



Oregon

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PERIODIC REVIEW REPLACEMENT RULES ADVISORY COMMITTEE

**1:30 P.M., JUNE 14, 2016
DLCD BASEMENT HEARING ROOM
635 CAPITOL STREET NE, SALEM 97301**

AGENDA

- I. Introductions
- II. Role of the work group and decision-making process
- III. Periodic review overview
 - Which cities are required to complete periodic review
 - Scope of periodic review
 - Periodic review schedule
 - Steps in periodic review process
- IV. Discussion of ideas, needs and opportunities
 - Subjects/topics of comprehensive plan updates
 - Public involvement in the alternative process
 - Schedule/timeframe to make needed amendments
 - Appeals of plan updates made under the alternative process
- V. Public Comment
- VI. Conclusion and next steps



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June 9, 2016

TO: Periodic Review Replacement Rules Advisory Committee

FROM: Rob Hallyburton, Community Services Division Manager

RE: Periodic Review Replacement Rules Advisory Committee meeting materials

We have a meeting scheduled for 1:30 to 3:30 p.m. on Tuesday, June 14. Background materials for that meeting are included in and attached to this report.

I. PURPOSE OF THIS RULES ADVISORY COMMITTEE

The Oregon Legislature passed a bill in 2013 directing the Land Conservation and Development Commission (commission) to develop rules to streamline the urban growth boundary (UGB) amendment process. The Department of Land Conservation and Development (department) worked with multiple advisory committees and work groups to formulate the concepts and rule provisions to satisfy the requirements of the legislation. The central group, the Urban Growth Boundary Rules Advisory Committee, coordinated and synthesized the input from the various work groups.

One element of rulemaking required by the legislation – periodic review replacement – was deferred because the rules were not needed immediately and deferring the rulemaking meant department and Urban Growth Boundary Rules Advisory Committee capacity could focus on the more immediate needs.

The legislation was codified in a new chapter of statute – ORS 197A. One provision of the legislation that is tucked away in ORS 197A.325(3) provides:

Notwithstanding ORS 197.628 and 197.629 [the requirements for periodic review], when a city evaluates or amends the urban growth boundary of the city pursuant to ORS 197A.310 or 197A.312 [the new, streamlined process], 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.

This rules advisory committee (RAC) is being asked by the department to help it develop concepts for these “alternative means.” These concepts will become the basis for rule language.

II. MEETING OBJECTIVE

Department staff will provide a brief overview of the periodic review process in order to demonstrate the process for which the commission must devise an alternative procedure. The RAC will be asked to discuss:

- Which elements of the traditional process will be completed during a streamlined UGB analysis in order to determine what remains for the follow-up plan and code amendments
- Concepts regarding alternative procedures for ensuring “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.” These concepts should include:
 - Local procedures and timeframes
 - Public involvement expectations
 - Appeal/approval channel

Asking for RAC recommendations on these topics is likely too much to expect for the first meeting, but advancing as far as possible will assist completing this project within the allotted timeframe (commission adoption in November 2016).

III. PERIODIC REVIEW OVERVIEW

Periodic review is guided by authority granted to the commission by the legislature. The legislative policy regarding the purpose of periodic review is in ORS 197.628(1), which provides:

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.

The statutes and rules pertaining to periodic review have received significant amendments over the years. Originally, all cities and counties were required to evaluate their plans to determine whether an update through periodic review was required, and the entire plan was subject to this examination and update if it was needed. Now, small cities and all counties have been relieved of the obligation and the scope has been narrowed. Currently the jurisdictions required to complete periodic review are:

- Cities over 2,500 population within a metropolitan planning organization (MPO), and
- Cities with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization.

A list of affected cities is provided in Attachment A. Pertinent statutes are provided in Attachment B for your information.

