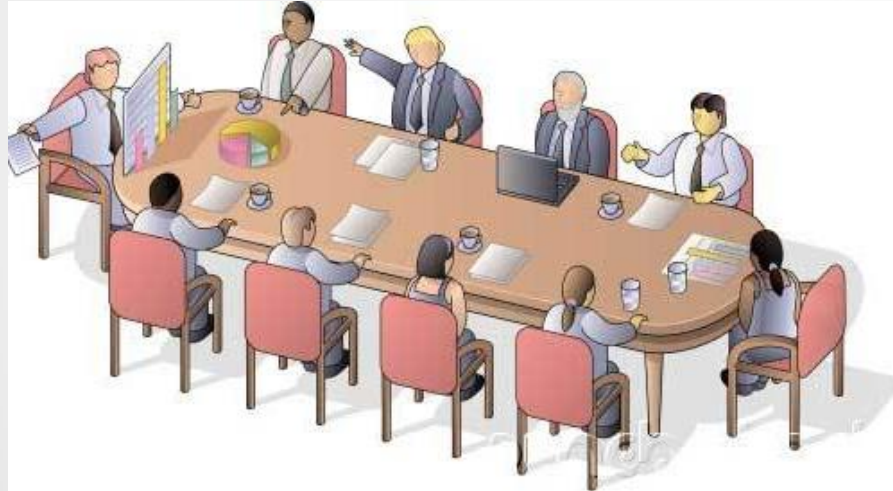


# LAND USE TRAINING

## focus on Quasi-Judicial Procedure



### **Local Government Law Group PC**

*A Member of Speer Hoyt LLC*

975 Oak Street, Suite 700

Eugene, OR 97401

# Public Meetings

## What meetings are subject to the law?

- Quorum of seated members (4 or more)
- Purpose of meeting (Deliberate or Decide?)
- *Electronic meetings? Emails, IMs, and Texts.*
- *Serial discussions (unless purely administrative)*

## What are the requirements of a public meeting?

- Notice
- Space, Location, Accessibility and Public Attendance
- Voting
- Records

# PUBLIC MEETINGS

## Practical Tips

- Avoid replying to e-mails when City business information is shared
- Avoid conversations (in person or via e-mail) between Commissioners where the views of a fellow Commissioners are shared
- Avoid sharing firm opinions or views on items the Commission will vote on

# Virtual Public Meetings

## Practical Tips

- Use headphones and ensure privacy during executive sessions.
- Ensure that no one is talking/whispering to you during a public hearing. (Three year old not a big concern; Another adult is a problem.)
  - During a quasi-judicial hearing = Ex-parte contact.
  - The basis for a decision must be public and recorded in the minutes. Your vote should not be based on a private conversation in your home during a meeting while muted.

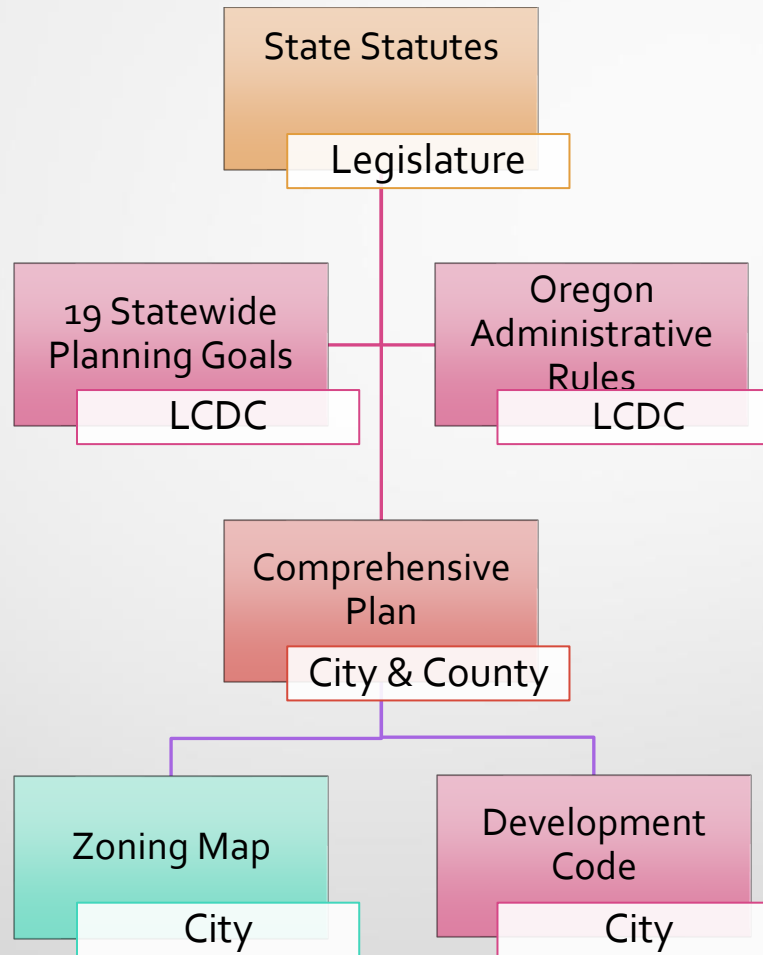
# Land Use

## Heavily Regulated by State Law

- Substantively  
How cities must plan for the way land is used
- Procedurally  
How cities must make land use decisions



