

THE COMPLETE PLANNER'S GUIDE TO PERIODIC REVIEW Second Edition (2012)

Table of Contents

1. Introduction	1
A. The Rules and Regulations	
B. A Word About Urban Growth Boundary Amendments	
C. Jargon and Acronyms	
2. .Who <i>Must</i> Complete Periodic Review, and Who <i>May</i>	3
A. Required Periodic Review	
B. Voluntary Periodic Review	
3. Commencing Periodic Review.....	5
A. Citizen Involvement	
B. Plan Evaluation	
C. Work Program	
D. Work Tasks	
4. Completing Periodic Review Tasks	10
A. A Word About Grants	
B. Work Program Amendments	
C. What if We're Not Done On Time?	
D. Submitting a Task	
E. Submitting Part of a Task	
F. Notice of the Final Decision	
G. Department Review of a Submittal for Completeness	
5. Review and Appeal of Tasks	16
A. Department Review	
B. Appeals	
Periodic Review Process flowchart.....	18
APPENDICES	
A. Relevant sections of ORS 197	
B. OAR Chapter 660, Division 25	
EXHIBITS	
• Sample notice of proposed adoption form	
• Sample task submittal form	
• Sample notice of decision on a work task	

THE COMPLETE PLANNER'S GUIDE TO PERIODIC REVIEW

I. INTRODUCTION

Periodic review is a process for certain local governments in Oregon to examine and, as necessary, update their comprehensive land use plan and implementing codes. The regulations on when and how to complete periodic review have changed several times over the years, and this guide is intended to address the current regulatory situation, after the 2011 Legislature adopted House Bill 2130.

A city or county can update its plan and code without periodic review. An amendment outside periodic review is generally called a “post-acknowledgment plan amendment” and is subject to different procedural requirements regarding notice and appeals. The relevant regulations for a post-acknowledgment plan amendment are found in ORS 197.610 to 197.615. These requirements are not discussed in this guide. Any appeal of a local decision on a post-acknowledgment plan amendment goes to the Land Use Board of Appeals, while LCDC is the hearings body for amendments made in periodic review (for more on periodic review appeals, see Chapter 5).

This guide is intended for local land use planners and is organized to provide step-by-step instructions for the various phases of periodic review. A simple flowchart of the periodic review process is provided on page 18. A clear distinction between requirements and tips is provided.

A. The Rules and Regulations

Periodic review requirements originate in statute: ORS 197.628 to 197.650. The statutes are interpreted and supplemented by administrative rules: OAR 660, Division 25. The entire set of provisions are included in the appendix, and relevant sections are quoted in the body of the guide.

The statutes and rules spell out the *procedural* aspects of completing periodic review, and identify the *substantive* issues that must be addressed. The periodic review regulations do not provide criteria for review of plan or code updates completed in periodic review. Those criteria would be found in other statutes and rules, or in the statewide planning goals.

B. A Word About Urban Growth Boundary Amendments

ORS 197.626 says that certain urban growth boundary amendments are to be reviewed “in the manner provided for review of a work task.” If a city with over 2,500 population changes its urban growth boundary by more than 50 acres, then it is treated like a periodic review task upon adoption. There is a similar provision for the Metro urban growth boundary. This will be addressed in more detail at appropriate places in the guide, and marked with a ♦.

C. Jargon and Acronyms

Some of the “planner speak” used in this guide is defined below.

DLCD – Department of Land Conservation and Development.
Sometimes just “the department.”

ERT – Economic Revitalization Team. An office in the Office of the Governor created by ORS 284.555. This statutory body has been renamed the “Regional Solutions Team,” but the statutes have not been amended to reflect the new name.

LCDC – Land Conservation and Development Commission, or just “the Commission.”

Metro – Metropolitan Service District. An elected regional government encompassing 25 cities and portions of Clackamas, Multnomah, and Washington counties.

MPO – Metropolitan Planning Organization. An organization formed by the Governor to coordinate transportation planning in major urban areas. In 2012, MPOs in Oregon include the urban areas around Bend, Corvallis, Eugene-Springfield, Medford, Portland and Salem-Keizer.

Periodic review rule – OAR 660, Division 25.

OAR – Oregon Administrative Rule. Regulations adopted by an administrative body, in the case of this guide the Land Conservation and Development Commission.

ORS – Oregon Revised Statute. The codified laws passed by the legislature.

