

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a city council decision approving a
4 conditional use permit for a parking garage.

5 **MOTION TO INTERVENE**

6 BPM Associates (hereafter BPM), the applicant below,
7 and Barry D. Schlesinger, BPM's representative during the
8 proceedings below, move to intervene on the side of
9 respondent. There is no objection to the motion, and it is
10 allowed.

11 **FACTS**

12 The subject property is a half block in downtown
13 Portland, bounded by S.W. 6th Avenue on the east,
14 S.W. Washington Street on the north, and S.W. Broadway
15 Avenue on the west. The property is zoned Central
16 Commercial (CX). Commercial parking is a conditional use in
17 the CX zone. The property is located in the Central City
18 Plan District (CCPD), and is within the Downtown Parking and
19 Circulation Policy (DPCP) subdistrict of the CCPD.¹

¹Portland City Code (PCC) 33.500.010 explains the purpose of "plan districts" as follows:

"Plan districts address concerns unique to an area when other zoning mechanisms cannot achieve the desired results. * * * Plan districts provide a means to modify zoning regulations for specific areas defined in specific plans or studies. Each plan district has its own nontransferable set of regulations. * * *"

Plan district regulations are applied in conjunction with a base zone, but may modify any portion of the regulations of the base zone or any other PCC

1 On November 4, 1992, BPM filed an application for
2 conditional use approval for a 462-space, eight-story
3 parking structure. The proposed parking structure will
4 include retail shops on its lower floors. Of the total 462
5 parking spaces proposed, 33 will be accessory spaces for
6 retail tenants of the structure; the remaining 429 will be
7 for short term parking use.

8 On June 21, 1993, after a public hearing, the city
9 hearings officer issued a decision denying BPM's
10 application. Intervenors appealed to the city council. The
11 city council conducted a de novo review, including an
12 additional public hearing. On December 6, 1993, the city
13 council issued an order approving BPM's application, subject
14 to conditions. This appeal followed.

15 **ELEVENTH ASSIGNMENT OF ERROR**

16 Petitioner contends the city can grant land use
17 approval only for property that is the subject of a proper
18 application. Breivogel v. Washington County, 114 Or App 55,
19 834 P2d 473 (1992); Goodman v. City of Portland, 19 Or LUBA
20 289, 294-98 (1990). Petitioner argues this requirement is
21 jurisdictional because, under PCC 33.730.060(A), the city
22 cannot process an application if it does not satisfy the

Title 33 regulations. PCC 33.500.030. Where there is a conflict between the plan district regulations and the base zone or other PCC Title 33 regulations, the plan district regulations control. PCC 33.500.040.

1 requirements of PCC 33.730.060(C) (Required Information).²
2 According to petitioner, the application does not satisfy
3 the requirement of PCC 33.730.060(C)(1) that an application
4 bear "the signature of the applicant," because it does not
5 bear the signature of BPM. Petitioner further argues the
6 application does not satisfy the requirement of
7 PCC 33.730.060(C)(1) that the application state "the nature
8 of the applicant's interest in the property," because it
9 describes BPM's interest as "future property owner."
10 Record 2638. According to petitioner, this is an admission
11 that PCC 33.730.060(C)(1) is not met, in that applicant BPM
12 has no interest in the subject property.

13 The city and intervenors (respondents) argue the city's
14 interpretation of the requirements of PCC 33.730.060(C) as
15 being procedural, rather than jurisdictional, is within the
16 discretion afforded the city by ORS 197.829.³ Respondents

²As relevant here, PCC 33.730.060(C) states a complete application must include the following:

"(1) [T]he name, address, and telephone number of the applicant, the name and addresses of all property owners if different, the signature of the applicant, and the nature of the applicant's interest in the property.

"* * * * *"

³ORS 197.829 provides:

"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:

1 argue Breivogel v. Washington County, supra, is inapposite
2 because in Breivogel the county explicitly interpreted its
3 code requirement for a signature to be jurisdictional.
4 Respondents also argue the city correctly found that BPM's
5 application complies with PCC 33.730.060(C)(1), because
6 intervenor Schlesinger is a general partner authorized to
7 sign the application for BPM and BPM can act on behalf of
8 the current property owners.

