



City of Prineville
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
STAFF REPORT

Date: October 18, 2012
To: City Council
From: Scott Edelman, Planning Director
Regarding: Fee for processing Measure 49 claims

Summary

The City of Prineville fee schedule does not currently list a fee for Measure 49 claims. As with any other request that does not have a specific fee listed, if someone came in today with a claim staff would charge the "other miscellaneous requests" fee (2.3.12 on the fee schedule). This is not a set charge but an hourly rate for the time it takes to process the application/request. This is consistent with our fee policy which is designed to ensure we charge the full cost (but no more) to the development that will benefit from the action taken by the City. Prior to accepting a Measure 49 application, staff would estimate the number of hours that would be expected to process the request and require a deposit to cover the estimated cost of staff time. Staff would then track hours and either charge additional fees if the deposit was less than actual costs or give a refund to the applicant if the deposit turned out to be more than actual costs.

The City may never receive a Measure 49 application, but it is the opinion of staff that, if we do, it would be better to have a clear fee (or be clear that we do not charge a fee for this type of application) rather than relying on the "other miscellaneous requests" fee.

Background

Ballot Measure 49 was passed by the Oregon voters and went into effect on January 1, 2007. The purpose of this measure was "to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon's protections for farm and forest uses and the state's water resources." This law allows property owners to file a claim when they believe a regulation imposed by a city, county or state government has reduced the real market value of their property. If the claim is determined to be valid, the governing body that enacted the regulation would be required to either: a) pay the property owner the difference in value of the property before and after the regulation; or b) allow the property owner to ignore the regulation to the extent necessary to make up for this difference in value.

There was a five year limitation on filing a Measure 49 claim for any regulation enacted prior to January 1, 2007. That expired at the beginning of this year so the only claims that the City would potentially see would be based on regulations adopted after that date. If the City does receive a claim, it would most likely be related to the Goal 5, 6 and 7 regulations the City adopted through Ordinance 1165 on November 10, 2009. These were the regulations to protect scenic and natural resources (i.e. Barnes Butte, the rimrock, Ochoco Creek, Crooked River, etc) and to prevent development that could be in danger, or create danger to neighboring properties, due to natural hazards such as steep slopes. There is also a five year limitation on claims related to any new regulation so any claim triggered by Ordinance 1165 would have to be filed by November 10, 2014.

A property owner with a Measure 49 claim would have to submit an application to the City which, by law, must include the following:

- An application and fee (if the jurisdiction charges a fee)
- Proof that the applicant owned the property at the time the new regulation was enacted
- A reference to the action taken by the City that affected the value of the property
- Evidence that the property is actually developable (i.e. not in a floodway, wetland, too steep of a slope, etc.)
- Appraisal by a certified appraisal which demonstrates the real market value of the property at its highest and best use one year before the regulation went into effect and one year after. The appraisal must take into account any features of the land that would make development more costly (i.e. building on steep slopes, mitigating wetlands, building above the floodplain, etc.).

The law authorizes jurisdictions to charge a fee to cover the costs of processing a claim (time and materials). The way the fee is charged and the amount varies greatly from city to city. In preparation for this report, staff called other Central Oregon cities and sent an email to all of the Planning Directors in the state to find out whether or not they charge a fee. The city received responses from only two cities outside Central Oregon – Oregon City and St. Helens each charge a \$1000 deposit and bill for actual costs. Other Central Oregon cities charge the following:

Bend	\$4,467 deposit with actual costs billed
Redmond	\$12,674 flat fee
Sisters	Actual costs billed, no deposit required
Madras	Actual costs billed, no deposit required

Discussion

There are four options for Council to consider in regard to a fee for Measure 49 claims:

- Charge a flat fee
- Charge on a cost recovery basis with no deposit
- Charge on a cost recovery basis with a deposit
- Do not charge a fee

Staff does not recommend a flat fee as it would not be possible to accurately estimate the time and materials because the cost would vary greatly from one claim to the next depending on multiple factors. Staff also does not recommend charging on a cost recovery basis with no deposit as it would be very difficult to collect if a claim were denied.

There are legitimate arguments for each of the other two options. Charging on a cost recovery basis with a deposit would be consistent with the other fees in the City's fee schedule in that they are intended to pay for the cost of processing an application. The City has adopted a philosophy that "growth pays for growth", meaning the party that stands to benefit from the results of an application should pay the cost for processing that application, rather than the cost being covered by tax payers. There can be a significant amount of staff time required for a Measure 49 claim, which would pull staff away from other projects. These claims are also expected to require significant time on the part of a jurisdiction's legal counsel, which is the main reason cities like Bend and Redmond have fees set fairly high.

On the other hand, there is a significant difference between a Measure 49 claim and other applications. The difference is that, with a Measure 49 claim, the applicant is trying to justify the right to develop because of a regulation imposed by the City. It represents a property owner who purchased land under a certain set of development assumptions and, because of the regulation, has potentially lost some of the value of their investment. The strongest argument for not charging a fee for a Measure 49 claim is that if the community as a whole values something enough to put a restriction on a private property, then it should be the community that covers the cost of the application and not the individual property owner who was affected. It is also important to note that there are other costs to the applicant which include the cost of the appraisal (up to \$5,000 of which is allowed to be included for recovery under the claim) and any legal or professional services that the applicant uses to demonstrate the legitimacy of the claim (which are not included for recovery under the claim).

Requested Action

Staff requests direction from Council in regard to whether or not a cost recovery fee should be charged for Measure 49 claims and, if so, how much of a deposit should be required. If Council determines that a fee should not be charged, staff does recommend that a deposit be required that would be fully refundable if the claim is approved; the purpose of this being to avoid the City getting flooded with claims that do not have a sufficient basis.

RESOLUTION NO. 1198

A RESOLUTION AMENDING FEES AND CHARGES FOR THE CITY OF PRINEVILLE

WHEREAS, Resolution No. 1194 established fees and charges for the City of Prineville for fiscal year 2012-2013; and

WHEREAS, the City of Prineville desires to amend the fee schedule to add a fee for filing Measure 49 claims;

NOW, THEREFORE, it is hereby resolved that the schedule for fees and charges attached to this Resolution as Exhibit A is hereby adopted with said fees and charges to be effective October 10, 2012, and continue in effect until modified by the further resolution of the Prineville City Council.

Approved by the City Council the ____ day of October, 2012.

Betty J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder