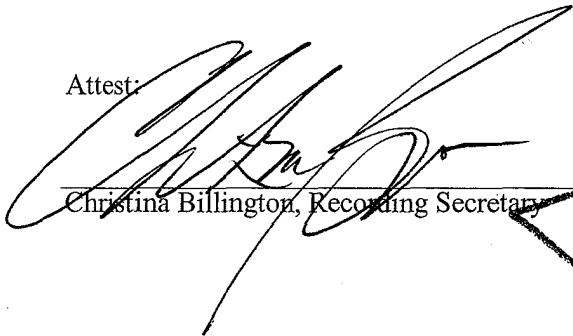
ADOPTED by the Metro Council this 29th day of November, 2007.


David Bragdon, Council President

Approved as to form:


Daniel B. Cooper, Metro Attorney

Attest:


Christina Billington, Recording Secretary

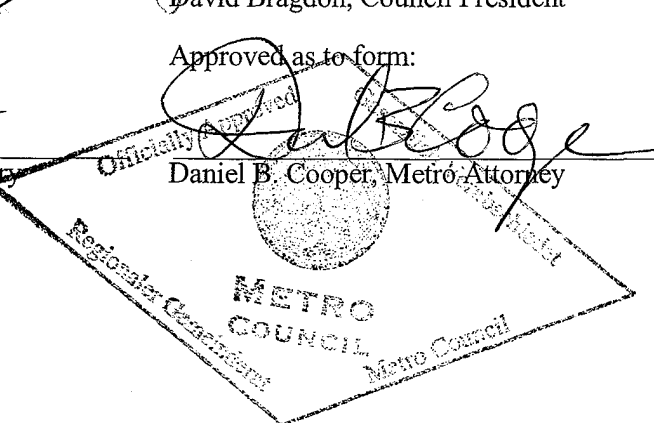


Exhibit A to Ordinance No. 07-1168
Amendments to Metro Code Chapter 2.21;

~~CLAIMS UNDER ORS 197.352 (BALLOT MEASURE 37)~~

SECTIONS	TITLE
2.21.010	Purpose
2.21.020	Definitions
2.21.030	Filing a Claim
2.21.040	Review of Claim by Chief Operating Officer and Recommendation
2.21.050	Hearing on Claim before Metro Council
2.21.060	Action on Claim by Metro Council
2.21.070	Conditions on Compensation or Waiver
2.21.080	Fee for Processing Claim

~~2.21.010 Purpose~~

~~This chapter establishes a process for treatment of claims for compensation submitted to Metro under ORS 197.352 (Ballot Measure 37). 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.~~

~~2.21.020 Definitions~~

~~— (a) "Appraisal" means a written statement prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674. In the case of commercial or industrial property, "appraisal" additionally means a written statement prepared by an appraiser holding the MAI qualification, as demonstrated by a written certificate.~~

~~— (b) "Family member" means the wife, husband, son, daughter, father, brother, brother in law, sister, sister in law, mother in law, father in law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner of the real property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the real property.~~

~~— (c) "Land use regulation" means a provision of a Metro functional plan or a land use regulation adopted by a city or county to comply with a Metro functional plan.~~

~~(d) "Owner" means the owner of the property, or any interest therein. "Owner" includes all persons or entities who share ownership of a property.~~

~~(e) "Reduction in value" means a reduction in the fair market value of real property, or any interest therein, resulting from enactment or enforcement of a land use regulation.~~

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

~~2.21.030 Filing a Claim~~

~~(a) A person may file a claim with Metro for compensation under ORS 197.352 without following the process set forth in this chapter. Metro may give priority to a claim filed under this chapter over claims filed without compliance with this chapter.~~

~~(b) A person filing a claim under this chapter must be the owner of the property that is the subject of the claim at the time the claim is submitted to Metro. The person must simultaneously file with Metro all claims against Metro under ORS 197.352 that involve the property. The person shall submit the claim or claims to the Chief Operating Officer (COO) and shall include, at a minimum, 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(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) The claimant's purchase price for the property;~~

~~(7) Evidence of the fair market value of the property prior to the application or enforcement of the challenged land use regulations to the property and the fair market value after application or enforcement of the regulations;~~

~~(8) 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; and~~

~~(9) A statement whether the claimant is filing claims with other public entities involving the same property and a copy of any decision made by the entity on the claim.~~

~~(c) In addition to the information required by subsection (b) of this section, a person filing a claim under this chapter after December 4, 2006, shall also submit the following information with the claim:~~