UGB – Urban growth boundary. A line around Oregon cities separating urban from rural uses.

2. WHO MUST COMPLETE PERIODIC REVIEW, AND WHO MAY

Certain local governments are required to complete a scheduled update of their comprehensive plans. Others may request it.

A. Required Periodic Review

ORS 197.629 and OAR 660-025-0030 provide a “schedule” of which local governments must go through the periodic review process. The following are included:

- Cities over 2,500 population in the city limits inside Metro or a Metropolitan Planning Organization (MPO): begin seven years after completion of the previous periodic review, and
- Cities with over 10,000 population inside the UGB and outside Metro and an MPO: begin 10 years after completion of the previous periodic review.



Counties must complete periodic review for the area inside urban growth boundaries on the same schedule as the cities listed above.

That’s all. No other city or county is scheduled to complete periodic review. Under certain circumstances, the Commission may require other cities or counties to enter the process as long as they are willing to pay the local government’s costs (OAR 660-025-0035(4)).

The statute and rule provide for the Commission to schedule periodic review. A city does not automatically start periodic review when seven or ten years has passed; the Commission must set a schedule for when each jurisdiction is to begin (see Chapter 3 for discussion of periodic review notice). Conversely, the Commission may start periodic review early for a city, but no sooner than five years after completion of the previous review.

Local governments not scheduled to complete periodic review may, in certain circumstances, be required to complete the process. These circumstances include a high growth rate or a major public or private investment. See OAR 660-025-0035(4) for more details.

B. Voluntary Periodic Review

The statute and rule include two options for a city to voluntarily enter periodic review and one option for a county.

ORS 197.629(6) and OAR 660-025-0035(1) and (2) provide for a city or county to request the Commission to approve initiation of periodic review. This could be a city or county that is not required to complete periodic review or a city that wishes to commence the process early. In consideration of such a request, the Commission must consider “the needs of the jurisdiction to address the issue(s) identified in periodic review, the interrelationships of the statewide planning goals to be addressed in the periodic review project, and other factors the Commission finds relevant.” If the Commission approves the request, the periodic review process proceeds according to all rule requirements for periodic review.

An option for cities to complete a “customized” periodic review is provided in ORS 197.629(4) and OAR 660-025-0035(3). This option, sometimes euphemistically called “periodic review lite,” provides for more flexibility concerning the topics covered during periodic review. The tasks in such a periodic review may be more focused than would be the case in a scheduled periodic review, or address issues not normally included in periodic review. Development of a work program (see Chapter 3 for a description of work programs) under this option must include consultation with the Economic Revitalization Team (now called Regional Solutions Team). There are few other requirements specified for customized periodic review, so just work closely with DLCDC and the Regional Solutions Team to explore options that best fit the needs of the city.

If a local government is considering a request to enter periodic review using one of these voluntary options, it should contact its DLCDC regional representative as early as possible.

3. COMMENCING PERIODIC REVIEW

When the schedule established by LCDC determines that it is time for a local government to begin periodic review, or if the Commission has approved a request to voluntarily begin the process, the department will send a periodic review notice that explains the process, timelines, and requirements for completing periodic review (OAR 660-025-0050).

The department will coordinate with other state agencies when developing the periodic review notice. The DLCD director may appoint a “Periodic Review Assistance Team” to assist in the effort (OAR 660-025-0060).

A. Citizen Involvement

After receiving a periodic review notice, the first step for the local government is to review its citizen involvement program to ensure that there is an adequate process for citizen participation in all phases of periodic review (OAR 660-025-0080(2)). The citizen



involvement program must provide opportunities for written and oral comments by interested citizens during development of the work program and when the work program is carried out.

No state statute or rule requires it, but many local governments appoint a citizen advisory committee at the beginning of periodic review to help steer public involvement throughout the process, or use an existing committee if one has been appointed. Make sure to check to see if the acknowledged citizen involvement program for the local government requires it. This committee can be the planning commission, but there are advantages to having a separate citizen committee because the planning commission will need to consider a wide range of input in making its recommendations, while the citizen advisory committee primarily communicates issues relevant to the lay public.

The local government must publish a notice in a newspaper of general circulation within the community informing citizens that

periodic review is commencing (OAR 660-025-0080(1)). Notice must also be provided to those who request it in writing.

