

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. When a city modifies a condition of approval in lieu of citing specific evidence and findings, the decision will be remanded for the city to adopt more adequate findings based on substantial evidence regarding compliance with local code. If the city cannot determine based on substantial evidence in the record that local codes are complied with, and the city chooses to defer that issue to a subsequent proceeding, that subsequent proceeding must provide notice and opportunity for public participation. *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A petitioner’s argument that the city erred in processing the application as a minor rather than major site plan modification does not provide a basis for remand, where the city adopted findings that the only difference between a major and minor modification is procedural, and the petitioner does not argue that the procedures the city provided, including a hearing that petitioner attended, prejudiced petitioner’s substantial rights. *Aboud v. City of Stayton*, 77 Or LUBA 300 (2018).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A code requirement that the planning commission hold a hearing on a local appeal at the next regular planning commission meeting is not a jurisdictional requirement, and the planning commission does not lose jurisdiction over the appeal when it holds the hearing at a later regular planning commission meeting. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A hearings officer does not err in approving development notwithstanding that the applicant failed to comply with a code requirement to determine levels of service based on existing intersection signal timing, where the code contemplates that the city may vary from the strict letter of the code to address unusual situations, based on expert recommendations, and the hearings officer agreed with the applicant’s experts that due to ongoing transportation construction in the area it would serve no purpose to consider existing signal timing. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where petitioner does not challenge a city’s findings that invoke a development code provision that allows the city community development director to change the review procedure that would otherwise apply where there is a “compelling public interest,” LUBA will deny an assignment of error that challenges the community development director’s decision to apply a different procedure that causes an appeal to go directly to the city council rather than to the planning commission. The development code provision need not be interpreted to prohibit a change the applicable review procedure after the city’s deliberations on an application have begun. *Wickham v. City of Grants Pass*, 53 Or LUBA 261 (2007).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a planning commission recommendation to correct the zoning map is a condition precedent to the governing body’s correction of the zoning map under the local code, the governing body cannot “substitute” for the required recommendation a planning commission

recommendation to rezone the subject property under a different code provision. *Sullivan v. Polk County*, 51 Or LUBA 107 (2006).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where the evidentiary record has closed and a party believes a local government has improperly allowed legal argument that includes new testimonial evidence, a party arguing that such an impropriety warrants remand by LUBA must (1) adequately identify the objectionable testimony, (2) explain why that testimony goes beyond legal argument or commentary on evidence that is already in the record or for some other reason constitutes new evidence and (3) offer some substantial reason to believe the objectionable testimony had some effect on the ultimate decision. *City of Damascus v. Metro*, 51 Or LUBA 210 (2006).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a local code provision limits a city council’s scope of review on appeal from a planning commission to “determining whether there is substantial evidence to support the findings” and whether “errors of law were committed,” the city council violates its limited scope of review where it makes its own findings of fact and determines on its own that the applicant failed to establish compliance with the applicable criteria. *Wal-Mart Stores, Inc. v. City of Medford*, 49 Or LUBA 52 (2005).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A citizen participation requirement for appointment of a three-person citizens’ advisory committee when considering major land use regulation amendments is a procedural requirement. A petitioner who wishes to assign error to the local government’s failure to appoint such a committee must have objected to that failure during the proceedings below. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a planning commission fails to formally appoint a three-person citizens’ advisory committee from the community at large when considering major land use regulation amendment, as required by an applicable citizen involvement comprehensive plan requirement, that failure does not constitute reversible error where the planning commission in fact seeks the advice of four members of the city’s design review committee who are citizens of the community. Where no party disputes that the design review committee members are members of the community at large, the planning commission’s decision to seek input from the design review committee either constitutes de facto compliance with the citizen involvement requirement or renders any failure to formally appoint a citizens advisory committee a procedural error that resulted in no prejudice to the petitioner or other citizens of the community. *Dobson v. City of Newport*, 47 Or LUBA 267 (2004).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a local code neither expressly authorizes a city council on appeal to reconsider a city’s engineer’s assessment of a traffic impact report and needed transportation improvements nor expressly prohibits such reconsideration, LUBA will defer to the city council’s interpretation of the local code to allow reconsideration of the adequacy of the engineer’s assessment. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Absent some explanation by the county as to why it has the authority to deviate from local regulations establishing the time at which a use is considered abandoned, a county errs in adopting a decision imposing a condition of approval that is flatly inconsistent with those regulations. *Hiebenthal v. Polk County*, 45 Or LUBA 297 (2003).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. LUBA will not remand a decision based on an allegation that the decision maker failed to follow the consultation and coordination requirements of OAR 340-252-0060, where the record makes clear that all parties required by the rule to be consulted were aware of and actively participated in the process leading to the challenged decision, and any failure to follow the procedures set out by the rule was attributable to someone other than the decision maker. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435 (2002).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Citizen involvement guidelines that recommend certain types of advisory committees for large transportation improvement projects, subject to the discretion of the county transportation director, are not mandatory in the circumstances for which they are recommended, nor do they require findings justifying the director's exercise of the discretion granted by the guidelines. *Paulson v. Washington County*, 40 Or LUBA 345 (2001).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a zoning ordinance includes no provisions specifying how a zoning map amendment application must be withdrawn, a local government commits no error in continuing to process a zoning map amendment request after the applicant attempts to withdraw the application and commits no error in failing to require a new application fee. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Consideration of a legislative action more than once within a 12-month period despite a code requirement that such actions be considered only once in a 12-month period provides no basis for reversal or remand, where all parties were given a full opportunity to participate in the proceedings and there was no prejudice to a party's substantial rights. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A local government may approve a partition and defer determination of an applicable approval criterion, provided the subsequent approval process provides the same notice and opportunity for public input as the original proceeding and the approval criteria are not so dependent on each other that they must be applied together. *Sunningdale-Case Heights Assoc. v. Washington Co.*, 34 Or LUBA 549 (1998).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where the comprehensive plan requires that the planning commission forward findings and a report to the city council for consideration with a proposed plan amendment, the

