

# CITY OF McMINNVILLE

## CITY COUNCIL

## LAND USE TRAINING

May 14, 2024

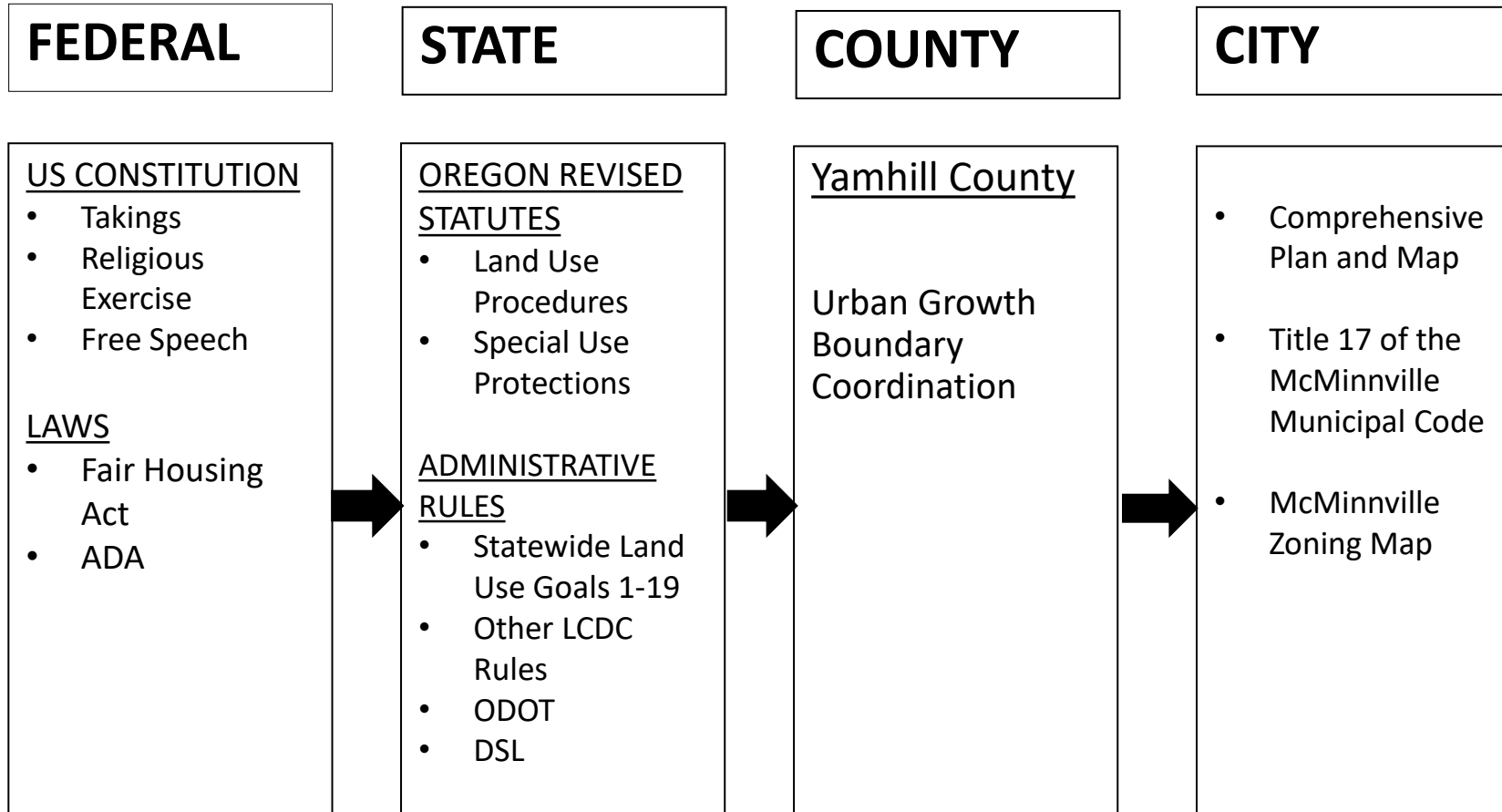
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# OREGON'S LAND USE PLANNING FRAMEWORK

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# SENATE BILL 100:

- Requires comprehensive plans and land use regulations reviewed by the state land use agency (Department of Land Conservation and Development (DLCD))
- Requires urban growth boundaries
- DLCD charged with creating and adopting statewide planning goals.