9 The city's findings state:

10 "[PCC 33.730.060(C)(1)] requires applicants to
11 demonstrate their interest in the property for
12 which a land use approval is sought. The Council
13 finds that [BPM] has done so in this case.
14 Testimony in the record by members of the
15 Schlesinger family shows that [BPM has] acquired
16 or will acquire all of the property that is the
17 subject of this application. Only the applicant
18 for a land use approval need sign the application
19 form, and Barry Schlesinger signed the application
20 form as [BPM]. The Council concludes that [BPM]
21 has complied with [PCC 33.730.060(C)(1)].
22 Moreover, any failure to do so would not have been
23 a jurisdictional defect, and [petitioner] has not
24 shown any prejudice from such a failure."
25 Record 79-80.

"(1) Is inconsistent with the express language of the
comprehensive plan or land use regulation;

"(2) Is inconsistent with the purpose for the comprehensive
plan or land use regulation;

"(3) Is inconsistent with the underlying policy that provides
the basis for the comprehensive plan or land use
regulation; or

"(4) Is contrary to a state statute, land use goal or rule
that the comprehensive plan provision or land use
regulation implements."

1 PCC 33.730.060(C) does not explicitly state the
2 requirements listed thereunder for a complete application
3 are "jurisdictional." Additionally, as intervenors point
4 out, PCC 33.730.060(A)(2) provides that if an application is
5 not complete, and the missing information is not provided
6 within 30 days, "the application will be considered complete
7 on the 31st day after its original submittal [and] will be
8 processed based on the information submitted." The city's
9 interpretation of PCC 33.730.060(C)(1) as a procedural
10 rather than jurisdictional requirement is not inconsistent
11 with the express words, purpose or policy of that enactment
12 and, therefore, must be affirmed. ORS 197.829; Clark v.
13 Jackson County, 313 Or 508, 836 P2d 710 (1992). Because
14 petitioner does not demonstrate how the alleged failure to
15 comply with PCC 33.730.060(C)(1) prejudices its substantial
16 rights, petitioner's argument provides no basis for reversal
17 or remand. ORS 197.835(7)(a)(B); Burghardt v. City of
18 Molalla, 25 Or LUBA 43, 51 (1993).

19 In any case, we also agree with the above quoted city
20 determination that BPM's application complies with
21 PCC 33.730.060(C)(1). The decision interprets the
22 requirement of PCC 33.730.060(C)(1) for the applicant's
23 signature to be satisfied because intervenor Schlesinger
24 signed the application on behalf of BPM. The record
25 indicates intervenor Schlesinger is a general partner in
26 BPM, an Oregon general partnership. Record 1447-49. The

1 decision also finds the requirement for a statement of the
2 nature of the applicant's interest in the subject property
3 to be satisfied where the application states the applicant
4 is the "future property owner" and there is evidence in the
5 record that the applicant has acquired or will acquire the
6 property. The city is well within the discretion afforded
7 by ORS 197.829 and Clark v. Jackson County, supra, in
8 interpreting the relevant requirements of
9 PCC 33.730.060(C)(1) to be satisfied in these circumstances.

10 The eleventh assignment of error is denied.

11 **FIRST, SECOND, FOURTH AND FIFTH (PART 2) ASSIGNMENTS OF**
12 **ERROR**

13 As relevant here, PCC 33.815.120.B establishes the
14 following conditional use criterion for approval of a
15 commercial parking facility in the CX zone:

16 "The parking facility is in conformance with * * *
17 the Downtown Parking and Circulation Policy
18 [DPCP.]"

19 Certain sections of the DPCP apply within the DPCP
20 subdistrict and have been adopted as part of the PCC,
21 including DPCP 2-5 (Parking Use), 2-6 (Surface Parking Lots)
22 and 2-7 (Approval of New Off Street Parking).
23 PCC 33.510.235.C.2.

24 DPCP 2-7(B) provides:

25 "New Off Street Parking will only be approved as
26 part of new developments, redevelopments, or major
27 rehabilitations except as allowed by [DPCP]

1 Section 2-6 or Section 2-7(B) [sic 2-7(C)⁴]."

2 There is no dispute the proposed 462 space parking garage is
3 "new off street parking" and, with the exception of the 33
4 spaces proposed for use by the retail tenants of the
5 structure, is not part of a new development, redevelopment
6 or major rehabilitation and, therefore, is allowable only
7 pursuant to DPCP 2-7(C).⁵ DPCP 2-7(C) provides:

8 "The City may approve new structured short term
9 parking as long as the City finds that it is
10 consistent with the City's short term parking
11 strategy."⁶ (Emphasis added.)

