25.6.1 Local Government Procedures – Hearings – Generally. While ORS 197.763(6)(a) does not require "magic words" for a party to exercise their right to have either the record held open or the hearing continued, where the local government provides notice of that right at the beginning of the hearing, a process question about whether a request for a continuance or to keep the record open can be made is not sufficient to exercise that right. *Norman v. Washington County*, 80 Or LUBA 500 (2019).

25.6.1 Local Government Procedures – Hearings – Generally. Any party may request an opportunity under ORS 197.763(6)(c) to respond to "additional written evidence" that was submitted during an open record period prior to the conclusion of the initial evidentiary hearing. But that response must be limited to responding to the "additional written evidence" that is submitted during the open record period. *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

25.6.1 Local Government Procedures – Hearings – Generally. Where a party's evidentiary response to "additional written evidence" that was submitted during the initial open record period at the conclusion of the initial evidentiary hearing pursuant to ORS 197.763(6)(c) includes additional evidence that goes beyond responding to that "additional written evidence" that was submitted during the initial open record period, a local government must either reject the additional evidence or give all parties an opportunity to rebut the additional evidence. *Grahn v. City of Yamhill*, 76 Or LUBA 258 (2017).

25.6.1 Local Government Procedures – Hearings – Generally. Under ORS 197.763(6)(a) through (c), prior to the conclusion of the initial evidentiary hearing any party may request an opportunity to present additional evidence. In that event, the hearing body must either continue the hearing or leave the record open to receive the additional evidence, and failure to do so is a procedural error. However, where the party making the request appeals and is given a de novo hearing before the local appellate body at which it is allowed to submit additional evidence, the hearings body's error did not result in prejudice to the party's substantial rights and therefore provides no basis for LUBA to remand. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

25.6.1 Local Government Procedures – Hearings – Generally. The requirements for continuances and open record periods in ORS 197.763(6)(a), (b) and (c) only apply to the initial evidentiary hearing and do not apply to subsequently continued hearings or open record periods. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

25.6.1 Local Government Procedures – Hearings – Generally. A local government does not err by granting additional seven-day open record periods following the conclusion of an initial seven-day open record period, where the local government's code specifically authorizes additional continuances and open record periods. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

25.6.1 Local Government Procedures – Hearings – Generally. Where a local government accepts opponent evidence that goes beyond the stated scope of a seven-day open record period, but grants the applicant final argument and evidentiary rebuttal, the applicant's substantial rights are not prejudiced and the local government's error in accepting the opponent evidence does not provide a basis for remand. *Warren v. Josephine County*, 67 Or LUBA 74 (2013).

25.6.1 Local Government Procedures – Hearings – Generally. Where petitioners' were allowed to present evidence during the hearings on a decision that is appealed to LUBA and remanded, the city need not allow petitioners a second opportunity to enhance their evidentiary presentation following LUBA's remand where neither the city's regulations nor LUBA's remand require a further evidentiary hearing. *Rosenzweig v. City of McMinnville,* 66 Or LUBA 164 (2012).

25.6.1 Local Government Procedures – Hearings – Generally. Parties to a land use proceeding have the right to review and respond to substantive changes in the application that occur during the proceedings. If such a change occurs after the close of the record or hearing, the local government may be required to re-open the record to allow other parties a reasonable opportunity to submit responsive testimony and evidence. Failure to do so can be procedural error and a basis for remand, if the petitioners demonstrate the error prejudiced their substantial rights. *Conte v. City of Eugene,* 66 Or LUBA 334 (2012).

25.6.1 Local Government Procedures – Hearings – Generally. ORS 197.763 sets out the minimum procedures the county is required to follow in the conduct of quasi-judicial land use hearings under ORS chapter 215, and ORS 197.763 does not require that the county provide an applicant with prior copies or notice of the evidence that the county submits at the initial evidentiary hearing on a permit application. *Emmert v. Clackamas County*, 65 Or LUBA 1 (2012).

25.6.1 Local Government Procedures – Hearings – Generally. Absent any allegation that the city council is required by its development code, other provisions of the city's code or charter, or state law to adhere to Robert's Rules of Order in voting on matters before it, failure to adhere to Robert's Rules does not amount to a procedural error under ORS 197.835(9)(a)(B). *Jones v. City of Grants Pass*, 64 Or LUBA 103 (2011).

