



Oregon

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PERIODIC REVIEW REPLACEMENT RULES ADVISORY COMMITTEE

**2:00 P.M., JULY 18, 2016
DLCD BASEMENT HEARING ROOM
635 CAPITOL STREET NE, SALEM 97301**

AGENDA

- I. Welcome and Introductions
- II. Presentation of first draft of the proposed rule
- III. Discussion
- IV. RAC recommendation on rule language or further work needed
- V. Public Comment
- VI. Adjourn



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July 12, 2016

TO: Periodic Review Replacement Rules Advisory Committee

FROM: Rob Hallyburton, Community Services Division Manager

RE: Periodic Review Replacement Rules Advisory Committee meeting materials

FIRST DRAFT OF PERIODIC REVIEW REPLACEMENT RULE

We have a meeting scheduled for 2:00 to 4:00 p.m. on Monday, July 18. Background materials for that meeting are included in and attached to this report.

I. MEETING OBJECTIVE

The purpose of the meeting is to discuss, and if possible agree upon, a preliminary rules advisory committee (RAC) recommendation to the Land Conservation and Development Commission regarding an administrative rule implementing ORS 197A.325(3),¹ which requires the commission to develop rules for an alternative to periodic review. A draft of a possible rule is provided in Attachment A. This report explains the draft and the options contained in it.

II. GENERAL OVERVIEW OF THE DRAFT RULE

The draft rule uses input provided by the RAC at its June 14, 2016, meeting to set out a process for cities that recently completed an urban growth boundary (UGB) amendment using the simplified UGB amendment process in [OAR chapter 660, division 38](#). Because this process only applies to those cities, the alternative process is also proposed to be placed in division 38.

The proposed rule lays out two options for how the alternative process can work: Process Option 1, which resembles the current periodic review process insofar as it includes a work program developed at the beginning of the process, and Process Option 2, which does not

¹ (15) A city that is scheduled to commence periodic review as required by OAR 660-025-0030 is not required to commence periodic review if the city has amended its UGB pursuant to this division, or if the city has evaluated its UGB need and land supply using this division and determined that the UGB contains sufficient buildable land for a 14-year period, including a supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-year period as provided in OAR 660-038-0200.

include an agreed-upon set of plan changes at the outset of the process. Diagrams showing the two options in a simplified format are provided as Attachments B and C.

The draft rule attachment employs margin comments to either help explain the proposal or act as a footnote providing relevant statute or rule citations.

III. SECTION-BY-SECTION EXPLANATION

The draft includes proposed amendments to two existing rules: OAR 660-038-0020, “Applicability,” and OAR 660-025-0030, “Periodic Review Schedules.” These amendments appear at the beginning and end of Attachment A, respectively, and merely provide cross-references to ensure that eligibility for the alternative process is clear. These amendments will not be discussed further in this report. All of the new provisions are contained in a proposed new rule: OAR 660-038-0210.

A. Section (1), Definitions

Two terms are used uniquely in the draft rule and therefore are provided definitions: “UGB amendment” and “complete UGB evaluation.” Neither of these terms are already defined in division 38. The term “UGB amendment” in this context applies only to those amendments completed using the simplified process. A “complete UGB evaluation” refers to employment of division 38 that does not result in a UGB amendment because the existing boundary contains a 14-year supply of land. These definitions apply to both process options.

B. Section (2), Exemption from Periodic Review

This section is essentially an “applicability” rule restating and augmenting the ORS 197A.325(3) exemption from periodic review. It is the same for both process options.

C. Process Option 1

Sections (3) through (11) (pp. 2–4 of Attachment A) lay out an alternative to periodic review that includes some of the same steps as periodic review, but with some key differences.

1. Section (3), List of Potential Changes

Under this option, the alternative process would begin by the Department of Land Conservation and Development (department) sending the city a list of potential changes to the city’s comprehensive plan and land use regulations. The department would send this within one month after acknowledgment of the UGB amendment. That is, one month after the UGB amendment adoption is submitted to the department and not appealed, or one month after the resolution of all appeals, whichever is applicable.

The contents of the list is controlled by the rule. The list is also informed by the scope of periodic review to ensure that the alternative process is not more inclusive. The list was discussed at the first RAC meeting. The proposed list is:

- (a) Comply with goals relating to transportation and public facilities and services;
- (b) Complete follow-up changes to the plan or implanting regulations that carry out decisions made during the UGB evaluation (such as natural resource protection); and
- (c) Comply with provisions of statute and administrative rule that are effective only at the time of periodic review.

The rule could, alternatively, specifically list the “provisions of statute and administrative rule that are effective only at the time of periodic review” rather than generically cite them as proposed here. This option is laid out in Process Option 2.

2. Section (4), City Review to Determine Need for Plan Changes

Under the provisions of this section, the city, in coordination with the county, would decide which plan and code changes from the list provided under section (3) were needed. The rule makes it clear that the city may limit its consideration to the items in the list required in section (3), but the city is not limited to that list.

3. Sections (5) through (7), Work Program Development and Approval

This section provides a requirement for a work program or determination that no work program is required, similar to periodic review. The six-month allowance for preparation of a work program is the same. The proposed three-year timeframe is the same as in the periodic review statute. The public involvement subsection is similar to what is required in periodic review, the difference being recognition that the city just completed a UGB amendment. DLCD director approval or remand, and no opportunity for appeal of the approval, are also the same.

The primary difference is that the draft includes no opportunity for objections to the department on the work program. The city would submit the work program (or determination that no work program is required) and all written testimony it received, and that would become the basis for the director’s decision. The proposed timeframe for department action on the work program is one month, compared to no deadline in the periodic review rule (OAR 660-025-0110; *see* Attachment E, p. E-1).