12 The challenged decision describes the city's "short
13 term parking strategy" as follows:

14 "The City's short-term parking strategy is to
15 provide sufficient short-term parking to support
16 the planned intensity of uses within the Downtown
17 area, particularly within the retail core of
18 Downtown. That is, a proposal for additional
19 short-term parking within the area subject to the
20 DPCP is consistent with the City's short-term
21 parking strategy only if the applicant
22 demonstrates that there is a need for the
23 additional parking." Record 46-47.

24 The decision concedes the city has not adopted a document
25 entitled "Short Term Parking Strategy," but maintains the

⁴The parties agree that the citation to DPCP 2-7(B) in DPCP 2-7(B) itself is a typographical error, and that the intended reference is to DPCP 2-7(C).

⁵DPCP 2-6, also referred to in DPCP 2-7(B), governs surface parking lots and is not applicable to the multi-story parking garage proposed here.

⁶DPCP 1-3(D) defines "short term parking" as "[p]arking having a duration not exceeding four hours."

1 city's short term parking strategy has been adopted through
2 a number of separate legislative enactments. The decision
3 identifies 11 parking-related provisions of the DPCP,
4 Central City Plan and Downtown Plan, and explains that the
5 above quoted "short term parking strategy" is deduced or
6 derived from these 11 provisions.⁷ Record 48-50. The
7 decision also states that in a previous quasi-judicial
8 decision applying DPCP 2-7(C) and approving additional
9 downtown short term parking, the city identified the same
10 short term parking strategy, "based upon" four of the 11
11 provisions from which it derived the short term parking
12 strategy stated in the challenged decision. Record 47.

13 Petitioner contends the city has not adopted a "short
14 term parking strategy" and, until it does so, cannot approve
15 the subject application. Petitioner argues certain
16 provisions of the DPCP, and of a 1986 resolution concerning
17 implementation of recommendations by a citizen advisory

⁷Some of petitioner's arguments, in these and other assignments of error, are based on the premise that the challenged decision states these 11 DPCP, Central City Plan and Downtown Plan provisions are the city's short term parking strategy. However, in their briefs and at oral argument respondents took the position the challenged decision determines the short term parking strategy "underlies the [11] provisions," and does not apply the 11 provisions as if they themselves are the short term parking strategy. (Emphasis added.) Intervenors-Respondent's Brief 24. In fact, most of the 11 identified provisions are not applied directly as approval criteria in the challenged decision. We agree with respondents that the "short term parking strategy" stated in the challenged decision and quoted in the text, supra, is derived from the 11 identified provisions; it is not the 11 provisions themselves. Consequently, we do not address petitioner's arguments that are premised on the 11 identified provisions themselves constituting the city's short term parking strategy.

1 committee adopted concurrently with the DPCP, make it clear
2 the city intended to adopt a "short term parking strategy"
3 in the future. Petitioner also argues the term "consistent
4 with the City's short term parking strategy" is not itself a
5 standard, because "short term parking strategy" has no
6 inherent meaning or content, and that the city cannot adopt
7 a standard in the guise of interpretation. Finally,
8 petitioner contends the city violated ORS 227.173(1) because
9 the "short term parking strategy" it announced and applied
10 as an approval standard in the challenged decision has not
11 been adopted as part of the city's comprehensive plan or
12 land use regulations.⁸

13 Respondents argue DPCP 2-7(C) refers to an existing
14 "short term parking strategy" that underlies the city's
15 various legislative enactments concerning downtown parking.
16 Respondents further argue there is no indication in the DPCP
17 or other city plans that in adopting DPCP 2-7(C) the city
18 intended to prohibit the approval of short term parking
19 structures until some future date when a "short term parking
20 strategy" would be adopted.

⁸ORS 227.173(1) provides:

"Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole."

1 Respondents also argue the challenged decision complies
2 with ORS 227.173(1) because the phrase "short term parking
3 strategy" is "sufficiently definite to inform interested
4 parties of the basis on which the application would be
5 approved or denied." Intervenors-Respondent's Brief 25; see
6 Oswego Properties, Inc. v. City of Lake Oswego, 108 Or App
7 113, 814 P2d 539 (1991); Lee v. City of Portland, 57 Or App
8 798, 646 P2d 662 (1982). According to respondents, the
9 standard of "consistency with the City's short term parking
10 strategy" is more definite than the "desirable to the public
11 convenience and welfare" standard upheld in Lee, "because
12 the former is a reference to an identifiable and existing
13 strategy, whereas the latter is a subjective standard that
14 can only be articulated in the context of specific
15 proposals." Id.