# STATEWIDE PLANNING GOALS:

- Citizen Involvement
- Managing urban growth
- Economic development
- Housing
- Transportation
- Natural and Historic Resources



# LAND USE PLANNING IN McMINNVILLE:

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## Long-Range Planning:

*(Legislative)*

- Involves adoption of regulations and policies applicable citywide or to a specific geography
- Initiated by the City Council, Planning Commission, Citizens' Advisory Committee or a citizen may petition the Council seeking initiation of an amendment.
- City Council makes the final decision
- Follows a legislative process – no bias and ex parte limitations

## Development Review:

*(Quasi-judicial /Administrative)*

- Reviewing a discrete development proposal for compliance against an adopted set of criteria
- Initiated by an applicant through the filing of an application
- Planning Commission or HLC are the final decision-maker, unless appealed
- Follows a formal quasi-judicial procedure (requires impartiality and controlled record)

# **REVIEW CATEGORIES:**

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**Administrative Decisions** – home occupation, Commercial design review (standard), Downtown design review (minor)

- Director’s Review without notification – No discretionary decision-making and no notice, hearing or appeal.

**Limited Discretionary Decisions** – administrative variance, Downtown design review (major), subdivision, short term rental

- Director’s decision with limited notice, 14-day comment period and appeal rights to Planning Commission and then City Council.

## **Quasi-Judicial Decisions – Certificate of Approval**

**Planning Commission** - variance, conditional use permit, subdivision (more than 10 lots), planned development, small area map amendment

**Historic Landmarks Committee** – Alteration of a local or National Register-listed resource, new construction on vacant land in a NR District or landmark designated site, and demolition

- Discretionary review to determine compliance with criteria. Notice, public hearing by HLC or Planning Commission and if appealed, on to City Council.

# REVIEW PROCEDURE:

## PREDICTABILITY AND A LEVEL PLAYING FIELD

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- Pre-application meeting w/ staff / neighborhood meeting
- Application filed and completeness review – 120-day decision limit
- Mailed and posted notice of hearing includes identification of the applicable criteria – These notice rules are set by state law and local code
- Staff report available 7 days in advance of hearing.
- Hearing
  - Must including legal disclosures including:
    - Instructions on the submittal of evidence into the record
    - Testimony must be directed to the criteria
    - Raise it or waive it
    - Failure to raise constitutional issues precludes an action for damages in circuit court
    - Right to an impartial tribunal
- Right to a continuance / Rebuttal
- Record closes, deliberation and decision
- Right to appeal to City Council
  - Only those who participated below have standing to appeal
  - Notice of appeal must be filed in writing with 12 days
  - Council review is de novo with no required deference to initial decision

# 120-DAY RULE REQUIREMENTS

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## **ONCE APPLICATION IS COMPLETE, CITY HAS 120 DAYS TO MAKE ITS FINAL DECISION**

- Applicant controls completeness
  - Can force City to begin processing application
  - Once an application is “deemed” complete, only question is whether applicant has met its burden to show compliance with criteria
- Entire application, including appeals, must be resolved within 120 days
- Applicant can extend the 120-day, but entirely their choice
- Failure to make a decision within 120-days gives rise to a right to mandamus in circuit court that may include attorney fee recovery

# PUBLIC HEARING ROLLS & RESPONSIBILITIES

<b><u>Applicant:</u></b>	<b><u>Planning / Legal Staff:</u></b>	<b><u>Neighborhood Groups/ Others:</u></b>	<b><u>Decision Maker:</u></b>
<ul style="list-style-type: none"><li>• Understanding of the applicable approval criteria.</li><li>• Submittal of an application that includes evidence establishing that the applicable approval standards are satisfied i.e. the filing of a complete application.</li><li>• Respond to all arguments and evidence presented during review.</li><li>• Bears the burden of proof.</li></ul>	<ul style="list-style-type: none"><li>• Administer the land use process (issue staff reports and notices)</li><li>• Advise and assist decision makers</li><li>• Educate and assist the public</li><li>• Know the laws, comprehensive plan and regulations</li><li>• Work as a team providing technical advice.</li></ul>	<ul style="list-style-type: none"><li>• Entitled to notice and an opportunity to participate consistent with adopted procedures.</li><li>• Raise concerns in the framework of the applicable approval criteria.</li></ul>	<ul style="list-style-type: none"><li>• Reflect community values in making planning policies</li><li>• Interpret and apply plans and regulations</li><li>• Educate the public and provide a public forum</li><li>• Do homework</li><li>• Treat staff and elected officials with professionalism and respect.</li><li>• Be courageous and don't avoid hard decisions.</li></ul>