The draft rule presents two options for how the department could respond to failure to complete a work program. The first option is to give the commission the authority to schedule the city for periodic review. The second option is providing the commission the same enforcement powers it has in periodic review, with the rule stating that the commission *may* use those powers, as opposed to the *shall* in the periodic review statute.

4. Sections (8) through (10), Making the Plan Changes

Section (8) provides a timeframe (not deadline) for the city to complete the work program. The draft says three years, as that is the same as the periodic review statute. If Process Option 1 is recommended by the RAC, the timeframes in sections (5) and (8) need to agree.

Section (9) requires that the changes comply with the notice requirements for post-acknowledgement plan amendments (PAPAs). This establishes that the work to implement the work program will be adopted as PAPAs, within the Land Use Board of Appeals' jurisdiction.

Section (10) includes two options for enforcement of performance on the plan changes in the work program, which are the same as the enforcement outlined for the work program: the commission may either (1) schedule the city for periodic review or (2) employ the same enforcement mechanisms available for periodic review.

5. Section (11), Expiration of Periodic Review Exemption

Division 38 already requires a city that has used the simplified UGB amendment process to evaluate its UGB again before the city's population has grown by 100 percent of the forecast used for the previous UGB amendment (OAR 660-038-0020(5)). The proposed section (11) provides that, if the city has not complied with this requirement, the exemption from periodic review expires. The unstated outcome of this provision is that the commission would then have the authority to schedule the city for periodic review.

D. Process Option 2

Sections (3) through (10) (pp. 5–6 of Attachment A) lay out a second alternative to periodic review, which diverges more significantly from the existing model.

1. Section (3), List of Potential Changes

Under this option, the list of potential changes to the city's comprehensive plan and land use regulations are not sent by the department, but rather exist in section (3). The list is more specific than that presented in Process Option 1. This could be advantageous if the list doesn't change, but this scheme would require a rule amendment if it does get altered.

The draft currently has some gaps because the scope of some of the items on the list still need to be established.

2. Sections (4) and (5), City Review and Making the Plan Changes

Section (4) authorizes the city – in coordination with the county, affected state agencies and special districts, and the public – to determine which comprehensive plan elements and land use regulations from the list in (3) need to be updated. Section (5), like section (9) of Process Option 1, establishes that the changes are processed as PAPAs.

3. Sections (6) through (9), Failure to Complete Necessary Plan Changes

Under Process Option 1, the city and state (and presumably other stakeholders) agreed upon the work program at the outset of the process through a work program. Since Process Option 2 does not include the work program step, a method for addressing disagreements is included at the end of the process.

Section (6) establishes a deadline for completing the plan and code changes listed in section (3). If the city has not completed the changes, the DLCDC director may request an explanation for why the changes were not made. This section gives authority to the commission to:

- Find the plan is up-to-date;
- Find the plan is not up-to-date but take no action;
- Give the city more time to make the required changes;
- Initiate periodic review for the city; or
- A combination of these options.

Sections (7) and (8) provide timeframes for actions under the process in section (6). Section (9) authorizes the commission to schedule the city for periodic review if the city fails to submit the explanation requested under section (6).

4. Section (10), Expiration of Periodic Review Exemption

Same as section (11) in Process Option 1.

IV. DISCUSSION ITEMS

1. What are the appropriate items for “the list” of required changes?

A. The general list in Process Option 1, section (3), and the more specific list in Process Option 2, section (3), are based on what would be required if the city were subject to periodic review. But it will not be, so there are items – the list of statutes and rules applicable only at periodic review – that could be removed from the list.

B. Goal 10, Housing, is not included on the list. The department compared the requirements of [OAR chapter 660, division 8](#) – the housing rule – with the requirements of OAR chapter 660, division 38 – the simplified UGB method – and found that all of the housing rule requirements will have been satisfied during the UGB amendment. See Attachment D for the department’s comparison chart.

2. What is the appropriate length of time for the alternative process?

The RAC asked the department to determine how long cities were taking to complete periodic review tasks. Unfortunately, we did not have adequate data at our disposal to make an accurate determination, particularly because several cities submitted all their tasks together at the end, rather than as the city completed them. The department determined that none of the cities

completed all the tasks on the work program in less than 4.5 years from the approval of the work program, with most cities taking at least five years.

3. Which Process Option is preferable?

Option 1 results in resolution of disagreements over which elements of the plan can be omitted from “the list” at the outset of the process while Option 2 delays it to the end. Option 1 explicitly allows a city to leave items off the work program in order to keep the timeframe of the work program within a specified period (three years proposed in the draft rule).

4. What is the appropriate mechanism for enforcement of nonperformance?

The draft rule lays out two options for city nonperformance: authority for the commission to schedule the otherwise-exempt city for periodic review or make the periodic review enforcement authority directly available. Does one of these work better than the other? Is there an option better than either of these?

ATTACHMENTS

- A. Draft rule amendments
- B. Process Option 1 diagram
- C. Process Option 2 diagram
- D. Housing requirements comparison chart
- E. Applicable statutes and rules

ATTACHMENT A

DIVISION 38

SIMPLIFIED URBAN GROWTH BOUNDARY METHOD

AMENDMENT

OAR 660-038-0020

Applicability

1 ***

2
3 (15) A city that is scheduled to commence periodic review as required by OAR 660-025-0030 is
4 not required to commence periodic review if the city has amended its UGB pursuant to this
5 division, or if the city has evaluated its UGB need and land supply using this division and
6 determined that the UGB contains sufficient buildable land for a 14-year period, including a
7 supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-
8 year period as provided in OAR 660-038-0200. **A city that is not required to commence**
9 **periodic review pursuant to this section is subject to the requirements of OAR 660-038-**
10 **0210.**

NEW RULE

660-038-0210

Plan Changes Following a Simplified Urban Growth Boundary Evaluation

11 (1) For the purposes of this rule, the following definitions apply in addition to those in OAR 660-
12 038-0010:

