



COUNCIL RESOLUTION NO. 5245

**A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY
LOCATED ADJACENT TO 70 WEST 24th PLACE, EUGENE,
OREGON (ASSESSOR'S MAP 18-03-06-42, TAX LOT 2700).**

PASSED: 4:3

REJECTED:

ABSENT: Evans

CONSIDERED: September 24, 2018



RESOLUTION NO. 5245

A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY LOCATED ADJACENT TO 70 WEST 24th PLACE, EUGENE, OREGON (ASSESSOR'S MAP 18-03-06-42, TAX LOT 2700).

The City Council of the City of Eugene finds that:

A. Elise Moore (Claimant) submitted a claim to the City seeking compensation or a waiver of EC 9.2751(18)(a)3. under Ballot Measure 49. Claimant alleges that the limit on building size on alley access lots of 10% of the lot size or 800 square feet (whichever is smaller) restricts the residential use and reduces the fair market value of her property identified as Assessor's Map 18-03-06-42, Tax Lot 2700 and located adjacent to 70 West 24th Place, Eugene, Oregon (the subject property).

B. Considering the requirements of Measure 49, and the materials related to the claim submitted to the City by the claimants and others, and the Findings, attached as Exhibit A to this Resolution, the City Council finds that the claim should be denied because EC 9.2751(18)(a)3. does not restrict the residential use of Claimant's property.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings and the Findings attached as Exhibit A to this Resolution, which are adopted, and the testimony and evidence in the record for this claim, the City Council hereby denies the Measure 49 claim submitted by Claimant Elise Moore, for the property located adjacent to 70 West 24th Place, Eugene, Oregon, Assessor's Map 18-03-06-42, Tax Lot 2700.

Section 2. A copy of this Resolution shall be forwarded to Elise Moore at 70 West 24th Place, Eugene, Oregon 97405, to her representative, Bill Kloos at 375 W. 4th Street, Suite 204, Eugene, Oregon 97401, to any person who submitted written arguments or evidence before the close of the record, and to the City's Planning & Development Department. A copy of this Resolution shall also be forwarded to Lane County Deeds and Records.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 24th day of September, 2018.

Amantha Roberts
Deputy City Recorder

**Exhibit A to Resolution Denying
Moore Measure 49 Claim**

**BALLOT MEASURE 49
(ORS 195.300 – ORS 195.336)**

CLAIM FOR COMPENSATION

FINDINGS

NAME OF CLAIMANT: Elise Moore

PROPERTY ADDRESS: West 24th Place & Portland Alley
Eugene, OR 97405

CLAIMANT’S REPRESENTATIVE: Bill Kloos

PROPERTY IDENTIFICATION: Tax Lot 2700 of Assessor’s
Map 18-03-06-42

ZONING: R-1 Low Density Residential

I. Summary of Claim

Elise Moore (Claimant) submitted a claim under Ballot Measure 49 for compensation or waiver of land use regulations alleging a reduction in fair market value to her vacant property located near the intersection of West 24th Place and Portland Alley in Eugene, Oregon. The property is a vacant alley access lot that is zoned R-1 Low-Density Residential. Claimant asserts that EC 9.2751(18)(a)3., which limits building size on alley access lots to 10% of the lot size or 800 square feet (whichever is smaller), restricts the residential use of her property and reduces its value. Specifically, Claimant contends that she purchased the lot in 2010 to build a 1,200 square foot house on the property and that EC 9.2751(18)(a)3., enacted in 2014, limits maximum building size on the lot to 462 square feet. She claims the regulation reduced the property’s value by \$25,000 and asks the City to compensate her for the lost value or to waive EC 9.2751(18)(a)3. to allow construction of a 1,200 square foot dwelling that complies with all other residential development standards.

A City Council public hearing on this Measure 49 claim was held on July 16, 2018. The claimant’s attorney, Bill Kloos, testified in favor of granting the claim. No other testimony was received at the public hearing.

Following the hearing, the Council left the record open one week, until 5:00 p.m. on July 24, 2018, for submission of written testimony and provided the claimant an additional week, until 5:00 p.m. on July 31, 2018, to rebut evidence and arguments submitted. At the Council meeting on July 23, 2018, the Council voted to extend the open record period until 5p.m. on July 27, 2018 and to extend the claimant’s rebuttal period until 5p.m. on August 3, 2018.

On September 10, 2018, the Council voted to leave the record open until 5:00 p.m. on Wednesday, September 12, 2018, and to extend Claimant’s rebuttal period until 5:00 p.m. on Wednesday, September 19, 2018.

II. Requirements of Measure 49

Measure 49 generally grants a property owner of residentially zoned land located within an urban growth boundary the right to compensation or waiver of a land use regulation (at the option of the government) if five substantive requirements are met. First, a claimant must own the property subject to the claim. Second, the regulation must constitute a “land use regulation” as that term is defined by Measure 49 and it must have been enacted after January 1, 2007, but not more than five years before the date the claim was filed. Third, the regulation must “restrict the residential use” of residentially zoned private property. Fourth, the regulation must cause a reduction of the fair market value of the property. Fifth, the regulation must not fall within one of Measure 49’s six exemptions.