planning commission commits a procedural error by not forwarding the required findings and report. *Fogarty v. City of Gresham*, 34 Or LUBA 309 (1998).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a local code requires that manufactured home parks "which contain land within the floodplain district" be subject to a "Type III" review, Type III review is required to approve a proposed manufactured home park, notwithstanding that no "development" is proposed for the portion of the park located in the floodplain district. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A county impermissibly defers a finding that a proposed dwelling complies with applicable land use design standards when, in the absence of substantial evidence supporting a finding of compliance, the county imposes a condition that the dwelling's compliance with design standards be reviewed at a later building permit stage. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A city council may not convert an on-the-record quasi-judicial appeal of a planning commission decision into a *de novo* legislative hearing where the city code: (1) provides that legislative proceedings may only be commenced by the planning commission or city council, and the subject proceeding was initiated by an individual; (2) includes no provisions for converting a quasi-judicial appeal proceeding into a legislative proceeding; and (3) requires that appeals of planning commission quasi-judicial decisions be heard on the record. *Anderson v. City of Shady Cove*, 33 Or LUBA 173 (1997).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where a local governing body has not adopted regulations providing for reconsideration of its decisions, the governing body commits no error by denying a request to reconsider a decision, where the request was received after the final written order is entered. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. A zoning ordinance requirement may be jurisdictional, in the sense that failure to comply with the requirement may not be waived by the local government or cured by later performance of the requirement. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Although the existence of an agency relationship between the applicant for land use approval and the property owner on the date the application was filed may be a jurisdictional requirement, the manner of creating and disclosing that agency relationship is not jurisdictional where the code language does not clearly so provide. *Simonson v. Marion County*, 21 Or LUBA 313 (1991).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From. Where the local code requires physical constraints review to be conducted

simultaneously with site review, and approval of a physical constraints review permit requires application of substantive criteria which could result in denial of the proposed development, the city's failure to require a proposed development to obtain a required physical constraints review permit at the time of site review approval is not a mere procedural error. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From.A hearings officer's acceptance of evidence submitted after the deadline established by local code provides no basis for reversal or remand where petitioner did not request a continuance, and petitioner fails to explain how he was prejudiced by the hearings officer's action. *Reed v. Lane County*, 19 Or LUBA 276 (1990).

25.4.5 Local Government Procedures – Compliance with Local Ordinances/Regs – Deviations From.The requirement to comply with ordinance criteria applicable to the resolution/conceptual site plan stage of the destination resort review process cannot be avoided by deferring those determinations to the preliminary development plan stage of the review process, through restatement of the first stage approval criteria as conditions of approval for the second stage. *Foland v. Jackson County*, 18 Or LUBA 731 (1990).