- 13
14 (a) "Complete UGB evaluation" means changes to the comprehensive plan or land use
15 regulation, or both, adopted by the city, and county if necessary, to enact needed updates
16 identified during evaluation of the UGB under the provisions of OAR chapter 660,
17 division 38 when no UGB amendment is adopted.
18
19 (b) "UGB amendment" means an adopted change to the UGB of a city under the provisions
20 of OAR chapter 660, division 38, "Simplified Urban Growth Boundary Method."
21

22 (2) A city that has adopted a UGB amendment or complete UGB evaluation is not required to
23 complete periodic review pursuant to ORS 197.628 to 197.651 and OAR chapter 660,
24 division 25. A city that is subject to the periodic review schedule in ORS 197.629(1) and
25 OAR 660-025-0030(2) that has adopted a UGB amendment or complete UGB evaluation is
26 subject to the requirements of this rule.
27
28

1
2
3 **[PROCESS OPTION 1]**
4

5 (3) Within one month after acknowledgment of the UGB amendment or complete UGB
6 evaluation, the department will provide a list for the city and county to consider when reviewing
7 its comprehensive plan elements and land use regulations as provided in section (4). The list may
8 only include items that would be applicable at the time of periodic review if the city had
9 remained subject to that requirement. The list will include elements to:

- 10
11 (a) Comply with **goals** relating to transportation and public facilities and services;
12
13 (b) Complete follow-up changes to the plan or implanting regulations that carry out decisions
14 made during the UGB evaluation (such as natural resource protection); and
15
16 (c) Comply with **provisions of statute and administrative rule that are effective only at the**
17 **time of periodic review.**
18

19 (4) The city, in coordination with the county, must complete a review to determine which, if any,
20 parts of the comprehensive plan and land use regulations need to be updated in order to ensure
21 that the comprehensive plan and land use regulations of the city comply with the statewide land
22 use planning goals, statutes and administrative rules. The review may be limited to the elements
23 contained in the list provided pursuant to section (3).
24

25 (5) Within six months after receiving the list required in section (3), the city must adopt a work
26 program that explains which elements of its comprehensive plan and land use regulations it
27 determined under section (4) must be updated, if any, and provides a schedule for completion of
28 the identified elements. The city is subject to the following requirements:
29

- 30 (a) The city must notify the county and affected state agencies and special districts that it is
31 developing a work program no more than 60 days after receiving the list required in
32 section (3) and provide an opportunity for the affected county, agencies and districts to
33 offer comments on which elements of the comprehensive plan and land use regulations
34 need to be updated;
35
36 (b) The work program or determination that no work program is required must be approved
37 by the city council by order, resolution or ordinance, as appropriate, after at least one
38 public hearing;
39
40 (c) The city must follow its citizen involvement program for conducting the review and
41 determination of the scope of a work program. The city must provide written notice of the
42 proposed work program to persons who participated in the UGB amendment or complete
43 UGB evaluation; those who request such notice in writing; and the affected county,
44 agencies and districts at least 21 days before the final hearing on the work program;
45

Commented [HR1]: This is to reflect the focus areas of periodic review, except that all requirements in OAR chapter 660, division 8 (housing rule) and division 9 (economic development rule) will be addressed during the UGB evaluation.

Commented [HR2]: •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

- 1 (d) The city must include the elements of the list required in section (3) in the work program
 2 unless:
 3 (A) The city determines that the element of the plan or land use regulation continues
 4 to comply with the statewide planning goals, statutes and administrative rules and
 5 therefore does not need to be changed; or
 6 (B) Including all the elements will require more than three years to complete and the
 7 city approves findings explaining why elements that need to be updated are
 8 excluded from the work program;
 9
- 10 (e) The city must, within 20 days of city council action, submit to the department the
 11 approved work program and all written testimony received by the city, and county if
 12 applicable, during public hearings.
 13
- 14 (6) ENFORCEMENT OPTION 1. If the city does not approve a work program or determination
 15 that no work program is required under this rule within six months after receiving the list
 16 required in section (3) and provide the work program to the department, the commission may
 17 schedule the city for periodic review pursuant to OAR chapter 660, division 25.
 18
- 19 (6) ENFORCEMENT OPTION 2. If the city does not approve a work program or determination
 20 that no work program is required under this rule within six months after receiving the list
 21 required in section (3) and provide the work program to the department, the director must
 22 schedule a hearing before the commission. The commission may issue an order imposing one or
 23 more of the sanctions provided in ORS 197.636(2)(a)-(d) until the work program is submitted to
 24 the department.
 25
- 26 (7) The city must submit the work program or determination that no work program is required
 27 approved under section (5) to the director of the department within the timeframe required in
 28 section (5). Approval of the submittal is subject to this section.
 29
- 30 (a) In response to a work program or determination that no work program is required
 31 submitted to the department pursuant to section (5), the director may:
 32
- 33 (A) Approve the work program or determination that no work program is required as
 34 consistent with subsection (5)(d); or
 35
- 36 (B) Remand the work program or determination that no work program is required to the
 37 city within one month of submittal with instructions regarding how the city must
 38 amend the work program in order to comply with the requirements in
 39 subsection (5)(d).
 40
- 41 (b) The director must issue an order with the decision in subsection (a) within one month
 42 after submittal of the work program or determination that no work program is required.
 43
- 44 (c) The director's decision to approve the work program or determination that no work
 45 program is required is final and may not be appealed.
 46

Commented [HR3]: 197.636(2): If a local government fails to submit a work program or to complete a work task by the deadline set by the director or the commission, including any extension that has been granted, the director shall schedule a hearing before the commission. The commission shall issue an order imposing one or more of the following sanctions until the work program or the work task receives final approval by the director or the commission:

(a) Require the local government to apply those portions of the goals and rules to land use decisions as specified in the order. Sanctions may be imposed under this paragraph only when necessary to resolve a specific deficiency identified in the order.