A. Ownership

Measure 49 provides for payment of compensation or relief from (waiver of) specific regulations for “owners” of real property. Ballot Measure 49 defines “owner” to include “[t]he owner of fee title to the property as shown in the deed records of the county where the property is located[.]” ORS 195.300(18).

Based on information that the Claimant submitted (Warranty Deed 2010-033733) and information from the Lane County Regional Land Information Database (RLID), the City Council finds that Claimant Elise Moore acquired fee title to the subject property on July 8, 2010. Accordingly, the City Council finds that Claimant Elise Moore is the owner of the property.

B. “Land Use Regulations”

Measure 49 requires compensation (or waiver) for only those regulations that constitute “land use regulations” as Measure 49 defines the term. Measure 49 defines “land use regulation,” with respect to cities, as a “provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use.” ORS 195.300(14)(c). Further, land use regulations eligible for waiver under Measure 49 must have been enacted after January 1, 2007, but within five years of the date of the claim.

The City Council finds that EC 9.2751(18)(a)3. is a provision of the city’s zoning ordinance and it regulates residential uses on property in a residential zone. The City Council further finds that EC 9.2751(18)(a)3. was adopted by Ordinance No. 20541, which became effective August 29, 2014. The City Council finds that Claimant timely filed her Measure 49 claim on January 29, 2018. However, as discussed in more detail below, the City Council finds that EC 9.2751(18)(a)3. does not restrict the residential use of Claimant’s property.

C. Restriction on Residential Use

A “land use regulation” gives rise to a Measure 49 claim only if the regulation restricts the residential use of private real property. The specific regulation that the is the subject of Claimant’s Measure 49 claim is EC 9.2751(18)(a)3., which limits the square footage of new dwellings built

on alley access lots. The Claimant alleges that EC 9.2751(18)(a)3. restricts the residential use of her property because it prevents her from building a home that would have been allowed before the regulation took effect.

Adopted on July 28, 2014 (by Ordinance No. 20541) and effective on August 29, 2014, EC 9.2751(18)(a)3. establishes the following limitations on square footage of buildings on alley access lots:

(18) Alley Access Lots in R-1.

(a) General Standards.

1. **Applicability.** Except as provided in (b) below, the following standards apply to development on alley access lots in R-1.
2. **Use Regulations.** Alley access lots have the same land use regulations as the base zone except that there is no allowance for a secondary dwelling.
3. **Building Size.** The total building square footage of a dwelling shall not exceed 10 percent of the total lot area or 800 square feet, whichever is smaller. Total building square footage is measured at the exterior perimeter walls and is defined as all square footage inside of the dwelling, including, but not limited to hallways, entries, closets, utility rooms, stairways and bathrooms.

The City Council finds that EC 9.2751(18)(a)3. does not restrict the residential use of Claimant's property because EC 9.2751(18)(a)3. does not restrict Claimant's ability to use her property for a single family residence, it simply limits the size of the single family residence Claimant may construct. Because Claimant retains the ability to construct a single family residence on her property both before and after the adoption of EC 9.2751(18)(a)3., the City Council finds that EC 9.2751(18)(a)3. does not restrict Claimant's residential use of her property.

D. Reduction in Value

A "land use regulation" gives rise to a Measure 49 claim only if, in addition to restricting the residential use of private real property, it reduces the fair market value of the property. Claimant submitted appraisals showing the fair market value of the property one year before the adoption of EC 9.2751(18)(a)3. (July 28, 2013) and one year after the adoption of EC 9.2751(18)(a)3. (July 28, 2015). The July 28, 2013 appraisal provides a property value of \$65,000. The July 28, 2015 appraisal provides a property value of \$40,000. The City Council finds that appraisals comply with the requirements of ORS 195.310 and establish that EC 9.2751(18)(a)3. reduces the fair market value of the Claimant's property.

E. Exemptions

Finally, a Measure 49 claim is not valid if the challenged regulation was enacted before the Claimant acquired the property or if it falls within one of the six exemptions under the Measure. Regulations adopted to: 1) protect the public health and safety, 2) prevent nuisances, or 3) comply with federal law, are exempt under Measure 49, even if they otherwise constitute "land use regulations" that "restrict the residential use" and "reduce the fair market value" of property. In addition, regulations that (4) restrict or prohibit the use of the property for selling pornography or performing nude dancing, (5) plan and rezone land for industrial zoning to be included in the UGB,

or (6) plan and rezone land already within a UGB to industrial zoning, are also exempt under Measure 49.

The City Council finds that EC 9.2751(18)(a)3. was enacted after the Claimant acquired the property and EC 9.2751(18)(a)3. does not fall within any of Measure 49's six exemptions.