25.6.1 Local Government Procedures – Hearings – Generally. A county's alleged failure to process a permit application under "Type II" procedures, which provide for a *de novo* hearing on appeal of an administrative decision, does not provide a basis for remand, where the county initially processed the application under "Type I" procedures that provide for a hearing limited to the issues raised in the appeal petition, but in fact the county provided a *de novo* hearing on the appeal not limited to the issues raised in the appeal petition. *Jensen Properties v. Washington County*, 61 Or LUBA 155 (2010).

25.6.1 Local Government Procedures – Hearings – Generally. When a local code provision limits participation at a public hearing on remand from LUBA to persons who obtained "party" status at the initial hearing and excludes persons who had "witness" status, the local government may properly prevent persons who were "witnesses" at the initial hearing from participating on remand. *Wetherell v. Douglas County,* 60 Or LUBA 131 (2009).

25.6.1 Local Government Procedures – Hearings – Generally. 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).

25.6.1 Local Government Procedures – Hearings – Generally. Oral statements made by a decision maker in a public hearing that may conflict with a later vote do not provide a basis for reversal or remand. LUBA reviews the written findings made in support of a decision not statements made during public hearings. *Sommer v. Josephine County*, 52 Or LUBA 209 (2006).

25.6.1 Local Government Procedures – Hearings – Generally. A member of the governing body, who was absent from the meeting at which a land use application was orally approved, but who otherwise participated throughout the local proceedings, may properly sign the final written decision. *Sommer v. Josephine County*, 49 Or LUBA 134 (2005).

25.6.1 Local Government Procedures – Hearings – Generally. A city council does not err in denying an applicant's request for a *de novo* appeal hearing before the city council, where the city code provides that local appeals are limited to the record before the planning commission and a zoning ordinance provision that permits the city council to hear appeals *de novo* does not limit the city council's discretion in determining whether it will do so. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

25.6.1 Local Government Procedures – Hearings – Generally. ORS 227.180 does not require that a city council hold a *de novo* hearing on appeal of a land use decision after a *de novo* hearing by the city planning commission. *Scheyer v. City of Hood River*, 43 Or LUBA 112 (2002).

25.6.1 Local Government Procedures – Hearings – Generally. Pursuant to ORS 197.830(3), a city decision maker must disclose all *ex parte* contacts at the first opportunity and must inform participants of their right to rebut the substance of the disclosure. However, a city's failure to inform a petitioner of his right to rebut the substance of an *ex parte* disclosure will not result in reversal or remand where (1) the disclosure of the *ex parte* contact was promptly made; (2) petitioner had more than one opportunity to object to the adequacy and the content of the disclosure; and (3) no party appears to dispute the facts alleged in the disclosure. *DLCD v. City of Gold Beach*, 43 Or LUBA 319 (2002).

25.6.1 Local Government Procedures – Hearings – Generally. In considering a request to continue a quasi-judicial land use hearing, a local government must evaluate the particular circumstances of the request, and balance the due process rights of the moving party against the potential prejudice to the other parties involved, including the local jurisdiction. *Reeder v. City of Oregon City*, 37 Or LUBA 794 (2000).

25.6.1 Local Government Procedures – Hearings – Generally. Where a local appeal is on the record, and the issues to be considered are limited to those raised in the notice of appeal, and there is likely to be a significant delay in the resolution of the appeal if a hearing is continued, a city does not abuse its discretion by denying an applicant's request for a continuance. *Reeder v. City of Oregon City*, 37 Or LUBA 794 (2000).

25.6.1 Local Government Procedures – Hearings – Generally. 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).

25.6.1 Local Government Procedures – Hearings – Generally. An opportunity to rebut undisclosed evidence obtained on a site visit is not required when that evidence is not the sole basis for a finding, but merely provides a context for integrating other evidence into findings. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.6.1 Local Government Procedures – Hearings – Generally. The provisions of ORS 197.763(6)(c) only apply to the "initial evidentiary hearing," and therefore do not require the city council to reopen the record for rebuttal upon the request of a participant in a subsequent evidentiary hearing. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

25.6.1 Local Government Procedures – Hearings – Generally. Statements made by individual decision makers during local government hearings that express erroneous interpretations of law or legally improper reasons for adopting a land use decision provide no basis for reversal or remand unless such statements are adopted in the final written decision or findings supporting the written decision. *Fraley v. Deschutes County*, 31 Or LUBA 566 (1996).

