



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Agenda Planning Commission

Monday, January 23, 2017

7:00 PM

Commission Chambers

1. Call to Order
2. Public Comments
3. Work Session
- 3a. Legal Training
4. Communications
5. Adjournment

Attachments: [Commission Report](#)
[July 26, 2016 Land Use Procedures Memorandum](#)

Public Comments: The following guidelines are given for citizens presenting information or raising issues relevant to the City but not listed on the agenda.

- *Complete a Comment Card prior to the meeting and submit it to the staff member.*
- *When the Chair calls your name, proceed to the speaker table and state your name and city of residence into the microphone.*
- *Each speaker is given 3 minutes to speak. To assist in tracking your speaking time, refer to the timer at the dais.*
- *As a general practice, Oregon City Officers do not engage in discussion with those making comments.*

Agenda Posted at City Hall, Pioneer Community Center, Library, and City Web site(oregon-city.legistar.com).

Video Streaming & Broadcasts: The meeting is streamed live on Oregon City's Web site at www.orcity.org and is available on demand following the meeting.

ADA: City Hall is wheelchair accessible with entry ramps and handicapped parking located on the east side of the building. Hearing devices may be requested from the City staff member prior to the meeting. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.



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Staff Report

File Number: PC 17-006

Agenda Date: 1/23/2017

Status: Agenda Ready

To: Planning Commission

Agenda #: 3a.

From: Assistant City Attorney Carrie Richter

File Type: Planning Item

SUBJECT:

Legal Training

RECOMMENDED ACTION (Motion): No action of the Planning Commission is requested.

BACKGROUND: The Assistant City Attorney, Carrie Richter will provide a presentation reviewing the legal requirements of the Planning Commission.

BUDGET IMPACT:

Amount:

FY(s):

Funding Source:



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MEMORANDUM

TO: City of Oregon City Staff
FROM: Carrie A. Richter, Deputy City Attorney
DATE: July 26, 2016
RE: Land Use Procedures Update

There are a number of state and regional noticing and decision requirements that apply to land use decisions, in addition to those set forth in the Oregon City Municipal Code (OCMC) Chapter 17.50. Given the recent increase and complexity of the development applications filed, along with a number of staff changes within the Planning Department, the City Attorney's office offered to provide a summary of these requirements, keying them in to the Permit Approval Process Table, set forth in OCMC 17.50.030, which identifies where these obligations apply to the various local reviews.

Legislative and Quasi-Judicial Distinction – The procedures to be followed when making a land use decision depend on the nature of the decision being made. A legislative decision typically involves the adoption or amendment of policy or regulations that apply to a large area or group of people. A quasi-judicial decision applies existing criteria to a particular land use proposal to a single tract of land. Three factors a court uses to determine if a decision is legislative or quasi-judicial include: (1) is the process bound to result in a decision – if it is subject to 120-day decision limit, it is bound to result in a decision; (2) does the decision require the application of pre-existing criteria; and (3) is the action directed to a closely circumscribed factual situation or a small number of persons? *Strawberry Hill 4 Wheelers v. Board of Comm'rs*, 287 Or 591, 602-603, 601 P2d 769 (1979).

Procedures Controlling Legislative Decision-Making -

Measure 56 Notice – Notice must be provided when legislative amendment (1) changes the base zoning classification of the property or (2) adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone. ORS 227.186(3)-(4), (6), (9). Notice must be given at least 20 days but not more than 40 days in advance of the first hearing.

Metro Notices – The two Metro-imposed notice requirements are: 1) a 35-day mailed notice to Metro of all amendments to the comprehensive plan and/or land use regulations; and 2) a 45-day mailed notice to Metro for a proposed new or amended ordinance or regulation relating to



protection of, or mitigation of damage to, habitat, trees or other vegetation under Title 13 Nature in Neighborhoods. Metro Code 3.07.1360(c)(2).

Both of these Metro notice deadlines are different and much earlier than the notice provided to Metro under OCMC 17.50.090(C), which requires giving notice of legislative proposals to Metro, along with Tri-Met, ODOT and affected neighborhoods, at least 20 days prior to a public hearing.

DLCD Notice Requirements – Except in two limited circumstances, City staff must give DLCD written notice of a proposed change to an acknowledged comprehensive plan or a land use regulation¹ at least 35 days before the initial evidentiary hearing. OAR 660-018-0020(1). The two exceptions are: (1) where no goals, commission rules, or land use statutes apply to a particular proposed change; or (2) emergency circumstances exist beyond the control of the local government. OAR 660-018-0022. This will include zone changes in cases where one or more of the statewide planning goals apply, for example Goal 12 and the Transportation Planning Rule. City staff must give DLCD notice of the adopted change within 20 days of the decision adopting the change, even when those decisions are subject to an exception. OAR 660-018-0040(2) and -0022(3).

