

CITY OF OREGON CITY

PLANNING COMMISSIONER

TRAINING

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OREGON'S LAND USE PLANNING FRAMEWORK

STATE OF OREGON

Requires all jurisdictions to have a Comprehensive Plan, urban growth boundaries and implementing ordinances.

PORTLAND METRO REGION

A regional council of governments charged with coordinating land use planning for the Metropolitan area.

CITY OF OREGON CITY

The City must comply with state planning rules, the Metro Urban Growth Management Functional Plan (the Title requirements) and does so by adopting land use regulations implementing these requirement.

LAND USE REVIEW CATEGORIES:

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 – Long-range 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*.

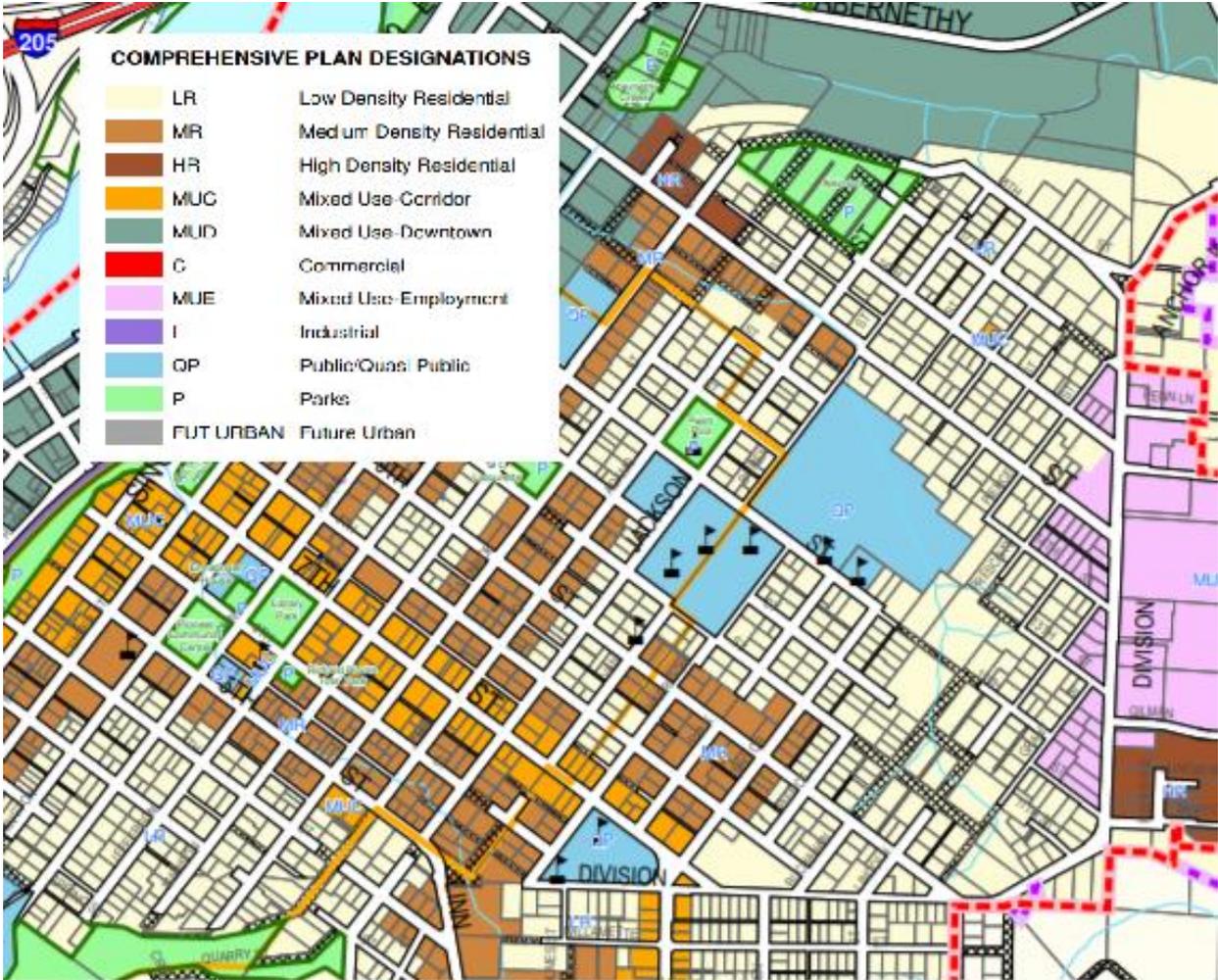
ALL DECISION-MAKING BASED ON THE APPLICABLE STANDARDS AND CRITERIA WHICH MAY INCLUDE:

OREGON CITY MUNICIPAL CODE – contains land use regulations for public and private property in Oregon City. The OCMC implements, among other things:

OREGON CITY ZONING MAP – Establishes base zone and overlay districts to property throughout the City and implements:

OREGON CITY COMPREHENSIVE PLAN AND MAP - sets forth long-term planning goals and policies for the City - how the City achieves compliance with the Statewide Planning Goals. Includes the Transportation System Plan and various utility master plans. The comprehensive plan implements the statewide planning goals and administrative rules.