# Sources of Law

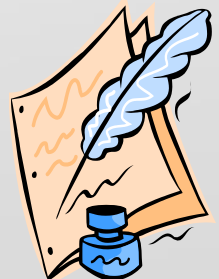


## State Statutes

- Chapter 92, Land Divisions
- Chapter 195, Local Government Planning Coordination

Directs LCDC to adopt statewide land use planning goals and administrative rules to direct how to meet goals and statutes.

- Chapter 197, Comprehensive Land Use Planning
- Chapter 222, Annexations
- Chapter 227, City Planning and Zoning



# Statewide Planning Goals

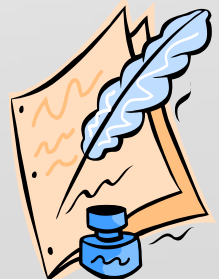
- Goals 1 and 2 : Process:
  - Goal 1 – Citizen Involvement
  - Goal 2 – Comprehensive Planning
- Goals 3-8, 13 and 15: Natural Resource Conservation
- Goals 9-12 and 14: Housing, Transportation, Urban Growth and Economic Development
- Goals 16-19: Oregon Coast Natural Resources





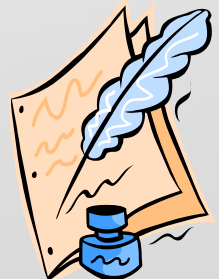
# Agencies

- Land Conservation and Development Commission (LCDC)
  - Oversees state policy, goals, and guidelines
  - Acknowledges local comprehensive plan and implementing land use regulations
- Department of Land Conservation and Development (DLCD)
  - Provides administrative oversight and technical/financial assistance to update and implement plans.
- Land Use Board of Appeals (LUBA)
  - Reviews local land use decisions for compliance with local regulations, comprehensive plans, goals, and statutes.



# Local Regulations

- Comprehensive Plan
  - Generalized, coordinated land use map and policies that establish City's vision for the type, location and intensity of future development.
  - Implements statewide planning goals.
- Land Use Development Code
  - Zoning and land division regulations that implement comprehensive plan, policies and designations.
- Functional Plans
  - Site Specific designs and requirements. Examples: Parks Master Plan, Capital Improvement Programs, Transportation System Plans, and Public Facilities Plans (i.e., for sewer or water).



# Land Use Procedures

- Legislative Actions (Type IV)
- Administrative Actions (Type II)
- Quasi-Judicial Actions (Type III)

## Legislative Actions – Type IV

- Making policy decisions that apply to many
- Development code text / Comprehensive plan text
- Planning Commission recommends / City Council acts
- City Council hearing and decision
- Discretionary within limits of state law

## Administrative Actions – Type II

- Decided by staff.
- Appeal to Planning Commission
- Possible “on the record” appeal to Council

## Quasi-Judicial Procedures

- Making a decision on a specific land use proposal that will apply to one or a few (Type III applications)
- Acting as appeal body, reconsidering Type II Community Development Director decisions.
- Must apply criteria in Municipal Code – Limited discretion.
  - Opposition testimony may or may not be relevant to applicable criteria.



## Quasi-Judicial Procedures (continued)

- Applicant-initiated applications
- Notice to Public
- Public Hearing
- Script for Chair
- Written decision & findings required  
(Determine Compliance with applicable criteria)
- 120-day deadline from date of completeness (ORS 227.178)



## Quasi-Judicial Tribunal

- Impartial Decision-making
  - No *Bias* – must be able to be fair and impartial.
  - No *Ex Parte Contacts* – decision must be based on information in record.  
ORS 227.180(3)
  - No *Conflict of Interest*





## Prejudgment Bias

- Incapable of basing decision on evidence and argument presented.
- If you cannot be fair and impartial, you must not participate.
- Could you be persuaded to overcome your preconceived thoughts?
- Prior statements may be used as evidence of prejudgment bias, but disqualification “high bar,” which can be overcome.
- Rehabilitate by stating on record that decision-maker can make a fair and impartial decision based solely on the record.
- If biased, disclose and step down

## Ex Parte Contacts

- Verbal, written, visual contact not on record
  - Examples: Newspaper articles, site visits, conversations with neighbors
- Avoid and keep track—no good deed goes unpunished
- Must disclose context and substance at meeting when public may respond, before record is closed
  - If decision postponed, even if record closed, be sure to double check ex-parte contacts, to ensure they do not influence the decision and tribunal remains impartial with decision based solely on the record.

