

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where state statute requires that a local government provide either a public hearing before ruling on an application for a statutory permit or an opportunity for an appeal that includes a *de novo* public hearing, although the local government may require a notice of appeal that sets forth with reasonable particularity the issues that the appealing party will raise at the hearing, the local government may not, consistent with the statute, (1) make that notice requirement a jurisdictional bar to obtaining the hearing, (2) limit the issues specified to five types of issues, or (3) approve or reject requests for hearings based on a qualitative assessment of how well the appellant has explained the issues specified. *Landwatch Lane County v. Lane County*, 79 Or LUBA 96 (2019).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When a county opts to approve a permit without a public hearing, any person who is adversely affected or aggrieved, or who is entitled to notice of the decision may appeal a decision made without a hearing. The county cannot require participation prior to a decision, either by attending a conference (that may or may not have occurred), or providing written comments, or in any other manner. Additionally, the county may not enact additional restrictions to prevent a person who is entitled to file an appeal under the ORS 215.416(11)(a)(A) right to file a local appeal. *Hood River Valley Residents Comm. v. Hood River County*, 78 Or LUBA 282 (2018).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. In an as-applied challenge, a petitioner cannot challenge the manner in which the city adopted its appeal fee structure. Instead, LUBA’s inquiry regarding petitioner’s as-applied challenge to the appeal fee charged by the city, is whether petitioner has produced a *prima facie* case that the fee that the city charged petitioner pursuant to the city’s previously adopted fee schedule is “more than the average cost of such appeals or the actual cost of the appeal.” ORS 227.180(1)(c). *Nicita v. City of Oregon City*, 78 Or LUBA 463 (2018).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Any error in a planning commission’s finding that the petitioner lacked standing to file a local appeal is harmless, where on appeal to the board of commissioners the board disposed of petitioner’s appeal on the merits and did not rely on standing as a basis to deny the appeal. *Richards v. Jefferson County*, 77 Or LUBA 152 (2018).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A county cannot apply more rigorous standing or timely appeal requirements on (1) local appeals of permit decisions than are authorized under ORS 215.416(11) or (2) local appeals of permit decisions under circumstances where, but for the county choosing to provide a local appeal, the petitioner would have the right to appeal the permit decision directly to LUBA under ORS 197.830(3). *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A county is not required to evaluate a petitioner’s standing to file a local appeal based on the presumption that the petitioner was entitled to notice of the decision, where there is no dispute that the petitioner did not live within the notice area and was not entitled to notice of the decision at the time the decision was made. That the petitioner now lives within the notice area

does not establish entitlement under state or local law to notice of the decision or to file a local appeal. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A petitioner’s actual knowledge that the applicant has applied to the county for a dwelling permit and that the county intends to approve it, and that a well dug on the property is to perfect the permit for a dwelling, is more than sufficient knowledge to place the petitioner on “inquiry notice” that the county has approved a dwelling on the applicant’s property. Where the petitioner waits more than a year after being placed on “inquiry notice” that the county had approved a dwelling to actually discover the permit decision and file a local appeal, the local appeal is untimely filed, under local appeal provisions based on ORS 197.830(3)(b). *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Unless some exclusion applies, LUBA has jurisdiction over the appeal of a land use compatibility statement concluding that no local appeal is available to petitioner, if the decision applies a land use regulation. Arguments that the local government correctly concluded that no local appeal is available go to the merits of the appeal, and does nothing to demonstrate that LUBA lacks jurisdiction over the decision. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A party fails to establish “party status” within the meaning of a local code provision requiring such a demonstration in order to file a local appeal of a planning commission decision, when that party does not provide oral or written testimony prior to the close of the evidentiary record before the planning commission. Oral testimony given (1) after the record was closed and (2) during the public comment portion of a planning commission meeting does not provide testimony prior to the close of the evidentiary record. *Dilley v. City of North Bend*, 71 Or LUBA 56 (2015).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When a party provides her name and address on a public comment sign-in sheet for a planning commission meeting and the city subsequently sends her notice of the planning commission’s decision based on that sign-in sheet request for notice, a party has established that she requested notice of a planning commission decision within the meaning of the local code, and demonstrates “party status” to file a local appeal on that basis. *Dilley v. City of North Bend*, 71 Or LUBA 56 (2015).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A statement that a person merely “endorses” or “supports” a party’s appeal does not confer co-appellant status on that person, where no local or statutory standards are cited that would authorize persons who may or may not have party status, to join an appeal that is filed by someone who has party status. *Dilley v. City of North Bend*, 71 Or LUBA 56 (2015).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a city’s code provides that the city administrator’s actions may be appealed to the planning commission, and the planning commission’s decision on that local appeal may be

appealed to the city council, but the city council agrees to bypass the planning commission and hear a petitioner's appeal, the city may not argue at LUBA that that petitioner failed to exhaust her administrative remedies in bypassing the planning commission. *Smith v. City of Gearhart*, 71 Or LUBA 184 (2015).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. If a planning commission relies on a comprehensive plan policy as a separate and independent basis for its decision to deny a permit application, and the permit applicant fails to challenge the planning commission's reliance on the comprehensive plan policy in its notice of local appeal, the board of county commissioners could affirm the planning commission's decision based on that failure alone, without regard to the merits of the permit applicant's challenge to other bases for the planning commission's decision. *WKN Chopin LLC v. Umatilla County*, 66 Or LUBA 1 (2012).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a planning commission almost entirely relied on the EFU zoning statutes to find that a permit applicant inadequately considered alternatives to a proposed EFU-zoned site for a transmission line, and only belatedly and obscurely relied on a comprehensive plan policy to impose a similar alternatives analysis, the permit applicant's general challenge to the planning commission's legal analysis on cited pages of the planning commission's decision where the comprehensive plan policy was mentioned is sufficient to preserve the permit applicant's right to challenge the planning commission's reliance on the plan policy in its appeal to the board of commissioners. *WKN Chopin LLC v. Umatilla County*, 66 Or LUBA 1 (2012).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the applicant appeals a hearings officer's decision, challenging a condition of approval under a local appeal standard that limits the planning commission's review to the issues raised in the appeal, the planning commission's authority to impose new conditions is limited to conditions necessary to ensure that the application, with the challenged condition eliminated, continues to comply with applicable approval criteria. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the applicant appeals a hearings officer's decision challenging a condition of approval limiting building height, under a local appeal standard that limits the planning commission's review to the issues raised in the appeal, the planning commission errs in imposing a new condition requiring additional setbacks, where the condition requiring additional setback is unrelated to the building height condition. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A notice of local appeal requirement that the bases for appeal be specified in detail is satisfied by the statement that the local appellant disagreed with the decision, where the appealed local decision was a planning commission decision denying permit approval and that denial was based on a single criterion. *Johnson v. City of Gladstone*, 65 Or LUBA 225 (2012).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A city’s interpretation of a local code provision governing appeals that determines that the consequence for underpayment of an appeal fee is not to dismiss the local appeal but rather to notify the appellant of the underpayment and request prompt payment of the remaining amount due is correct, where nothing in the applicable code section specifies that the consequence for an underpayment of an appeal fee based on misinformation from planning staff is dismissal of a local appeal. *Willamette Oaks LLC v. City of Eugene*, 63 Or LUBA 75 (2011).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. 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).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code requires the appellant to pay the local appeal fee “specified in the Notice of Decision,” but instead the notice simply directs recipients to contact planning staff to find out the amount of the appeal fee, the failure to specify an appeal fee in the notice does not mean that the local government is precluded from charging an appeal fee or that the local government must provide a free local appeal. *Jensen Properties v. Washington County*, 61 Or LUBA 155 (2010).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Under ORS 215.427(8), when a county fails to take timely action on a permit application, a permit applicant is entitled to a refund of “either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater,” and ORS 215.427(8) further provides that in that circumstance “[t]he applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits.” Under ORS 215.427(8), when a county is required to refund initial permit application fees, it may not require the permit applicant to pay additional fees for any additional proceedings that may be required to respond to a LUBA remand of the county’s permit decision. *Sperber v. Coos County*, 61 Or LUBA 477 (2010).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Approving or denying a tentative subdivision plat within an urban growth boundary is a limited land use decision and therefore not a “permit” decision. Because the ORS 227.175(10)(a) directive that local appeal issues not be limited to those issues identified in the notice of appeal only applies to permit decisions, that statute does not apply to decisions involving the approval or denial of subdivisions. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Even when an applicant forfeits the right to process a subdivision application under the limited land use provisions of a local code and processes the application under the procedures for permits, the decision approving or denying the subdivision is still a limited land use decision and the provisions of ORS 227.175(10)(a) do not apply. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code requires a notice of review to contain “the specific grounds relied on in the petition request for review,” and petitioners challenged a planning commission decision on the grounds that the county failed to identify other available industrially zoned properties throughout the county, petitioners may not on appeal to LUBA challenge the decision on different grounds that the county did not properly identify available industrially zoned lands within the specific rural community in which the applicant proposes the plan amendment. *Miles v. City of Florence*, 190 Or App 500, 506-507, 79 P3d 382 (2003). *Kinnett v. Douglas County*, 59 Or LUBA 293 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the underlying approval that is being extended is a permit, the extension of that permit is also a permit. *Thalman v. Marion County*, 58 Or LUBA 23 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When an appellant asks a local government to either approve or deny a building permit application and the local government ignores the request, the local government’s actions may constitute a de facto denial. That the local government declines to reduce its de facto denial to writing does not mean that the applicant’s attempt to file a local appeal of that de facto denial was untimely filed. *Huessy v. Tillamook County*, 58 Or LUBA 172 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Dismissal of a local appeal for failure to comply with an informational requirement like specifying the date of the appealed decision in the local notice of appeal is a sufficiently harsh sanction that a local government may only dismiss the appeal if its code expressly provides that dismissal is the sanction for not complying with the informational requirement. *Golden v. City of Silverton*, 58 Or LUBA 399 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A county erred by dismissing a local appeal of a building permit where (1) the county’s land use regulations provided a right of local appeal to challenge decisions that required the exercise of significant discretion, (2) the county was required to determine if the dwelling that was the subject of the building permit was lawfully established, and (3) the history of the development of the property required the county to exercise considerable discretion to determine if the dwelling was lawfully established. *Kuhn v. Deschutes County*, 58 Or LUBA 483 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a planning department is authorized to treat nondiscretionary building permit applications as discretionary permits for which there is a right of local appeal, and the planning department gives notice that a local appeal is available and accepts and processes petitioner’s local appeal, a hearings officer errs by later dismissing the appeal. In that circumstance, LUBA will assume the planning department intended to exercise its authority to treat the nondiscretionary application as a discretionary application. *Kuhn v. Deschutes County*, 58 Or LUBA 483 (2009).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local ordinance allows for a de novo hearing on appeal where new evidence and testimony may be presented, it does not mean that a local government also intends to allow new issues to be raised that were not specified in the notice of appeal, when the local ordinance requires issues on appeal to be specified. *Stricklin v. City of Astoria*, 56 Or LUBA 535 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a county provides two rounds of appeals to the governing body, both rounds of appeals constitute as single proceeding, and the fact that the county did not require that petitioner pay a second appeal fee for the second appeal does not preclude petitioner from challenging imposition of the first appeal fee. *Young v. Crook County*, 56 Or LUBA 704 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where nothing in the county’s code supports a claim that payment of a local appeal fee is a jurisdictional requirement, failure to pay the appeal fee is not grounds for dismissal of the appeal at the local level. *Ratzlaff v. Polk County*, 56 Or LUBA 740 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government correctly concludes that no timely local appeal of a building permit was filed where nothing in two letters sent to the city after the permit was granted indicated that the letters were intended to constitute appeals of the building permit. *Ortman v. City of Forest Grove*, 55 Or LUBA 426 (2007).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local government’s adopted appeal procedure requires the city council to conduct a de novo hearing on appeal, the city council’s interpretation of that provision to allow it to decide for itself whether the land use application that is the subject of the appeal complies with applicable standards must be affirmed. Contextual provisions that refer to city council *review* of the appealed decision are not sufficient to require that the city council limit its review to a review of the planning commission’s decision on appeal. *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. *Miles v. City of Florence*, 190 Or App 500, 510, 79 P3d 382 (2003), does not hold that a requirement under local law that the issues to be considered in a local land use appeal must be specified in the notice of local appeal has the legal effect of limiting the local appellate body’s authority to raise and consider issues *sua sponte* that are not specified in the notice of local appeal. The question of the legal effect of such a provision on the local appellate body’s authority to raise and consider issues that go beyond the issues specified in the notice of local appeal *sua sponte* was specifically left open in *Johns v. City of Lincoln City*, 146 Or App 594, 602 n 1, 933 P2d 978 (1997), and was not addressed further in *Miles*. *Burgess v. City of Corvallis*, 55 Or LUBA 482 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government’s interpretation of its code provisions governing appeals to

