



# Oregon

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July 7, 2016

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Rob Hallyburton, Community Services Division Manager

SUBJECT: **Agenda Item 11, July 21-22, 2016, LCDC Meeting**

## **PERIODIC REVIEW REPLACEMENT RULEMAKING BRIEFING**

### **I. AGENDA ITEM SUMMARY**

The Land Conversation and Development Commission (LCDC or the commission) will receive a briefing by Department of Land Conservation and Development (DLCD or the department) regarding progress on a recommendation to the commission for a rule prescribing an alternative to periodic review for cities that completed an urban growth boundary (UGB) evaluation or amendment using the new simplified method.

This item is an information briefing and discussion opportunity. No commission action is requested.

For more information, please contact Rob Hallyburton, Community Services Division Manager, at 503-934-0018 or [rob.hallyburton@state.or.us](mailto:rob.hallyburton@state.or.us).

### **II. BACKGROUND**

“Periodic review” is a statutorily mandated process for certain cities to update their comprehensive land use plans on a schedule included in the statute. The statute and implementing administrative rules provide guidance regarding the breadth of the required plan updates and requirements for development of a work program, completion of work tasks, public involvement, and state agency involvement. Periodic review work programs and tasks are subject to approval by the director of the department; appeals of director work task decisions go to the commission. This is in contrast to comprehensive plan amendments completed outside periodic review – in the “post-acknowledgment plan amendment” (PAPA) process – where final local decisions are subject to appeal to the Land Use Board of Appeals rather than the department-commission path.

The Oregon Legislature enacted House Bill 2254 during the 2013 session. This bill was codified as ORS 197A.300–325, and it required the commission to develop rules to implement the “simplified” UGB method created by the bill. The commission adopted these rules, OAR chapter 660, division 38, in December 2015 (effective January 2016). Implementation of one requirement in ORS 19A.325 was deferred by the commission. This requirement, at ORS 197A.325(3), provides:

Notwithstanding ORS 197.628 and 197.629 [periodic review], when a city evaluates or amends the urban growth boundary of the city pursuant to ORS 197A.310 or 197A.312 [simplified UGB method], the city is not required to commence or complete periodic review. *The commission shall, by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of the city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs.* (italics added)

The commission initiated this required rulemaking and appointed a rulemaking advisory committee (RAC) at its May 2016 meeting.

The RAC met on June 14, 2016, to discuss the charge of the RAC and begin discussing rule concepts. Department staff provided, for context, the RAC an overview of the periodic review process, which cities are required to complete the process and how often, and the scope of what a city must include in a periodic review work program. The RAC discussed the following themes.

***Affected jurisdictions.*** The RAC quickly agreed that the alternative process for updating comprehensive plans should only apply to those cities that would be subject to periodic review had they not evaluated or amended their UGBs using the simplified method. Periodic review is required for cities over 10,000 population and cities over 2,500 that are in a Metropolitan Planning Organization. *See* Attachment A. Since the simplified UGB evaluation and amendment process is not available to Metro, only non-Metro cities are affected.

***Scope of alternative process.*** The statute on periodic review provides:

(1) It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services and urbanization.

(2) The Land Conservation and Development Commission shall concentrate periodic review assistance to local governments on achieving compliance with those statewide land use planning laws and goals that address economic development, needed housing, transportation, public facilities and services and urbanization.

Periodic review tasks therefore generally address one of two categories of plan amendments: (1) those to “ensure that the plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services and urbanization” and (2) those to comply with a statute or rule that only becomes effective at periodic review. The RAC agreed that a city that has just completed a UGB evaluation or amendment will have completed planning requirements related to economic development and urbanization and that planning for public facilities and services and transportation systems will not be complete. More research and discussion is needed regarding whether a city will have work to complete regarding needed housing.

The RAC was provided a list of statutes and rules that become effective only when a local government enters periodic review.<sup>1</sup> The RAC will discuss further whether all the statutes and rules on the list belong there.

***Approval/appeal path.*** The department offered the opinion to the RAC that the alternative process being created in this rulemaking would likely resemble either the current periodic review process (*i.e.*, department review and appeals to the commission) or the existing PAPA process (*i.e.*, appeals to the Land Use Board of Appeals), or some hybrid of the two. RAC members agreed and expressed that the alternative process should follow the PAPA model.

***Public involvement.*** The RAC discussed whether the public involvement requirements for a PAPA are adequate for the periodic review alternative process. In the PAPA process, cities are required to conduct planning commission and city council hearings and follow their own public involvement programs (which frequently require more opportunities than the minimum number of hearings). The RAC did not express an interest in including additional public involvement requirements in the rule for the alternative process.

### **III. SUMMARY AND CONCLUSION**

The RAC is scheduled to meet a second time on July 18 to discuss the issues introduced in this report and to review the first draft of a proposed rule. The draft rule has not been prepared at the time of this report. The RAC meeting will be held on the Monday immediately before to the commission meeting, so the oral report will include the most current information.

### **IV. ATTACHMENT**

List of Affected Jurisdictions

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- ORS 197.660–197.670: Special residences
- ORS 195.060–195.085: Urban service agreements
- ORS 195.110: School facility plans for large school districts
- OAR 660-012–0020: Elements of a transportation system plan
- OAR chapter 660, division 13: Airport Planning
- OAR chapter 660, division 23: Procedures and Requirements for Complying with Goal 5

**ATTACHMENT – AFFECTED JURISDICTIONS**

<b>City</b>	<b>Certified Estimate July 1, 2015</b>	<b>Post-2007 PR starts</b>	<b>UGB Status</b>
Eugene	163,400		Working
Salem	160,690		
Bend	81,310		Working on remand response
Medford	77,655		Working
Springfield	60,135		Working
Corvallis	57,390		
Albany	51,670		
Keizer	36,985	complete	
Grants Pass	36,465		Amendment in 2015
McMinnville	33,080		
Redmond	27,050		Large-lot industrial proposal
Woodburn	24,670		Amendment in 2015
Newberg	22,900		Working on streamlined amendment
Roseburg	22,500		
Klamath Falls	21,580		
Ashland	20,405		
Hermiston	17,520	in process	
Central Point	17,485		
Pendleton	16,845	in process	
Coos Bay	16,470		
Canby	16,010		
Lebanon	15,740		
Dallas	15,040		
The Dalles	14,515	in process	Working on Gorge Scenic Area issues
La Grande	13,165		Industrial amendment in 2014
St. Helens	13,095		
Ontario	11,465		Industrial amendment in 2014
Sandy	10,395		
Newport	10,165		Public facility amendment in 2014
Eagle Point	8,695		
Milton-Freewater	7,070		
Talent	6,270		
Philomath	4,650		
Phoenix	4,585		
Jacksonville	2,880		

Data from PSU Population Research Center | College of Urban and Public Affairs | 12/15/2015

List includes non-Metro cities w/ population >10,000 and w/ 2,500-10,000 inside an MPO

“Working” means the city is actively preparing facts and findings or is at hearing