



1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's adoption of an emergency  
4 ordinance establishing new procedural requirements and  
5 siting standards for telecommunications facilities.

6 **FACTS**

7 During the summer of 1996, the city planning staff  
8 began developing regulations establishing new procedures and  
9 standards for siting telecommunications facilities,  
10 including cellular phone towers and personal communication  
11 service towers.<sup>1</sup> The city attorney prepared a report for  
12 the city council dated December 15, 1996 (the council  
13 report), outlining the need for the proposed regulations and  
14 the procedural requirements for their adoption. The council  
15 report concluded that an "emergency" (as that term is used  
16 in the city charter and ORS 197.610(2)) existed, which  
17 warranted the adoption of an interim, emergency ordinance  
18 until a permanent ordinance could be adopted. The council  
19 report explains that, under the city charter, an emergency  
20 ordinance may be adopted without notice or a public hearing.

21 On December 12, 1996, petitioner's counsel became aware  
22 that the city was considering adopting an emergency

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<sup>1</sup>Personal communications services (PCS) technology is a version of cellular telephone technology, which requires more, but shorter towers than other versions of cellular phone technology use to completely service a given area.

1 ordinance relating to telecommunication facilities on  
2 December 17, 1996. There is no dispute that the city did  
3 not issue or publish any notice of the proposed regulations  
4 prior to taking the action. The city council met on  
5 December 17, 1996 to consider adopting the challenged  
6 ordinance. However, it postponed final action until a  
7 special meeting on December 19, 1996. The city did not  
8 provide notice of, or conduct a public hearing on the  
9 proposed regulations. The city council did invite testimony  
10 on the proposed regulations from those in attendance at the  
11 special meeting on December 19, 1996. Petitioner's counsel  
12 testified at that meeting, objecting to the lack of notice  
13 and insufficient time to review the proposed regulations and  
14 prepare testimony on their substance. At the December 19,  
15 1996 meeting, the city council adopted the council report as  
16 its findings and adopted the challenged ordinance. This  
17 appeal followed.

18 **MOTION TO SUPPLEMENT THE RECORD**

19 The city moves to supplement the record with a copy of  
20 the notice of adoption it submitted to the Department of  
21 Land Conservation and Development (DLCD) pursuant to ORS  
22 197.615(1). Alternatively, the city requests that we take  
23 official notice of the notice of adoption pursuant to Oregon  
24 Evidence Code (OEC) 202(2). At oral argument, petitioner  
25 objected to the city's motion so late in the proceeding.  
26 However, petitioner did not specifically respond to the

1 arguments presented by the city in support of its motion.

2 In Brown v. Union County, 31 Or LUBA 551 (1996), the  
3 county and the intervenor sought to supplement the record  
4 with a one-page document, which included the subheading  
5 "Conditions of Approval" and a list of nine separate  
6 conditions, and which the county claimed was an essential  
7 part of the final land use decision at issue in that case.  
8 The county and the intervenor-respondent filed the motion to  
9 supplement the record after the record had been settled and  
10 after petitioner had filed its petition for review. We  
11 allowed the motion in Brown over the petitioner's objections  
12 for two reasons: First, our rules require the record to  
13 include the final decision, (OAR 661-10-025(1)(a)), and the  
14 record supported the county's claim that the one-page  
15 document was a part of that final decision. Second, we  
16 reasoned that excluding the one-page document from the  
17 record "would serve no purpose other than delay," and that  
18 such delay would be contrary to our obligation "to promote  
19 the speediest practicable review of land use decisions."  
20 Brown at 553, (quoting OAR 661-10-005).<sup>2</sup> See also ORS  
21 197.805.

22 The first reason for allowing the motion in Brown  
23 applies here as well. Our rules require that the notice of  
24 adoption be included in the record. OAR 661-10-025(1)(d).

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<sup>2</sup>We allowed the petitioner in Brown an additional 21 days to amend his petition for review.