16 ORS 227.173(1) requires approval or denial of the
17 subject permit application to be based on "standards and
18 criteria * * * set forth in the [city's] development
19 ordinance * * *." To satisfy ORS 227.173(1), a standard
20 must be "clear enough for an applicant to know what he must
21 show during the application process." Lee, supra, 57 Or App
22 at 802. A standard satisfies this test if it "inform[s]
23 interested parties of the basis on which applications would
24 be granted or denied." Id. at 803; Spiering v. Yamhill
25 County, 25 Or LUBA 695, 715 (1993).

26 The DPCP 2-7(C) requirement that a parking structure be

1 "consistent with the City's short term parking strategy"
2 does not, in itself, satisfy ORS 227.173(1) because it
3 explains absolutely nothing about the basis on which such an
4 application will be approved or denied. Of course, this
5 deficiency would be remedied if there were other provisions
6 set out in the city's development ordinances that identified
7 for interested parties what the city's "short term parking
8 strategy" is.⁹ If that were the case, DPCP 2-7(C) would be
9 applied in conjunction with such other provisions and
10 ORS 227.173(1) would be met. However, that is not the case
11 here. No provision of the city's development ordinances
12 sets out the city's "short term parking strategy." Rather,
13 the challenged decision determines the city's "short term
14 parking strategy" is something that underlies, or can be
15 deduced from, 11 provisions in the DPCP, Central City Plan
16 and Downtown Plan and can be announced for the first time in
17 the city's decision on a permit application.¹⁰ This

⁹As we explain, supra, no provision in the city's plan or land use regulations explicitly states it is the city's "short term parking strategy." We do not decide whether during the course of a quasi-judicial permit proceeding and with advance notice to the parties, the city could, consistent with ORS 227.173(1), identify one or more existing provisions in the PCC or plan as constituting the "short term parking strategy" referred to in DPCP 2-7(C), because that is not what the city did here. See n 7.

¹⁰There is dispute between the parties with regard to whether the "short term parking strategy" set out in the challenged decision is the same as the "short term parking strategy" expressed in a previous city decision approving a similar type of permit application. However, even if the "short term parking strategies" set out in the two decisions are the same, that would make no difference. ORS 227.173(1) requires a permit approval

1 violates the requirement of ORS 227.173(1) that permit
2 standards and criteria themselves must be set out in the
3 city's development ordinances.

4 We conclude the city does not have a "short term
5 parking strategy" set out in its development ordinances to
6 be used, in the context of DPCP 2-7(C), as an approval
7 standard for the subject application. Next, we determine
8 the effect of the city's lack of a "short term parking
9 strategy" on its ability to approve the subject application.

10 Petitioner argues the lack of a "short term parking
11 strategy" means the application must be denied. On the
12 other hand, the challenged decision states:

13 "* * * If indeed the City has no short-term
14 parking strategy, then the City would have no
15 choice but to approve, not deny, the application.
16 ORS 227.173(1) requires the approval or denial of
17 a permit application to be based upon standards
18 and criteria set forth in the City's development
19 ordinances. If [BPM's] proposed parking structure
20 satisfies all other conditional use approval
21 criteria, the City could not deny the application
22 based upon a short-term parking strategy that,
23 according to [petitioner] does not exist."
24 Record 51-52.

25 We agree with the city that the lack of a short term
26 parking strategy adopted as part of its development
27 ordinances would not require denial of the subject
28 application, if the application satisfies all approval
29 criteria that are adopted as part of the city's development

standard to be adopted as part of the city's development ordinances, not
announced in a decision on a permit application.