require co-appellants to either submit the same appeal form and sign in the spaces provided on that form for “appellant” and “co-appellant,” or file separate appeal fees, is reasonable. *Yantis v. Josephine County*, 55 Or LUBA 619 (2008).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The general grant of authority in ORS 215.422(1)(c) does not impose a specific limit on local land use appeal fees, but ORS 215.416(11)(b) imposes a specific \$250 dollar limit on local appeal fees that counties can charge for local appeal of a permit decision that is rendered initially without a hearing. For such appeals, the \$250 dollar limit applies in place of the higher appeal fee that might otherwise be permissible under ORS 215.422(1)(c). *Meadow Neighborhood Assoc. v. Washington County*, 54 Or LUBA 124 (2007).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government errs in finding that an appeal of a denial of a sign permit involves only a “request for interpretation” rather than a “permit” to which the provisions of ORS 227.175(10) applied to require a *de novo* hearing that is not limited to issues raised by the appellant in an appeal statement. *Lamar Advertising Company v. City of Eugene*, 54 Or LUBA 295 (2007).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. 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).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A city errs in dismissing as moot a local appeal of a decision revoking a conditional use permit after the permit holder informed the city that he no longer owns the subject property. While the revocation decision may or may not be enforceable against the new owner, dismissal of the local appeal leaves the revocation decision in effect. *Merton v. City of Jefferson*, 53 Or LUBA 559 (2007).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Absent a local provision or other authority that limits standing to appeal a permit revocation decision only to current owners of the property to which the permit applies, a city errs in dismissing the permit holder’s local appeal of a permit revocation decision for lack of standing, solely because the permit holder informs the city that the property has been sold to a third party. *Merton v. City of Jefferson*, 53 Or LUBA 559 (2007).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the standard to refer a permit revocation request to a hearing is whether the petitioner has shown a “reasonable suspicion” to believe that a misrepresentation in the permit application was the “sole basis” for approval, because the ultimate standard (sole basis for

approval) is so difficult to satisfy, application of the threshold “reasonable suspicion” standard to that ultimate standard makes it relatively difficult to obtain referral of a revocation request to a hearing. *Emami v. City of Lake Oswego*, 52 Or LUBA 18 (2006).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where no statute or other authority provides otherwise, a code provision that limits local appeal issues to those issues raised in the notice of local appeal also limits the issues that can be raised before LUBA. *Ray v. Josephine County*, 51 Or LUBA 443 (2006).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local appeal deadline is a mandatory standard, and planning staff provides erroneous information to petitioner regarding the local appeal deadline, petitioner’s reliance on that information does not excuse petitioner’s untimely filing of the local appeal. *Jacobsen v. City of Winston*, 51 Or LUBA 602 (2006).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government’s rejection of a local appeal may be a land use decision even if the underlying decision sought to be appealed would not itself be a land use decision. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government correctly interprets its zoning code only to allow local appeals of decisions that will constitute land use decisions when they become final. *Wells v. Yamhill County*, 51 Or LUBA 659 (2006).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. LUBA will not review an assignment of error alleging that a county improperly retained part of the petitioner’s local appeal fee, where the county’s alleged actions in retaining the fee postdate the challenged decision before LUBA and are embodied in a different decision that is not before LUBA. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local government’s code makes certain local appeal requirements “jurisdictional,” or mandatory prerequisites to filing or maintaining an appeal, such code provisions authorize planning staff to reject or dismiss a local appeal that does not satisfy those requirements. *Siuslaw Rod and Gun Club v. City of Florence*, 48 Or LUBA 163 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local government code provides that failures to comply with three specified appeal requirements are “jurisdictional,” *i.e.*, will result in rejection or dismissal of the local appeal, but does not so provide with respect to other appeal requirements, the authority of planning staff to reject or dismiss the appeal for failure to comply with such “non-jurisdictional” appeal requirements is limited. *Siuslaw Rod and Gun Club v. City of Florence*, 48 Or LUBA 163 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local government code provides that the planning director will review “petitions” for missing information or fees, and give the petitioner written notice of the missing information or fees and an opportunity to cure, the planning director lacks authority to summarily dismiss a petition for local appeal for failure to provide required information or to pay required fees, without providing written notice and an opportunity to cure. *Siuslaw Rod and Gun Club v. City of Florence*, 48 Or LUBA 163 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code appeal requirement merely requires that the local appellant include a “statement of interest of the person seeking review,” the local government may not dismiss the local appeal because the local appellant does not demonstrate in the notice of local appeal that the appellant is “adversely affected or aggrieved.” If a local appellant is going to be required to demonstrate he or she is adversely affected in the local notice of appeal, and is not going to be allowed an opportunity to make that demonstration at the statutorily required *de novo* hearing, the local code must make that requirement clear. *Crowley v. City of Bandon*, 48 Or LUBA 545 (2005).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code requires that a local appellant state “specific grounds” for review, and the local appellant specifies some grounds for review, the local government errs in dismissing the local appeal. If the local government finds the stated grounds for review do not provide a basis for sustaining the appeal, it may deny the appeal, but it must first provide the statutorily required *de novo* appeal hearing. *Crowley v. City of Bandon*, 48 Or LUBA 545 (2005).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. By statute, an opportunity for a *de novo* appeal must be provided where a permit decision is made without first providing a hearing. ORS 227.175(10)(a)(E)(ii) provides that at the required *de novo* hearing “[t]he presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal[.]” Under these statutes it is highly unlikely that the legislature could have intended that a city may dismiss a local appeal, without first providing a *de novo* hearing, simply because the appellant’s local notice of appeal did not sufficiently identify the issues to be asserted on appeal. *Crowley v. City of Bandon*, 48 Or LUBA 545 (2005).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local government regulation requires the local appellate body to review the record of the decision under appeal and additionally consider any new evidence submitted into the record at the appeal hearing, the record of decision on appeal becomes part of the appellate body’s record as a matter of law. *Papadopoulos v. Benton County*, 48 Or LUBA 634 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The logic of the exhaustion requirement at ORS 197.825(2)(a) dictates that, where the local government determines that the petitioner failed to perfect an otherwise available local remedy, LUBA has no jurisdiction over an appeal of the underlying decision. Under such circumstances, petitioner’s only recourse is to appeal the decision rejecting the local appeal and