~~(1) A copy of the land use application the claimant has filed with the city or county in which the property lies; and~~

~~(2) A copy of the final decision made by the city or county on the claimant's land use application indicating that the city or county applied the challenged land use regulation as a criterion as part of its final decision.~~

~~(d) A claim shall not be considered complete for purposes of subsections (4) and (6) of ORS 197.352 until the claimant has submitted the information required by this section.~~

2.21.040 Review of Claim by Chief Operating Officer and Recommendation

~~(a) The COO shall review the claim to ensure that it provides the information required by Section 2.21.030. 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 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.~~

~~(c) If the claim fails to satisfy one or more of the prerequisites in subsection (b) of this section, the COO shall prepare a report to that effect and recommend to the Metro Council that it dismiss the claim as provided in Section 2.21.060(a)(1).~~

~~(d) If the claim satisfies each of the prerequisites in subsection (b) of this section, the COO shall complete the review of the claim to determine whether:~~

~~(1) The claimant owns an interest in the property and has owned an interest in the property without interruption since the effective date of the land use regulation that is the basis for the claim;~~

~~(2) City, county, regional and state land use regulations that applied to the property at the time the challenged land use regulation became applicable to, or were enforced against, the property allowed the claimant's proposed use and, if so, what criteria or conditions applied to the proposed use under the regulations;~~

~~(3) The specific, existing land use regulation that allegedly reduced the value of the property allows the proposed use and, if so, what criteria or conditions apply to the proposed use under the regulation;~~

~~(4) The specific, existing land use regulation that allegedly reduced the value of the property is exempt from claims under ORS 197.352(3); and~~

~~(5) If the specific, existing land use regulation that allegedly reduced the value of the property is not exempt under ORS 197.352(3), the regulation restricts the proposed use and the restriction has reduced the fair market value of the property. In making this determination, the COO will compare the value of the property before application or enforcement of the challenged land use regulation to the property with the value after the application or enforcement.~~

~~(c) 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 if the claim is found to be valid.~~

~~(f) The COO shall prepare a written report, to be posted at Metro's website, with the determinations required by subsections (b) and (d) of this section and the reasoning to support the determinations. 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.~~

~~(g) 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.~~

~~2.21.050 Hearing on Claim before Metro Council~~

~~(a) The Metro Council shall hold a public hearing on a claim that satisfies the prerequisites of Section 2.21.040(b) before taking final action. The COO shall schedule the hearing for a date prior to the expiration of 180 days after the filing of a completed claim under Section 2.21.030.~~

~~(b) The COO shall provide notification of the date, time and location of the public hearing at least 20 days before the hearing to the claimant, owners and occupants of property within 500 feet of the subject property, the local government with land use planning responsibility for the property and any person who requests notification. The notification shall indicate that a copy of the COO's recommendation under Section 2.21.040 is available upon request.~~

~~2.21.060 Action on Claim by Metro Council~~

~~(a) After the public hearing, but not later than 180 days after the filing of a claim under Section 2.21.030, the Metro Council shall consider the COO's recommendation and:~~

~~(1) Determine that the claim does not qualify for compensation;~~

~~(2) Determine that the claim qualifies for compensation and provide relief in the form of compensation or enhancement of the value of the property or decide not to apply the land use regulation; or~~

~~(3) Determine that the claim qualifies for compensation and resolve to modify or remove the land use regulation.~~

~~(b) The Council shall take the action that is most consistent with the purpose of this chapter and the Regional Framework Plan.~~

~~(c) The Council shall issue an order with its decision and direct the COO to send the order to the claimant, the city or county with land use responsibility for the property, persons who participated at the hearing held under Section 2.21.050, other persons who request a copy, and the Oregon Department of Administrative Services if the Council adopted the land use regulation to comply with state law.~~

~~2.21.070 Conditions on Compensation or Waiver~~

~~(a) The Metro Council may place any conditions on its action under Section 2.21.060, including conservation easements and deed restrictions, that are appropriate to achieve the purposes of this chapter. The Council shall place a condition on a decision under Section 2.21.060(a)(2) or (3) that the decision constitutes a waiver by the claimant of any further claims against Metro under Measure 37 involving the subject property.~~

~~(b) Failure by a claimant to comply with a condition provides a basis for action to recover any compensation made or revoke any action by the Council under Section under Section 2.21.060(a)(2) or (3).~~

~~2.21.080 Fee for Processing Claim~~

~~(a) The COO may establish a fee to be paid by a person filing a claim 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 claims. 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 final action 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.~~

CHAPTER 2.21

CLAIMS UNDER ORS 197.352 (BALLOT MEASURE 49)

SECTIONS	TITLE
2.21.010	Purpose
2.21.020	Definitions
2.21.030	Filing an Amended Claim
2.21.040	Review of Amended Claim by Chief Operating Officer
2.21.050	Filing a New Claim
2.21.060	Review of New Claim by Chief Operating Officer
2.21.070	Hearing before Metro Council
2.21.080	Fee for Processing Claim

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.