B. Plan Evaluation

After deciding on a citizen involvement strategy, the local government will embark on an evaluation to determine whether the comprehensive plan needs to be updated. The statute (ORS 197.628) and rule (OAR 660-025-0070) include “factors” to apply when deciding whether periodic review is called for. These are:



- 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;
- Decisions based on 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;
- 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
- The local government, commission or department 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.

The periodic review notice will include a checklist to assist in deciding whether these factors apply. As stated in the factors, the focus of the inquiry will be on parts of the plan related to economic development, housing, public facilities and services, transportation, and urbanization. This does not mean that comprehensive

plan updates during periodic review can only amend sections of the plan addressing these five topics. It does mean the local government must determine that there are needed amendments to some or all of these sections before the evaluation shows a “need” for periodic review.

The decision whether periodic review is needed must be made at a public meeting after DLCD, the Periodic Review Assistance Team, and citizens have had the opportunity to review and comment on the proposal (OAR 660-025-0090). In most cases, the county will be a partner in the periodic review, so it must be included as well.

The local government will need to decide whether plan updates are needed. If periodic review is warranted, the next step is to develop a work program; if it’s not, the decision that no further work is necessary must be adopted by the local government. Notice of the proposed evaluation must be provided to members of the public who requested it and to the Periodic Review Assistance Team at least 21 days prior to adoption of the decision that periodic review is not needed. The city must conduct at least one public hearing on the plan evaluation (OAR 660-025-0080(2)(a)).

The periodic review rule requires that the local government respond to comments it received during plan evaluation (OAR 660-025-0080-(2)(b)). The rule does not specify the form of this response, but written findings are advisable.

The evaluation must be submitted to DLCD within six months from when the city received its periodic review notice. A 90-day extension to complete the evaluation can be approved by the department upon request. Submittal of the evaluation must be accompanied by required forms, a list of people who requested notice of the city’s decision, and the result (a work program or a decision that no work program is necessary). Note that a work program, if required, must be completed within the same six-month timeframe.

C. Work Program

If the local government, through the plan evaluation, decides that the comprehensive plan needs to be updated, the next step is to develop a “work program.” A work program is “a detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to ensure the plan and regulations achieve the statewide planning goals” (OAR 660-025-0020(7)). Keep in mind that the local government may discover through the course of

completing a task that the plan is in fact adequate, and no amendment is necessary.

An important consideration to keep in mind while developing the work program is that a statute encourages the state and local governments to ensure periodic review takes no longer than three years (ORS 197.633(7)). The local government should not let “its eyes be bigger than its stomach”—that is, the plan may be in need of many updates, but periodic review may not be the best process to address all those needs. The city would also be well-served to prepare an estimated three-year budget for completion of the work program. Work closely with your DLCD regional representative for guidance on periodic review grants that will assist in completion of the work program.



In developing the work program, the local government must follow its citizen involvement program (OAR 660-025-0090(1)(a)). Citizens must be provided the opportunity to propose work tasks (OAR 660-025-0080(2)(a)).

A work program must be submitted to DLCD for review and approval. As explained in the previous section, the local government must submit the plan evaluation and work program within six months of receiving periodic review notice. The local government must provide notice of the action on the work program to DLCD and individuals who participated orally or in writing during local proceedings (OAR 660-025-0100(1)). Those who participated may submit objections to the work program to DLCD.

DLCD will approve or reject the work program or determination that no work program is necessary (OAR 660-025-0110(1)). A DLCD decision to approve the local government’s action (work program or determination that no work program is necessary) is final and cannot be appealed. A DLCD decision to reject the local government’s decision can be appealed to LCDC (OAR 660-025-0110).

Once the work program is complete and approved, the local government embarks on completing the tasks listed in the work program.

D. Work Tasks

Since the evaluation focused on the economic development, needed housing, transportation, public facilities and services, and urbanization elements of the plan, the work program is likely to be weighted toward those topics as well. While other sections of the comprehensive plan may be out-of-date, limited resources and the aforementioned time constraints on periodic review may conspire to force the local government to make difficult choices about what to include on the work program.

Certain statutes and rules are implemented through periodic review. For example, the Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) administrative rule (OAR 660, Division 23) states that a local government must, with some exceptions, address the requirements of the rule at its next periodic review. If the comprehensive plan has not been updated to address these requirements, the city will need to consider, in coordination with DLCDC, whether a task to update this part of the plan needs to be in the work program.