demonstrate to LUBA that the local government erred in determining that petitioner failed to perfect the local appeal. *Siuslaw Rod and Gun Club v. City of Florence*, 47 Or LUBA 615 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where two pages of legal argument are attached to a local appellant’s jurisdictional statement of the grounds for local appeal, and the county refuses to consider those two pages simply because they are unsigned and include a non-appellant’s fax header, the county commits error. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where local appellants (1) sign a local appeal form, (2) indicate “see attached” in the part of the appeal form where the grounds for the local appeal are to be specified, and (3) attach two pages that identify alleged legal errors in the decision, it is error for the county to refuse to consider the attached pages simply because there is no signature at the bottom of those pages and the pages include the fax header of a non-appellant. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. LUBA will not assume a county rejected a local appeal, where petitioner and the county dispute whether the county rejected petitioner’s attempted local appeal or whether petitioner voluntarily withdrew his local appeal to correct identified deficiencies and later failed to refile the local appeal, and the record does not establish that the county rejected the local appeal. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a county’s local appeal form invites five local appellants to utilize a single local appeal form and attach documents in support of the appeal to that local appeal form, the county may not impose additional signature and express incorporation requirements that are not reflected in the form to limit the right of individual local appellants to rely on attached documents to support their local appeal. *Burke v. Crook County*, 46 Or LUBA 413 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Once an administrative permit approval decision is appealed locally, ORS 227.175(10)(a)(A) and (D) require that a city provide a *de novo* appeal and a decision on that appeal. A city fails to provide the statutorily required *de novo* appeal when it relies on a committee rule that is not part of the zoning ordinance and was not adopted by the city council to decide that a 2-2 vote of the committee results in denial of the appeal. *Hayden Island, Ltd. v. City of Portland*, 46 Or LUBA 439 (2004).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a land use decision is rendered without a hearing and parties belatedly learn of the decision, ORS 197.830(3) provides a right of direct appeal to LUBA except where petitioners also seek and are granted a local appeal. *Warf v. Coos County*, 42 Or LUBA 84 (2002).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. ORS 197.830(4) applies where a local government is attempting to render a permit