(b) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task.

(c) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335 (4).

(d) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

1 (d) The director’s decision to remand the work program or determination that no work
2 program is required may be appealed by the city to the Land Conservation and
3 Development Commission within 21 days of the director’s order. The city appealing the
4 director’s decision must show a deficiency in the director’s decision to remand the work
5 program or decision that no work program is necessary.
6

7 (e) The city must resubmit a remanded work program within three months of the remand
8 from the director or, in the case of an appeal, from the commission. The resubmitted
9 work program is subject to the requirements of this section.
10

11 (8) The city, and the county if applicable, must change the comprehensive plan and land use
12 regulations according to the work program in section (5) unless, during the course of the plan
13 change process, the city determines no update is required. The final change to the plan or land
14 use regulations on the work program should be completed no more than *three* years after the
15 work program is approved by the city council.
16

17 (9) Changes to the comprehensive plan and land use regulations pursuant to this rule must
18 comply with OAR 660-018-0020 through 660-018-0060.
19

20 (10) **ENFORCEMENT OPTION 1.** If the city has not completed the comprehensive plan and
21 land use regulation changes according to the work program in section (6), the commission may
22 schedule the city for periodic review pursuant to OAR chapter 660, division 25.
23

24 (10) **ENFORCEMENT OPTION 2.** If the city has not completed the comprehensive plan and
25 land use regulation changes according to the work program in section (6), the director must
26 schedule a hearing before the commission. The commission may issue an order imposing one or
27 more of the sanctions provided in ORS 197.636(2)(a)-(d) until the city, and the county if
28 applicable, has completed the changes.
29

30 (11) The exemption from the requirement to complete periodic review in section (2) expires
31 when, according to the most recent final forecast issued by the Portland State University
32 Population Research Center under ORS 195.033, the population of the city has grown by 100
33 percent of the population growth forecast to occur in conjunction with the city’s previous UGB
34 amendment or complete UGB analysis unless the city has completed a subsequent UGB
35 evaluation pursuant to this division or OAR chapter 660, division 24.
36
37

Commented [HR4]: Post-acknowledgment plan amendment notice and submittal requirements and appeals.

Commented [HR5]: Division 38 requires the city to undertake a new evaluation of its UGB *before* this 100% trigger.

1
2
3 **[PROCESS OPTION 2]**
4

5 (3) Within *three* years after acknowledgement of the UGB amendment or complete UGB
6 evaluation, the city must change its comprehensive plan in order to ensure that the
7 comprehensive plan and land use regulations of the city comply with the statewide land use
8 planning goals. At a minimum the city must:
9

- 10 (a) Make all necessary comprehensive plan and land use regulation changes identified during
11 the UGB amendment or complete UGB evaluation that were not adopted before or
12 concurrently with the UGB amendment or complete UGB evaluation;
13
14 (b) Change its transportation system plan to _____;
15
16 (c) Change its public facilities and services plans to _____;
17
18 (d) Change its comprehensive plan and land use regulations, if necessary, to comply with the
19 requirements of **ORS 197.660-197.670**, Special Residences;
20
21 (e) Comply with the requirements of **ORS 195.110**, School Facility Planning, if applicable;
22
23 (f) Change its comprehensive plan and land use regulations, if necessary, to comply with the
24 requirements of **OAR chapter 660, division 13**, Airport Planning, if applicable;
25
26 (g) Change its comprehensive plan and land use regulations, if necessary, to comply with the
27 requirements of OAR chapter 660, division 23 commensurate with what would be
28 required at the time of periodic review under **OAR 660-023-0250(5)**.
29

30 (4) The city shall coordinate with the county, affected state agencies and special districts, and the
31 public in determining whether any of the changes listed in section (3) are not required.
32

33 (5) Changes to the comprehensive plan and land use regulations pursuant to this rule must
34 comply with **OAR 660-018-0020 through 660-018-0060**.
35

36 (6) If the city has not completed the changes required in section (3) within *three* years after
37 acknowledgment of the UGB amendment or complete UGB evaluation, the city must, upon
38 request from the director, submit findings explaining why the changes are not required or, if they
39 are required, why they have not been completed. The director must schedule a hearing before the
40 commission. The commission may issue an order that finds the changes to the comprehensive
41 plan and land use regulations are:
42

- 43 (a) Not required because the comprehensive plan and land use regulations comply with
44 relevant goals, rules, and statutes;
45

Commented [HR6]: 197.670(2): Every city and county shall amend its zoning ordinance to comply with ORS 197.660 to 197.667 as part of periodic land use plan review occurring after January 1, 1990.

Commented [HR7]: 195.110(8) The large school district shall:
(b) Update the school facility plan during periodic review or more frequently by mutual agreement between the large school district and the affected city or county.

Commented [HR8]: 660-013-0160(1): Local government plans and land use regulations shall be updated to conform to this division at periodic review...

Commented [HR9]: 660-023-0250(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.

Commented [HR10]: Post-acknowledgment plan amendment notice and submittal requirements and appeals.