A. Scope of Periodic Review

The scope of periodic review is twofold, generally limited to ensuring that the plans and land use regulations:

- Remain in compliance with the statewide planning goals, and
- Make adequate provision for economic development, needed housing, transportation, public facilities and services, and urbanization

1. Compliance with Statewide Planning Goals and Related Statutes

Requirements for local governments to address certain plan or code content are contained in a number of statutes and rules that only become effective at a jurisdiction's next periodic review. Without a requirement to complete periodic review, these regulations will never become effective. These include:

- 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

2. Adequate Provision for Urban Lands and Facilities

Outside the compliance matters listed in the previous section, the scope of periodic review is generally focused on five issues largely equating to:

- Goal 9, Economic Development
- Goal 10, Housing
- Goal 11, Public Facilities and Services
- Goal 12, Transportation, and
- Goal 14, Urbanization

Tasks on recent work programs have focused exclusively on these elements of comprehensive plans except for consideration of Goal 5 to the extent it affects buildable lands.

Cities utilizing the new, streamlined UGB process will address the land-need components of Goals 9 and 10 and the UGB-location component of Goal 14. No follow-up work regarding these goals will be required.

Completing the planning for the UGB expansion area, without ORS 197A.325(3), would be completed no later than the next periodic review. This includes compliance with:

- OAR chapter 660, division 11: Public Facilities Planning
- OAR chapter 660, division 12: Transportation Planning

B. Periodic Review Schedule

Statutes sets a timeframe for when cities are required to complete periodic review. For cities in a Metropolitan Planning Organization, the requirement is seven years between the completion of one work program and the beginning of the next. For cities over 10,000 population outside Metropolitan Planning Organizations, the interval is 10 years.

ORS 197A.305(3)(a) specifies how frequently a city updates its UGB using the new, streamlined process. It provides:

- A city *may* use the streamlined UGB amendment process again when:
 - The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or
 - At least one-half of the lands identified as buildable lands during the previous use of the method by the city have been developed
- A city *must* evaluate whether it needs to include additional land for residential or employment uses before the population has grown by 100 percent of the population growth forecast to occur in conjunction with the previous use of the method by the city.

C. Periodic Review Process

The statutes and rules for periodic review provide procedural requirements regarding notice, public involvement, developing a work program, timelines, and department/commission review. A summary of the existing process is provided so the work group has an understanding of what is being replaced and so members can determine whether elements of the existing process are worth retaining.

The flowchart in Attachment B is from [*The Complete Planners Guide to Periodic Review, Second Edition*](#) (DLCD, 2012). Department staff will use the flowchart as the basis for the discussion of the existing periodic review process.

IV. CONCLUSION

The mandate in ORS 197A.325(3) is essentially the same as that for periodic review: “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.” The charge before this group is to develop concepts for an “alternate” means to that end.