1 However, the notice of adoption offered by the city in this  
2 case does not supplement or complete the challenged decision  
3 in any way that is challenged by petitioner, as was the case  
4 in Brown. Instead, the notice of adoption simply reaffirms  
5 the city's position that it was not required to send a pre-  
6 adoption notice to DLCD pursuant to ORS 197.610(1), because  
7 the challenged decision was adopted as an emergency  
8 ordinance. Under these circumstances, whether or not the  
9 notice of adoption is included in the record before this  
10 Board has no bearing on how we resolve the merits of this  
11 case. Accordingly, we deny the city's motion to supplement  
12 the record.

13 We also cannot take official notice of the notice of  
14 adoption pursuant to OEC 202(2), as requested by the city.  
15 Relevant to this case, OEC 202(2) defines judicially noticed  
16 law to include "[p]ublic and private official acts of the  
17 legislative, executive and judicial departments of this  
18 state[.]" ORS 40.090(2). The filing was an act of the  
19 city, and was not an "official act of the \* \* \* executive  
20 department \* \* \* of this state."

21 **FIRST ASSIGNMENT OF ERROR**

22 Petitioner argues that

23 "[i]n adopting the challenged Ordinance, the City  
24 failed to comply with requirements for amending  
25 city land use regulations or adopting new city  
26 land use regulations found in ORS 197.610 to  
27 197.625, Statewide Planning Goals 1 and 2, Lake  
28 Oswego Comprehensive Plan Citizen Involvement  
29 Policies 1 and 10 and [Lake Oswego Code]

1 49.60.1515 and 49.60.1520." Petition for Review  
2 at 8.

3 The city responds that it relied on provisions of its own  
4 charter, which the city council interpreted as authorizing  
5 it to adopt emergency ordinances without notice or a public  
6 hearing. The city asserts that its interpretation of its  
7 own charter is not "clearly wrong" and therefore must be  
8 affirmed under Clark v. Jackson County, 313 Or 508, 836 P2d  
9 710 (1992), and its progeny. Citing LaGrande/Astoria v.  
10 PERB, 281 Or 137, 576 P2d 1204 aff'd on rehearing 284 Or 173  
11 (1978), and its progeny, the city also argues that the  
12 process it followed pursuant to its charter is not  
13 "unambiguously preclude[d]" by any provision of state law,  
14 and therefore is valid and controlling under the so-called  
15 Home Rule Charter provisions of the Oregon Constitution,  
16 Article XI, section 2 and Article IV, section 1(5). We  
17 begin our review by considering the correctness of the  
18 city's interpretation of its charter and code. We then  
19 determine whether ORS 197.610 and Goals 1 and 2 impose  
20 requirements beyond what the city charter and code require,  
21 and if so, whether the local requirements "predominate" over  
22 the state requirements under the Home Rule Charter  
23 provisions of the Oregon Constitution.

24 **A. City Charter and Code**

25 Sections 33 through 35 of the Lake Oswego Charter,  
26 Chapter VIII, provide for the enactment of ordinances  
27 generally, and include minimum requirements for the

1 enactment of emergency ordinances, as follows:

2 **"Section 33. Mode of Enactment.**

3 "A. Except as this Section provides otherwise,  
4 every ordinance of the Council shall, before  
5 its enactment, be read fully and distinctly  
6 in open Council meeting on two different  
7 days. Copies of each such ordinance shall be  
8 available free to the public at least 24  
9 hours before each Council meeting and at the  
10 Council meeting.

11 "B. In an emergency, an ordinance may be enacted  
12 at a single meeting of the Council by  
13 unanimous vote of all Council members  
14 present, upon being read first in full and  
15 then by title. In such cases, provisions of  
16 Subsections A and C of this Section do not  
17 apply.