1 ordinances. However, one of those approval criteria,
2 adopted as part of the PCC in PCC 33.510.235.C.2, is
3 DPCP 2-7(B). DPCP 2-7(B) provides that new off street
4 parking "will only be approved as part of new developments,
5 redevelopments, or major rehabilitations except as allowed
6 by [DPCP] Section 2-7([C])." (Emphases added.) This
7 clearly means that new off street parking not in conjunction
8 with new developments, redevelopments, or major
9 rehabilitations, such as the disputed parking structure, is
10 prohibited in areas to which DPCP 2-7(B) applies, unless an
11 exception can be justified pursuant to DPCP 2-7(C). The
12 exception provided by DPCP 2-7(C) requires the city to have
13 a "short term parking strategy." Consequently, if the city
14 has not adopted a "short term parking strategy," it cannot
15 make use of the exception provided by DPCP 2-7(C) and must
16 deny the application. In other words, without relying on
17 the DPCP 2-7(C) exception, the subject application cannot
18 satisfy the applicable approval standards, and the city's
19 decision must be reversed.

20 The first, second, fourth and fifth (part 2)
21 assignments of error are sustained.

22 **FIFTH (PARTS 3, 4 AND 5) ASSIGNMENT OF ERROR**

23 Petitioner argues the short term parking strategy
24 announced in the challenged decision, which the city infers
25 or derives from 11 specific DPCP, Central City Plan and
26 Downtown Plan provisions, as explained supra, is

1 inconsistent with DPCP 2-7(C), and some of the 11 identified
2 DPCP, Central City Plan and Downtown Plan provisions.

3 In the previous section, we determine the city cannot
4 deduce or derive a short term parking strategy from 11
5 existing plan provisions. Therefore, no purpose would be
6 served by determining whether the short term parking
7 strategy derived in this manner is inconsistent with certain
8 plan provisions.

9 **THIRD AND SIXTH ASSIGNMENTS OF ERROR**

10 Petitioner contends the short term parking strategy
11 expressed in the challenged decision is inconsistent with a
12 prior articulation of the city's short term parking strategy
13 in a previous quasi-judicial decision on a permit
14 application.

15 We determine, supra, that in order to apply a "short
16 term parking strategy" as an approval standard for permit
17 applications, the city must adopt such strategy in its
18 development ordinances. Therefore, whether the city's
19 articulation of a short term parking strategy in the
20 challenged decision is inconsistent with its articulation of
21 such strategy in a prior quasi-judicial decision is of no
22 consequence, and we do not consider petitioner's argument.

23 **SEVENTH ASSIGNMENT OF ERROR**

24 Petitioner argues its substantial rights were
25 prejudiced because the city failed to list the 11 DPCP,
26 Central City Plan and Downtown Plan provisions constituting

1 its short term parking strategy as approval criteria in its
2 notice of hearing, as required by ORS 197.763(3)(b).
3 Petitioner also argues the city failed to list the short
4 term parking strategy announced in the challenged decision
5 as an applicable criterion in the notice of hearing.

6 ORS 197.763(3)(b) requires the city to "[l]ist the
7 applicable criteria from the ordinance and the plan" in its
8 notice of a quasi-judicial land use hearing. As we explain,
9 supra, the city did not apply the 11 DPCP, Central City Plan
10 and Downtown Plan provisions referred to as approval
11 criteria for the subject application. Therefore, its
12 failure to list them in its notice of hearing did not
13 violate ORS 197.763(3)(b). Of course, if the city had
14 adopted a short term parking strategy as part of its
15 development ordinances, as required by ORS 227.173(1), under
16 DPCP 2-7(C) and PCC 33.510.235.C.2 that strategy would be an
17 approval criterion for the subject application and the city
18 would be required to list the strategy in its notice of
19 hearing. However, since the city failed to adopt a short
20 term parking strategy in its ordinance or plan, the
21 requirement of ORS 197.763(3)(b) does not apply.

22 The seventh assignment of error is denied.

23 **FIFTH (PART 6) AND NINTH ASSIGNMENTS OF ERROR**

24 The short term parking strategy announced in the
25 challenged decision requires that the applicant demonstrate
26 "a need for the additional parking." Record 47. Petitioner

1 argues the findings demonstrating a need for additional
2 parking are inadequate because the area considered reflects
3 an improper interpretation of the city's short term parking
4 strategy. Petitioner also argues the city's determination
5 that there is a need for additional parking is not supported
6 by substantial evidence in the record.

7 The only source cited by petitioner for a requirement
8 that a need for additional parking be demonstrated is the
9 "short term parking strategy" announced in the challenged
10 decision. As explained supra, consistency with that
11 strategy cannot be applied as an approval standard for the
12 subject application. Therefore, no purpose would be served
13 by considering petitioner's argument.