ATTACHMENTS

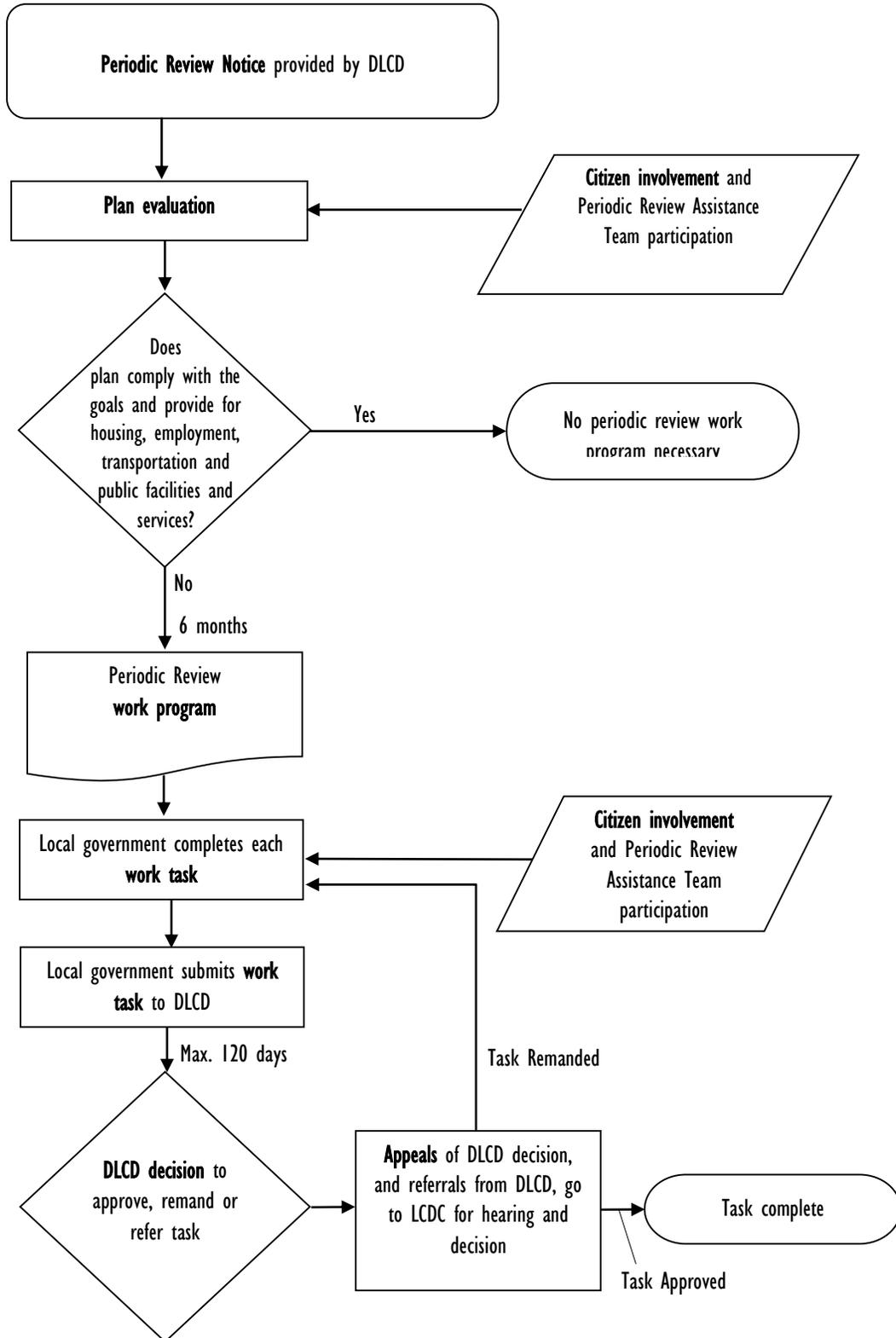
- A. Periodic review process flowchart
- B. Statute excerpts
- C. Periodic review-eligible cities outside Metro

City	Certified Est. July 1, 2015	Post-2007 PR starts	UGB Status
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		
Talent	6,270		
Philomath	4,650		
Phoenix	4,585		
Jacksonville	2,880		

DATA from PSU Population Research Center

- List includes cities w/ population >10,000 and w/ 2,500-10,000 inside an MPO
- "Working" means actively preparing facts and findings or at hearing

PERIODIC REVIEW PROCESS



The entirety of ORS 197A, the statute mandating the new, streamlined UGB amendment process is available [here](#). The entirety of ORS 197, which includes periodic review, is available [here](#). The entirety of the periodic review rule (OAR chapter 660, division 25) is available [here](#).

The sections of statute regarding the UGB amendment process and periodic review quoted in part or paraphrased in this report are provided here in their entirety. Excerpts from the administrative rule implementing Goal 5 are included at the end.

197A.305 Amendment of urban growth boundaries outside Metro; rules. (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt by rule methods by which a city that is outside Metro may evaluate or amend the urban growth boundary of the city.

(2) A city outside Metro may use the methods adopted pursuant to:

(a) ORS 197A.310 if the city has a population of less than 10,000.

(b) ORS 197A.312 if the city has a population of 10,000 or more.

(3) A city that elects to include land within the urban growth boundary of the city under a method established pursuant to ORS 197A.310 or 197A.312:

(a) May use the method again when:

(A) The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or

(B) At least one-half of the lands identified as buildable lands during the previous use of the method by the city have been developed.

(b) Shall evaluate whether the city needs to include within the urban growth boundary additional land for residential or employment uses before the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the previous use of the method by the city.