- 1 (b) Required because the comprehensive plan or land use regulations, or both, do not comply
2 with relevant goals, rules, or statutes and the commission relieves the city, and county if
3 applicable, of the requirement to adopt the changes. The order shall include findings
4 explaining why relief from the requirement or requirements is in the public interest;
5
6 (c) Required because the comprehensive plan or land use regulations, or both, do not comply
7 with relevant goals, rules, or statutes and the commission establishes a deadline for
8 completion of the required changes;
9
10 (d) Required because the comprehensive plan or land use regulations, or both, do not comply
11 with relevant goals, rules, or statutes and the commission initiates periodic review for the
12 city pursuant to OAR chapter 660, division 25.
13
14 (e) A combination of (a), (b), and (c) or (a) and (d).
15
16 (7) The findings required in section (6) to be submitted by the city must be submitted within 60
17 days of receipt of the request.
18
19 (8) The hearing before the commission pursuant to section (6) must be held within 90 days after
20 the findings are submitted by the city.
21
22 (9) If the city does not submit the findings required in section (6), the director must schedule a
23 hearing before the commission. The commission may issue an order imposing one or more of the
24 sanctions provided in ORS 197.636(2)(a)-(d) until the city, and the county if applicable, has
25 submitted the findings or made the required changes to the comprehensive plan and land use
26 regulations.
27
28 (10) The exemption from the requirement to complete periodic review in section (2) expires
29 when, according to the most recent final forecast issued by the Portland State University
30 Population Research Center under ORS 195.033, the population of the city has grown by 100
31 percent of the population growth forecast to occur in conjunction with the city's previous UGB
32 amendment or complete UGB analysis unless the city has completed a subsequent UGB
33 evaluation pursuant to this division or OAR chapter 660, division 24.
34

Commented [HR11]: Same as section (11) in option 1.

DIVISION 25
PERIODIC REVIEW
AMENDMENTS

660-025-0030

Periodic Review Schedule

1 (1) The commission must approve, and update as necessary, a schedule for periodic review. The
2 schedule must include the date when the department, pursuant to ORS 197.629, must send a local
3 government a letter requesting the local government to commence the periodic review process.

4
5 (2) ~~[The]~~ **Except as provided in OAR 660-038-0020(15), the** schedule developed by the
6 commission must reflect the following:

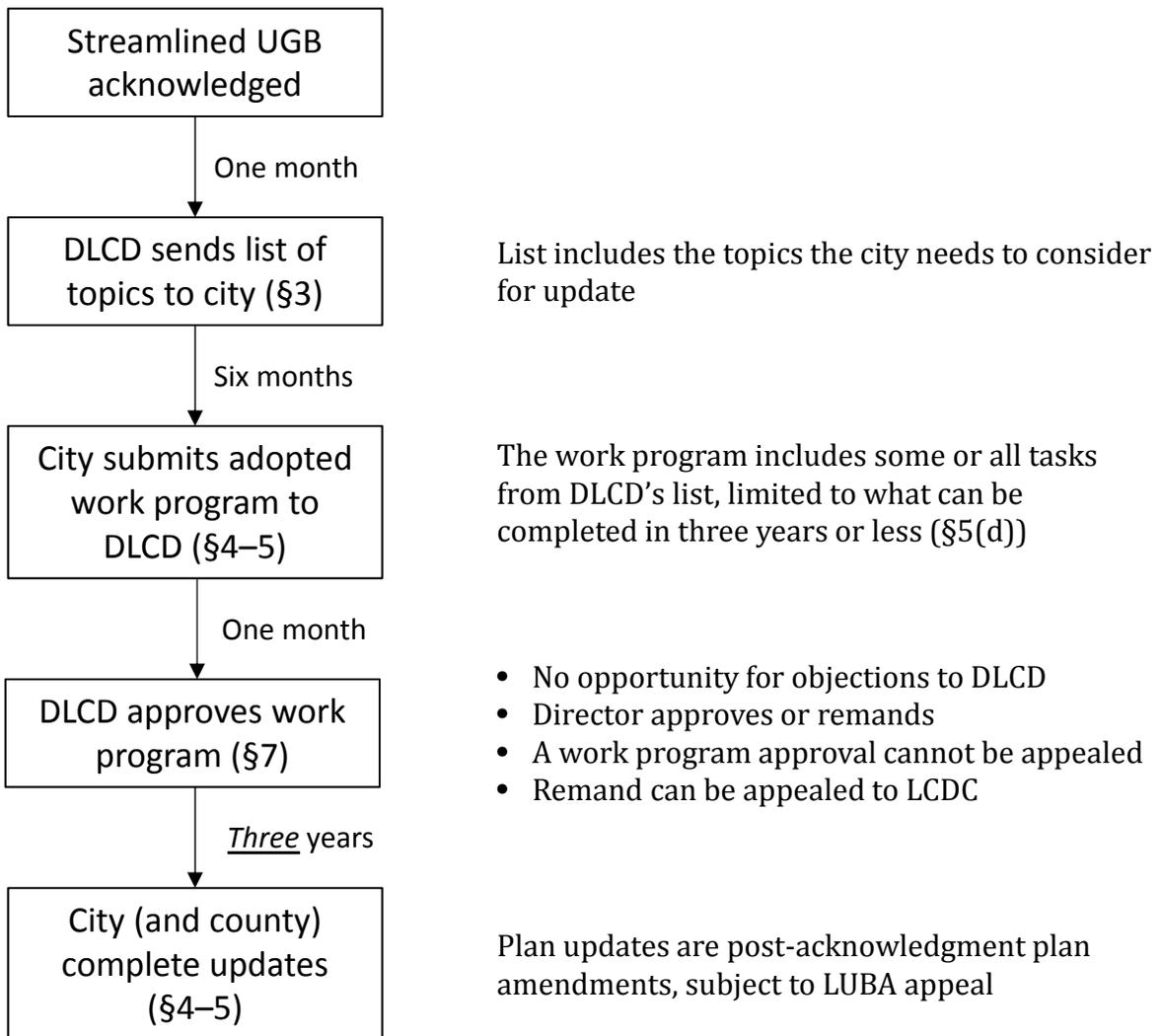
- 7
8 (a) A city with a population of more than 2,500 within a metropolitan planning organization
9 or a metropolitan service district shall conduct periodic review every seven years after
10 completion of the previous periodic review.
11 (b) A city with a population of 10,000 or more inside its urban growth boundary that is not
12 within a metropolitan planning organization shall conduct periodic review every 10 years
13 after completion of the previous periodic review.
14 (c) A county with a portion of its population within the urban growth boundary of a city
15 subject to periodic review under this section shall conduct periodic review for that
16 portion of the county according to the schedule and work program set for the city.
17 (d) Notwithstanding subsection (c) of this section, if the schedule set for the county is
18 specific as to that portion of the county within the urban growth boundary of a city
19 subject to periodic review under this section, the county shall conduct periodic review for
20 that portion of the county according to the schedule and work program set for the county.