decision without a prior hearing pursuant to ORS 215.416(11) or 227.175(10). ORS 197.830(3) applies in all other cases where a local government adopts a decision without providing a hearing, including where the local government mistakenly believes its decision is not a discretionary “permit” decision and for that reason does not provide the required notice and opportunity for a local appeal. *Warf v. Coos County*, 42 Or LUBA 84 (2002).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a code criterion can be interpreted to impermissibly shift the burden of proof from an applicant to an appellant in a local land use appeal, but it is reasonably clear that the county did not apply the code criterion to shift the burden in that manner, petitioner’s assignment of error that the county improperly shifted the burden of proof will be denied. *Oregon Natural Desert Assoc. v. Grant County*, 42 Or LUBA 9 (2002).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a board of commissioners declares that it is biased, recuses itself from an appeal of a hearings officer’s land use decision, and designates a hearings officer’s decision as the county’s final decision, the hearings officer’s decision may be appealed to LUBA, notwithstanding local code provisions that grant a party a right to a local appeal before the board of commissioners. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The right to an impartial tribunal will supersede petitioners’ right to a local appeal, where denying the local appeal will not deprive petitioners of an opportunity to have a local decision reviewed on the merits. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Local appeal provisions that require an appellant to specify issues in its notice of appeal to the city council have a preclusive effect on subsequent review only where the council recognizes and imposes that effect. Where the governing body appears to view petitioners’ failure to specify an issue in the notice of appeal as giving the governing body the option to address or reject the issue, and the issue is then addressed, LUBA will not presume that the governing body assigned preclusive effect to petitioners’ violation of the issue-specification provision. *Pearl District Neigh. Assoc. v. City of Portland*, 40 Or LUBA 436 (2001).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A determination that there is no further local appeal under a local government’s code is a land use decision that may be challenged at LUBA. *Robinson v. City of Silverton*, 39 Or LUBA 792 (2001).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. LUBA will not dismiss an appeal for failure to exhaust local administrative remedies where the local code provisions regarding appeals are ambiguous and petitioner followed a directive in a planning commission notice of decision that appeals from its decision would be directly to LUBA. *Mountain West Investment v. City of Silverton*, 39 Or LUBA 788 (2001).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local notice of appeal is inadequate to preserve a specific issue on appeal when the notice of appeal does not identify that issue, and the local ordinance requires that appeal issues be raised in the notice of appeal. *Hausam v. City of Salem*, 39 Or LUBA 51 (2000).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the city council is legally obligated to review the planning commission's legislative recommendation to adopt proposed land use regulations, petitioner is not required to perform the redundant task of appealing the planning commission's decision to the city council. *Home Depot, Inc. v. City of Beaverton*, 37 Or LUBA 1020 (2000).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the city council's review of a planning commission decision is limited to whether the lower decision is supported by substantial evidence, and petitioner argues that the city council exceeded its review authority by reweighing the evidence, LUBA will deny the assignment of error where it concludes that the city council understood and applied the substantial evidence standard correctly. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government is not estopped from following the appeal procedure that is required by its code where it is unclear whether county staff (1) made any false statements to the applicant concerning appeal procedures, (2) were aware that any of their representations were incorrect, or (3) intended that the applicant take any action based on such representations; and the applicant does not identify how she was induced to act differently by the county's representations. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a county code provision requires a *de novo* review and a hearings officer's decision includes language that suggests the hearings officer erroneously believed a *de novo* review was not required, there is no basis for reversal or remand where record makes it clear that the hearings officer nevertheless conducted the requisite *de novo* review. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A notice of local appeal is inadequate to raise an issue concerning a particular code provision where the code provision is not identified in the notice of local appeal. The fact that the notice uses some of the same words that are used in a document in the record that addresses that code criterion is not sufficient, in itself, to raise an issue concerning the code criterion. *Johns v. City of Lincoln City*, 35 Or LUBA 421 (1999).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where no code provision prohibits a planning commission from raising an issue on its own motion during a local appeal hearing and petitioner was aware of the issue prior to the hearing, the planning commission may raise the issue on its own motion. *Johns v. City of Lincoln City*, 35 Or LUBA 421 (1999).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The applicant retains the burden of proof throughout the local process to demonstrate compliance with all applicable approval criteria. *Rochlin v. Multnomah County*, 35 Or LUBA 333 (1998).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local notice of appeal is sufficient to invoke the issue of compliance with a code criterion, the local notice of appeal is not required to also describe the precise ways in which the code criterion is allegedly violated. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local government decision maker commits a procedural error by failing to require a transcript of the proceedings below, but petitioner fails to demonstrate that failure prejudiced his substantial rights, the procedural error provides no basis for remand. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A city council's procedural error in failing to require preparation of a transcript of proceedings on remand before the planning commission cannot have any bearing on whether the challenged decision is supported by substantial evidence, where the proceedings on remand were on the record. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A county does not commit a procedural error where local ordinances allow the county to call up a hearings officer decision and refer it back for reconsideration without first providing an opportunity for a hearing. A party is not prejudiced by such a summary procedure where it is provided an opportunity to appeal the hearings officer's decision on reconsideration. *R/C Pilots Association v. Marion County*, 33 Or LUBA 532 (1997).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. 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).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Because petitioners failed to demonstrate the county's announcement of a higher appeal fee two hours before the deadline for filing a local appeal precluded them from exercising their local appeal rights, they failed to show they exhausted their local administrative remedies, and LUBA must dismiss. *Westall v. Polk County*, 32 Or LUBA 443 (1997).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A petitioner is not required to go through the process of appealing from the county

planning commission to the county board of commissioners to obtain a review the board of commissioners is already required by statute to give. *Young v. Douglas County*, 31 Or LUBA 545 (1996).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A county is not estopped from applying a provision providing that appeals to the board of commissioners are conducted on the record by a county employee’s representation that the county has not consistently applied the provision. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. If a city hearings officer issues an amended decision and the amendments are so integrated into the decision that a page-by-page review is required to locate them, petitioners may file a local appeal of the entire amended decision within the period allowed by local ordinance. *Wilmington Neighbors v. City of Bend*, 30 Or LUBA 415 (1996).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When the city council did not attempt to limit the issues addressed by petitioner at a city council hearing on appeal from the planning commission, petitioner may raise at LUBA any issues raised before the city council. *Thompson v. City of St. Helens*, 30 Or LUBA 415 (1996).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government must make clear prior to the commencement of a local appeal period that a local appeal is available or it cannot contend that a petitioner who fails to appeal locally has not exhausted all local remedies. *New v. Clackamas County*, 30 Or LUBA 453 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When county ordinance is unclear and county decision maker’s remarks were self-contradictory and confusing as to whether a local appeal was available, a local appeal was not an available local remedy that petitioner was required to exhaust prior to appealing to LUBA. *New v. Clackamas County*, 30 Or LUBA 453 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where two separate ordinance provisions arguably establish two different deadlines for the filing of a local appeal, the more general ordinance provision is controlled by the more specific provision. *Sparks v. City of Bandon*, 30 Or LUBA 69 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Statute authorizing counties to establish local appeal fees and setting standards for the amount of fees does not require the county to evaluate each appeal to determine whether an appeal fee established by ordinance meets the statutory standard. ORS 215.422(1)(c). *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. An appeal to LUBA challenging the amount of a local appeal fee established by

ordinance adopted under ORS 215.422(1)(c) amounts to an impermissible collateral attack on the fee ordinance. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local regulation allows certain development applicants to apply for a waiver of their application fees, no interpretation of that regulation would allow a development opponent to qualify for a waiver of appeal fees, and to remand for such findings would be devoid of substantive purpose. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. In the absence of county regulations under which petitioner could be granted an appeal fee waiver, the county was not required to accept petitioner’s appeal without payment of required fees notwithstanding that the appeal was accompanied by a request for a waiver of fees. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where petitioner challenges the method of calculating appeal fees as provided in the county’s regulations and not the accuracy of the calculation or conformity with the regulations, the challenge constitutes an impermissible collateral attack on the regulation. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Failure to waive a local appeal fee violates no federal constitutional rights of due process or access to the courts; ORS 215.422(1)(c) does not create a right to a free appeal. *Cummings v. Tillamook County*, 30 Or LUBA 17 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Under ORS 215.422(1)(a), a county is not required to accept a local appeal if it is filed after the deadline stated in the county ordinance. *Hick v. Marion County*, 30 Or LUBA 1 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When the city zoning ordinance makes final approval of a tentative subdivision plan a limited land use decision appealable to LUBA, a decision applying the ordinance is not a “tentative decision” that can be appealed locally at a hearing pursuant to ORS 227.175(10). *Azevedo v. City of Albany*, 29 Or LUBA 516 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The purpose of ORS 197.825(2)(a) is to assure a local government decision is reviewed by the highest-level local decision-making body that the local code makes available, and a party’s failure to exercise a right to a local appeal is grounds for dismissal of that party’s appeal to LUBA. *Shaffer v. City of Salem*, 29 Or LUBA 479 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A party’s fear that a local appeal would be futile does not excuse the party’s failure

