Planning Commission Meeting Agenda

ASHLAND PLANNING COMMISSION

REGULAR MEETING AGENDA

Tuesday, September 9, 2025

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

I. CALL TO ORDER

7:00 p.m., Civic Center Council Chambers, 1175 E. Main Street

II. ANNOUNCEMENTS

1. Staff Announcements
2. Advisory Committee Liaison Reports

III. CONSENT AGENDA

Approval of Minutes

1. August 12, 2025 Regular Meeting Minutes

IV. PUBLIC FORUM

Note: To speak to an agenda item in person you must fill out a speaker request form at the meeting and will then be recognized by the Chair to provide your public testimony. Written testimony can be submitted in advance or in person at the meeting. If you wish to discuss an agenda item electronically, please contact PC-public-testimony@ashland.or.us by 10:00 a.m. on September 9, 2025 to register to participate via Zoom. If you are interested in watching the meeting via Zoom, please utilize the following link: https://zoom.us/j/96070091196

V. UNFINISHED BUSINESS

Approval of Findings for PA-T2-2025-00059, Kestrel Park Phase III

VI. DISCUSSION ITEMS

Public Meeting Law Training

- **Ashland Legal Department** – Overview presentation and Q&A
- **Optional Video** – Two-hour Public Meeting Law training available for home viewing: https://www.youtube.com/watch?v=DKaBlcaaGAk

VII. OPEN DISCUSSION

VIII. ADJOURNMENT

Next meeting Date: *September 23, 2025*

If you need special assistance to participate in this meeting, please contact Derek Severson at planning@ashlandoregon.gov or 541.488.5305 (TTY phone number 1.800.735.2900). Notification at least three business days before the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting in compliance with the Americans with Disabilities Act.

Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

August 12, 2025
REGULAR MEETING
***DRAFT* Minutes**

I. CALL TO ORDER:

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street.

Commissioners Present:
Lisa Verner
Susan MacCracken Jain
John Maher
Russell Phillips

Staff Present:
Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Aaron Anderson, Senior Planner
Michael Sullivan, Executive Assistant

Absent Members:
Eric Herron
Kerry KenCairn

Council Liaison:
Jeff Dahle (absent)

II. ANNOUNCEMENTS

1. Staff Announcements:

Community Development Director Brandon Goldman made the following announcements:

- The City Council will hold a public hearing regarding the annexation of 1511 Highway 99 at their meeting on Tuesday, August 19.
- The City Council will be reviewing the second reading of ordinances implementing the SOU Masterplan at their next meeting.
- The Parks Department will hold an open house on August 14 from 5:00 PM to 6:00 PM at the Senior Center to gather feedback on the East Main park project.
- The Water Treatment plant work on Granite Street is underway, with the culvert crossing currently in process and a temporary pedestrian crossing over Ashland Creek in place.

2. Advisory Committee Liaison Reports – None

III. CONSENT AGENDA

Approval of Minutes

1. July 22, 2025 Special Meeting Minutes

Chair Verner noted that Staff had submitted revised minutes for the July 22, 2025 Special Meeting which clarified Staff announcements regarding the SOU Masterplan project.

Commissioners Phillips/Maher m/s to approve the Consent Agenda as amended by Staff. Voice Vote: All AYES. Motion passed 4-0.

IV. PUBLIC FORUM

Alison Laughlin/Ms. Laughlin spoke regarding dangerous flooding conditions at Roca Street and Fern Street.

V. UNFINISHED BUSINESS

A. Approval of revised Findings on remand from City Council for PA-T2-2024-00053, 231 Granite Street

Chair Verner explained that the Planning Commission's earlier decision regarding 231 Granite Street had been appealed to the City Council. While the Council upheld the Commission's decision, they requested more robust findings in anticipation of a possible appeal to the Land use Board of Appeals (LUBA.) The revised findings before the Commission included suggested revisions from staff, the applicants, Commissioner Phillips, and Chair Verner (see attachment #1).

Chair Verner noted that a question had been raised about section 2.5 of the findings, which contained the statement "the Commission notes that with the proposal one additional home serving a lot with a pre-existing easement will be served from the shared driveway." Staff clarified that this referred to the home proposed in the application, not implying additional future construction.

Ex Parte Contact

Commissioners Maher and Phillips disclosed site visits. No ex parte contact was disclosed.

Decision

Chair Verner proposed removing a sentence in the middle of page 6 that stated "The Commission finds that the proposed development reduces adverse impacts, potential hazards, and limits the amount of hillside disturbance," stating that it went beyond what the Commission had directly found.

Commissioners Phillips/Maher m/s to approve the amended findings, incorporating revisions from staff and the updated condition 2.5 provided by Chair Verner, and also included removing the sentence "The Commission finds that the proposed development reduces adverse impacts, potential hazards, and limits the amount of hillside disturbance." Roll Call Vote: All AYES. Motion passed 4-0.

VI. TYPE II PUBLIC HEARINGS

PLANNING ACTION: PA-T2-2025-00059
SUBJECT PROPERTY: 39-1E-04-AD Tax Lot 8600
OWNER/APPLICANT: PDK Properties LLC
DESCRIPTION: A request for Final Plan approval for a 15-lot Performance Standard Option (PSO) subdivision. The Subdivision Outline Plan was approved by the Ashland Planning Commission adopted findings approving PA-T2-2024-00054, on January 14, 2025. The Proposed final plan come before the Planning Commission because a section that was approved as an alley is now proposed to be pedestrian access due to the existing adjacent grade. The application also includes a modification to the previous Site Design Review.
COMPREHENSIVE PLAN DESIGNATION: North Mountain I; **ZONING:** NM-MF; **MAP:** 39 1E 04 AD; **TAX LOTS:** 8600

Chair Verner acknowledged public comments received before the meeting but after the packet had been published (see attachment #2).

Ex Parte Contact

Commissioners Phillips and Verner disclosed site visits. No ex parte contact was disclosed.

Staff Presentation

Senior Planner Aaron Anderson briefly outlined the project with the following proposed changes to the previously approved plan: altering a vehicle traffic connection to a pedestrian pathway; changing building layouts and elevations; removing underbuilding parking in favor of a small parking area on Julian Court; and lowering building heights. Items addressed were increasing rights-of-way from 47 to 48 feet and additional alleyway dedications. Staff also added Condition #8 regarding new irrigation, and removed a mistakenly included condition related to another planning project (see attachment #3).

Questions of Staff

Commissioner Phillips requested clarification regarding the walkway's grade; Mr. Anderson confirmed a 15% grade with steps. Mr. Goldman elaborated that improvements in the public right-of-way often exceed ADA standards in the City due to the terrain, while internal sidewalks and the ADA parking space would be subject to ADA accessibility requirements.