18 "C. Any required reading may be by title only. A  
19 copy of the ordinance shall be provided for  
20 each council member and copies provided free  
21 to the public at the Council meeting and in  
22 the office of the City Recorder at least one  
23 week before the first reading of the  
24 ordinance notice of their availability shall  
25 be given forthwith upon the filing, by  
26 written notice posted at the City Hall and  
27 two other public places in the City and  
28 advertised in a newspaper of general  
29 circulation in the City. An ordinance has no  
30 legal effect if it differs substantially from  
31 its terms as it was thus filed prior to the  
32 first reading, unless each section  
33 incorporating such a difference and as  
34 finally amended is read fully and distinctly  
35 in two open Council meetings before being  
36 approved by the Council.

37 "D. An ordinance is enacted upon the approval of  
38 the question of its adoption as provided by  
39 this Charter.

40 "E. Upon the enactment of an ordinance the  
41 Recorder shall sign it by name and title and

1 note upon it the date of its enactment; and,  
2 within three days thereafter, the Mayor shall  
3 sign it by name and note the date of  
4 signature.

5 **"Section 34. When Ordinances Take Effect.**

6 "An ordinance enacted by the Council takes  
7 effect on the thirtieth day after its  
8 enactment. When the Council deems it  
9 advisable, however, an ordinance may provide  
10 a later time for it to take effect, and, in  
11 case of emergency, it may take effect  
12 immediately or at any specified time after  
13 its enactment.

14 **"Section 35. Definition of Emergency.**

15 "The word "emergency" as used in this Chapter  
16 is defined as a condition existing that tends  
17 to put life or property in jeopardy from a  
18 real or imminent threat." (Emphasis  
19 supplied.)

20 As part of the challenged decision, the Lake Oswego  
21 City Council interpreted the emphasized language to mean  
22 that it could adopt emergency ordinances without notice or a  
23 public hearing, notwithstanding the city's land use code  
24 provisions to the contrary. The city council construed the  
25 above-quoted charter provisions and sections 49.60.1515 and  
26 49.60.1520 of the Lake Oswego City Code as follows:

27 "Nothing in the City's Comprehensive Plan,  
28 Development Code or Zoning Code contemplates  
29 emergency land use legislative amendments. The  
30 City's codes, however, must be construed in  
31 conjunction with the City Charter, which is the  
32 legally superior legislative document. In light  
33 of this legislative scheme, it is reasonable to  
34 interpret the Charter and Code as allowing an  
35 emergency enactment of a land use regulation when  
36 such ordinance is justified pursuant to the

1 Charter requirements. Otherwise, the lengthy  
2 standard process would render the City Council's  
3 emergency authority meaningless." Record 38.

4 The city argues that we owe deference to its  
5 interpretation of its charter under Clark v. Jackson County  
6 and its progeny, and that we must accept this interpretation  
7 unless it is "clearly wrong." Petitioner urges us to adopt  
8 a different interpretation of the city's charter provision,  
9 arguing that

10 "[b]ecause the Charter is neither a comprehensive  
11 plan nor a land use regulation, ORS 197.829 does  
12 not govern LUBA's review of interpretations of  
13 Charter provisions by the City Council. Rather,  
14 LUBA should affirm the City Council's  
15 interpretation of the Charter only if it is  
16 reasonable and correct." Petition for Review 15,  
17 n 7.

18 Petitioner is correct that, by its terms, ORS 197.829  
19 does not apply here.<sup>3</sup> Because we conclude that the city's  
20 interpretation passes muster under the less deferential  
21 "reasonable and correct" standard, we need not determine  
22 whether Clark applies to local government interpretations of  
23 charter provisions, or whether the less deferential  
24 "reasonable and correct" standard stated in McCoy v. Linn  
25 County, 90 Or App 271, 274-76, 752 P2d 323 (1988) applies.

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<sup>3</sup>ORS 197.829 states in relevant part that

"The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation" does not meet one or more of the standards listed.