There are no administrative rules on how to organize the tasks on a work program. One thing to consider, however, is that when the city submits a task, it needs to be a *complete* task (see OAR 660-025-0130(3)). Task completeness is addressed in more detail in the next chapter. Therefore, carefully consider the steps needed to complete a task early in the process to avoid troubles later on.



Difficulties are minimized when a task addresses only one element of the plan or code that is to be reviewed and potentially updated. For example, if the local government needs to update the housing and economic development chapters of its plan, the steps may be similar for each and include things like (1) inventories, (2) analysis, and (3) a plan update. Rather than including both of the inventories in Task 1, the analyses in Task 2, etc., it is advisable to include the Housing Element update in one task and the Economic Development Element in another. This way, if the studies proceed at different paces, one won't hold up the other.

If this method of organization doesn't satisfy local government needs, other alternatives are acceptable. The work program must identify what the city expects it will ultimately submit in fulfillment of a task (OAR 660-025-0130(3)).

4. COMPLETING PERIODIC REVIEW TASKS

The process of completing a task varies based on the needs and practices of the affected jurisdiction and the nature of the task. Generally speaking, the local process is essentially the same as it would be for a plan amendment outside periodic review. Only the notice requirements are different.

The process and effort that a local government puts into a task will vary. Often, periodic review is employed for major plan updates, so they require a significant investment of time and effort by the local government; but this would be the case if the same plan amendment was initiated outside periodic review. In some cases, the plan evaluation shows that an element of the plan needs updating, but it may be a minor change requiring a corresponding level of work.

Regarding the local process, the local government's citizen involvement program should be used as the controlling instrument. Generally, an amendment to the comprehensive plan or code will require, at a minimum, one hearing before the planning commission and one at the city council. Often a co-adoption by the county will be in order. For a major effort such as a UGB expansion, citizen and technical advisory committees may be employed to develop, propose, or review updates prior to any hearings.

NOTE: A Notice of Proposed Action to DLCD (alternatively called a "35-day Notice," "green sheet," and "Form 1") is required to be sent prior to a hearing on consideration of an amendment related to a periodic review task or a UGB amendment that is not on a work program but which is evaluated in the manner of a periodic review task ♦. Be sure to check the appropriate box on the form.

A. A Word About Grants



For many years, DLCD has provided grants to assist in the completion of periodic review tasks. The grant program is operated on a biennial basis, with the biennium beginning and ending in the middle of odd-numbered years. These grants frequently do not cover the full cost of completing periodic review, but DLCD attempts to make a significant contribution to completion of tasks.

B. Work Program Amendments

From time to time, a city may determine that an approved work program needs to be amended. Amendments are allowed in certain circumstances (ORS 197.644(1) and OAR 660-025-0170(1)). Most amendments are made upon request by the local government. DLCDC may approve or direct a work program amendment if one of the following circumstances is found:

- Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or
- Issues relating to needed housing, economic development, transportation, public facilities and services, or urbanization were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.
- Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;
- Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination.



The most common reason is: “Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision.”

No statute or rule specifies the local process for amending a work program. The citizen involvement rule (OAR 660-025-0080) says only that the local government must provide for public participation “in all phases of the local periodic review.” There have been no LUBA or court opinions regarding local procedures for work program amendments. Having the city council approve the request after a public hearing is a safe practice, but each jurisdiction will need to make this decision based upon its citizen involvement program and attorney’s advice.

DLCD does not, as a practice, review the procedure a local government employed in considering a work program amendment, but rather limits review to the criteria listed above.

C. What if We're Not Done On Time?

An administrative rule (OAR 660-025-0130(6)) allows DLCD to approve *one* extension of a task submittal date for up to one year. The city should make the request before the original submittal date expires, and the department may approve the request upon a finding that there is “good cause.”

There is no guidance in any rule or court decision whether a local government’s decision to request extension of a date requires a public process. As stated in the previous section, employing a public process is the safest route, but no such requirement is explicit.

D. Submitting a Task

Once the city has completed a plan update that is on the periodic review work program (or completes designation of an urban reserve area or amends an urban reserve area or UGB to include over 50 acres for a city over 2,500 population outside periodic review ♦), there are specific requirements regarding what is to be included in the submittal and the form of notice.



Some tasks, particularly UGB amendments, require co-adoption by the city and county. The city and county must coordinate and provide *one submittal* to the state (OAR 660-025-0130(1)).