# Conflict of Interest

“Actual or Potential Conflicts”

(Will or Could Happen)

- An action, decision, or recommendation
- By a *public official*
- Will (Actual) or Could (Potential) Result in a financial benefit or detriment for PO or a relative or business associated with PO or relative

# Conflict of Interest

## Conflicts of Interest Rules (Both Actual and Potential)

### When in Doubt: Shout it Out!

- State the nature of your conflict
  - Do it before voting or discussing the matter
  - Do it on the record
  - Do it each meeting issue is discussed
- Actual Conflict **Only**
- When in Doubt, Shout It Out...and then Press the Mute Button.
  - Same rules as Potential Conflict, but **no** talking and **no** voting...
  - Unless City cannot act without you (only vote, don't talk)

## Conflict of Interest

### EXCEPTIONS TO THE CONFLICT RULES

It is not a conflict if the financial benefit happens because of:

- Membership in a class (any large, distinguishable group of citizens that the **Commission** determines is a class);
- Membership in a non-profit (501(c) status)

# Conflict of Interest

## EFFECT OF FAILING TO DISCLOSE CONFLICT:

- Decision will not be invalidated
- Personal liability up to \$1,000 per violation

## Process

- Record
  - Available to Public
  - “Closed Universe”
  - Planner is Keeper



## Process

- Staff Report
  - Available to public 7 days before hearing (ORS 197.763)
  - Sets out all / only applicable material
  - Provides proposed decision with supporting findings and conditions





## Hearing

### **Chair's Script for Hearing**

- Process – on the record, or *de novo*
- Criteria
- Opportunity to disclose bias, ex parte and/or conflicts
- Statutory notifications

# Hearing

## Order of Testimony

- Applicant
- Proponents
- Neutral
- Opponents
- Applicant's rebuttal

\*Stay formal; No back and forth with public

# Hearing

## After Testimony

- Staff comments/120-day status
- Potential next steps “initial evidentiary hearing”
  - Continue hearing to specific date and time
  - Close hearing but leave record open for written testimony
  - Close hearing and close record

**STATUTES DICTATE OPTIONS! ORS 197.763**

# Hearing

## **Deliberation/Findings**

- Decisions must be made based on approval criteria (as identified by the City Planner).
- Planning Commission may not consider factors outside of approval criteria, such as impact on property values.
- Findings show why approval criteria are met or not met.
- Each decision should include findings supporting the decision.

# Hearing

## **Deliberation / Findings (Continued)**

- Address every argument made by participants
- Interpret any ambiguous criteria
- Choose between conflicting evidence (“substantial evidence” / “reasonable decision maker”)

# Hearing

## **Deliberation/Findings (Continued)**

- For each criterion
  - list relevant facts
  - Apply facts to criterion
  - Determine whether criterion is satisfied or can be satisfied with a clear condition of approval

## Quasi-Judicial Decision

- Conditions must impose a clear, nondiscretionary requirement
- Conditions requiring the applicant to dedicate private property or work to the public may require constitutional “*Nollan*” and “*Dolan*” findings

## Quasi-Judicial Decision (Continued)

- Conditions requiring applicant to dedicate (give) private property or work to the public in exchange for requested development approval may require constitutional *Nollan* and *Dolan* findings.
  - Requires an ***essential nexus*** (connection) between gov't interest advanced by restriction and the condition exacted by gov't.
    - Ex: Lots must front public right of way. Condition: dedicate and improve public rights of way (need access; but requested doesn't connect/provide access).





## Quasi-Judicial Decision (Continued)

- Requires ***rough proportionality*** (numerical correlation) between the benefit gained from property interest exacted and the burden the development will impose.
  - Ex: Required dedication of right of way will address volume of traffic that proposed development will generate (not bike path for hardware store).

## Land Use Appeal

- Consider on Appeal:
- Are appealed criterion satisfied?
- If unsatisfied, can the criteria be satisfied by imposition of conditions?
- If criterion is unsatisfied and cannot be satisfied by a condition, deny the application.

## Role Playing:

1. Requesting and announcing ex parte contacts; bias; conflicts
2. Controlling rowdy crowd
3. Closing hearing and record

# Quick Ethics Blast

ORS 244

and

Oregon Government Ethics  
Commission (OGEC)



## Statement of Economic Interest

City councilors, appointed commissions members, the municipal judge and the city administrator are required to file.  
Statements due April 15, yearly.

## Financial Gain

The “BUT-FOR” Test 244.040(1)

### **A public official (PO) cannot use position**

- To get \$ or to avoid losing \$
- For the PO, for the PO's relative, a member of the PO's household, or business with which any of these is associated
- If that opportunity would not be available BUT FOR your position

# Gifts

**Gifts are Limited** (\$50 per year, per interested giver)



## The GIFT RULE:

1. You (your relative or a member of household)
2. Cannot ask for, receive, or give
3. Or even hint at getting/giving
4. Gifts over \$50 from any single source in one year
5. IF your source has an interest in *your* official actions (i.e., a decision or vote)





Thank you!

Carrie Connelly