1 Larrison v. City of Lake Oswego, 26 Or LUBA 515, 523 (1994).

2       We discern no inconsistency between the language of the  
3 charter and the city's interpretation of that language.  
4 Also, as far as we can tell, the charter itself does not  
5 implement the land use statutes, and the general procedures  
6 outlined in the charter do not appear to be limited to the  
7 enactment of land use regulations. Rather, the apparent  
8 purpose and policy of the language at issue is to guide the  
9 manner in which the city may enact emergency ordinances  
10 generally, and not just land use ordinances. The city's  
11 interpretation that its charter does not require notice or a  
12 hearing prior to enactment of an emergency ordinance is  
13 "reasonable and correct." This, however, does not end our  
14 inquiry. As explained above, we must now determine whether  
15 state law imposes additional requirements beyond what the  
16 city charter and code establish, and if so, whether the  
17 local requirements "predominate" over the state requirements  
18 under the Home Rule Charter provisions of the Oregon  
19 Constitution.

20       Petitioner argues that ORS 197.610 and Statewide  
21 Planning Goals 1 and 2 mandate certain procedural  
22 requirements for enacting land use regulations that were not  
23 followed in this case. Citing LaGrande/Astoria and City of  
24 Roseburg v. Roseburg City Firefighters, 292 Or 266, 639 P2d  
25 90 (1981), petitioner argues that these state requirements  
26 preempt the charter and code as interpreted by the city.

1 The city disagrees on both counts. In the city's view, ORS  
2 197.610 allows a local government to not send any pre-  
3 adoption notice whatsoever to DLCD if there are "emergency  
4 circumstances requiring expedited review." The city also  
5 reasons that, since the emergency ordinance at issue is only  
6 temporary, and since the city will comply with the  
7 applicable requirements of Goals 1 and 2 when adopting a  
8 permanent ordinance, there is no violation of those Goals.

9 In deciding these issues, we first explain the  
10 applicable requirements of the cited statute and goals,  
11 addressing at the same time the parties' disagreements about  
12 the correct interpretations of those requirements. We then  
13 apply the analysis established by the Oregon Supreme Court  
14 in LaGrande/Astoria and other cases to determine whether the  
15 charter provisions or the state law and goals dictate the  
16 procedural requirements that the city must follow when  
17 adopting an emergency land use regulation.

18 **B. ORS 197.610 to 197.625**

19 ORS 197.610 through 197.625 establish specific notice  
20 requirements for adopting new or amended comprehensive plan  
21 provisions and land use regulations. In relevant part, ORS  
22 197.610 states that:

23 "(1) A proposal to amend a local government  
24 acknowledged comprehensive plan or land use  
25 regulation or to adopt a new land use  
26 regulation shall be forwarded to the director  
27 at least 45 days before the final hearing on  
28 adoption. The proposal forwarded shall  
29 contain the text and any supplemental

1 information that the local government  
2 believes is necessary to inform the director  
3 as to the effect of the proposal. The  
4 director shall notify persons who have  
5 requested notice that the proposal is  
6 pending.

7 "(2) When a local government determines that  
8 the goals do not apply to a particular  
9 proposed amendment or new regulation, notice  
10 under subsection (1) of this section is not  
11 required. In addition, a local government  
12 may submit an amendment or new regulation  
13 with less than 45 days' notice if the local  
14 government determines that there are  
15 emergency circumstances requiring expedited  
16 review." (Emphasis supplied.)

17 As noted in the statement of facts, the city did not  
18 submit, issue or publish any pre-adoption notice of the  
19 proposed regulations. We disagree with the city's argument  
20 that "less than 45 days notice" can mean no notice at all.  
21 As petitioner points out, the first sentence in ORS  
22 197.610(2) expressly excuses local governments from the  
23 notice requirements of subsection (1), while the second  
24 sentence does not. The second sentence of ORS 197.610(2),  
25 emphasized above and applicable to this case, requires a  
26 local government to provide DLCD with pre-adoption notice of  
27 a proposal to adopt new or amended plan provisions or land  
28 use regulations. The notice may be sent to DLCD less than  
29 45 days in advance of adoption, but the notice must be

1 sent.<sup>4</sup> Unless we determine that the charter controls over  
2 the statutory requirements under the constitutional Home  
3 Rule Charter provisions, the city's failure to send the pre-  
4 adoption notice to DLCD is a substantive failure and  
5 warrants remand. Oregon City Leasing, Inc. v. Columbia  
6 County, 121 Or App 173, 177, 854 P2d 495 (1993).