That is, the county (which usually acts last) should transmit its record to the city; the city will then package the city and county materials and submit them together. This reduces the opportunities for confusion and multiple appeals.

There are three elements of complete submittal:

1. The final decision, including the local record;
2. A list of those who participated in local proceedings or asked to receive notice; and
3. The appropriate DLCD form.

The final decision. If the city decided that no amendment to the plan or code was necessary to complete the task, the submittal should include the decision and the record of the decision. Such a decision will usually be by resolution or order.

If the plan or code, or both, gets amended, then the decision will be made by ordinance (see ORS 227.186(2) and 215.503(2)). Be sure to submit a signed ordinance along with the record of the decision.

In either case, the administrative rule specifies the record that is to be submitted (OAR 660-025-0130(3)):

- (a) If the local record does not exceed 2,000 pages, a submittal must include the entire local record, including but not limited to, adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program;
- (b) If the local record exceeds 2,000 pages, a submittal must include:
- adopted ordinances;
 - resolutions and orders;
 - any amended comprehensive or regional framework plan provisions or land use regulations;
 - findings;
 - hearings minutes;
 - materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and
 - a detailed index listing all items in the local record indicating whether the item is included in the submittal.
- Items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or Commission may require submission of any materials not included in the initial submittal;
- (c) A task submittal of over 500 pages must include an index of all submitted materials.



Notice list. The list should include everyone who participated orally or in writing during local consideration of the task, and anyone who requested notice of the local government’s final decision. DLCDD needs this list because it is required to send notice of its decision on the task to these individuals. There is more about notice later in this chapter.

Submittal form. DLCDC will provide the appropriate form to attach to the front of your submittal. An example is included as an exhibit at the end of this report. Please be sure to fill out this form completely and accurately.

E. Submitting Part of a Task

In limited circumstances, the local government may submit part of a task or a subtask. The work program may be organized in a manner that one task will have multiple products (although this is not advised—see Chapter 3, Section D). For example, a task could be to update public facilities plans, with subtasks for the water plan, sewer plan, and storm water management plan. These subtasks may be independent of each other and adopted by the local government at separate times.

In this case, you may submit a subtask *if* doing so has been spelled out in the work program (OAR 660-025-0130(3)). Otherwise, DLCDC must wait for complete task submittal prior to review.

F. Notice of the Final Decision

After the local government (or both city and county) makes a final decision on a work task, the local government must notify DLCDC and persons who participated at the local hearings orally or in writing, or who requested notice in writing. The notice must contain the following information:

1. Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;
2. The requirements for filing a valid objection to the work task; and
3. That objectors must give a copy of the objection to the local government.

A sample notice of decision is included as an exhibit at the end of this report.

G. Department Review of a Submittal for Completeness

After DLCDC receives a submittal, it will review the materials to decide whether it is complete (OAR 660-025-0130(2)-(3)). See Section E, above, regarding submittal of a portion of a task.

If DLCDC determines that the submittal is complete, it will commence with a review concerning whether the submittal complies with relevant statutes, goals, and rules. If the submittal is determined to be incomplete, DLCDC will notify the affected local

government(s) and those on the notice list the local government provided. The department may decide to proceed with a review even if the submittal is deemed to be incomplete.

5. REVIEW AND APPEAL OF TASKS

Amendments to plans and codes made in periodic review are treated differently than such amendments made under post-acknowledgement plan amendment procedures.

A. Department Review

Periodic review task and certain urban reserve area and UGB decision ♦ submittals are reviewed by DLCD. Once the decision has been made to begin review of a submitted task, there are statutory and rule requirements DLCD must follow. These include addressing objections, sending notice, and making timely decisions.

Timelines for Decision. Regarding the deadline for review, the department must make a decision to approve or remand the task, or refer it to the Commission, within 120 days of the date it was submitted (OAR 660-025-0150(3)). This deadline can be extended by the Commission or waived by the local government.



The department may not, however, make a decision within the first 21 days after submittal if there are any parties that are eligible to submit an objection.

If DLCD misses the 120-day deadline, and there are no valid objections, the task becomes approved. If there are valid objections and the department does not act within 120 days, the director must issue an order or refer the matter to the Commission for a hearing and decision (OAR 660-025-0150(3)).