Applicant Presentation

Applicant Mark Knox explained that the civil plans revealed the grade was steeper than initially anticipated, especially at the connection to Patton Lane, resulting in the proposed revisions. The applicant team determined that while a vehicle connection wasn't feasible, a pedestrian connection would align with the North Mountain plan's goal of facilitating pedestrian movement. He noted that the 15% grade was a worst-case scenario, and the addition of steps would likely reduce it to about 12%. He

Better Together

mentioned that other paths in the development also have similar grades with steps. Applicant Kyle Taylor explained that the requested modifications were refinements from the outline plan. He explained that the team had struggled with the grade on the pedestrian path and needed to drop the buildings to address neighbor concerns about views. This made the parking underneath the buildings unreasonable, so the parking was relocated and the structures rearranged while maintaining the same number of units with similar square footage. He noted that pushing the building frontage on Patton down would make it appear more like a single-story property from the uphill perspective.

Questions of the Applicant

Chair Verner asked about a market for small units, with the applicant responding to demand focused on affordable and workforce housing.

Public Comments

Mark Abelle/Mr. Abelle raised concerns regarding wildfire risk and advocated for changes enhancing safety.

Chair Verner closed the Public Hearing and Public Record at 7:50 p.m.

Deliberation and Decision

Commissioner Russell requested clarification on the conditions of approval. Staff confirmed that the original condition #2 had already been removed from the packet prior to distribution, and the new condition regarding irrigation would be added as condition #8.

Commissioners Russell/Maher m/s to approve the application consistent with the conditions recommended by staff, with the addition of Condition #8 as proposed by staff. Roll Call Vote: All AYES. Motion passed 4-0.

VII. OPEN DISCUSSION

The Commission discussed planning it's annual retreat, including potential topics, such as wildfire risk and how it pertains to land use, Public Meeting law, and a site visit to projects completed with the previous year. The date of the retreat was not determined.

VIII. ADJOURNMENT

Meeting adjourned at 8:14 p.m.

Submitted by,
Michael Sullivan, Executive Assistant

ATTENTION

For attachments to the August 12, 2025 Minutes, please use the link below:

https://ashlandor.portal.civicclerk.com/event/887/files/agenda/1672

UNFINISHED BUSINESS

Approval of Findings for PA-T2-2025-00059, Kestrel Park Phase III

THE CITY OF ASHLAND

BEFORE THE PLANNING COMMISSION

SEPTEMBER 9, 2025

<table>
<tr><td>IN THE MATTER OF PLANNING ACTION #PA-T2-2025-00059 A REQUEST FOR MODIFICATION TO THE PREVIOUSLY APPROVED PLANNING ACTION #PA-T2-2024-00054 WHICH WAS AN OUTLINE PLAN APPROVAL OF A PERFORMANCE STANDARDS OPTION (PSO) SUBDIVISION AND RESIDENTIAL SITE DESIGN REVIEW. THE APPLICATION ALSO INCLUDES FINAL PLAN APPROVAL FOR THE PSO SUBDIVISION.

OWNER: PDK PROPERTIES LLC*
APPLICANT: TAYLORED ELEMENTS</td><td>)
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)</td><td>**FINDINGS, CONCLUSIONS, AND ORDERS.**</td></tr>
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RECITALS:

1) The application is a request for Final Plan approval for a 13-lot Performance Standard Option (PSO) subdivision. The application also includes two modifications to the previously approved planning action:

   a. A modification to the Outline Plan Approval as it relates to the street design. The application proposes to change what was understood to be an alley to a pedestrian connection from Patton Lane to the Julian Court alley, and;

   b. A modification to the Site Design Review approval as it relates to the layout and design of the buildings as well as the design of the parking area in “Area Six.”

2) The Subdivision Outline Plan was planning action #PA-T2-2024-00054 and was approved by the Ashland Planning Commission on December 10, 2024, with findings adopted on January 14, 2025.

   a. Following the Planning Commission’s approval of the planning action an appeal was timely filed. The City Council, following proper public notice, held a public hearing on March 4, 2025. Following a public hearing the City Council deliberated and voted in favor of affirming the decision of the Planning Commission, rejected the appeal, and adopted the Planning Commission’s Findings as the Council’s own.

   b. Both the Planning Commission’s Findings Conclusions and Orders dated January 14, 2025, as well as the City Council’s Findings Conclusions and Orders dated March 4, 2025 (collectively, the “previous approval’s findings”) are attached

* *Previous staff reports and findings in this and other planning actions associated with Kestrel Park Phase 3 have incorrectly identified CMK Development LLC as the property owner. The property was previously owned by CMK Development LLC but has since changed ownership to PDK Properties LLC. Both CMK Development LLC and PDK Properties LLC are owned by the same entity.*

hereto.

3) In these Findings Conclusions and Orders, we only address Final Plan approval, and Major Modification to a Previously Approved Plan as they relate to the proposed changes to the Outline Plan and Site Design Review with "*the scope of review limited to the modification request.*"

4) Final Plan approval is a Type I planning action and therefore would not typically come before the Planning Commission. Because of the proposed modifications to the Site Design Review approval involve changes in the building envelopes and elevations it qualifies as a "major modification."

    a. AMC 18.5.6.030(A) requires that "The approval authority and review procedure for Major Modification applications is the same as for the original project or plan approval." Therefore, review and approval by the Planning Commission is required because the Planning Commission originally approved the application.

5) The subject property is tax lot #8600 of Assessor's Map 39-1E-04-AD (it does not presently have a street address). The property was created as Lot 31 of Kestrel Park Phase II and was reserved for this final phase of the Kestrel Park Subdivision.

6) The property is zoned "North Mountain-Multi Family" (NM-MF) and is regulated by the North Mountain Neighborhood Plan (NMNP) which is codified at Ashland Municipal Code (AMC) 18.3.5. This chapter applies to properties within the North Mountain Neighborhood Plan area adopted by Ordinance 2800 in April 1997.

7) The North Mountain Neighborhood District regulations require that all applications involving the creation of three or more lots shall be processed under chapter 18.3.9 Performance Standards Option (PSO) Overlay (AMC 18.3.5.040.K).

8) The applicant's proposal is detailed in plans which are on file at the Department of Community Development and by their reference are incorporated herein as if set out in full.

9) The criteria for approval for Major Modifications to previously approved plans are described in **AMC 18.5.6.030** as follows:

   C. Major Modification Approval Criteria. A Major Modification shall be approved only upon the approval authority finding that all of the following criteria are met.

      1. Major Modification applications are subject to the same approval criteria used for the initial project approval, except that the scope of review is limited to the modification request. For example, a request to modify a commercial development's parking lot shall require Site Design Review only for the proposed parking lot and any changes to associated access, circulation, etc.

      2. A modification adding or altering a conditional use, or requiring a variance, administrative variance, or exception may be subject to other ordinance requirements.

      3. The approval authority shall approve, deny, or approve with conditions the application, based on written findings.

10) The criteria of approval for Outline Plan are described in **AMC 18.3.9.040.A.3** as follows:

A. The development meets all applicable ordinance requirements of the city.

B. Adequate key city facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a city facility to operate beyond capacity.

C. The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.

D. The development of the land will not prevent adjacent land from being developed for the uses shown in the comprehensive plan.