21
22 (3) The commission may establish a schedule that varies from the standards in section (2) of this
23 rule if necessary to coordinate approved periodic review work programs or to account for special
24 circumstances. The commission may schedule a local government's periodic review earlier than
25 provided in section (2) of this rule if necessary to ensure that all local governments in a region
26 whose land use decisions would significantly affect other local governments in the region are
27 conducting periodic review concurrently, but not sooner than five years after completion of the
28 previous periodic review.

29
30 (4) The director must maintain and implement the schedule. Copies of the schedule must be
31 provided upon request.

32
33 **(5) A city that is granted an exception to the requirements of this rule by OAR 660-038-**
34 **0020(15) must complete an update of its comprehensive plan and land use regulations as**
35 **provided in OAR 660-038-0210.**

Process Option 1

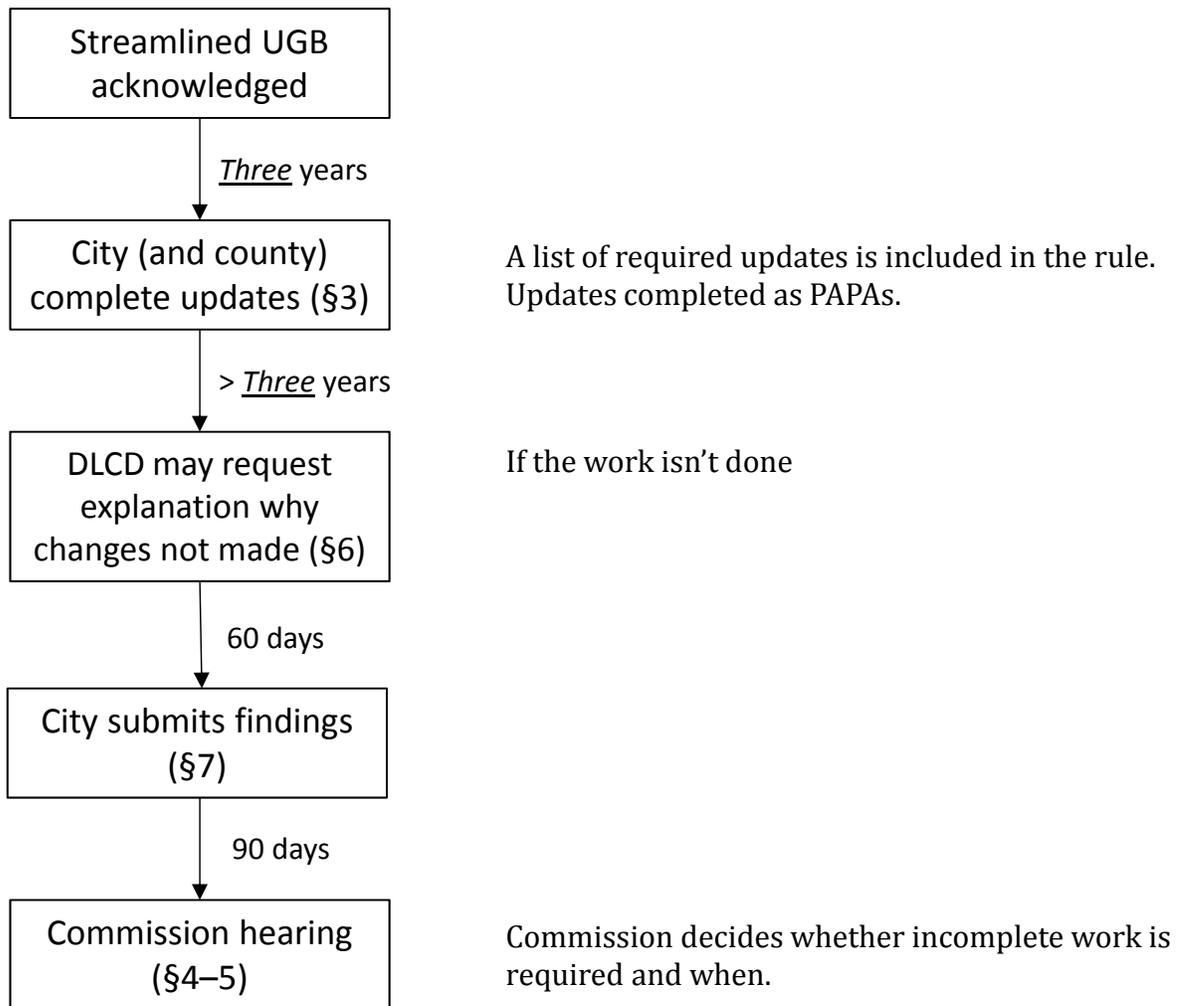


Failure to adopt a work program or individual plan changes:
Option 1: LCDC *may* initiate periodic review
Option 2: LCDC *may* adopt enforcement order

Major differences in this process compared to full periodic review:

- No objections to work program
- Plan/code changes are PAPAs
- Enforcement is discretionary rather than mandatory

Process Option 2



Failure to adopt individual plan changes:
LCDC may overlook, extend time, or initiate periodic review

