

## CHAPTER 49

### MEASURE 49 PROCESSING

#### 49.100 SHORT TITLE.

This chapter may be cited as the “Measure 49 Processing Ordinance.”

#### 49.110 PURPOSE.

This chapter provides an internal process for implementing the provisions added to Oregon Revised Statutes, Chapter 197 by Ballot Measure 49 (“Measure 49”) (November 6, 2007). Measure 49 permits owners of private real property who previously received a waiver from land use regulations pursuant to Ballot Measure 37 (“Measure 37”) (November 2, 2004) to proceed with Measure 37-based use(s) provided that the owner has a common law vested right to complete and continue the use(s) allowed in the waiver. This chapter provides a prompt, open, and thorough process that enables property owners and interested others to present their respective positions relative to whether or not the requisite common law vested right to complete and continue the use(s) described in the Measure 37 waiver is established.

#### 49.200 DEFINITIONS.

For the purposes of this chapter, the following definitions apply unless the context requires a different meaning.

(1) **WORDS & PHRASES.** Words and phrases shall have the same meaning as provided in Measure 49.

(2) **COMMUNITY DEVELOPMENT DIRECTOR.** Means the Polk County Community Development Director or designee.

(3) **REQUEST FOR VESTING DETERMINATION.** Means a determination by Polk County Community Development (with appeal rights to the Hearings Officer and then as provided by Measure 49) as to whether or not the requesting party has demonstrated the requisite common law vested right to complete and continue the use(s) described in the subject Measure 37 waiver(s).

#### 49.300 VESTING DETERMINATION PROCESS.

An owner of real property located within the unincorporated area of Polk County may submit a parcel-specific Request for Vesting Determination (“RVD”) with the Community Development Department. The RVD will be processed in the ordinary course of business. A complete RVD shall include the following information:

- (1) Name, address, telephone number and signature of the owner;
- (2) A copy of the Measure 37 waivers issued by Polk County and the State of Oregon;
- (3) A copy of the current deed and/or title company documentation confirming current ownership status;
- (4) The physical address of the subject parcel;
- (5) A copy of all post-Measure 37 land use applications and approvals;
- (6) Identification of expenditures made to develop the parcel and the dates of those expenditures;
- (7) A written statement which articulates in detail facts establishing that the subject use(s) is vested as required by Measure 49 (Chapter 424, Oregon Laws 2007);
- (8) A RVD processing fee in the sum of \$800.00.

#### 49.305 VESTING DETERMINATION DECISION.

Within 45 days after the RVD is deemed complete, the Community Development Director will issue a written determination stating whether or not the subject use(s) is vested as required by Measure 49. Notice of the vesting determination will be provided to area property owners identified on the current tax assessment role within 750' of the property where the subject property is located, and participants of record. A courtesy notice will also be provided to the Area Advisory Committee.

#### 49.310 LOCAL APPEAL OF VESTING DETERMINATION DECISION.

(1) HEARINGS OFFICER. The vesting determination issued by the Community Development Director may be appealed to the Polk County Hearings Officer. To be timely, a completed appeal form, along with the appeal fee of \$250.00 must be filed with the Community Development Department within twelve (12) days from the date that the Notice is mailed. Appeal forms are available at the Community Development Department counter.

(2) VESTING DETERMINATION APPEAL HEARING. Upon receipt of a timely and complete vesting determination appeal form, the Community Development Department will schedule a duly noticed public hearing at the first available and convenient date. The hearing will be held at the Polk County Courthouse, Dallas, Oregon. Within 15 days after the close of the appeal hearing, the Hearings Officer will issue a written decision affirming or overruling the Community Development Director's vesting determination. The Hearings Officers' decision will serve as the final county decision.

#### 49.315 JUDICIAL REVIEW.

Final decisions of the Polk County Hearings Officer are subject to judicial review as provided by Measure 49 and/or Oregon common law.

#### 49.400 EVIDENCE.

The property owner submitting the RVD has the burden of proof for all issues required for processing the Measure 49 vesting determination.

#### 49.500 SCOPE OF MEASURE 49 VESTING DETERMINATION.

The vesting determination issued by Polk County pursuant to Measure 49 and/or this chapter is specific to Polk County and may not be binding on other jurisdictions. Those seeking Measure 49 vesting determinations may need to file a Measure 49 vesting determination with the State of Oregon and/or other governmental entities.

#### 49.600 TRANSFER OF VESTING DETERMINATION.

Vesting determinations made under Measure 49 and this chapter are real property parcel-specific. Polk County disclaims any liability to any person or entity should the transfer rights associated with its vesting determination decision be restricted or prohibited by current or future ordinances, regulations, statutes or judicial decisions.

#### 49.700 ENFORCEMENT OF DECISION.

In the event an owner, or the owner's successor in interest (if any where applicable), fails to fully comply with the vesting determination decision or conditions therein, the County may institute an enforcement proceeding under this chapter, or as otherwise permitted by law.

#### 49.720 UNDERLYING VALIDITY.

Any determination and/or relief granted under this chapter may be deemed void and of no further force and effect from and after the date of Polk County's final vesting determination decision, without any action on the part of the County to the extent an applicable administrative, legislative or judicial determination modifies or revokes said determination and/or relief.

#### 49.900 SUBSEQUENT INVALIDITY.

If any portion of this chapter is declared invalid by a court of competent jurisdiction, then to the extent necessary to implement Measure 49, the remaining portions of this chapter shall remain in full force and effect.

[Chapter 49 – *Measure 49 Processing*, enacted by Polk County Ordinance 08-01]