E. There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.

F. The proposed density meets the base and bonus density standards established under this chapter.

G. The development complies with the street standards.

H. The proposed development meets the common open space standards established under section 18.4.4.070. Common open space requirements may be satisfied by public open space in accordance with section 18.4.4.070 if approved by the city of Ashland.

11) The criteria for approval for Final Plan are described in **AMC 18.3.9.040.B.5** as follows:

5. Approval Criteria for Final Plan. Final Plan approval shall be granted upon finding of substantial conformance with the Outline Plan. This substantial conformance provision is intended solely to facilitate the minor modifications from one planning step to another. Substantial conformance shall exist when comparison of the outline plan with the final plan meets all of the following criteria.

    a. The number of dwelling units vary no more than ten percent of those shown on the approved outline plan, but in no case shall the number of units exceed those permitted in the outline plan.

    b. The yard depths and distances between main buildings vary no more than ten percent of those shown on the approved outline plan, but in no case shall these distances be reduced below the minimum established within this Ordinance.

    c. The open spaces vary no more than ten percent of that provided on the outline plan.

    d. The building size does not exceed the building size shown on the outline plan by more than ten percent.

    e. The building elevations and exterior materials are in conformance with the purpose and intent of this ordinance and the approved outline plan.

    f. That the additional standards which resulted in the awarding of bonus points in the outline plan approval have been included in the final plan with substantial detail to ensure that the performance level committed to in the outline plan will be achieved.

    g. The development complies with the Street Standards.

    h. Nothing in this section shall limit reduction in the number of dwelling units or increased open space provided that, if this is done for one phase, the number of dwelling units shall not be transferred to another phase, nor the open space reduced below that permitted in the outline plan.

6. Any substantial amendment to an approved Final Plan shall follow a Type I procedure in section 18.5.1.050 and be reviewed in accordance with the above criteria.

12) The criteria for approval for Site Design Review are described in **AMC 18.5.2.050** as follows:

An application for Site Design Review shall be approved if the proposal meets the criteria in subsections A, B, C, and D below. The approval authority may, in approving the application, impose conditions of approval, consistent with the applicable criteria.

A. **Underlying Zone.** The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.

B. **Overlay Zones.** The proposal complies with applicable overlay zone requirements (part 18.3).

C. **Site Development and Design Standards**. The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.

D. **City Facilities**. The proposal complies with the applicable standards in section 18.4.6 Public Facilities, and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property.

E. **Exception to the Site Development and Design Standards**. The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1, 2, or 3, below, are found to exist.

1. There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty;

2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or

3. There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section 18.2.3.090.

13) The Planning Commission, following proper public notice, held a public hearing on August 12, 2025. Testimony was received, and exhibits were presented. The Planning Commission deliberated and approved the application subject to conditions of approval.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes, and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS OF FACT

2.1 The Planning Commission notes that chapter 18 of the Ashland Municipal Code (AMC) is the City's Land Use Ordinance (LUO). The LUO regulates the development pattern envisioned by the Comprehensive Plan and encourages efficient use of land resources among other goals. The Planning Commission notes that when considering the decision to approve or deny an application the Planning Commission considers the application materials against the relevant approval criteria in the LUO.

> 2.1.2 The Planning Commission finds that it has received all information necessary to render a decision based on the application itself, the August 12, 2025 Staff Report, the applicant's testimony, the exhibits received, and public testimony received both written and at the public hearing.

2.2 The Planning Commission notes that the application was deemed complete and that the notice for the public hearing was both posted at the frontage of the subject property and mailed to all property owners within 200-feet of the subject property on July 22, 2025 (21 days prior to the August 12th Meeting).

2.3 The Planning Commission finds that the proposal for a Major Modifications to a previously approved plan meets all applicable approval criteria for described in AMC 18.5.6.030 and detailed below.

> 2.3.1 The first approval criterion for a Major Modifications to a previously approved plan is that "*Major Modification applications are subject to the same approval criteria used for the initial project approval, except that the scope of review is limited to the modification request.*" The Planning Commission notes that there are two distinct modifications, one to Outline Plan, the other to Site Design Review. The Planning Commission notes that the request modifications are:
>
> - The modification to the Outline Plan approval as it relates to the street design. The application proposes to change what was understood to be an alley to a pedestrian connection between Patton Lane and the Julian Court alley
> - A modification to the Site Design Review approval as it relates to the layout and design of the buildings and building elevations as well as the design of the parking area and site improvements.
>
> The Planning Commission notes that below are complete findings addressing these modifications as they relate to the approval criteria for Outline Plan and Site Design Review. The Planning Commission concludes that with the findings below this criterion of approval is met.
>
> 2.3.2 The second approval criterion for a Major Modifications to a previously approved plan is that "*A modification adding or altering a conditional use, or requiring a variance, administrative variance, or exception may be subject to other ordinance requirements.*" The Planning Commission notes that the application does not include a conditional use, a variance or an exception other than those approved in conjunction with Outline Plan approval. The

Planning Commission finds that this criterion of approval is met.

2.3.3 The third approval criterion for a Major Modifications to a previously approved plan is that "*The approval authority shall approve, deny, or approve with conditions the application, based on written findings.*" The Planning Commission notes that this document is the findings that are required, and conditions of approval have been included below. The Planning Commission finds that that this criterion of approval is met.

2.4 The Planning Commission finds that the proposal for Outline Plan of a Performance Standard Option (PSO) subdivision meets all applicable criteria for described in AMC 18.3.9.040.A.3 and detailed below.

2.4.1 The first approval criterion for Outline Plan approval is that "*The development meets all applicable ordinance requirements of the City.*" The Planning Commission notes that this is an all-encompassing criterion and that it has considered which city ordinances are applicable. The Planning Commission notes that for the purposes of resolving this criterion we rely on the entirety of the record including the applicant's submittal, and the Staff Report dated August 12, 2025. The Planning Commission notes that with the findings that are set out below, and the adopted conditions of approval, that the proposal will meet all applicable ordinance requirements and finds that this criterion of approval is met.

2.4.2 The second approval criterion for Outline Plan approval is that "*Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*" The Planning Commission notes that the only change in city facilities is that section of alley from Patton Lane to the Julian Court alley now being proposed to be a pedestrian connection rather than an alley due to the existing adjacent grade. The Planning Commission notes that the revised parking area, discussed further below, still provides access to the alley as well as the additional parking proposed along the alley. In addition, the Planning Commission notes that the applicant has now proposed additional parking bays along Patton Lane. The Planning Commission notes that as it relates to other city facilities the proposed modifications will have no change to their impact including water sewer electricity, storm drain, police or fire protection. The Planning Commission notes that with the modification to a pedestrian connection from an alley the project still provides adequate transportation, and finally that this proposed modification will not cause any city facility to operate beyond its capacity. The Planning Commission finds that with the foregoing this criterion of approval is met.