**OAR Chapter 660
Division 8 and 38 comparison**

ATTACHMENT D

DIVISION 8	REQUIREMENT	DIVISION 38	REQUIREMENT
660-008-0005	Buildable Land” means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered “suitable and available” unless it: (a) Is severely constrained by natural hazards; (b) Is subject to natural resource protection measures; (c) Has slopes of 25 percent or greater; (d) Is within the 100-year flood plain; or (e) Cannot be provided with public facilities.		
660-008-0005	“Housing Needs Projection” refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be: (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period; (b) Consistent with any adopted regional housing standards, state statutes and LCDC rules; and (c) Consistent with Goal 14 requirements.	660-038-0020(12)	A city that amends a UGB under this division is not required to also satisfy the housing needs projection requirements of OAR chapter 660, division 8
660-008-0005	“Redevelopable Land” means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.	660-038-0030(6)	The city must account for projected redevelopment expected to occur in residentially zoned areas, and for mixed use residential development expected to occur in commercially zoned areas, as follows: multiply the result calculated in section (5) by the applicable percentage in subsections (a) through (c) of this section.
660-008-0010	The mix and density of needed housing is determined in the housing needs projection	660-038-0020(12)	A city that amends a UGB under this division is not required to also satisfy the housing needs projection requirements of OAR chapter 660, division 8
660-008-0010	Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection.	660-038-0030, 0040 and 0050	NOT REPEATED HERE -ACCOMPLISHES SAME OBJECTIVE AS 660-008-0010

DIVISION 8	REQUIREMENT	DIVISION 38	REQUIREMENT
660-008-0010	The local buildable lands inventory must document the amount of buildable land in each residential plan designation	660-038-0060 and 0070	NOT REPEATED HERE -ACCOMPLISHES SAME OBJECTIVE AS 660-008-0010
660-008-0015	A local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.	660-038-0190(1)	The comprehensive plan and implementing zoning shall allow the housing types and densities determined to be needed in OAR 660-038-0040 and 660-038-0050 under clear and objective standards and shall meet other applicable needed housing requirements specified in ORS 197.307 and OAR chapter 660, division 8
660-008-0015	A local government may adopt and apply an optional alternative approval process for applications and permits for residential development if: a) (a) The applicant retains the option of proceeding under clear and objective standards; b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized by clear and objective standards		
660-008-0020	Plan designations that allow or require residential uses shall be assigned to all buildable land. Such designations may allow nonresidential uses as well as residential uses. The plan designations assigned to buildable land shall be specific so as to accommodate the varying housing types and densities identified in the local housing needs projection.	660-038-0190(2)	The city and appropriate counties must assign appropriate urban plan designations to the added residential land consistent with the need determination, and apply appropriate zoning to the added land consistent with the plan designation,

DIVISION 8	REQUIREMENT	DIVISION 38	REQUIREMENT
660-008-0020	A local government may defer the assignment of specific residential plan designations only when the following conditions have been met: a) Uncertainties concerning public facilities have been identified, b) the decision not to assign specific residential plan designations is specifically related to public facilities uncertainties, and c) the plan includes a strategy for resolution of uncertainties.		
660-008-0025	A local government may defer rezoning of land within an urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified. If such is the case, then: (1) The plan shall contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing; and (2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective.	660-038-0190(2)	The city and appropriate counties must assign appropriate urban plan designations to the added residential land consistent with the need determination, may adopt measures to maintain the land as urbanizable land until the land is rezoned for the planned urban uses by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. Measures for rezoning urbanizable land for needed housing shall be clear and objective and consistent with other requirements of ORS 197.307.
660-008-0030	Each local government shall consider the needs of the relevant region in arriving at a fair allocation of housing types and densities.		
660-008-0030	The local coordination body shall be responsible for ensuring that the regional housing impacts of restrictive or expansive local government programs are considered. The local coordination body shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.		

DIVISION 8	REQUIREMENT	DIVISION 38	REQUIREMENT
660-008-0040	Any local government that restricts the construction of either rental or owner occupied housing shall include a determination of housing need according to tenure as part of the local housing needs projection.		
		660-038-0190(3)	Cities with UGB population of 10,000 or greater must either: (a) Consider the housing measures listed in the Table 5 and adopt at least one high impact measure or three low impact measures, or (b) Satisfy the alternate performance standard

STATUTES AND RULES CITED IN STAFF REPORT

660-025-0110 Director and Commission Action (Work Program Phase)

(1) In response to an evaluation and work program submitted to the department pursuant to OAR 660-025-0100, the director may:

- (a) Issue an order approving the evaluation and work program or determination that no work program is necessary; or
- (b) Issue an order rejecting the evaluation and work program or determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal.

(2) The director may postpone action, pursuant to section (1) of this rule to allow the department, the jurisdiction, objectors or other persons who participated orally or in writing at the local level to reach agreement on specific issues relating to the evaluation and work program or determination that no work program is necessary.

(3) The director must provide written notice of the decision to the local government persons who filed objections, and persons who requested notice of the local government decision.

(4) The director's decision to approve an evaluation and work program or determination that no work program is necessary is final and may not be appealed.

(5) The director's decision to deny an evaluation and work program or determination that no work program is necessary may be appealed to the commission by the local government, or a person who filed an objection, or other person who participated orally or in writing at the local level.

(a) Appeal of the director's decision must be filed with the department within 21 days of the date notice of the director's action was mailed;

(b) A person appealing the director's decision must show that the person participated in the local government decision. The person appealing the director's decision must show a deficiency in the director's decision to deny the evaluation, work program or decision that no work program is necessary. The person appealing the director's decision also must suggest a specific modification to the evaluation, work program or decision that no work program is necessary to resolve the alleged deficiency.

(6) If no such appeal is filed, the director's decision shall be final.

(7) In response to an appeal, the director may prepare and submit a report to the commission. The provisions in OAR 660-025-0160(4) and (5) apply.

(8) The commission shall hear referrals and appeals of evaluations and work programs according to the procedures in OAR 660-025-0085.