COMPREHENSIVE PLAN MAP



THE ZONING CODE OF OREGON CITY- CHAPTER 17

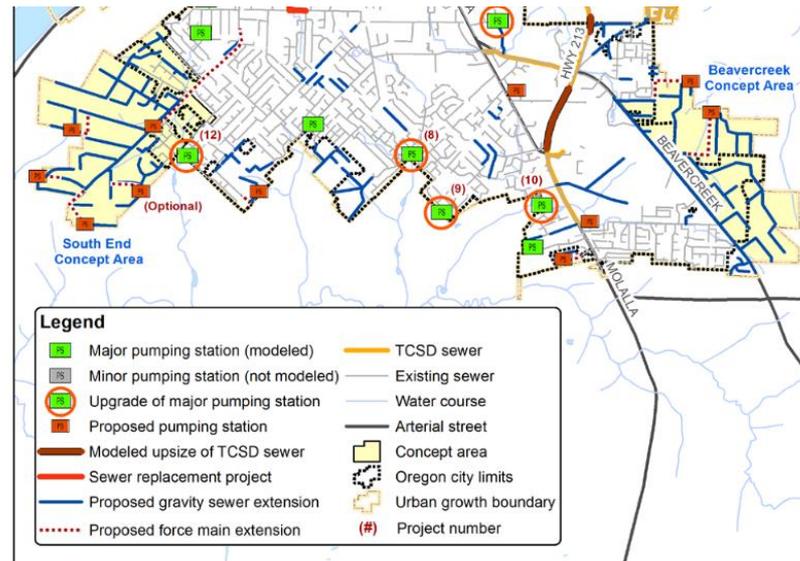
The purpose of this title is to promote public health, safety and general welfare through standards and regulations designed to provide adequate light and air; to secure safety from fire and other dangers; to lessen congestion in the streets; to prevent the overcrowding of land; to assure opportunities for effective utilization of land; to provide for desired population densities; and to facilitate adequate provision for transportation, public utilities, parks and other provisions set forth in the Oregon City Comprehensive Plan and the Oregon Land Conservation and Development Commission Statewide Planning Goals.

- Establishes development standards based on Base Zones – use restrictions, setbacks, height limitations
- Overlay zones – natural resources, steep slopes, historic protections
- Design standards – building orientation and design detail requirements
- Sets forth criteria for reviewing certain types of approvals – conditional use permit, zone change, variances

ADEQUATE PUBLIC UTILITIES AND SERVICES TO SERVE DEVELOPMENT:

- CHAPTER 12.4 – Transportation adequacy standards including off-street parking requirements
- CHAPTER 13 – Public service standards including water, sewer, stormwater design and adequacy standards
- CHAPTER 15 – Sign regulations and grading standards

All based on capacity projections as set forth in various master plans:



TYPES OF DECISIONS: LAND DIVISIONS, ANNEXATION, AND DISCRETIONARY REVIEWS

CHAPTER 16 – Land division requirements for subdivisions or partitions

CHAPTER 14 – Annexations

Other discretionary reviews:

- Variance – Applicant cannot satisfy one or more of the development standards.
- Conditional use – Uses that are more intensive than those allowed in the base zone but can be allowed if certain criteria are satisfied.
- Non-conforming use or structure
- Zoning map change – Changes the base zone designation but does not alter the comprehensive plan map designation.
- Zoning map and plan amendment – Changes both the base zone and the plan map designation.

INTERPRETING DISCRETIONARY CRITERIA

17.60.030 - Variance—Grounds.

A variance may be granted only in the event that all of the following conditions exist:

- A. That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;
- B. That the request is the *minimum variance that would alleviate the hardship*;
- C. Granting the variance will *equal or exceed the purpose* of the regulation to be modified.
- D. Any impacts resulting from the adjustment are mitigated;
- E. No practical alternatives have been identified which would accomplish the same purpose and not require a variance; and
- F. The variance conforms to the comprehensive plan and the intent of the ordinance being varied.

COMPREHENSIVE PLAN GOALS AND POLICIES, FOR EXAMPLE:

- Goal 2.4 Neighborhood Livability. Provide a sense of place and identity for residents and visitors by protecting and maintaining neighborhoods as the basic unit of community life in Oregon City while implementing the goals and policies of the other sections of the Comprehensive Plan.
- Policy 2.4.1 Develop local neighborhood plans to strengthen and protect residential neighborhoods and historic areas from infill development; such as development along linear commercial corridors.
- Policy 2.4.3 Promote connectivity between neighborhoods and neighborhood commercial centers through a variety of transportation modes.
- Goal 10.2 Supply of Affordable Housing: Provide and maintain an adequate supply of affordable housing.
- Policy 10.2.1 Retain affordable housing potential by evaluating and restricting the loss of land reserved or committed to residential use. When considering amendments to the Comprehensive Plan Land-Use Map, ensure that potential loss of affordable housing is replaced.
- Policy 10.2.2 Allow increases in residential density (density bonuses) for housing development that would be affordable to Oregon City residents earning less than 50 percent of the median income for Oregon City.
- Policy 10.2.4 Provide incentives that encourage the location of affordable housing developments near public transportation routes. Incentives could include reduction of development-related fees and/or increases in residential density (density bonuses).

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 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

PUBLIC HEARING PROCEDURES

- Staff Report – Available 7 days before initial hearing
- Applicant's Presentation
- Testimony by Interested Parties – Proponents and opponents
- Applicant Rebuttal
- Deliberation

NEXUS...

- Legal term used to describe a direct connection between a condition of approval and the impact created by the proposal.
- The nexus must be related to the Approval Criteria and must be explained in the findings.
- The nexus must also show that the requirement of the condition is of the same weight as the expected impact.

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.

QUESTIONS?

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