Procedures Controlling Quasi-Judicial Decision-Making - Quasi-judicial decisions require compliance with decision-making procedures of ORS 197.763 including: (1) mailed notice 20 days in advance of the hearing; (2) notice listing the applicable criteria from both the zoning regulations and the comprehensive plan (need not include statewide planning goals but may do so); (3) any staff report used at the hearing must be available 7 days in advance of the hearing; (4) includes the oral hearing disclosures including impartial decision-maker questions; (5) requires continuance or to leave the record open if requested at the initial hearing; and (6) unless waived, applicant gets 7 days after record is closed to submit final written argument. These procedures do not apply to legislative decisions.

120-Day Decision Time Limit – The city must take final action on an application for a “permit” or a zone change within 120 days of the date the application is deemed complete. ORS 227.178(1). A “permit” is a discretionary approval of a proposed development of land under land use regulations. ORS 227.160.

Consolidated Review – ORS 227.175(1) requires that the City provide a consolidated procedure for all permits and zone changes. When a permit and zone change are consolidated for review, they will be subject to the 120-day time limit. When review is consolidated with a plan amendment and the zoning and permits are contingent on the plan change, the consolidated decision is not subject to the 120-day rule. An annexation that includes a zone change would

¹ The City’s zoning map is adopted as part of the City’s zoning regulation (OCMC 17.06.020). Accordingly, any zone change is an amendment to the City’s land use regulations and is subject to this requirement.



likely be subject to the 120-day limit because the zone change must be accomplished within that deadline.

Statewide Planning Goal Applicability – The Statewide Planning Goals apply to an amendment of an acknowledged comprehensive plan or land use regulation. ORS 197.175(2)(a) and 197.835(5). Additionally, when a goal or administrative rule are amended, the amendment applies directly to all land use decisions until the amendment is included in the City's plan or regulations and acknowledged. ORS 197.646(2). Any amendment to an acknowledged land use regulation must comply with all applicable statewide planning goals, if the comprehensive plan "does not contain specific policies or other provisions which provide the basis for the regulation." ORS 197.835(5)(b). In other words, where the City's comprehensive plan is not acknowledged with regard to a particular statewide goal, it will apply directly. For example, a zone change that is otherwise compatible with the comprehensive plan will have to independently consider Goal 12 (TPR) may require adoption of the alternative mobility standards before it can be approved. With regard to annexation, OAR 660-014-0060 requires local governments to apply acknowledged plans and land use ordinances, rather than statewide planning goals, unless plans and ordinance do not control the annexation.

Applying these rules to the decision-making process chart set forth in OCMC 17.50.030 would typically require additional actions as noted below. Further additions and deletions to the chart are noted in underlined and strikethrough text.

Permit Type	I	II	III	IV	Expedited Land Division	DLCD/M56 Metro Notice	QJ or Leg or Facts Will Determine	Subject to 120-Day Limit
Annexation w/out Zone Change				X			Depends, likely QJ	
Compatibility Review	X							
Code Interpretation			X				Depends	X
General Development Plan			X				QJ	X
Conditional Use			X				QJ	X
Detailed Development Plan ¹		X	X				QJ	X
Extension		X					QJ	X
Final Plat	X							
Geologic Hazards		X					QJ	X
Historic Review			X				QJ	X
Lot Line Adjustment and Abandonment	X							

¹ If any provision or element of the master plan requires a deferred Type III procedure, the detailed development plan shall be processed through a Type III procedure.



Permit Type	I	II	III	IV	Expedited Land Division	DLCD/M56 Metro Notice	QJ or Leg or Facts Will Determine	Subject to 120-Day Limit
Major Modification to a Prior Approval ²	X	X	X	X	X		QJ	X
Minor Modification to a prior Approval	X							
Minor Partition		X					QJ	X
Nonconforming Use, Structure and Lots Review	X	X					QJ	X
<u>Plan or Code Amendment</u>				<u>X</u>		<u>X, where zone change or action limits uses allowed in zone</u>	<u>Leg</u>	
Reconsideration	X							
Revocation				X			QJ	X
Site Plan and Design Review		X					QJ	X
Subdivision		X			X		QJ	X
Variance		X	X				QJ	X
<u>Zone Change Consistent With Acknowledged Comp Plan</u>				<u>X</u>		<u>X, except for DLCD, in cases where plan fully implements goals</u>	<u>Depends</u>	<u>X</u>
<u>Zone Change Upon Annexation with No Discretion³</u>	<u>X</u>			<u>X</u>				
Zone Change Upon Annexation with Discretion				X		X	Depends	
Natural Resource Exemption	X							
Natural Resource Review		X					QJ	X

GSB:7940175.3 [34758.00400]

² A major modification to a prior approval shall be considered using the same process as would be applicable to the initial approval.

³ Given the need to determine utility and service infrastructure adequacy, it is unlikely that the facts will result in a non-discretionary annexation decision opportunity.

CITY OF OREGON CITY PLANNING COMMISSION TRAINING

January 23, 2017

By Carrie A. Richter



Bateman Seidel Miner Blomgren Chellis & Gram, P.C.