2.4.3 The third criterion for approval of an Outline Plan is that "*The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.*" The Planning Commission notes that the wetlands, floodplain corridors and large trees were previously addressed in the earlier phases of the subdivision. The Planning Commission notes that there are no other natural features to address and concludes that this criterion of approval is met.

2.4.4 The fourth criterion for approval of an Outline Plan is that "*The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*" The Planning Commission finds that the modification to a pedestrian connection from an alley is not applicable to this approval criteria. The Planning Commission notes that "*the scope of review* [is] *limited to the modification request*" and therefore concludes that this criterion of approval is met.

2.4.5 The fifth criterion for approval of an Outline Plan is that "*There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*" The Planning Commission notes again that this is the final phase of the Kestrel Park Subdivision and that the homeowner's association's (HOA's) governing instruments have obligations for the maintenance of the open space and other common amenities that have already been developed. The Planning Commission notes that this will include any required weed abatement adjacent to the modified alley with the pedestrian connection, and that a condition of approval has been included below requiring this to be included in the contracts, covenants and restrictions (CC&R's) for the subdivision. The Planning Commission finds that with the foregoing there are adequate provisions for the maintenance of the open space and common areas and concludes that this criterion of approval is met.

2.4.6 The sixth criterion for approval of an Outline Plan is that is that "*The proposed density meets the base and bonus density standards established under this chapter.*" The Planning Commission finds that the modification to a pedestrian connection from a vehicle alley is not applicable to this approval criteria. The Planning Commission again notes that "*the scope of review* [is] *limited to the modification request*" and therefore concludes that this criterion of approval is met.

2.4.7 The seventh Outline Plan approval criterion is that "*The development complies with the Street Standards.*" The Planning Commission notes that among the Street Design Standards a multi-use path requires a travel lane between six to ten feet wide with additional unpaved strips on either side. The Planning Commission notes that the proposed six-foot pedestrian path inside a twenty-foot right of way exceeds this standard. The Planning Commission therefore concludes that this criterion of approval is met.

2.4.8 The final criterion for approval of an Outline Plan is that is that "*The proposed development meets the common open space standards established under section 18.4.4.070. Common open space requirements may be satisfied by public open space in accordance with section 18.4.4.070 if approved by the City of Ashland.*" The Planning Commission finds that the modification to a pedestrian connection from a vehicle alley is not applicable to this approval criterion. The Planning Commission notes that "*the scope of review* [is] *limited to the modification request*" and therefore concludes that this criterion of approval is met.

2.4.9 The Planning Commission concludes based on the above that all applicable approval criteria for Outline Plan subdivision approval have been satisfied.

2.5 The Planning Commission finds that the proposal for Site Design Review approval meets all applicable criteria for described in AMC 18.5.2.050 as detailed below:

2.5.1 The Planning Commission notes that the first criterion of approval for Site Design Review is that "*The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*" The Planning Commission notes that the property is in the NMNP and is required to be processed in accordance with the Performance standards of AMC 18.3.9. The Planning Commission further notes that the PSO applicability provides "*that developments subject to [the PSO] chapter are not required to meet the minimum lot size, lot width, lot depth, and setback standards of part 18.2.*" Additionally, The Planning Commission would take particular note of the Site Plan exhibit titled 'Area 6' (Sheet 10 of 12) of the Dezin plan set which includes detailed dimensions with regard to the parking area, building separation, and required buffering between parking and buildings. The Planning Commission also would take note of the Planting Plan (sheet L1.0) which shows all required landscape buffering. The Planning Commission concludes that based on the PSO standards and the application materials mentioned above that this criterion of approval is met.

2.5.2 The Planning Commission notes that the second criterion of approval for Site Design Review is that "*The proposal complies with applicable overlay zone requirements (part 18.3).*" As mentioned above in 2.5.2, the Planning Commission again notes that the only overlay is the city-wide wildfire overlay and that all proposed construction will meet the adopted wildfire standards. The Planning Commission finds that this criterion of approval is met.

2.5.3 The Planning Commission notes that the third criterion of approval for Site Design Review is that "*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided below.*" The Planning Commission notes that the most notable component of the change is that the parking is no longer incorporated under the second floors and instead are in a common multi-unit parking lot, and that this change was necessary to allow the development to work with the existing topography. The Planning Commission notes that despite these revisions the building orientation, proposed building materials, preliminary landscape plan and open space standards are all met. The Planning Commission would note that the exhibits provided show that solar setbacks are met and the revised building layout actually has a lesser impact on the adjacent existing development. The Planning Commission would take particular note of the Site Plan exhibit titled 'Area 6 - Topography' (Sheet 11 of 12) of the Dezin plan set, as well as page 13 of 20 of the Elevation plan set showing the relationship between the buildings and the streetscape. The Planning Commission finds that with the foregoing and a comprehensive review of the application materials that this criterion of approval is met.

2.5.4 The Planning Commission notes that the fourth criterion of approval for Site Design Review is that "*The proposal complies with the applicable standards in section 18.4.6*

Public Facilities, and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property." The Planning Commission notes that this was addressed in detail above in the second approval criterion for Outline Plan in the context of the modification of the alley to a pedestrian connection. The Planning Commission reiterates that this is the third phase of the subdivision and that all city facilities were sized for the expected density during the first phase. Additionally, the Planning Commission notes that the modification of the building design and parking area is not applicable to this approval criteria in terms of impact to city facilities. The Planning Commission notes that "*the scope of review* [is] *limited to the modification request*" and therefore concludes that this approval criterion is satisfied.

2.5.5 The Planning Commission notes that the last criterion of approval for Site Design Review is that "*The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1, 2, or 3, below, are found to exist…*" The Planning Commission notes that there are no requested exceptions to the above standards and finds that this criterion of approval has been met.

2.5.6 The Planning Commission concludes based on the above that all applicable approval criteria for Site Design Review approval have been satisfied.

2.6 The Planning Commission finds that the proposal for Final Plan approval meets all applicable approval criteria described in AMC 18.3.9.040.B.5 which provides the following: "*Final plan approval shall be granted upon finding of substantial conformance with the outline plan. This substantial conformance provision is intended solely to facilitate the minor modifications from one planning step to another. Substantial conformance shall exist when comparison of the outline plan with the final plan meets all of the following criteria:*"

2.6.1 The first approval criterion for Final Plan approval is that "*The number of dwelling units vary no more than ten percent of those shown on the approved outline plan, but in no case shall the number of units exceed those permitted in the outline plan.*" The Planning Commission notes that the number of dwelling units/lots is identical to the Outline Plan approval and therefore is within the ten percent allowance. The Planning Commission conclude that this criterion of approval is met.