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.

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 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.

2.21.040 Review of Amended Claim by Chief Operating Officer

(a) The Chief Operating Officer (COO) shall review a claim filed under 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 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.

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 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.

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 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 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.

(g) 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.

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.

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 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.

Exhibit B to Ordinance No. 07-1168
Findings of Fact and Conclusions of Law

Ballot Measure 49 requires Metro, under specified circumstances, to provide relief to a property owner whose property is reduced in value as the result of a Metro land use regulation. If Metro concludes that a claim brought against it entitles the claimant to relief under the measure, Metro must make a choice: compensate for the reduction in value or modify, repeal or not apply the land use regulation that caused the reduction in value.

The Metro Council adopted a claims process by Ordinance No. 05-1087A, For the Purpose of Adopting a Process for Treatment of Claims Against Metro Under Ballot Measure 37 by adding Chapter 2.21 to Title 11 of the Metro Code on December 21, 2005, to implement Ballot Measure 37. The process provides a way for Metro to determine whether a claim against Metro is valid, and whether the specific circumstances require Metro to provide relief under the measure. Metro codified its claims process in Metro Code Chapter 2.21.

Ordinance No. 07-1168 amends the claims process in Chapter 2.21 to conform it to Measure 49, which modified Measure 37.

If Metro chooses to compensate a property owner for a reduction in value, there is no “land use decision” to which the policies in Metro’s Regional Framework Plan (“RFP”) or state planning law other than Measure 48 would apply. If Metro chooses to waive a land use regulation that caused a reduction in value, Metro will have to demonstrate at the time it adopts an ordinance to modify or repeal the regulation that its action is consistent with the RFP and state planning laws. This ordinance, therefore, is not a “land use decision” as defined in ORS chapter 197 and is not subject to the statewide planning goals.

If Metro chooses not to apply the land use regulation to the claimant’s property under this amended process, Metro may be authorizing a use that does not comply with the RFP or with state planning laws. Measure 49, however, expressly authorizes Metro to take that action, RFP and state planning laws notwithstanding. In short, if there are no funds for compensation, Metro must take action to allow a use that may violate the RFP and state planning laws if Metro is presented with a valid claim that meets the requirements of the measure.

In conclusion, Ordinance No. 07-1168 is consistent with the RFP and state planning laws.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1168, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.21 (CLAIMS UNDER ORS 197.352) TO IMPLEMENT BALLOT MEASURE 49, AND DECLARING AN EMERGENCY

Date: October 30, 2007

Prepared by: Richard Benner

BACKGROUND

Voters of Oregon enacted Ballot Measure 49 on November 6, 2007. Measure 49 amended Ballot Measure 37 in significant ways. Much of Metro's claims process (Code Chapter 2.21) does not conform to the amendments. This ordinance is intended to bring Metro's claims process into conformance with Measure 49.

Measure 49 becomes effective 30 days after the election, or December 6, 2007. On or after this date, people can file claims with Metro under Measure 49. This ordinance would contain an emergency clause making it effective on December 6, 2007, the first date a person could file a claim under the measure.

ANALYSIS/INFORMATION

1. **Known Opposition:** at the time this staff report was written, there was no known opposition.
2. **Legal Antecedents :** ORS 197.352 (Ballot Measure 37); Metro Code Chapter 2.21; and Ballot Measure 49, amending ORS 197.352.
3. **Anticipated Effects:** the amendments will bring Metro's claims process into line with newly-enacted Ballot Measure 49 and prepare Metro to deal with expected claims under the new measure, most likely amended claims originally filed with Metro under Ballot Measure 37.
4. **Budget Impacts:** the revised claims process will not have fiscal impacts that are different in nature or magnitude from those of Measure 37. Measure 49 itself narrowed the scope of Measure 37. It is reasonable to expect fewer claims as a result.

RECOMMENDED ACTION

The Metro Council should adopt Ordinance No. 07-1168 in order to prepare Metro for claims under Measure 49.