(4) A city that elects to use a method established pursuant to ORS 197A.310 or 197A.312 shall notify the Department of Land Conservation and Development of the election in the manner required by ORS 197.610 for notice of a post-acknowledgment plan amendment. The city may revoke the election until the city makes a final decision whether to amend the urban growth boundary of the city. A city that has initiated, but not completed, an amendment of its urban growth boundary before January 1, 2014, may withdraw the proposed amendment and use a method established pursuant to ORS 197A.310 or 197A.312 by filing notice of the election with the department in the manner required by ORS 197.610 and 197.615 for notice of a post-acknowledgment plan amendment.

(5) Beginning on or before January 1, 2023, the commission shall:

(a) Evaluate, every five years, the impact of the implementation of ORS 197A.310 (2) and 197A.312 (2) on the population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations;

(b) Consider changes to the statewide land use planning goals or rules to address adverse outcomes; and

(c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes.

197A.325 Review of final decision of city; rules. (1) Notwithstanding ORS 197.626, when a city evaluates or amends the urban growth boundary of the city pursuant to ORS 197A.310 or 197A.312, the Land Use Board of Appeals has jurisdiction for review of a final decision of the city.

(2) The board shall review the final decision of the city under ORS 197A.300 to 197A.325 as provided in ORS 197.805 to 197.855, except that:

(a) In circumstances in which the Land Conservation and Development Commission has specified by rule a number or a range of numbers that the city may use:

(A) The city is not required to adopt findings to support the use of the number or a number within the range of numbers; and

(B) The board's review of the number may determine only that the city has used a number that is allowed by the rule.

(b) The board shall affirm an interpretation by a local government of its comprehensive plan or land use regulations unless that interpretation is clearly erroneous.

(3) Notwithstanding ORS 197.628 and 197.629, when a city evaluates or amends the urban growth boundary of the city pursuant to ORS 197A.310 or 197A.312, 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.

197.628 Periodic review; policy; conditions that indicate need for periodic review. (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.

(3) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(b) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(c) There are issues of regional or statewide significance, intergovernmental coordination or state agency plans or programs affecting land use which must be addressed in order to bring

comprehensive plans and land use regulations into compliance with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization; or

(d) The local government, commission or Department of Land Conservation and Development determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization.

197.629 Schedule for periodic review; coordination. (1) The Land Conservation and Development Commission shall establish and maintain a schedule for periodic review of comprehensive plans and land use regulations. Except as necessary to coordinate approved periodic review work programs and to account for special circumstances that from time to time arise, the schedule shall reflect the following timelines:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review; and

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(2) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(4) If the Land Conservation and Development Commission pays the costs of a local government that is not subject to subsection (1) of this section to perform new work programs and work tasks, the commission may require the local government to complete periodic review when the local government has not completed periodic review within the previous five years if:

(a) A city has been growing faster than the annual population growth rate of the state for five consecutive years;

(b) A major transportation project on the Statewide Transportation Improvement Program that is approved for funding by the Oregon Transportation Commission is likely to:

(A) Have a significant impact on a city or an urban unincorporated community; or

(B) Be significantly affected by growth and development in a city or an urban unincorporated community;

(c) A major facility, including a prison, is sited or funded by a state agency; or

(d) Approval by the city or county of a facility for a major employer will increase employment opportunities and significantly affect the capacity of housing and public facilities in the city or urban unincorporated community.

(5) The Land Conservation and Development Commission may schedule periodic review for a local government earlier than provided in subsection (1) of this section if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other

local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(6) A city or county that is not required to complete periodic review under subsection (1) of this section may request periodic review by the commission.

(7) As used in this section, “metropolitan planning organization” means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c).

DIVISION 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0250

Applicability

* * *

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

* * *

(5) Local governments are required to amend acknowledged plan or land use regulations at periodic review to address Goal 5 and the requirements of this division only if one or more of the following conditions apply, unless exempted by the director under section (7) of this rule:

- (a) The plan was acknowledged to comply with Goal 5 prior to the applicability of OAR 660, Division 16, and has not subsequently been amended in order to comply with that division;
- (b) The jurisdiction includes riparian corridors, wetlands, or wildlife habitat as provided under OAR 660-023-0090 through 660-023-0110, or aggregate resources as provided under OAR 660-023-0180; or
- (c) New information is submitted at the time of periodic review concerning resource sites not addressed by the plan at the time of acknowledgement or in previous periodic reviews, except for historic, open space, or scenic resources.