7 **C. Statewide Planning Goals 1 and 2**

8 The city determined that Goals 1 and 2 applied to its  
9 enactment of the challenged ordinance, and concluded that  
10 these goals

11 "generally require local governments to have an  
12 open public process that provides ample  
13 opportunities for citizen input when making land  
14 use decisions." Record 38.

15 The city correctly observes that Goal 1 does not mandate  
16 specific procedural requirements for enacting new or amended  
17 land use regulations. Rather, Goal 1 applies here only in  
18 that it requires the city to follow its acknowledged citizen  
19 involvement program. The city concedes it did not follow  
20 its acknowledged citizen involvement program, but argues  
21 that this failure will be adequately remedied when the city  
22 adopts a permanent ordinance to replace the temporary one at  
23 issue here. According to the city,

24 "[p]etitioner and every other citizen or interest  
25 group will \* \* \* therefore have the full

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<sup>4</sup>Implicit in ORS 197.610(2) is the obligation to provide notice to the department director as expeditiously as possible given the nature of the emergency.

1 opportunity to comment and provide testimony on  
2 the ordinance at formal public hearings before the  
3 Planning Commission and City Council." Response  
4 Brief 21-22.

5 We find nothing in Goal 1 that even impliedly suggests  
6 that a local government is excused from following its  
7 acknowledged citizen involvement program when it adopts a  
8 temporary land use regulation. The difficulty we have with  
9 the city's reasoning is that it assumes all "emergency" land  
10 use regulations must be temporary in nature, and that  
11 "temporary" means something on the order of 6 months. We  
12 are not aware of any state statute, land use planning goal  
13 or administrative rule establishing such parameters on local  
14 government ordinance adoptions, and the city points to  
15 none.<sup>5</sup> Taken to its logical conclusion, the city's  
16 rationale would allow a local government to adopt an  
17 "emergency" land use regulation without any pre-adoption  
18 notice or hearing, so long as the regulation was "temporary"  
19 in nature and the local government would eventually readopt  
20 the regulation after notice and public hearings. In the  
21 absence of statutory, goal or rule language establishing  
22 otherwise, "temporary" and "eventually" could mean as short  
23 or long a period of time as the local government chooses.

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<sup>5</sup> Compare ORS 183.335(5) and (6) (expressly authorizing state agencies to adopt "emergency" rules without prior notice or a hearing, "or upon any abbreviated notice and hearing that it finds practicable," but also expressly providing that such rules are temporary in nature and may be in force for no more than 180 days.)

1 Thus a local government could adopt "temporary" regulations  
2 on an emergency basis, and those regulations could be in  
3 place for years, with affected citizens denied any  
4 opportunity to participate in the adoption process or  
5 influence its outcome. Such a result is contrary to the  
6 purpose of Goal 1. A local government may not disregard its  
7 acknowledged citizen involvement program when adopting an  
8 "emergency" or "temporary" land use regulation.

9 The city's argument relative to Goal 2 is equally  
10 flawed. As petitioner notes, Goal 2 provides that

11 "[a]ll land-use plans and implementation  
12 ordinances shall be adopted by the governing body  
13 after public hearing \* \* \*. Opportunities shall  
14 be provided for review and comment by citizens and  
15 affected governmental units during preparation,  
16 review and revision of plans and implementation  
17 ordinances." Statewide Planning Goal 2.

18 Again, we see no language in Goal 2 or state statute  
19 allowing a local government to avoid these requirements  
20 under any circumstances.