25.6.1 Local Government Procedures – Hearings – Generally. Petitioners fail to demonstrate prejudice to their substantial rights arising out of an inaccurate notice published by the city when the mayor correctly stated the applicable criteria prior to the hearing. *Sparks v. City of Bandon*, 30 Or LUBA 69 (1995).

25.6.1 Local Government Procedures – Hearings – Generally. Where a local government decision includes a determination that an existing use of the subject property is lawful, it was improper for the local government to refuse to accept evidence or argument on this issue during the local proceedings. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

25.6.1 Local Government Procedures – Hearings – Generally. Where a local government's "initial evidentiary hearing" on a quasi-judicial land use application was held before the planning commission, the local government does not violate ORS 197.763(6) by denying petitioner's request to leave open the record of a subsequent evidentiary hearing before the governing body. *ONRC v. City of Oregon City*, 29 Or LUBA 90 (1995).

25.6.1 Local Government Procedures – Hearings – Generally. Where petitioner submitted evidence and argument to the city council during its *de novo* review of a decision of the city landmarks commission, even if procedural errors were made in the proceeding before the landmarks commission, petitioner's substantial rights were not prejudiced. *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

25.6.1 Local Government Procedures – Hearings – Generally. Where the local government gives notice of a hearing before two different hearings bodies on a development application, and those hearings are continued to another time, both hearings bodies must continue the hearing to avoid having to repeat the original notice process. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

25.6.1 Local Government Procedures – Hearings – Generally. In order to defer determinations of compliance with mandatory approval standards to a later stage where no public hearing is contemplated, the local government must first determine that compliance with those standards is possible. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

25.6.1 Local Government Procedures – Hearings – Generally. A code provision that prohibits taking "notice of any communications * * * or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material" prohibits a hearings officer from considering communications from the local government counsel, or proposed findings submitted by a party, without providing other parties an opportunity for rebuttal. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994).

25.6.1 Local Government Procedures – Hearings – Generally. Where petitioner had notice that the applicant revised his subdivision proposal to include cluster housing, and had an opportunity to present and rebut evidence regarding the proposed cluster housing in a *de novo* evidentiary hearing before the city council, petitioner's substantial rights were not prejudiced simply because the cluster housing proposal was not referred to the hearings officer for hearing. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

25.6.1 Local Government Procedures – Hearings – Generally. It is reasonable to expect that a local government, in applying subjective comprehensive plan and code provisions, will include interpretive findings in its final decision. The parties to such local proceedings should know to include arguments concerning proper interpretation of such provisions in their presentations. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

25.6.1 Local Government Procedures – Hearings – Generally. Although a party to a quasi-judicial land use proceeding has the right to rebut new evidence, a request for the record to remain open so that a party can "complete her report" is not a request to rebut new evidence. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

25.6.1 Local Government Procedures – Hearings – Generally. Where a local government fails to give a person an individual written notice of hearing to which the person is entitled, the local government fails to provide a hearing with regard to that person, within the meaning of ORS 197.830(3). *Leonard v. Union County*, 24 Or LUBA 362 (1992).

25.6.1 Local Government Procedures – Hearings – Generally. Poor quality tape recordings of local land use proceedings provide no basis for reversal or remand where petitioner fails to demonstrate that any properly submitted evidence was not considered by the local decision makers. *Reed v. Benton County*, 23 Or LUBA 486 (1992).

25.6.1 Local Government Procedures – Hearings – Generally. Where there are oral statements during local proceedings suggesting confusion about who has the burden of proof in a local appeal, but there is nothing in the written decision to suggest the local government made an erroneous allocation of the burden of proof, LUBA will not assume the burden of proof was erroneously assigned to the opponents of the application. *Coonse v. Crook County*, 22 Or LUBA 138 (1991).

25.6.1 Local Government Procedures – Hearings – Generally. The right to rebut evidence placed before the local decision maker in a quasi-judicial land use proceeding extends to requiring disclosure of and opportunity to rebut the substance of *ex parte* communications to and personal site observations by the local decision maker. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

25.6.1 Local Government Procedures – Hearings – Generally. Where a city is not required under its code to allow surrebuttal if rebuttal is limited to nonevidentiary testimony and evidence already in the local record, parties asserting city denial of surrebuttal as reversible error must show that the rebuttal included new evidence and that denial of an opportunity to rebut such evidence prejudices their substantial rights. *Walker v. City of Beaverton*, 18 Or LUBA 712 (1990).