25.6.6 Local Government Procedures – Hearings – When Required. 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).

25.6.6 Local Government Procedures – Hearings – Impartial Tribunal. A city councilor's statement in the comment section of an online blog article that a specific application should be approved in order to "get[] this particular monkey off of [the applicant's] back" is sufficient to demonstrate both actual bias and that the councilor has so prejudged the matter as to be incapable of determining its merits based on the evidence and arguments presented, and any subsequent decision on the application in which the biased councilor participates will be remanded, to allow the council to consider the application without the biased councilor's participation. A statement made by the biased councilor during a public hearing on the application that he will render an impartial decision does not cure his demonstrated actual bias. *Niederer v. City of Albany*, 79 Or LUBA 305 (2019).

25.6.6 Local Government Procedures – Hearings – When Required. 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).

25.6.6 Local Government Procedures – Hearings – When Required. Deferral of compliance with an approval standard to a subsequent proceeding under *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), or *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009), may not be permissible at all where the approval standard at issue invokes a particular process that is explicitly linked to submittal of the development application, requiring consultation and dispute resolution between the applicant, the local government, and a sovereign Native American Tribe before development approval. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

25.6.6 Local Government Procedures – Hearings – When Required. A local government errs in imposing a condition of approval deferring consideration of compliance with a comprehensive plan policy requiring the applicant and county to undertake a process to consult and resolve differences with local Native American tribes before approving development in an estuary, where the deferral is to an *ad hoc* proceeding without any assurances that the deferred proceeding will actually occur, and the deferral is not supported by findings demonstrating that deferral is permissible under *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), or *Gould v. Deschutes*

County, 227 Or App 601, 206 P3d 1106 (2009). *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

25.6.6 Local Government Procedures – Hearings – When Required. Where no statute or local code provision requires that a city council, in making the city's final decision on a request for a zoning classification as described in ORS 227.160(2)(b), conduct the city council meeting pursuant to quasi-judicial land use procedures requiring notice and an evidentiary hearing, the city council does not err in conducting the meeting pursuant only to the procedures governing a public meeting. *Central Eastside Industrial Council v. City of Portland*, 74 Or LUBA 221 (2016).

25.6.6 Local Government Procedures – Hearings – When Required. If a local government in granting planned development approval wishes to defer a finding that is required at the time of planned development approval to a subsequent, future proceeding, it must ensure that the public will be provided the same participatory rights at the future proceeding that they have at the time of planned development approval. *Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

25.6.6 Local Government Procedures – Hearings – When Required. A tentative subdivision approval decision that imposes a condition of approval that the applicant must submit a revised tentative subdivision plat to reflect an amendment to the application that was submitted before the local government adopted its decision is not accurately characterized as an improper requirement for a replat without public participation. *Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

25.6.6 Local Government Procedures – Hearings – When Required. When approving a subdivision where approval criteria must be applied in a proceeding where the public has participatory rights, a city may defer findings on a required approval criterion to a later proceeding, so long as that later proceeding is one in which the public has participatory rights. *Boucot v. City of Corvallis*, 61 Or LUBA 459 (2010).

25.6.6 Local Government Procedures – Hearings – When Required. The obligation to conduct a "hearing at least for argument" under ORS 227.180(1)(a)(B) only applies when a city council conducts a review of a lower body's decision. The obligation does not apply when the city council declines review thereby making the lower body's decision the city's final determination. *Mazorol v. City of Bend*, 59 Or LUBA 260 (2009).

25.6.6 Local Government Procedures – Hearings – When Required. Code procedures that distinguish between "Type II" permit decisions that can be made without an initial hearing, with an opportunity for affected persons to appeal to a *de novo* hearing, and "Type III" permit decisions that require an initial hearing, do not violate the privileges and immunities clause by granting "privileges" to participants of Type III proceedings that are denied Type II participants. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

25.6.6 Local Government Procedures – Hearings – When Required. Although a local government is obligated to open the evidentiary record to allow the parties to address any new criteria that may be applied on remand from LUBA, where a local government applies the same criterion on remand that it did in its initial decision and merely cites different comprehensive plan

policies to explain how it interprets that criterion, the local government is not obligated to reopen the evidentiary record. *Neighbors 4 Responsible Growth v. City of Veneta*, 52 Or LUBA 325 (2006).

25.6.6 Local Government Procedures – Hearings – When Required. A local government errs in deferring a determination of compliance with a discretionary permit criterion requiring that development protect riparian vegetation and aesthetic resources to a subsequent staff review that does not provide for notice or hearing. *Moreland v. City of Depoe Bay*, 48 Or LUBA 136 (2004).

25.6.6 Local Government Procedures – Hearings – When Required. That comprehensive plan policies apply to a challenged grading permit, and thus the permit is a "land use decision" as defined by ORS 197.015(10), does not necessarily mean that the city is obligated to provide a hearing on the grading permit. Not all permits that are land use decisions are also statutory "permits" as defined by ORS 215.402 and 227.160 and subject to statutory requirements to provide a hearing or opportunity for a hearing. *Jaqua v. City of Springfield*, 46 Or LUBA 566 (2004).