2.6.2 The second approval criterion for Final Plan approval is that "*The yard depths and distances between main buildings vary no more than ten percent of those shown on the approved outline plan, but in no case shall these distances be reduced below the minimum established within this ordinance.*" The Planning Commission would note that it was discussed in first criterion of approval for Site Design Review that PSO subdivisions are free from the standards of 18.2. The Planning Commission would also note that the applicant has provided detailed site plans for each area of the subdivision meeting the base standards of the North Mountain Neighborhood Plan. The Planning Commission concludes that this criterion of approval is met.

2.6.3 The third approval criterion for Final Plan approval is that "*The common open spaces vary no more than ten percent of that provided on the outline plan.*" The Planning

Commission notes that this phase of the subdivision includes no open space. As the Outline Plan approval staff report dated December 10, 2024 explained, the first phase of the Kestrel Park Subdivision was 13.48 acres in size of which 5.13 acres was dedicated as open space (North Mountain/Bear Creek Greenway area as required in AMC 18.3.5.090) and another 0.7 acres was platted as private open space for the subdivision's on-site wetlands. This open space dedication was 43 percent of the subdivision parent parcel's acreage, far exceeding the requirement of eight percent, and satisfied the open space requirement for all future phases of the subdivision. The Planning Commission concludes that this criterion of approval is met.

2.6.4 The fourth approval criterion for Final Plan approval is that "*The building size does not exceed the building size shown on the outline plan by more than ten percent.*" The Planning Commission notes that the proposed building footprints in Area Six are slightly smaller than originally proposed. The Planning Commission notes that the building permits will be required to be in substantial conformance with those plan reviewed and approved here. The Planning Commission concludes that this criterion of approval is met.

2.6.5 The fifth criterion for Final Plan approval is that "*The building elevations and exterior materials are in conformance with the purpose and intent of this ordinance and the approved outline plan.*" The Planning Commission notes that the building elevations are significantly different than what was reviewed and approved during outline plan. The Planning Commission also notes that was the reason that the Major Modification required review and approval by the Planning Commission. The Planning Commission concludes that with the approval of the Major Modification this criterion of approval is met.

2.6.6 The sixth criterion for Final Plan approval is that "*That the additional standards which resulted in the awarding of bonus points in the outline plan approval have been included in the final plan with substantial detail to ensure that the performance level committed to in the outline plan will be achieved.*" The Planning Commission notes that there were no additional standards that were required to be met and no bonus points awarded at Outline Plan.

2.6.7 The seventh criterion for Final Plan approval is that "*The development complies with the street standards*." The Planning Commission notes that the civil plans submitted for review have been modified to show a 48-foot right-of-way and that they meet all of the city street design standards for the North Mountain Neighborhood. The Planning Commission concludes that this criterion of approval is met.

2.6.8 The last Final Plan approval criterion is that "*Nothing in this section shall limit reduction in the number of dwelling units or increased open space; provided, that if this is done for one phase, the number of dwelling units shall not be transferred to another phase, nor the common open space reduced below that permitted in the outline plan.*" The Planning Commission notes that this approval criterion relates to issues that arise with a project that has multiple phases of Final Plan. This Final Plan is for the entirety of the project in a single phase therefore this standard is not applicable. The Planning Commission concludes that this criterion of approval is met.

The Planning Commission concludes based on the above that all applicable approval criteria for Final Plan approval have been satisfied.

2.7 The Planning Commission notes that following proper public notice, a public hearing was held on August 12, 2025 where testimony was received, and exhibits were presented.

2.8 The Planning Commission notes that the record includes the applicant's submittal; the Planning Commission Staff Report for Outline Plan dated December 10, 2024; the Planning Commission's Findings, Conclusions and Orders dated January 14, 2025; the City Council's Findings, Conclusions and Orders dated March 4, 2025; the Planning Commission Staff Report dated August 12, 2025; and the testimony received at the public hearing, and each of these by their reference are incorporated herein as if set out in full.

2.9 The Planning Commission finds that there is substantial evidence in the record to make findings that each of the criteria of approval for the modification to the previously approved Outline Plan and Site Design Review are met, and additionally that each of the criteria of approval for Final Plan have been met.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearings on this matter, the Planning Commission concludes that the requests for the modification to the Performance Standards Option (PSO) subdivision Outline Plan, as well as for the modification of the residential Site Design Review for Area 6, and for Final Plan approval are supported by evidence contained within the whole record and are **approved** subject to the conditions of approval below.

The conditions of approval are below:

1. All proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.
2. All proposed public improvements including sidewalks, curbs, gutters, park rows with irrigated street trees and the alley shall be installed, including the surrounding Area 7, prior to the recording of final plat.
3. Permits shall be obtained from the Ashland Public Works Department prior to any work within the public rights-of-way.
4. A final Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.
5. A final survey plat shall be submitted for review and approval within 18 months of Final Plan approval. Prior to submittal of the final subdivision survey plat for signature:
    a. All easements including but not limited to public and private utilities, drainage, irrigation, mutual access, conservation area easements, and fire apparatus access

shall be indicated on the final subdivision plat submittal for review by the Planning, Engineering, Building and Fire Departments.

   b. Subdivision infrastructure improvements including but not limited to utilities, driveway approaches, full street improvements, and conservation area easements, shall be completed according to approved plans, inspected, and approved.

   c. Electric services shall be installed underground to serve all lots, inspected, and approved. The final electric service plan shall be reviewed and approved by the Ashland Electric, Building, Planning and Engineering Divisions prior to installation.

   d. Sanitary sewer laterals and water services including connection with meters at the street shall be installed to serve all lots within the applicable phase, inspected and approved.

6. The building permit submittals shall include the following:

   a. Identification of all easements, including but not limited to any public and private utility easements, mutual access easements, conservation area easements, and fire apparatus access easements.

   b. Solar setback calculations demonstrating that all units comply with the performance Solar Setback Standard A as approved in the Outline and Final Plans.

   c. Final lot coverage calculations demonstrating how lot coverage complies with the lot coverage approved in the Outline and Final Plans.

   d. Storm water from all new impervious surfaces and runoff associated with peak rainfalls must be collected on site and channeled to the City storm water collection system through the curb or gutter at a public street, a public storm pipe, an approved public drainage way, or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.

________________________________	September 9, 2025
Planning Commission Approval	Date

THE CITY OF ASHLAND

BEFORE THE PLANNING COMMISSION

JANUARY 14, 2025

IN THE MATTER OF PLANNING ACTION #PA-T2-2024-00054 A REQUEST FOR OUTLINE PLAN APPROVAL FOR A PERFORMANCE STANDARDS OPTION (PSO) SUBDIVISION, AND A REQUEST FOR RESIDENTIAL SITE DESIGN REVIEW APPROVAL. THE APPLICATION ALSO INCLUDES A REQUEST FOR A VARIANCE TO DRIVEWAY WIDTH AND A TREE REMOVAL PERMIT.	)	**FINDINGS, CONCLUSIONS, AND ORDERS.**
OWNER: CMK DEVELOPMENT LLC	)	
APPLICANT: TAYLORED ELEMENTS	)	

RECITALS:

1) The subject property is tax lot #8600 of Assessor's Map 39-1E-04-AD (it does not presently have a street address). The property was created as lot-31 of Kestrel Park Phase II and was reserved for this final phase of the Kestrel Park Subdivision.
   a. The application also includes three tax lots owned by the City of Ashland; tax lot 4700 a 0.05 acre strip of land along the north of the subject property, as well as tax lots 7800 & 4900 which are both 'street plugs' to be vacated.
   b. The main property is 2.27 acres in size and slopes from east to west at approximately 15% slope.

