

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** A decision adopting guidelines for identifying and evaluating the quality of designated habitat areas as part of development applications is a “land use ordinance” for purposes of the county charter, which defines “land use ordinance” to include any ordinance that directly governs the use of land. The guidelines differ from non-land use ordinances, such as building codes, because it governs whether land will be developed, not how it will be developed. Accordingly, the county prejudiced the petitioner’s substantial rights under the Charter by failing to follow the procedures and hearings required when adopting a land use ordinance. *CPO 4M v. Washington County*, LUBA No 2021-002 (Dec 8, 2021).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Where the only variable between multiple Urban Growth Area-Urban Growth Management (UGA-UGM) zones is lot size, and where a county code provision provides that “[t]he density of one UGA-UGM zoning district is not interchangeable with the density of another UGA-UGM zoning district without prior review and approval by the affected city and \* \* \* County,” an interpretation by the county that the provision applies to zone changes of the subject property or changes to the underlying density of the zone in which the subject property is located, but that it does not apply to lot size variances, is inconsistent with the express language of the provision. In such cases, where the local code does not define “density” and the dictionary defines “density” as the quantity or number per unit of area, LUBA will make its own determination that a lot size variance in a UGA-UGM zone may qualify as an “interchange[.]” with the density of another UGA-UGM zone, thereby requiring city review and approval. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Whether a city council initially tries to reverse a hearings official’s interpretation of the city zoning code by amending the zoning code has no bearing on whether the city council could also effectively reverse the hearings official’s interpretation by adopting an interpretation of its own. *Randazzo v. City of Eugene*, 65 Or LUBA 272 (2012).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Under the second sentence of ORS 197.830(1), the 21-day deadline for filing an appeal with LUBA does not begin to run until the city gives individual written notice of its post acknowledgment land use regulation amendment to persons who are entitled to receive such notice. Even if the Department of Land Conservation and Development is the only person entitled to receive written notice of the city’s decision, the agency is always entitled to such notice and all other persons with standing to appeal to LUBA have 21 days from the date notice is given to the Department of Land Conservation and Development to file an appeal. *Dobson v. City of Newport*, 47 Or LUBA 589 (2004).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Providing notice and a copy of proposed zoning ordinance amendments to DLCD under ORS 197.610(1) and then adopting an additional zoning ordinance amendment that was not

included with the notice without providing additional notice to DLCD is not error. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** The broad notice and potential for participation by DLCD and others under ORS 197.610 is the *quid pro quo* for ORS 197.625, which deems post-acknowledgment land use regulation amendments to be consistent with the statewide planning goals as a matter of law, if the amendment is not appealed or is affirmed on appeal. Therefore, whether errors in a city’s notice to DLCD under ORS 197.610 warrant remand depends upon whether the errors are of the kind or of a degree that calls into question whether the ORS 197.610 to 197.625 process nevertheless performed its function. If so, remand may be required, without regard to whether petitioners before LUBA can demonstrate prejudice to their substantial rights. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Where a city’s notice to DLCD under ORS 197.610(1) states that the initial evidentiary hearing on a proposed zoning ordinance amendment will be held on November 7 and the hearing is actually held on November 6, and LUBA cannot determine whether persons who may have been depending on notice that DLCD subsequently provided of that initial evidentiary hearing may have been prejudiced by the city’s error, LUBA will remand the city’s decision. *OCAPA v. City of Mosier*, 44 Or LUBA 452 (2003).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** A *pro forma* declaration of “emergency circumstances,” unaccompanied by stated reasons directed at the necessity for expedited review, is insufficient to satisfy ORS 197.610. Cited concerns about unregulated development in the floodplain constitute a sufficient declaration of emergency under ORS 197.610 to allow expedited adoption proceedings. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** If a city’s decision to adopt a tree-cutting ordinance is not a statutory land use decision, none of the notice provisions found in ORS 197.830 or any other land use statute apply, except perhaps by analogy. *Ramsey v. City of Portland*, 30 Or LUBA 212 (1995).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Where an ordinance amends the text of a zoning ordinance by adding a temporary overlay district, identifies a map showing where the overlay district applies an “attachment to” the zoning map and does not purport to amend the section of the zoning ordinance under which the zoning map is adopted, it is reasonable and correct to interpret a code notice of hearing provision governing amendments to the text of the zoning ordinance, rather than another provision governing amendments to the “zoning map,” as applicable. *Orenco Neighborhood v. City of Hillsboro*, 29 Or LUBA 186 (1995).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Applying the three-factor analysis used by the Oregon Supreme Court in *Strawberry Hill 4-Wheelers v.*

*Benton Co. Bd. of Comm.*, 287 Or 591, 601 P2d 769 (1979), a city council-initiated ordinance amending the city code to list nonprofit rehabilitation training centers as a conditional use in several of the city's residential zones is legislative in nature. *Andrews v. City of Brookings*, 27 Or LUBA 39 (1994).

**30.2.2 Zoning Ordinances – Amendment – Text Amendment: Procedure.** Although the party initiating a challenged zoning ordinance amendment was not clearly identified on the application and notices of local public hearings as required by the local code, such procedural errors provide no basis for reversal or remand where petitioners' substantial rights were not prejudiced. *Parmenter v. Wallowa County*, 21 Or LUBA 490 (1991).