25.6.6 Local Government Procedures – Hearings – When Required. A local government does not err in failing to provide an evidentiary hearing on remand to accept updated information regarding the current status of petitioner's property, where LUBA's remand did not require the local government to conduct additional evidentiary hearings, and petitioner fails to identify any authority that requires the local government to conduct an additional evidentiary hearing to accept updated information. *Manning v. Marion County*, 45 Or LUBA 1 (2003).

25.6.6 Local Government Procedures – Hearings – When Required. A city denial of petitioners' request for an evidentiary hearing after remand from LUBA is not error, where (1) petitioners had an opportunity to present evidence and argument during the city's initial proceedings; (2) the city did not apply new approval criteria or consider new evidence in making its decision on remand; and (3) petitioners do not provide a reason why the initial evidentiary proceedings were inadequate to address petitioners' application. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

25.6.6 Local Government Procedures – Hearings – When Required. Where a hearings officer finds that it is feasible to comply with an approval standard, and imposes conditions to ensure compliance, the issue becomes whether that finding is adequate and supported by substantial evidence, not whether the hearings officer improperly deferred a finding of compliance to a later review stage. The fact that the hearings officer addresses the possibility that the solution found to be feasible might not work, and finds that if so DEQ would require that the project be scaled back, does not mean that the hearings officer deferred a finding of compliance with the approval standard or impermissibly delegated that finding to DEQ. *Baker v. Lane County*, 43 Or LUBA 493 (2003).

25.6.6 Local Government Procedures – Hearings – When Required. A local government's decision to request that an applicant prepare revised findings to respond to a LUBA remand does not, by itself, obligate the local government to provide a hearing following LUBA's remand. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

25.6.6 Local Government Procedures – Hearings – When Required. Parties that seek to demonstrate that a local government erred by adopting an interpretation of local land use legislation after the opportunity for argument and evidentiary presentations closes must demonstrate (1) that the interpretation was unforeseeable, and (2) that the party can produce new evidence that is different from evidence in the record and is directly responsive to the unanticipated interpretation. *Gutoski v. Lane County*, 155 Or App 369, 963 P2d 145 (1998). *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

25.6.6 Local Government Procedures – Hearings – When Required. Where LUBA remands a land use decision for inadequate findings, parties have no unqualified right to demand a hearing to present additional argument or evidence under *Morrison v. City of Portland*, 70 Or App 437, 689 P2d 1027 (1984). *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185 (2001).

25.6.6 Local Government Procedures – Hearings – When Required. A city rezoning decision conditioned on the applicant providing a geotechnical report and allowing the city to retain an independent engineer to ensure adequate monitoring and mitigation of environmental hazards during construction as part of the site development permit process, which does not provide for public hearings, does not defer discretionary decision making to a later stage of review. In that circumstance, the conditions are properly viewed as being designed to support the city's threshold finding that environmental hazards on the subject property do not impact adjoining properties in violation of comprehensive plan objectives. *Neighbors for Livability v. City of Beaverton*, 40 Or LUBA 52 (2001).

25.6.6 Local Government Procedures – Hearings – When Required. A nonbinding preliminary PUD approval is equivalent to a tentative decision following a pre-application conference or review, and therefore does not trigger the statutory requirement under ORS 227.175(3) for a public hearing or the right of local appeal to challenge a permit decision rendered without a prior public hearing. *Neighbors for Sensible Dev. v. City of Sweet Home*, 40 Or LUBA 21 (2001).

25.6.6 Local Government Procedures – Hearings – When Required. A finding of feasibility of compliance with a code standard requiring adequate fire protection, conditioned on the fire marshal's written approval of a proposed emergency turnaround, does not impermissibly defer a finding of compliance with that standard to a second stage of review that fails to provide notice and opportunity for hearing, where the finding of feasibility of compliance is based on evidence that the proposed emergency turnaround is acceptable to the fire marshal. *Mitchell v. Washington County*, 37 Or LUBA 452 (2000).

25.6.6 Local Government Procedures – Hearings – When Required. A local code provision requiring an "adequate turnaround" is not satisfied by deferring the decision concerning the design of the turnaround to the fire district where (1) there will be no opportunity for public comment or a hearing, and (2) designs required by the fire district will require adjustments to or elimination of one or more lots. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

25.6.6 Local Government Procedures – Hearings – When Required. In order for a county to find it is feasible to comply with a code requirement for an "adequate turnaround," it must have a proposed turnaround to review. The county may not defer development and approval of a proposed

turnaround to a later stage where there is no opportunity for public hearing. *Tenly Properties Corp. v. Washington County*, 34 Or LUBA 352 (1998).