LEGAL LIMITATIONS ON DECISION-MAKING

FEDERAL

United States Constitution

United States Code

STATE

Oregon Constitution

Oregon Revised Statutes

DLCD/LCDC

19 Statewide Land Use Goals

Oregon Administrative Rules
Division 660-

OREGON CITY

Oregon City Comprehensive Plan including
Transportation System Plan, Utility Plans and Master
Plans

Oregon City Municipal Code

TYPES OF LAND USE REVIEW IN OREGON CITY

Administrative Decisions

- **Type I** – No discretionary decision-making and no notice, hearing or appeal.

Quasi-Judicial Decisions

- **Type II** – Limited discretion in decision-making. Notice to neighbors, written comment, Director decision, and appeal rights to the City Commission.
- **Type III** – Discretionary review to determine compliance with criteria. Notice, public hearing by Planning Commission or Historic Review Board, and appeal rights to the City Commission.
- **Type IV** – Typically, plan amendments and zoning map amendments applied to particular property. Notice, public hearing by Planning Commission with recommendation and final decision by the City Commission.

Legislative Decisions – Policy-making decisions including amendments to plan and zoning code text or map. Planning Commission recommendation and final decision by City Commission. City Commission review is *de novo*.

QUASI-JUDICIAL VS. LEGISLATIVE DECISION-MAKING

Quasi-Judicial

- Adjudicative: Application of the criteria to the facts
- ORS 197.763: opportunity to present and rebut evidence.
- Impartial Tribunal
- Raise it or Waive It
- Commission review of appeals on the record.
- Adequate Findings and Conclusions
- Decision must be made 120 days after application is complete.

Legislative

- Making policy
- No legal formalities in terms of hearing disclosures
- Decision-makers are expected to communicate with interested parties as part of making policy.
- Commission review of recommended amendments *de novo*.
- No decision-making timeline.

QUASI-JUDICIAL HEARING DISCLOSURES

- A list of the applicable criteria is provided.
- Staff report prepared 7 days in advance and is available.
- Testimony must be directed to the criteria.
- Failure to raise an issue precludes raising it before LUBA.
- Failure to raise constitutional issues precludes an action for damages in circuit court.
- Right to an impartial tribunal.

IMPARTIAL TRIBUNAL

Decisions must be based on the testimony and evidence that is part of the record:

- Disclose ex parte contacts on the record giving the public an opportunity to question decision-maker further.
- Ex parte contacts are facts gleaned outside the record from newspaper articles, site visits, or attending neighborhood meetings, for example.
- An objection must be made in order to preserve a challenge at LUBA on that basis.

Decisions must be free of actual bias:

- “Actual Bias” - A predisposition rendering it impossible to make a decision based on the evidence and argument presented.
- No actual conflict of interest - If the decision is likely to have a direct pecuniary benefit or detriment to the decision-maker or a family member of the decision-maker, the decision-maker may not participate.
- Potential conflict of interest – Announce and determine whether to participate.

PUBLIC HEARING PROCEDURES

- Staff Report – Available 7 days before initial hearing
- Applicant's Presentation
- Testimony by Interested Parties – Proponents and opponents
- Applicant Rebuttal
- At any time during the initial hearing, a party requests a continuance, the Planning Commission must hold off in making a decision at that meeting. The Planning Commission may:
 - Continue the meeting to a date certain and resume the proceedings where the Commission left off allowing additional testimony with rebuttal.
 - Leave the record open for at least 7 days for all parties, an additional 7 days for all parties to respond to the evidence and finally an additional 7 days for the applicant to submit final written argument (not new evidence).

THE HEARING RECORD – BE CLEAR ABOUT WHAT IS IN AND WHAT IS OUT.

PUBLIC MEETINGS AND RECORDS REQUIREMENTS

“Public Meeting” – Majority or a quorum “deliberating to a decision” – may include meeting substitutes such as conference calls or emails.

- General rule is that they are open to the public
- Notice and minutes
- Enforcement

“Public Records” – Almost any writing, data storage or other record.

- General rule is that they are available to the public
- Enforcement

DELIBERATION AND THE DECISION

DETERMINATION OF WHETHER THE STANDARDS ARE MET INCLUDES:

Interpreting the Applicable Criteria – Apply meaning to ambiguous standards in the purpose or policy of the provision. Focus on the plain meaning of terms taken in context.

Adequate findings – An explanation of how the facts satisfy the criteria.

- Findings must explain why and should not amount to mere conclusions.
- Findings should resolve conflicts in facts and explain why one fact was deemed more reliable than another.
- Findings must address all of the applicable criteria. If the criteria is not applicable, the findings should explain why this is the case.

Based on Substantial Evidence – Is there evidence in the record to support the conclusions identified in the findings.

- The decision-maker can weigh the evidence and make a choice when the evidence is in conflict.

Conditions of Approval – may be attached to ensure that all applicable approval standards are or can be met.