21 Because we conclude that ORS 197.610(2) and Goals 1 and  
22 2 impose substantive and procedural requirements beyond  
23 those required by the city's charter and code, we must now  
24 determine whether the local charter or the state  
25 requirements "predominate."

26 **D. "Home Rule" provisions of the Oregon Constitution**

27 The so-called home rule amendments to the Oregon  
28 Constitution provide, in relevant part:

29 "\* \* \* The Legislative Assembly shall not enact,

1 amend or repeal any charter or act of  
2 incorporation for any municipality, city or town.  
3 The legal voters of every city and town are hereby  
4 granted power to enact and amend their municipal  
5 charter, subject to the Constitution and criminal  
6 laws of the State of Oregon \* \* \*." Or Const, Art  
7 XI, section 2.

8 "The initiative and referendum powers reserved to  
9 the people by subsections (2) and (3) of this  
10 section are further reserved to the qualified  
11 voters of each municipality and district as to all  
12 local, special and municipal legislation of every  
13 character in or for their municipality or  
14 district. The manner of exercising these powers  
15 shall be provided by general laws, but cities may  
16 provide the manner of exercising those powers as  
17 to their municipal legislation. \* \* \*" Or Const,  
18 Art IV, section 1(5).

19 The Oregon Supreme Court has held that

20 "these constitutional provisions are concerned  
21 with the structural and organizational  
22 arrangements for the exercise of local self-  
23 government, with the power of local voters to  
24 enact and amend their own municipal charters and  
25 to employ the initiative and referendum for  
26 'local, special and municipal legislation.' They  
27 address the manner in which governmental power is  
28 granted and exercised, not the concrete uses to  
29 which it is put." LaGrande/Astoria, 281 Or at  
30 141-142.

31 The court also has outlined the manner in which statutes and  
32 home rule legislation are to be balanced, based on these  
33 constitutional provisions:

34 "When a statute is addressed to a concern of the  
35 state with the structure and procedure of local  
36 agencies, the statute impinges on the powers  
37 reserved by the amendments to the citizens of  
38 local communities. Such a state concern must be  
39 justified by a need to safeguard the interests of  
40 persons or entities affected by the procedures of

1 local government.

2 "Conversely, a general law addressed primarily to  
3 substantive social, economic, or other regulatory  
4 objectives of the state prevails over contrary  
5 policies preferred by some local governments if it  
6 is clearly intended to do so, unless the law is  
7 shown to be irreconcilable with the local  
8 community's freedom to choose its own political  
9 form. In that case, such a state law must yield  
10 in those particulars necessary to preserve that  
11 freedom of local organization." LaGrande/Astoria,  
12 281 Or at 156 (footnote omitted).

13 In determining whether a statute or statutory program  
14 is "procedural" or "substantive" in nature, the Oregon  
15 Supreme Court has focused on the "dominant character" of the  
16 state laws at issue. City of Roseburg v. Roseburg City  
17 Firefighters, 292 Or at 276. The "dominant character" of  
18 the state's land use program, embodied in statute, goal and  
19 administrative rule, is substantive in nature: "Land use  
20 regulation is addressed primarily to substantive social,  
21 economic, or other regulatory objectives of the state."  
22 Seto v. Tri-County Metro. Transportation Dist., 311 Or 456,  
23 464, 814 P2d 1060 (1991) (citing ORS 197.005 and 197.835).<sup>6</sup>

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<sup>6</sup>See also LaGrande/Astoria, 281 Or at 145-46, where the court held that

"[E]ven with respect to a law prescribing municipal modes of government \* \* \* a general law might be valid if it served a predominant social interest extending beyond the local municipality. This conclusion is consistent with many of the court's decisions in which state standards designed to safeguard the interest of private persons in procedures of local government have generally been sustained.<sup>15</sup>