Objections. Anyone who participated at the local level orally or in writing is eligible to submit an objection to the local government's task (OAR 660-025-0140(2)-(3)). In order to be valid, the objection must:

1. Be in writing and received by DLCD within 21 days of the date the notice of decision was sent;
2. Clearly identify an alleged deficiency in the work task

3. Suggest specific revisions that would resolve the objection; and
4. Demonstrate that the objecting party participated orally or in writing during the local process.

Written decision. A decision on the task submittal must be in writing. If there are no valid objections and the decision is to approve the submittal, the order may be a simple letter.

If there are objections, DLCD must address them in a report regardless of whether the decision is ultimately approved or remanded (OAR 660-025-0150(1)-(3)). If DLCD's review of the task results in a remand, the reasons for the remand must be explained in a report. Sometimes, DLCD will decide to approve portions of the submittal and remand a portion. In these cases, the approved portions are complete unless appealed.

The department may decide to refer the task to the Commission for review. In this case, the submittal will be treated much like an appeal, but without a department decision.

Notice of a DLCD decision to approve, remand, or refer the task must be provided to the local government, those who submitted objections, and anyone who requested the notice in writing.

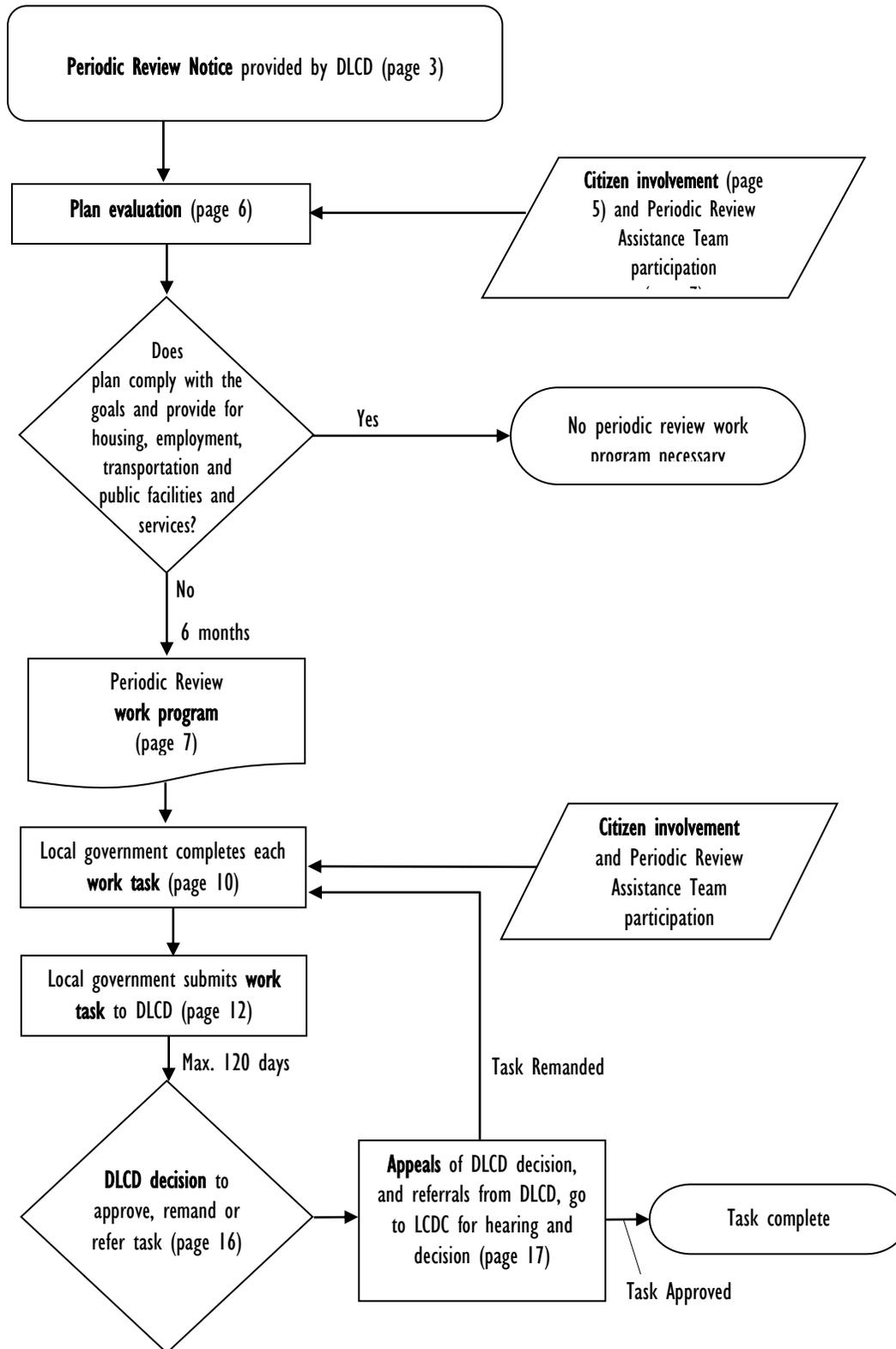
B. Appeals

A DLCD decision to approve or remand a task may be appealed to LCDC. The Commission must conduct a hearing within 90 days of the appeal (or referral), although there is some opportunity for extending this timeline. The Commission may uphold or modify the DLCD decision and approve or remand the task according to its discretion.



The details of appeals and Commission hearings are beyond the scope of this document. For more information, refer to OAR 660-025-0150 and -0160.

PERIODIC REVIEW PROCESS



APPENDIX A

Chapter 197 — Comprehensive Land Use Planning Coordination

2011 EDITION

197.626 Submission of land use decisions that expand urban growth boundary or designate urban or rural reserves. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

- (a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;
- (b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;
- (c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;
- (d) An amendment of the boundary of an urban reserve by a metropolitan service district;
- (e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary; and
- (f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

(2) A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651. [1999 c.622 §14; 2001 c.672 §10; 2003 c.793 §4; 2007 c.723 §7; 2011 c.469 §1]

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. [1991 c.612 §2; 1999 c.622 §2; 2005 c.829 §1]

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). [1999 c.622 §10; 2001 c.527 §3; 2005 c.829 §2]

197.631 Commission to amend regulations to facilitate periodic review. In order to use state and local periodic review resources most efficiently and effectively and to concentrate periodic review on adequate provision of economic development, needed housing, transportation, public facilities and services and urbanization, the Land Conservation and Development Commission shall adopt, amend or repeal the statewide land use planning goals, guidelines and corresponding rules as necessary to facilitate periodic review and to provide for compliance by local governments with those goals not described in ORS 197.628 (2) through the post-acknowledgment procedures of ORS 197.610 to 197.625. [1999 c.622 §11; 2005 c.829 §3]