# RIGHT TO AN IMPARTIAL TRIBUNAL:

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

Disclose the substance of an 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:

- Media reports
- Neighborhood meetings, blogs or list serves
- Site visits
- Personal or Professional Experience

•An objection must be made in order to preserve a challenge at LUBA on that basis.

## **Decision-makers must be free of actual bias:**

•“Actual Bias” – Bias exists if the decision was the produce of positive or negative bias rather than an independent review of the facts and law. *Rosenzweig v. McMinnville*.

## **Decision-makers may not have any actual conflict of interest:**

•No actual conflict of interest - If the decision will 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.

•In addition to appeal issues, can result in personal liability for the official (fines plus up to 2x the financial gain (call OGEC)

# 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 meeting vs public hearing differences

**“Public Records”** – Almost any writing, data storage or other record relating to city business.

- Work done on private e-mail accounts, personally purchased computers and hand-held devices might be a public record.
- Avoid commenting on instant messaging or chat rooms unless mechanism to capture this information.
- When in doubt, ask the City Recorder for help

# DELIBERATION AND THE DECISION

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DETERMINATION OF WHETHER THE APPLICANT HAS MET ITS BURDEN TO SHOW THAT THE APPLICABLE STANDARDS ARE SATISFIED:

**Identify and interpret** the applicable approval criteria – Give meaning to ambiguous standards using the text, taken in context, along with the the purpose or policy for the provision,

**Adequate Findings - Identify the facts (evidence)** in the record that **lead to a conclusion** that the criterion is satisfied or not -

- Personal knowledge is not evidence in the record – put personal feelings aside
- Denial of an application cannot be based on facts not in the record
- Where there is conflicting evidence, state why certain evidence is more reliable, credible or entitled to greater weight;

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

# INTERPRET DISCRETIONARY CRITERIA:

One of the criteria for a conditional use permit requires a finding that:

“The location and design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrants” MZO 17.74.030.D

How “attractive” does the use and its setting have to be?

- Does determining what the setting warrants based on current conditions or might include planned future changes?
- What does “attractive” mean?
- From whose perspective is this viewed?

Hearing participants must have an opportunity to know of the City’s interpretation of standards and to provide evidence to show that the criterion is satisfied while the record is open. *Botts Marsh v. City of Wheeler*

# QJ DECISIONS MUST BE EXPLAINED: WRITTEN FINDINGS BASED ON SUBSTANTIAL EVIDENCE

- If criterion is not applicable, explain why it is not applicable;
- Where there is conflicting evidence in the record, state why certain evidence is more reliable, credible or entitled to greater weight;
- LUBA standard of review for substantial evidence: Could a reasonable person looking at all of the evidence in the record come to the same conclusion?

# CONDITIONS OF APPROVAL – NEXUS AND PROPORTIONALITY IN EXACTIONS

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- 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.

# RECOMMENDATIONS FOR EFFECTIVE PARTICIPATION

- **Try to avoid ex parte contacts or evidence**, be aware and prepared to disclose.
- **Be attentive and prepared** – It is unfair to the applicant and participants to act on issues without adequate preparation.
- **Don't be afraid to ask questions** but keep them focused and directed on the approval criteria and/or the evidence in the record.
- **Focus on issues and don't make assumptions about what you hear** – Ask open ended questions and perhaps start with a summary or paraphrase of what you hear as a framework for the question.
- **Don't make up your mind before hand – Avoid prejudgment**– Saying that “this project will increase traffic” implies that a decision is already made. Instead say “this project might increase traffic.”
- **Don't be afraid to disagree** – Sharing perspectives ensures a decision that in the City's best interest.

# QUESTIONS?

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## Additional Resources:

- Oregon land use training info:  
<https://www.oregonlandusetraining.info/>
- OGEC Guide for Public Officials (for conflicts of interest and other ethics issues): <https://www.oregon.gov/ogec/pages/guide-for-public-officials.aspx>

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