to make the appeal, for purposes of determining whether local remedies have been exhausted. *Shaffer v. City of Salem*, 29 Or LUBA 479 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When the city planning manager rejects a local appeal without a hearing, adversely affecting a party’s interests, and the local zoning ordinance establishes a procedure for appeals to the city council of land use decisions for which the ordinance provides no right to notice of a hearing, the party has an unqualified right to appeal the planning manager’s decision to the city council. *Shaffer v. City of Salem*, 29 Or LUBA 479 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When petitioners fail to satisfy the county’s jurisdictional appeal provision requiring local appellants to state the basis of their standing, the county is not at liberty to take notice of petitioners’ standing or to excuse their failure satisfy the requirement as “harmless error.” *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. When a county zoning ordinance provision states that a local appeal will be dismissed if the requirements of the provision are not satisfied, the provision is jurisdictional. An appellant’s failure to satisfy a jurisdictional requirement results in dismissal of the appeal. *Tipton v. Coos County*, 29 Or LUBA 474 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. LUBA will defer to the local governing body’s interpretation that under its code provisions governing permits for the demolition of historic properties, the planning director’s determination regarding compliance with pre-application requirements is not reviewable by the historic review board or appealable to the governing body. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Although ORS 197.825(2)(a) requires that local appeals be exhausted, the fact that the local code may limit the scope of review of a local appellate body in considering a local appeal does not similarly limit LUBA’s scope of review. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local governing body improperly accepts potentially relevant new evidence while conducting an on-the-record review of a lower level decision maker’s decision, and does not provide petitioners an opportunity to rebut that new evidence, petitioners’ substantial rights are prejudiced, and the local government’s decision must be remanded. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A hearings officer’s decision to approve a zone change and planned unit development is a land use decision. Therefore, a planning department decision not to accept petitioner’s local appeal of that decision is not subject to the ORS 197.015(10)(b)(A) exception to

LUBA's jurisdiction for "ministerial" decisions. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local government may interpret relevant code provisions to require that either (1) the required appeal fee, or (2) a fee waiver previously approved by the planning director, be included in a local appeal when it is filed. In such circumstance, it is a local appellant's responsibility to obtain approval of a fee waiver request prior to submitting an appeal. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Petitioner's contention that the fee charged for a local appeal violates ORS 227.180(1)(c) must fail where there is no evidence in the record establishing that the local appeal fee is unreasonable or that it exceeds the average or actual cost of such an appeal, and petitioner does not move for an evidentiary hearing to submit such evidence. *Ramsey v. City of Portland*, 29 Or LUBA 139 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where petitioner appeals a decision by a local governing body not to accept petitioner's appeal of a planning commission decision, LUBA's scope of review is limited to whether the governing body correctly decided not to accept petitioner's local appeal. LUBA will not review the merits of the planning commission decision. *Cummings v. Tillamook County*, 29 Or LUBA 550 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The city council must provide an appeal of a planning commission decision to approve a building permit, regardless of whether the planning commission was the proper body to approve a building permit, where the planning commission in fact approves the building permit and the zoning code provides that "any action of the planning commission pursuant to [the zoning code] may be appealed to the city council." *Mills v. City of Yachats*, 29 Or LUBA 1 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The exception to LUBA's jurisdiction in ORS 197.015(10)(b) does not apply where applicable local code standards concerning the timely filing of a local appeal require interpretation and the exercise of legal judgment. *Hick v. Marion County*, 28 Or LUBA 782 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local governing body is authorized to limit issues on appeal to issues raised before the planning commission but the local government failed to keep an adequate record of the planning commission proceedings, and LUBA cannot determine whether the governing body correctly limited its review to two particular issues, LUBA will remand the governing body's decision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local governing body may interpret a code requirement that "[b]efore granting any appeal, [the governing body] shall make findings of fact, setting forth wherein the planning