1 Based on these authorities, we conclude that the substantive  
2 and procedural requirements established by ORS 197.610 and  
3 Goals 1 and 2 dictate the manner in which the city may adopt  
4 land use regulations, including "emergency" and "temporary"  
5 land use regulations.<sup>7</sup>

6 This assignment of error is sustained.

7 **SECOND ASSIGNMENT OF ERROR**

8 Petitioner argues that the challenged ordinance fails  
9 to comply with Statewide Planning Goals 9 and 11.

10 **A. Goal 9**

11 Petitioner argues that the challenged ordinance fails  
12 to comply with Goal 9, because the city did not make  
13 findings that "the regulations will result in there being an  
14 adequate supply of sites for telecommunications facilities."  
15 Petition for Review at 18. Petitioner relies on the Goal 9  
16 requirement that

17 "Comprehensive plans for urban areas shall:

18 "\* \* \* \* \*

19 "3. Provide for at least an adequate supply of  
20 sites of suitable sizes, types, locations,  
21 and service levels for a variety of

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"<sup>15</sup>E.g., \* \* \* Fasano v. Washington County Comm'n, 264 Or 574,  
507 P2d 23 (1973), and its progeny, in which procedural  
protections for affected persons have been inferred from state  
laws authorizing various local government decisions."

<sup>7</sup>We emphasize that our holding is limited to the adoption of land use  
regulations. We do not consider whether and to what extent state  
requirements might apply to the adoption of non-land use regulations.

1 industrial and commercial uses consistent  
2 with plan policies."

3 We understand petitioner to argue that  
4 telecommunication facilities are "commercial uses" under  
5 Goal 9, and that the city must ensure an "adequate supply"  
6 of sites for that particular use. Petitioner cites no  
7 authority for its argument that Goal 9 requires a local  
8 government to plan and designate an "adequate supply" of  
9 sites for a particular commercial use, such as  
10 telecommunication facilities. We do not understand Goal 9  
11 to require such detail or specificity in a local  
12 comprehensive plan.

13 Alternatively, petitioner's argument can be understood  
14 to be that the challenged ordinance effectively prohibits  
15 new telecommunication facilities from being located in most  
16 of the city. Petition for Review 18-19. The city responds  
17 by pointing out that the challenged ordinance allows  
18 telecommunication facilities as permitted or conditional  
19 uses in all zones, and that the ordinance allows for  
20 variances from the otherwise applicable height limits and  
21 setback requirements. Consequently, in the city's view, the  
22 ordinance does not prohibit new telecommunication facilities  
23 in any zone of the city. We agree with the city. Under the  
24 challenged ordinance, it is possible to site a  
25 telecommunication facility in any zone and at virtually any  
26 location within the city, and the ordinance does not affect  
27 the city's compliance with Goal 9.

1 This subassignment of error is denied.

2 **B. Goal 11**

3 Petitioner next argues that the challenged ordinance  
4 does not comply with the Goal 11 requirement that the city  
5 "plan and develop a timely, orderly and efficient  
6 arrangement of public facilities and services to  
7 serve as a framework for urban and rural  
8 development."

9 Petitioner correctly notes that Goal 11 defines "urban  
10 facilities and services" to include "communication  
11 services." However, the exact nature of the city's Goal 11  
12 obligation to "plan and develop a timely, orderly and  
13 efficient arrangement" of communication services generally,  
14 or telecommunication towers specifically is not clear. We  
15 agree with petitioner that, on remand, the city must  
16 consider whether its regulations preclude or interfere with  
17 "a timely, orderly and efficient arrangement of public  
18 facilities and services." We note, however, that "timely,  
19 orderly and efficient" does not necessarily mean the time,  
20 place and manner in which the service provider would prefer  
21 to provide the service. A local government need not provide  
22 an expedited process for siting public facilities and  
23 retains its ability to ensure the appropriate juxtaposition  
24 of land uses.

25 This subassignment of error is sustained.

26 The second assignment of error is denied in part and  
27 sustained in part.

1           The city's decision is remanded.