14 **TENTH ASSIGNMENT OF ERROR**

15 After the hearing and evidentiary record before the
16 city council were closed, the city council made a tentative
17 decision to approve the application and asked BPM to submit
18 proposed findings, which BPM did. Petitioner submitted
19 written objections to the proposed findings to the city
20 council. The city council rejected petitioner's written
21 objections, because they were received after the record was
22 closed. Record 10-11.

23 Petitioner recognizes that in Adler v. City of
24 Portland, 24 Or LUBA 1, 12 (1992), we determined the PCC
25 does not require the city to provide an opportunity to
26 object to proposed findings submitted to the city decision

1 maker by the prevailing party. However, petitioner contends
2 the situation here is different because a critical approval
3 standard (the short term parking strategy) was not announced
4 until the final decision was adopted. Petitioner argues
5 BPM's proposed findings raised new issues with regard to
6 determining the city's "short term parking strategy," and
7 cite as relevant several plan provisions that were never
8 before mentioned in the city proceedings. According to
9 petitioner, in these circumstances, denying petitioner the
10 right to rebut the proposed findings "denies [petitioner]
11 due process." Petition for Review 47.

12 We assume petitioner's reference to "due process
13 rights" alleges a constitutional violation. However,
14 petitioner's claim to a "due process right" to rebut
15 proposed findings appears to be based on a situation where
16 an applicable approval standard is not set out in the local
17 government's plan or development ordinances, but rather is
18 expressed for the first time in its final decision. We
19 determine, supra, that the city may not proceed in such a
20 manner. Therefore, it is not necessary to reach
21 petitioner's constitutional claim.

22 The tenth assignment of error is denied.

23 **TWELFTH ASSIGNMENT OF ERROR**

24 DPCP 2-7(C), the only basis relied on in the challenged
25 decision for approving a new commercial parking structure in
26 the DPCP subdistrict, allows only "short term parking."

1 DPCP 1-3(D) defines "short term parking" as "[p]arking
2 having a duration not exceeding four hours." The conditions
3 imposed by the challenged decision include:

4 "B. Except for accessory tenant spaces, all
5 spaces shall be used exclusively for
6 short-term parking.

7 * * * * *

8 "E. After the initial four hours, the parking
9 rate shall double (based on the average
10 hourly rate for the first four hours).

11 * * * * *

12 "K. The owner or designated operator shall submit
13 reports to the City's Parking Manager on
14 January 1 and July 1 which shows [sic] the
15 following information for the preceding six
16 months:

17 "• Short and long-term and carpool
18 utilization of spaces * * *.

19 "• A summary of efforts made and/or
20 strategies implemented to encourage
21 short-term parking and the results of
22 those efforts." (Emphases added.)
23 Record 4-5.

24 Petitioner contends the conditions quoted above are
25 insufficient to ensure the proposed structure, with the
26 exception of the 33 proposed accessory tenant spaces, will
27 provide only short term parking. Petitioner argues the
28 provisions emphasized above indicate the decision
29 contemplates and allows an unspecified amount of long-term
30 parking, in violation of DPCP 2-7(C).

31 The challenged decision does not specifically explain

1 why the proposed parking structure, as conditioned, complies
2 with the DPCP 1-3(D) definition of, and requirement of
3 DPCP 2-7(C) for, "short term parking." However, in its
4 brief, the city cites DPCP 2-5(C), which provides:

5 "Short-term parking shall be marketed, priced or
6 operated in a manner which encourages its use for
7 short-term parking and discourages its use for
8 long-term parking."

9 The city argues that interpreting DPCP 1-3(D), 2-5(C) and
10 2-7(C) together, it is clear that the parking structure, as
11 conditioned, is consistent with the city's requirements for
12 "short term parking."

13 To be reviewable by this Board, a local government's
14 interpretation of its regulations must be provided in the
15 challenged decision or the supporting findings, not in the
16 local government's brief. Eskandarian v. City of Portland,
17 ___ Or LUBA ___ (LUBA No. 93-012, October 15, 1993),
18 slip op 15; Miller v. Washington County, 25 Or LUBA 169, 179
19 (1993). Therefore, although we might agree with the
20 interpretation of the relevant DPCP provisions expressed in
21 the city's brief, in order to be affirmed by this Board the
22 interpretation must be expressed in the challenged decision.

23 The twelfth assignment of error is sustained.

24 The city's decision is reversed.