25.6.6 Local Government Procedures – Hearings – When Required. A local government has not deferred compliance with mandatory approval criteria where it grants tentative subdivision approval with the condition that development plans be reviewed by a geotechnical engineer prior to the issuance of construction permits. Once a local government has determined that compliance with a mandatory criterion is feasible, it may impose conditions of approval to ensure compliance with that criterion. No hearing on the geotechnical report is required. *Property Rights and Owners, Ltd. v. City of Salem*, 34 Or LUBA 258 (1998).

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

25.6.6 Local Government Procedures – Hearings – When Required. 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).

25.6.6 Local Government Procedures – Hearings – When Required. ORS 197.175(10)(a) requires the city to provide, on appeal from a decision made without a hearing, at least one hearing at which any issue may be raised. *Johns v. City of Lincoln City*, 32 Or LUBA 195 (1996).

25.6.6 Local Government Procedures – Hearings – When Required. Where, on remand from LUBA, the county corrects an error in its decision, it is not required to follow the procedures that were required during the initial proceeding. *Richards-Kreitzberg v. Marion County*, 32 Or LUBA 76 (1996).

25.6.6 Local Government Procedures – Hearings – When Required. 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).

25.6.6 Local Government Procedures – Hearings – When Required. ORS 197.763 governs how a quasi-judicial land use hearing is conducted, not whether one is required. ORS 197.763 does not confer a right to a quasi-judicial land use hearing where such a right does not otherwise exist. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

25.6.6 Local Government Procedures – Hearings – When Required. *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973), does not independently confer a right to a hearing

prior to a local government determination on compliance with particular code requirements, where none is conferred by the statutes or local regulations governing such land use decisions. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

25.6.6 Local Government Procedures – Hearings – When Required. Where LUBA remands a decision because the local decision maker failed to adopt findings explaining its determination of compliance with relevant approval standards, and the local decision maker was not required to hold a hearing before making its initial decision, the local decision maker is not required to hold a hearing on remand. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 335 (1995).

25.6.6 Local Government Procedures – Hearings – When Required. Where LUBA remands a local government decision because it lacks findings of compliance with relevant approval standards, the local government must, at a minimum, conduct a hearing on remand to allow the parties an opportunity to present argument based on the possible interpretations to be adopted by the local government on remand. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

25.6.6 Local Government Procedures – Hearings – When Required. Where a local government is required to adopt a new decision on remand, it must conduct a hearing and provide notice of that hearing, at least for the purpose of allowing argument on the proposal's compliance with the standards to be addressed on remand. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

25.6.6 Local Government Procedures – Hearings – When Required. If a "permit" decision is erroneously is processed as a limited land use decision, without a public hearing or an opportunity to request a hearing through a local appeal, then the challenged decision is a "land use decision" made without providing a hearing, and the deadline for filing a notice of intent to appeal with LUBA is governed by ORS 197.830(3). *Fechtig v. City of Albany*, 27 Or LUBA 666 (1994).

25.6.6 Local Government Procedures – Hearings – When Required. Decisions concerning development of property applying the elements of equitable estoppel require the exercise of factual and legal judgment and, therefore, are permits. Where a local government fails to provide a local public hearing or opportunity for appeal of such a permit decision, the deadline for filing a notice of intent to appeal the decision to LUBA is governed by ORS 197.830(3). *DLCD v. Benton County*, 27 Or LUBA 49 (1994).

25.6.6 Local Government Procedures – Hearings – When Required. 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).

25.6.6 Local Government Procedures – Hearings – When Required. 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).

25.6.6 Local Government Procedures – Hearings – When Required. Where adoption of the challenged decision required the exercise of factual and legal judgment, the decision required the exercise of discretion and, consequently, approves a "permit." Under these circumstances, it is error for the local government to fail to provide petitioner with notice and opportunity for hearing, where at least some of petitioner's members were entitled to notice if a public hearing had been scheduled. *Tuality Lands Coalition v. Washington County*, 22 Or LUBA 319 (1991).

25.6.6 Local Government Procedures – Hearings – When Required. Where the local code establishes procedures and notice requirements for hearings on administrative actions, but does not require that determinations of compliance with conditions imposed on administrative action approvals themselves be processed as administrative actions, proceedings to determine compliance with such conditions are not required to follow the hearing and notice procedures for administrative actions. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

25.6.6 Local Government Procedures – Hearings – When Required. Where LUBA determined in a previous appeal that a local government properly found compliance with applicable code standards and, through conditions, deferred responsibility for developing particular technical solutions to the planning commission, and LUBA's decision was not appealed, the local government is entitled to determine compliance with the conditions of approval administratively, without notice and public hearing. *Von Lubken v. Hood River County*, 20 Or LUBA 208 (1990).

25.6.6 Local Government Procedures – Hearings – When Required. Where an amended code provides discretionary criteria for approval of minor land divisions, it is error for the code to fail to require or provide for notice and hearing before the local government makes a final decision concerning a proposed minor land division. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).