2) The property is zoned "North Mountain-Multi Family" (NM-MF) and is regulated by the North Mountain Neighborhood Plan (NMNP) which is codified at Ashland Municipal Code (AMC) 18.3.5. This chapter applies to properties within the North Mountain Neighborhood Plan area adopted by Ordinance 2800 in April 1997.

3) The North Mountain Neighborhood District regulations require that all applications involving the creation of three or more lots shall be processed under chapter 18.3.9 Performance Standards Option (PSO) Overlay (AMC 18.3.5.040.K).

4) On November 4, 2024 the application was submitted and described as follows:
   a. The proposed PSO subdivision includes a total of 15-lots for residential development, ten of the lots are proposed for single-family residential (SFR) development, and five lots for multifamily housing. The subdivision will connect both Nandina Street and Patton Lane / Mountain Meadows Drive to create four blocks that have been identified previously as areas 4, 5, 6, and 7. The application includes a request for Site Design Review approval for four multifamily buildings with a total of 28-units of multi-family housing. Combined, this is a development

density of thirty-eight dwellings for the purposes of determining allowed density.

5) On December 9, the day before the Planning Commission hearing, the applicant informed staff that they were removing 'area 7' and its proposed development from the application, and instead would plat the area as a single lot reserved for future development.

   a. On December 10, 2024 the applicant informed staff in writing that "*Based on comments received from the neighboring property owners of the proposed Kestrel Park, Phase III application, the applicants have decided to withdraw area 7 from the application, including all associated entitlement requests such as the proposed property lines, tree removal and site review proposal. The applicants are still proposing to move forward with the remaining areas, area 4, 5 and 6, but will eventually re-apply for entitlements for area 7 in the future*."

6) The request, after the removal of area 7, is for outline plan approval for a 13-lot PSO subdivision and Site Design Review approval.

   a. Proposed is a total of twelve-lots for residential development, eight of the lots are proposed for single-family residential (SFR) development (which may or may not eventually develop with ARU's). The Site Design Review includes four lots with a total of 16-units of multi-family housing (area 6), as well as three buildings of attached single family (areas 4 and 5). The thirteenth lot will be reserved for the future development of area 7.

   b. Combined, this is a development density of twenty-two dwellings for the purposes of determining allowed density. (In accordance with HB2001 and the adopted duplex standards at AMC 18.2.3.110 each of the SFR lots can be developed with two dwellings.)

   c. The application also includes a request for a variance to driveway width.

7) The applicant's proposal is detailed in plans which are on file at the Department of Community Development and by their reference are incorporated herein as if set out in full.

8) The criteria of approval for Outline Plan are described in **AMC 18.3.9.040.A.3** as follows:

   A. the development meets all applicable ordinance requirements of the city.

   B. adequate key city facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a city facility to operate beyond capacity.

   C. the existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.

   D. the development of the land will not prevent adjacent land from being developed for the uses shown in the comprehensive plan.

   E. there are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.

   F. the proposed density meets the base and bonus density standards established under this chapter.

G. the development complies with the street standards.

H. the proposed development meets the common open space standards established under section 18.4.4.070. Common open space requirements may be satisfied by public open space in accordance with section 18.4.4.070 if approved by the city of Ashland.

9) The supplemental approval criteria of the NMNP are described in **AMC 18.3.5.030.C** as follows:

C. Supplemental Approval Criteria. In addition to the criteria for approval required by other sections of this ordinance, applications within the NM district shall also meet all of the following criteria.

1. The application demonstrates conformity to the general design requirements of the North Mountain Neighborhood Plan, including density, transportation, building design, and building orientation.

2. The application complies with the specific design requirements as provided in the North Mountain Neighborhood Design Standards.

10) The criteria for approval for Site Design Review are described in **AMC 18.5.2.050** as follows:

An application for Site Design Review shall be approved if the proposal meets the criteria in subsections A, B, C, and D below. The approval authority may, in approving the application, impose conditions of approval, consistent with the applicable criteria.

A. Underlying Zone. The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.

B. Overlay Zones. The proposal complies with applicable overlay zone requirements (part 18.3).

C. Site Development and Design Standards. The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.

D. City Facilities. The proposal complies with the applicable standards in section 18.4.6 Public Facilities, and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property.

E. Exception to the Site Development and Design Standards. The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1, 2, or 3, below, are found to exist.

1. There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty;

2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or

3. There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section 18.2.3.090.

11) The criteria of approval for a Variance are described in **AMC 18.5.5.030** as follows:

A. The approval authority through a Type I or Type II procedure, as applicable, may approve a variance upon finding that it meets all of the following criteria.

1. The variance is necessary because the subject code provision does not account for special or unique physical circumstances of the subject site, such as topography, natural features, adjacent development, or similar circumstances. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance.

2. The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site.

3. The proposal's benefits will be greater than any negative impacts on the development of the adjacent uses and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.

4. The need for the variance is not self-imposed by the applicant or property owner. For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant.

12) The criteria of approval for removal of a Tree that is Not a Hazard are described in **AMC 18.5.7.040.B.2** as follows

2. Tree That is Not a Hazard. A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.

a. The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.

b. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.

c. Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.

d. Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.

e. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.

13) The Planning Commission, following proper public notice, held a public hearing on December 10, 2024.

a. At the beginning of the hearing, it was announced that 'Area 7' was no longer part of the proposal and that the Planning Commission would only be considering the public improvements and Site Design Review for Areas 4, 5 and 6.

14) Testimony was received, and exhibits were presented. The Planning Commission deliberated

and approved the application subject to conditions of approval.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes, and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS OF FACT

2.1 The Planning Commission notes that chapter 18 of the Ashland Municipal Code (AMC) is the City's Land Use Ordinance (LUO). The LUO regulates the development pattern envisioned by the Comprehensive Plan and encourages efficient use of land resources among other goals. The Planning Commission notes that when considering the decision to approve or deny an application the Planning Commission considers the application materials against the relevant approval criteria in the LUO.

2.1.2 The Planning Commission finds that it has received all information necessary to render a decision based on the application itself, the December 10th Staff Report, the applicant's testimony, the exhibits received, and public testimony received both written and at the public hearing.

2.2 The Planning Commission notes that the application was deemed complete and that the notice for the public hearing was both posted at the frontage of the subject property and mailed to all property owners within 200-feet of the subject property on, November 19, 2024 (21 days prior to the December 10th Meeting).