(9) Following its hearing, the commission must issue an order that either:

- (a) Establishes a work program; or
- (b) Determines that no work program is necessary.

SPECIAL RESIDENCES

197.660 Definitions. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 443.422:

(1) “Residential facility” means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) “Residential home” means a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) “Zoning requirement” means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement. [1989 c.564 §2; 1991 c.801 §6; 2001 c.900 §47; 2005 c.22 §145; 2009 c.595 §174]

197.663 Legislative findings. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area. [1989 c.564 §3; 2007 c.70 §54]

197.665 Locations of residential homes. (1) Residential homes shall be a permitted use in:

(a) Any residential zone, including a residential zone which allows a single-family dwelling; and

(b) Any commercial zone which allows a single-family dwelling.

(2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section that is

more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.

(3) A city or county may:

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose zoning requirements on the establishment of a residential home in areas described in paragraph (a) of this subsection, provided that these requirements are no more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as described in ORS 215.263 (9). [1989 c.564 §4; 2001 c.704 §5]

197.667 Location of residential facility; application and supporting documentation. (1)

A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.

(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.

(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

(4) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.410 to 192.505. However, cities and counties shall not require independent proof of the same conditions that have been required by the Department of Human Services under ORS 418.205 to 418.327 for licensing of a residential facility. [1989 c.564 §5; 1991 c.801 §8; 2001 c.900 §48; 2003 c.86 §15]

197.670 Zoning requirements and prohibitions for residential homes and residential facilities. (1) As of October 3, 1989, no city or county shall:

(a) Deny an application for the siting of a residential home in a residential or commercial zone described in ORS 197.665 (1).

(b) Deny an application for the siting of a residential facility in a zone where multifamily residential uses are allowed, unless the city or county has adopted a siting procedure which implements the requirements of ORS 197.667.

(2) Every city and county shall amend its zoning ordinance to comply with ORS 197.660 to 197.667 as part of periodic land use plan review occurring after January 1, 1990. Nothing in this section prohibits a city or county from amending its zoning ordinance prior to periodic review.

SCHOOL FACILITY PLANNING

ORS 195.110 School facility plan for large school districts. (1) As used in this section, “large school district” means a school district that has an enrollment of over 2,500 students based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.

(2) A city or county containing a large school district shall:

(a) Include as an element of its comprehensive plan a school facility plan prepared by the district in consultation with the affected city or county.

(b) Initiate planning activities with a school district to accomplish planning as required under ORS 195.020.

(3) The provisions of subsection (2)(a) of this section do not apply to a city or a county that contains less than 10 percent of the total population of the large school district.

(4) The large school district shall select a representative to meet and confer with a representative of the city or county, as described in subsection (2)(b) of this section, to accomplish the planning required by ORS 195.020 and shall notify the city or county of the selected representative. The city or county shall provide the facilities and set the time for the planning activities. The representatives shall meet at least twice each year, unless all representatives agree in writing to another schedule, and make a written summary of issues discussed and proposed actions.

(5)(a) The school facility plan must cover a period of at least 10 years and must include, but need not be limited to, the following elements:

(A) Population projections by school age group.

(B) Identification by the city or county and by the large school district of desirable school sites.

(C) Descriptions of physical improvements needed in existing schools to meet the minimum standards of the large school district.

(D) Financial plans to meet school facility needs, including an analysis of available tools to ensure facility needs are met.

(E) An analysis of:

(i) The alternatives to new school construction and major renovation; and

(ii) Measures to increase the efficient use of school sites including, but not limited to, multiple-story buildings and multipurpose use of sites.

(F) Ten-year capital improvement plans.

(G) Site acquisition schedules and programs.

(b) Based on the elements described in paragraph (a) of this subsection and applicable laws and rules, the school facility plan must also include an analysis of the land required for the 10-year period covered by the plan that is suitable, as a permitted or conditional use, for school facilities inside the urban growth boundary.

(6) If a large school district determines that there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the school facility plan, the city or county, or both, and the large school district shall cooperate in identifying land for school facilities and take necessary actions, including, but not limited to, adopting appropriate zoning, aggregating existing lots or parcels in separate ownership, adding one or more sites designated for school facilities to an urban growth boundary, or petitioning a metropolitan service district to add one or

more sites designated for school facilities to an urban growth boundary pursuant to applicable law.

(7) The school facility plan shall provide for the integration of existing city or county land dedication requirements with the needs of the large school district.

(8) The large school district shall:

(a) Identify in the school facility plan school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan; and

(b) Update the school facility plan during periodic review or more frequently by mutual agreement between the large school district and the affected city or county.

(9)(a) In the school facility plan, the district school board of a large school district may adopt objective criteria to be used by an affected city or county to determine whether adequate capacity exists to accommodate projected development. Before the adoption of the criteria, the large school district shall confer with the affected cities and counties and agree, to the extent possible, on the appropriate criteria. After a large school district formally adopts criteria for the capacity of school facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

(b) A city or county shall provide notice to an affected large school district when considering a plan or land use regulation amendment that significantly impacts school capacity. If the large school district requests, the city or county shall implement a coordinated process with the district to identify potential school sites and facilities to address the projected impacts.

(10) A school district that is not a large school district may adopt a school facility plan as described in this section in consultation with an affected city or county.

(11) The capacity of a school facility is not the basis for a development moratorium under ORS 197.505 to 197.540.

(12) This section does not confer any power to a school district to declare a building moratorium.

(13) A city or county may deny an application for residential development based on a lack of school capacity if:

(a) The issue is raised by the school district;

(b) The lack of school capacity is based on a school facility plan formally adopted under this section; and

(c) The city or county has considered options to address school capacity. [1993 c.550 §2; 1995 c.508 §1; 2001 c.876 §1; 2007 c.579 §1]

DIVISION 13

AIRPORT PLANNING

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_013.html