197.633 Two phases of periodic review; rules; appeal of decision on work program; schedule for completion; extension of time on appeal. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review that address:

- (a) Initiating periodic review;
- (b) Citizen participation;
- (c) The participation of state agencies;
- (d) The preparation, review and approval of a work program; and
- (e) The preparation, review and approval of work tasks, including:
 - (A) The amendment of an urban growth boundary.
 - (B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

(3) The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission's standard of review:

(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

(4) A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal.

(5) The director:

(a) Shall take action on a work task not later than 120 days after the local government submits the work task for review unless the local government waives the 120-day deadline or the commission grants the director an extension. If the director does not take action within the time period required by this subsection, the work task is deemed approved. The department shall provide a letter to the local government certifying that the work task is approved unless

an interested party has filed a timely objection to the work task consistent with administrative rules for conducting periodic review.

(b) May approve or remand a work task or refer the work task to the commission for a decision. A decision by the director to approve or remand a work task may be appealed to the commission.

(6) Except as provided in this subsection, the commission shall take action on the appeal or referral of a work task within 90 days of the appeal or referral. Action by the commission in response to an appeal from a decision of the director or a referral is a final order subject to judicial review in the manner provided in ORS 197.650 and 197.651. The commission may extend the time for taking action on the appeal or referral if the commission finds that:

(a) The appeal or referral is appropriate for mediation;

(b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit; or

(c) The parties to the appeal and the commission agree to an extension, not to exceed an additional 90 days.

(7) The commission and a local government shall attempt to complete periodic review within three years after approval of a work program. To promote the timely completion of periodic review, the commission shall establish a system of incentives to encourage local government compliance with timelines in periodic review work programs. [1991 c.612 §3; 1993 c.18 §38; 1999 c.622 §3; 2001 c.527 §1; 2005 c.829 §4; 2011 c.469 §2]

197.636 Procedures and actions for failure to meet periodic review deadlines. (1) Upon good cause shown by a local government, the Director of the Department of Land Conservation and Development may allow the local government an extension of time for submitting a work program or completing a work task. A decision by the director to grant or deny an extension may be referred to the Land Conservation and Development Commission by the director. The Department of Land

Conservation and Development or the commission shall not extend the deadline for submitting a work program more than once nor for more than 90 days, and shall not extend the deadline for a work task more than once nor for more than one year.

