

A City's Role in the Land Use Process

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Oregon is known for its strict regulation of land use, with literally hundreds of state statutes and rules on whether, how and when a city may allow land to be developed. State laws also govern how a city must notify and engage its residents when the city is considering a proposed change to its land use regulations, or considering a landowner's application for a land use approval. Complying with these state laws takes time, methodical decision-making and staff expertise.

STATEWIDE GOALS & CITY PROCEDURES

Oregon's land use laws relate to 19 "Statewide Planning Goals" that address all aspects of land use planning, including: Citizen Involvement (Goal 1), Natural Resources (Goal 5), Economic Development (Goal 9), Housing (Goal 10), Public Facilities (Goal 11), Transportation (Goal 12), and Urbanization (Goal 14). State law requires every city in Oregon to have a state-approved comprehensive plan to implement the Statewide Planning Goals and to serve as a high-level planning document for the city. Each city's comprehensive plan must include local policies and a land use diagram that are implemented through the city's zoning map and land use code.

The zoning map and land use code are a city's primary land use documents. The map assigns a land use zone to every parcel of land inside the city limits. The code sets out development standards for each zone, including requirements and limits for things like building height, property line setbacks, landscaping and parking spaces. The code also lists the land uses allowed in each zone. For each zone, the code specifies which of the allowed uses are permitted "outright" and which require a more intense approval process. To establish an outright permitted use, a landowner needs only to obtain a building permit, processed by city staff to make sure that applicable development standards are met. To obtain city approval of other uses, the landowner must submit the specified land use application (such as a subdivision or conditional use permit) and demonstrate how the development proposal meets criteria set out in the code.

A city's land use code sets out the procedures it uses to consider land use applications. To a great extent, these procedures are prescribed by state law, though city procedures often exceed state requirements. Each review process includes

mailed notices to surrounding property owners and an opportunity for interested persons to provide written testimony. For certain kinds of applications, a public hearing is required. Many city codes include several different procedural paths with varying notice and hearing requirements. For most land use applications, the city's final decision must be made within 120 days of an application's submittal.

CITY ROLES & DECISION-MAKING

When it comes to land use, city officials play two different roles. Sometimes city officials act like the Legislature, considering the adoption of changes to the land use code that apply city-wide or within an entire zone. This role is referred to as "legislative decision-making." In other cases, city officials act like the judiciary, reviewing a landowner's land use application, holding hearings, considering testimony, and applying code criteria to decide whether the city must approve or deny the proposed development. This is referred to as "quasi-judicial decision-making." There are different rules for city officials, depending upon which role is being played.

When acting in a legislative role, city officials are considering a change in city policy that will be generally applicable. City officials may exercise broad discretion when considering whether to vote for or against the proposed change. In fact, the officials may decide to simply abandon the idea without voting at all. City officials may talk with residents about a legislative proposal and may do their own research about it. They are bound only by the general ethics laws that apply to all city actions.

When considering a land use application in their quasi-judicial role, city officials are bound by additional laws. To ensure a fair process, city officials should not form an unchangeable opinion about an application until they have received all testimony and evidence. Also, city officials should not read or talk about the pending application outside of the formal hearing and review process. If such an "ex parte" communication does occur, the city official should alert the planner so that remedial steps can be taken. The city's decision on a land use application must be based on written findings addressing the application's consistency with the approval criteria from the code, and no other considerations. The applicable criteria are those that were in place at the time the application was submitted. ■