commission’s findings were in error,” to allow the governing body to substitute its judgment for that of the planning commission on questions of fact or law, and to find the planning commission erred because it relied on different evidence or reached a different conclusion than did the governing body. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Although a local government is free to adopt local code provisions narrowing the scope of review in local appeal proceedings, such local code provisions do not have the legal effect of limiting LUBA’s scope of review. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a planning director exercises discretion in applying the local code and correctly rejecting an attempted local appeal as untimely filed, the decision to reject the attempted local appeal is a land use decision, and the proper disposition of a LUBA appeal challenging that decision is to affirm the decision rather than to dismiss the LUBA appeal. *Kevedy, Inc. v. City of Portland*, 28 Or LUBA 227 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code explicitly provides that a tie vote of the decision making body means the appealed decision of a lower level decision maker stands, the general rule that a tie vote of a decision maker amounts to a failure of the applicant to carry the burden of proof does not apply. *Derry v. Douglas County*, 28 Or LUBA 212 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code neither expressly allows a local appellant to withdraw his appeal of a planning commission decision to the governing body, nor expressly provides the governing body retains jurisdiction over such an appeal once filed, a local government acts within its interpretive discretion under ORS 197.829 in concluding that it retains jurisdiction over such an appeal notwithstanding the local appellant’s attempt unilaterally to withdraw the appeal. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The record of a challenged local governing body decision includes the record of the planning commission proceeding on the subject application if either (1) the planning commission record was actually placed before the governing body, or (2) local code provisions require that the planning commission record be made part of the record before the governing body as a matter of law. *Salem Golf Club v. City of Salem*, 27 Or LUBA 715 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a county code allows a “permit” decision to be made without a hearing, but provides for a local appeal only by the permit applicant, ORS 215.416(11) nevertheless requires the county to provide an opportunity to obtain a hearing through an appeal to persons who would have had a right to notice if a hearing had been scheduled and who are adversely affected or aggrieved by the decision. In these circumstances, a county does not err by allowing such persons to pursue a local appeal. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code makes payment of a local appeal fee, “as specified by the Planning Director,” a jurisdictional requirement, so long as the local appellant pays the fee specified by the director there is no jurisdictional defect, regardless of whether the director made a mistake in calculating the amount of the appeal fee. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code provides for an initial decision on a permit application without a hearing, subject to obtaining a hearing through a *de novo* local appeal, regardless of a code requirement that the bases for appeal be specified in the local notice of appeal, the local appellant is entitled to raise any relevant issue during the local appeal. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Even after an initial local government decision is made approving a permit application, and a local appeal is filed, the applicant has the burden of establishing that the proposal satisfies relevant approval standards. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Although a local governing body may be authorized to conduct a *de novo* review of a development application, its refusal to allow petitioner to submit the planning commission decision and staff report on the subject application into the record as relevant evidence prejudices petitioner’s substantial right to submit evidence. *Furler v. Curry County*, 27 Or LUBA 497 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code explicitly establishes a right to a local appeal only for decisions made pursuant to certain procedures set out in the code, a the local government’s interpretation that no local appeal is available if the decision sought to be appealed was not made through those procedures is not clearly wrong, and LUBA will defer to it. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a permit applicant receives a public hearing and decision from a local government and, under the local code, an appeal to the governing body may be decided without further public hearing, the governing body commits no error by denying the applicant’s appeal at a public meeting without further notice or public hearing. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code provides a possibility of, but not a right to, a second public hearing on appeal of a hearings officer’s decision, the appeal may be denied without providing an additional public hearing, and the code need not include standards for determining whether to grant an additional public hearing. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. 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).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code makes filing a transcript of the initial local hearing an essential part of perfecting a local appeal, and contains no provision providing procedures or standards for granting an extension of time to file such transcript, LUBA will affirm a local government’s decision to dismiss a local appeal because the transcript was not filed within the required time. *Bjerk v. Deschutes County*, 26 Or LUBA 439 (1994).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. LUBA’s scope of review is determined by ORS 197.835 and 197.763(1). That local government regulations may allow or require the local governing body’s scope of review to be narrowed during local appeals does not similarly narrow LUBA’s scope of review. *Cummings v. Tillamook County*, 26 Or LUBA 139 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Although a local appellant may have the burden under local code provisions of demonstrating error in a lower local decision maker’s decision, the *applicant* for permit approval retains the burden of proof concerning compliance with all applicable approval criteria throughout the local appeals process. *Mohler v. Josephine County*, 26 Or LUBA 1 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The failure to initiate a timely local rehearing process is *not* a procedural defect which LUBA may overlook if no prejudice is shown. *Rochlin v. Multnomah County*, 25 Or LUBA 637 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. An interpretation of local code provisions, that the local appeal time runs from the date the decision is mailed to parties, is not clearly wrong, and LUBA will defer to it. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code states that “failure to comply with this subsection shall be a jurisdictional defect,” and a local appellant fails to establish compliance with that subsection, the local government is free to interpret its code to require dismissal of the local appeal, and LUBA will defer to that interpretation. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code does not either specifically prohibit or allow the filing of appeals and appeal fees by facsimile, it is not “clearly wrong” for the local government to determine that a local appeal is not properly filed under the local code where both appeal fees and

the appeal document itself are filed by facsimile. *DLCD v. Wasco County*, 25 Or LUBA 529 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A permit approval condition that amendments to the approved master plan must be approved by the planning department is not inconsistent with, and does not eliminate, the right established by the local code to appeal a decision by the planning director on such an administrative action to the planning commission. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where one code provision requires a local government’s notice of decision to identify the local appeal fee, and another provision states that failure to pay the proper local appeal fee prior to expiration of the period for filing an appeal constitutes a “jurisdictional” defect, the local government may interpret the two code provisions together to mean that the period for filing an appeal does not begin to run until the required notice of decision, identifying the proper appeal fee, is provided to the appealing party. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where parties object that petitioner failed to properly perfect its local appeal, but the local government nevertheless allows the local appeal, petitioner satisfies the requirement that it exhaust available administrative remedies, as ORS 197.825(2)(a) requires. Although the local government may have committed reversible error in considering the local appeal, LUBA has jurisdiction to review the local government’s final decision. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where an applicant neither files its own appeal of the local governing body’s decision granting the requested development approval nor files a cross-petition for review in the LUBA appeal filed by the opponents, the question of whether a local appeal by the opponents should have been dismissed by the governing body is not properly presented to LUBA. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code provides that a conditional use permit expires one year after it is approved, unless construction occurs demonstrating the CUP has been “used,” and where the code also prohibits the local government from issuing building or other permits required for construction until appeals have been “completed,” the running of the one-year period for “using” a conditional use permit is tolled during those periods of time when a building or other permit necessary to “use” the conditional use permit cannot properly be issued due to an appeal. *Weeks v. City of Tillamook*, 24 Or LUBA 155 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local planning official refuses to accept petitioner’s local appeal of a hearings officer’s decision on a permit application, but another local appeal of the same decision is processed, the refusal is either (1) a final land use decision, in which case a NITA must be timely