(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.

(3) If the department receives a work program or work task completed in response to a commission order issued under subsection (2) of this section, the director shall evaluate and issue a decision on the work program or work task within 90 days.

(4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650. [1991 c.612 §4; 1999 c.622 §4; 2001 c.527 §2; 2005 c.829 §5]

197.637 Department of Land Conservation and Development may request review by Housing and Community Services Department of certain local housing measures. (1) Upon request of the Department of Land Conservation and Development, the Housing and Community Services Department shall review the inventory and analysis of housing, and measures taken to address the housing need, required of certain local governments under ORS 197.296. The review shall address the likely effect of measures developed by a local government under ORS 197.296 (6) or (7) on the adequacy of the supply of buildable land and opportunities to satisfy needs identified under ORS 197.296 (3).

(2) The Land Conservation and Development Commission and the Director of the Department of Land Conservation and Development shall consider the review and any recommendations of the Housing and Community Services Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.296. [1999 c.622 §12; 2001 c.908 §4]

197.638 Department of Land Conservation and Development may request review by Oregon Business Development Department of local inventory and analysis of industrial and commercial land. (1) Upon request of the Department of Land Conservation and Development, the Oregon Business Development Department shall review the inventory and analysis of industrial and commercial land, and measures taken to address the land needs, required of certain local governments under ORS 197.712. The review shall address the likely effect of measures developed by a local government on the adequacy of the supply of sites and opportunities to satisfy needs identified under ORS 197.712.

(2) The Land Conservation and Development Commission and the Director of the Department of Land Conservation and Development shall consider the review and any recommendations of the Oregon Business Development Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.712. [1999 c.622 §13]

197.639 State assistance teams; alternative coordination process; grant and technical assistance funding; advisory committee. (1) In addition to coordination between state agencies and local government established in certified state agency coordination programs, the Department of Land Conservation and Development may establish one or more state assistance teams made up of representatives of various agencies and local governments, utilize the Economic Revitalization Team established under ORS 284.555 or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(2) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review.

(3) The department may develop model ordinance provisions to assist local governments in the periodic review plan update process and in complying with new statutory requirements or new land use planning goal or rule requirements adopted by the Land Conservation and Development Commission outside the periodic review process.

(4) A local government may arrange with the department for the provision of periodic review planning services and those services may be paid with grant program funds.

(5) The commission shall establish an advisory committee composed, at a minimum, of representatives from the League of Oregon Cities, the Association of Oregon Counties, metropolitan service districts, the Special Districts Association of Oregon, land use planning public interest groups and developer interest groups. The advisory committee shall advise the commission and the department on the allocation of grants and technical assistance funding from General Fund sources and other issues assigned by the commission. [1991 c.612 §5; 2003 c.793 §5; 2005 c.829 §6]

197.644 Modification of work program; exclusive jurisdiction of Land Conservation and Development Commission. (1) The Director of the Department of Land Conservation and Development may authorize or direct a local government to modify an approved work program when:

- (a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination;
- (b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;
- (c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks, result in a need for further review or revision; or
- (d) Issues relating to needed housing, employment, transportation or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) The Land Conservation and Development Commission shall have exclusive jurisdiction for review of the completed work tasks as set forth in ORS 197.628 to 197.651.

(3) Commission action pursuant to subsection (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650 and 197.651. [1991 c.612 §6; 1997 c.634 §1; 1999 c.622 §5; 2011 c.469 §3]

197.646 Implementation of new requirement in goal, rule or statute; rules. (1) A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals.

(2)(a) The Department of Land Conservation and Development shall notify local governments when a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals requires changes to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan.

(b) The Land Conservation and Development Commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, an acknowledged regional framework plan and land use regulations implementing either plan must be in compliance with:

(A) A new requirement in a land use statute, if the legislation does not specify a time period for compliance; and

(B) A new requirement in a land use planning goal or rule adopted by the commission.

(3) When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [1991 c.612 §7; 2005 c.829 §7; 2007 c.71 §67; 2011 c.469 §4]