2.3 The Planning Commission notes that the property is in the NMNP and as provided at AMC 18.3.5.040.K, "*All applications involving the creation of three or more lots shall be processed under chapter 18.3.9 Performance Standards Option Overlay.*"

2.4 The Planning Commission finds that the proposal for Outline Plan of a Performance Standard Option (PSO) subdivision meets all applicable criteria for described in AMC 18.3.9.040.A.3 and detailed below.

2.4.1 The first approval criterion for Outline Plan approval is that "*The development meets all applicable ordinance requirements of the City.*" The Planning Commission notes that this is an all-encompassing criterion and that it has considered which City Ordinances are applicable. The Planning Commission notes that for the purposes of resolving this criterion we rely on the entirety of the record including the applicant's submittal, and the Staff Report dated December 10th. The Planning Commission notes that with the findings that are set out below, the approval of the exception to street standards discussed below, and the adopted conditions of approval that the proposal will meet all applicable ordinance requirements and finds that this criterion of approval is satisfied.

2.4.2 The second approval criterion for Outline Plan approval is that "*Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*" The Planning Commission notes that this is the final phase of the Kestrel Park Subdivision and all infrastructure installed in the previous phases were sized based on the total planned density. The Planning Commission notes that at the intersection of Stoneridge Ave. and Nandina St. that there is a maintenance hole where an eight-inch sanitary sewer will connect. The Planning Commission notes that at the same intersection there is also a storm drain catch basin that feeds into a twelve-inch main. The storm drain connects into existing retention facilities that were constructed in the first phase of the subdivision. The Planning Commission notes that each road that is proposed to be extended through the subdivision has either a six- or eight-inch water main that will all connect, providing a closed loop system. The Planning Commission notes that the application materials assert that adequate key City facilities can be provided to serve the development based on consultations with representatives of the various City departments (i.e. water, sewer, streets and electric), and that the proposed development will not cause a City facility to operate beyond capacity. The Planning Commission notes that the Staff Report stated that "Public works has confirmed that there are no concerns regarding the capacity of any of these services." The Planning Commission finds that with the foregoing that this criterion of approval is satisfied.

2.4.3 The third criterion for approval of an Outline Plan is that "*The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.*" The Planning Commission notes that the wetlands, floodplain corridors and large trees were previously addressed in the earlier phases of the subdivision. The Planning Commission notes that the only natural feature that has been identified is the cherry tree that is requested to be removed and is addressed further below. The Planning Commission notes that there are no other natural features to address and that this approval criteria is satisfied.

2.4.4 The fourth criterion for approval of an Outline Plan is that "*The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*" The Planning Commission notes that the surrounding property is fully developed, and that there is no adjacent vacant land. The Planning Commission finds that the proposed subdivision will not prevent the adjacent lands from being developed as envisioned in the Comprehensive Plan and finds that this criterion of approval is satisfied.

2.4.5 The fifth criterion for approval of an Outline Plan is that is that "*There are adequate* *provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*" The Planning Commission notes again that this is the final phase of the Kestrel Park Subdivision and that the HOA governing instruments have obligations for the maintenance of the open space and other common amenities. The Planning Commission notes that all of the open space for the subdivision were dedicated in the previous phases and concludes that the earlier phases had a higher ratio of amenities than this final phase. The Planning Commission finds that there are adequate provisions for the maintenance of the open space and common areas and finds that this criterion of approval is satisfied.

2.4.6 The sixth criterion for approval of an Outline Plan is that is that "*The proposed density meets the base and bonus density standards established under this chapter.*" The Planning Commission reiterates that this is the third phase of the subdivision and the density considered has been tracked over the previous phases and includes all area of the previous parent parcels including lands dedicated to Rights of Way. The Planning Commission takes note of the spread sheet that was provided in the staff report and also set out below. This spreadsheet has been updated based on the removal of 'Area 7.'

	NM-R-1-7.5	**NM-MF**
Acres	4.59	4.16
Dwelling units per acre	3.6	12
Base Density (acres x units per acre)	16.52	49.92
Minimum Density (x 0.75 – 1.1)	12.39 – 18.18	37.44 – 54.91
Phase 1	11	4
Phase 2 (Cottages)	5	10
Total Dwellings (Phase 1 + 2)	16	14
Remaining minimum density range	up to 2.18	23.44 - 40.91
Proposed Phase 3		22*
Required minimum range for Area 7	Full developed	1.44 – 18.91

The Planning Commission notes that the required minimum density for the remaining subdivision is between 24 and 40 units. The Planning Commission further notes that the present proposal is for 22 units of density, and the Planning Commission further notes that 8 of the proposed MFR units are below 500 sq. ft. they are counted as 0.75 units [SFR: 8, MFR 8+(8*0.75)=14, 8+14=22]. The Planning Commission concludes that Area 7 will need to develop with at least two but not more than eighteen units, and a condition of approval to that effect has been included below. The Planning Commission finds that, with the condition of approval included below ensuring that area seven will meet the required minimum density, that this criterion of approval is satisfied.

2.4.7 The seventh Outline Plan approval criterion is that "*The development complies with*

* Eight of the proposed multi family units are less than 500 square feet so for the purposes of density they only count as 0.75. [8 SFR + ((8 x 0.75) + 8) MFR = 22]

the Street Standards." The Planning Commission notes that the street network and road cross-sections have been planned from the earlier phases of the subdivision. The Planning Commission notes that the application materials include civil drawings and road cross sections for each road and alley meeting the standards provided in the NMNP. The Planning Commission concludes that the street standards are met and finds that this criterion of approval is satisfied.

2.4.8 The final criterion for approval of an Outline Plan is that is that "*The proposed development meets the common open space standards established under section 18.4.4.070. Common open space requirements may be satisfied by public open space in accordance with section 18.4.4.070 if approved by the City of Ashland.*" The Performance Standards Option Chapter requires that at least eight percent of the total lot area be provided in common open space for developments with a base density of ten units or greater. The Planning Commission notes that the firsts two phases dedicated nearly 50% of the total project land area to dedicated open space including the floodplain and wetland areas as well as additional open space provided in phase 2 of the project. The Planning Commission conclude that with the previous phases of the subdivision considered and the ample amount of land dedicated that this criterion of approval has been found to be satisfied.

2.4.9 The Planning Commission concludes based on the above and finds that all applicable approval criteria for Outline Plan subdivision approval have been satisfied.