filed with LUBA; or (2) part of the ongoing local proceedings on the subject application, in which case in an appeal of the local government's final decision, LUBA can only consider issues concerning the refusal to accept petitioner's appeal if those issues were raised below. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code provision clearly requires that in the event a decision maker's initial decision is modified by a subsequent decision after an appeal of the initial decision is filed, the appellant must file an appeal of the modified decision; an appellant may not simply rely upon the previously filed appeal of the initial decision. *Breivogel v. Washington County*, 24 Or LUBA 63 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where neither the local code nor any statute creates a "duty" on the part of a local government to advise local appellants of local appeal requirements stated in the local code itself, that the county provided petitioners with a detailed information sheet concerning local appeals which did not indicate the existence of the county's "jurisdictional" requirement that a local appeal document be signed, provides no basis for reversal or remand of the challenged decision. *Breivogel v. Washington County*, 24 Or LUBA 63 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Even though petitioners may have complied with the "spirit" of a local jurisdictional signature requirement by having identified the local appellants in the appeal document, LUBA may not disregard petitioners' failure to comply with the jurisdictional signature requirement. *Breivogel v. Washington County*, 24 Or LUBA 63 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where local code provisions governing appeals state the governing body may "affirm, reverse or modify in whole or in part, any decision * * * of the planning commission," the code does *not* limit the governing body's scope of review to issues raised in the notice of appeal of a planning commission decision. *Horizon Construction, Inc. v. City of Newberg*, 23 Or LUBA 159 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. A local code jurisdictional requirement that the local appeal document, which under the code includes the required appeal fee, be "signed" but which does not state *where* such signature must be located, is satisfied by the local appellant's signature on his personal check submitted as the filing fee. *Breivogel v. Washington County*, 23 Or LUBA 143 (1992).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. In a local appeal of an initial local decision maker's decision approving an application for land use approval, the applicant retains the burden of proof. However, the opponents of the application also have a burden in the local appeal, in that unless they are able to convince the appellate decision maker that the initial decision maker erred, the appellate decision maker may affirm that earlier decision or adopt it as its own. *Coonse v. Crook County*, 22 Or LUBA 138 (1991).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Persons within sight and sound of a development proposal are presumed to be adversely affected by it. *Kamppi v. City of Salem*, 21 Or LUBA 498 (1991).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Even where the local code provides for the type of *de novo* review in which the governing body develops its own evidentiary record and renders its decision based on that new record, the code may require that the planning commission record be included as part of the evidentiary record before the governing body in its *de novo* review proceeding. *Union Gospel Ministries*, 21 Or LUBA 580 (1991).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code gives “aggrieved parties” the right to appeal a decision, but does not require notice and a hearing prior to making that decision, petitioners were not given an opportunity to become “aggrieved parties” and therefore had no local remedies to exhaust. *Citizens Concerned v. City of Sherwood*, 21 Or LUBA 515 (1991).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code vests total discretion to refuse to reconsider a decision with the local decision maker, it is not error for the decision maker to refuse to reconsider a disputed decision. *West v. Clackamas County*, 20 Or LUBA 433 (1991).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. If the local code states that certain provisions are applicable where the governing body assumes jurisdiction, on its own motion, to review a decision of a lower body, those provisions do not apply to appeals of such decisions initiated by persons other than the governing body. *Adams v. Jackson County*, 20 Or LUBA 398 (1991).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. In a *de novo* local appeal of an inferior tribunal’s decision granting land use approval, the applicant retains its burden of proof before the appellate tribunal. *Strawn v. City of Albany*, 20 Or LUBA 344 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local government provides for *de novo* review of an inferior tribunal’s decision, the applicant must carry the burden of proof before the appellate tribunal. If the appellate tribunal is unable to agree on a decision, the applicant is deemed to have failed to carry its burden of proof, whether or not the applicant prevailed before the inferior tribunal. *Strawn v. City of Albany*, 20 Or LUBA 344 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where a local code provides that (1) planning commission decisions become final 10 days after they are filed with the clerk, *unless* the governing body orders review; and (2) a governing body order for review must be made at the governing body’s next meeting concerning land use matters; then a planning commission decision is not final if the governing body adopts an

order for review at such meeting, even if the order is adopted more than 10 days after the planning commission's decision was filed. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the county charter and code grant the county administrator broad administrative powers, but do not explicitly grant the county administrator authority to determine whether decisions are appealable under the county code, LUBA will accept the county's interpretation of the charter and code as granting the administrator such authority, so long as that interpretation is not inconsistent with the charter and code. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The applicant for land use approval has the burden of proof that applicable approval standards are met; an opponent is not obligated to prove such standards are not met. Local code provisions which require that an appellant identify the reasons for an appeal, and alter the order in which parties present argument and evidence, do not impermissibly alter the burden of proof regarding compliance with applicable approval standards. *1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where petitioners' local notice of review specifically identifies as the subject of the appeal a building permit (the only local government decision concerning the proposed use of which petitioners were aware), but also indicated an intent to request review of any local decision authorizing the proposed use, LUBA will interpret petitioners' local notice of review to appeal both the building permit and an earlier zoning clearance decision required for issuance of the building permit. *Komning v. Grant County*, 20 Or LUBA 481 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code states that a person may appeal to the planning commission from "a decision" made pursuant to the code by the planning director, *all* decisions made by the planning director, whether ministerial or discretionary, are appealable to the planning commission. *Komning v. Grant County*, 20 Or LUBA 481 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where petitioners were entitled under ORS 215.416(11) to written notice of a local permit decision made without a hearing, and such written notice was not given, the time for filing petitioners' local appeal did not begin to run and, therefore, their subsequent appeal to the planning commission was timely filed. *Komning v. Grant County*, 20 Or LUBA 481 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where the local code requires that the governing body remand an appeal to the planning commission if evidence is presented which could not have been presented to the planning commission, and parties offer to the governing body relevant evidence that the planning commission refused to consider, it is error for the governing body not to remand the appeal to the

planning commission to consider such evidence. *Bloomer v. Baker County*, 19 Or LUBA 319 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. The local governing body has the *authority* to conduct either an evidentiary or on the record *de novo* review of planning commission decisions in circumstances where local ordinances are silent on the scope of review. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).

25.4.7 Local Government Procedures – Compliance with Local Ordinances/Regs – Appeal Requirements. Where petitioner was not given notice of the city council’s *de novo* scope of review in appeals of planning commission decisions, but the city council continued its hearing to provide an opportunity for parties to submit evidence, petitioner’s substantial rights were not prejudiced by the procedural error. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990).