2.5 The Planning Commission finds that the proposal for development in the NMNP meets all of the supplemental applicable criteria described in AMC 18.3.5.030.C and detailed below. There are two supplemental approval criteria for the NMNP. The first is to ensure conformity with the "general design requirements" and second that the proposal meets the "specific design requirements" of the NMNP Design Standards. The general design requirements include '*density, transportation, building design, and building orientation.*' The specific design requirements include all of the standards provided in AMC 18.3.5.100 "Site Development and Design Standards"

2.5.1 The Planning Commission notes that the "general design requirements" include 'density, transportation, building design, and building orientation." Included in the discussion of the Outline Plan approval, above, there are findings addressing the required minimum density, and that the road system connecting four road stubs completing the original road design that was approved in conjunction with the first phase of Kestrel Park Subdivision. The Planning Commission notes that each of the proposed buildings provides pedestrian connectivity to the proposed facilities and satisfies the building orientation. The Planning Commission concludes that with the foregoing discussion that the Planning Commission finds that this approval criterion is met.

2.5.2 The Planning Commission notes that the "specific design requirements" include all of the standards provided in AMC 18.3.5.100 "Site Development and Design Standards." The Planning Commission notes that the Site Development and Design Standards includes four primary sections: A.) Housing, B.) Neighborhood Central, C.) Street Types and Design, and D.) Open Space and Neighborhood Focal Point. There are no applicable portions of sections B or D and they are not discussed further.

AMC 18.3.5.100 A "Housing"

The Planning Commission notes that first the first standard is 'Architectural Design.' This standard provides a list of architectural features and requires that at least two listed features from the section be included in each home design.

The Planning Commission notes that the application materials include extensive drawings of the proposed buildings with each having eaves, covered porch entries, gables and in some cases dormers. The Planning Commission concludes that each proposed building design includes at least two of the required features satisfying the 'Architectural Design.' Requirements.

The Planning Commission notes that the building orientation standards require that "*Dwellings shall be designed with a primary elevation oriented towards a street.*" The Planning Commission notes that the site plan clearly shows that each proposed building has its primary orientation to the street and finds that the orientation standard is met.

The Planning Commission notes that the requirement for garages requires that "*Where no alleys are present, garages shall be located a minimum of 15 feet behind the primary façade and a minimum of 20 feet from the sidewalk.*" The Planning Commission, in evaluating the main site plan, note that the garages are properly setback and that this standard is met.

The Planning Commission notes that the standards require that "*Grading for new homes and accessory structures shall be minimized and building designs shall respond to the natural grade.*" The Planning Commission again notes the comprehensive design package for each of the three areas and notes that care has been given in having each of these homes have a daylight basement and are responsive to the existing grade, and that this standard has been met.

The Planning Commission notes that the design standards specify that porches shall be incorporated into buildings and be a minimum of six-feet by eight-feet in size. The Planning Commission notes that the detailed site plan of each area includes details on the porch size and in every case meet or exceed this requirement, and that this standard has been met.

The Planning Commission notes that the design standards include that driveways for single family homes be limited to nine-feet in width, and that shared driveways be no more than twelve-feet. The Planning Commission notes that the application includes a variance to this standard which is discussed below. The Planning Commission further notes that the Public Works department has a standard that requires that the minimum driveway width be twelve feet, and that the application proposes twelve-foot driveways for the single-family homes and combined 18'-wide for the shared driveways. The Planning Commission concludes that if the variance is approved below then this standard will be satisfied.

AMC 18.3.5.100 D "Street Types and Design."

The Planning Commission notes that this section provides many types of streets for the NMNP area with the primary type being a "neighborhood access street" which is composed of "*a 48-foot right-of-way, which provides for a 15-foot travel surface, seven-foot parking bays, and eight-foot planting strips and five-foot sidewalks on each side*." The project also includes alleys which are "*a 20-foot wide right-of-way which contains a 12-foot wide improved alley and four-foot planted or graveled strips or shoulders.*" The Planning Commission once again notes that this is the third phase of the Kestrel Subdivision, and the extension of the street system approved at that time. The Planning Commission further notes that the application materials containing detailed civil plans showing that the proposed cross sections meet these design standards and conclude that this standard has been met.

2.5.3 The Planning Commission concludes based on the above and finds that all design standards are met and that therefore this approval criterion has been met.

2.6 The Planning Commission finds that the proposal for a variance meets all of the applicable criteria described in AMC 18.5.5.050 and as detailed below.

2.6.1 The Planning Commission notes that the approval criteria for a variance include that 1) variance is necessary special or unique circumstances, 2)The variance is the minimum necessary, 3)The proposal's benefits will be greater than any negative impacts, and 4) that the need for the variance is not self-imposed.

2.6.2 The Planning Commission notes that the NMNP master plan was adopted in 1997, and that in the decades since cars have gotten larger. The Planning Commission also notes that there is no evidence that nine-foot driveways have ever been constructed in the NMNP area. The Planning Commission notes that the Public Works department will not authorize a driveway as narrow as the code requires, making a unique circumstance. The Planning Commission notes that the proposal for 12' and 18' shared driveways is the minimum necessary in both cases, because Public Works will not allow anything less than 12', and that the application materials demonstrate that 12' is two narrow for a shared drive. The Planning Commission further notes that based on a single driveway requirement for a nine foot it is perfectly reasonable that a shared driveway for two shared wall garages be allowed to be twice that. The Planning Commission notes that based on the topography and lot sizes it is unreasonable to expect a 12' wide shared drive to functionally serve two 2-car garages. The Planning Commission further notes that the benefit of the variance allows for long stretches of uninterrupted streetscape that would not otherwise be possible. Finally, The Planning Commission notes that the inability to build the required driveway width based on City of Ashland policy demonstrates that the need for the variance is not self-created. The Planning Commission concludes that based on the above that each of the approval criteria for a variance is satisfied and that the variance should be approved.

2.7 The Planning Commission finds that the proposal for Site Design Review approval meets all applicable criteria for described in AMC 18.5.2.050 as detailed below:

2.7.1 The Planning Commission notes that the first criterion of approval for Site Design Review is that "*The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*" The Planning Commission notes that the property is in the NMNP and is required to be processed in accordance with the Performance standards of AMC 18.3.9. The Planning Commission further notes that the PSO applicability provides "*that developments subject to [the PSO] chapter are not required to meet the minimum lot size, lot width, lot depth, and setback standards of part 18.2.*" The Planning Commission concludes that based on the PSO standards this approval criteria is met.

2.7.2 The Planning Commission notes that the second criterion of approval for Site Design Review is that "*The proposal complies with applicable overlay zone requirements (part 18.3).*" As mentioned above in 2.5.2, the Planning Commission again notes that the only overlay is the city-wide wildfire overlay and that all proposed construction will meet the adopted wildfire standards. The Planning Commission finds that this criterion of approval is met.

2.7.3 The Planning Commission notes that the third criterion of approval for Site Design Review is that "*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided below.*" The Planning Commission notes that the application includes detailed responses to each of the Site Development and Design Standards. The Planning Commission notes that the building orientation, garage standards, proposed building materials, preliminary landscape plan and open space standards are all met. The Planning Commission notes that a final landscaping plan with irrigation details will be required and a condition of approval to that effect has been included below. The Planning Commission finds that with the foregoing that this criterion of approval is met.

2.7.4 The Planning Commission notes that the fourth criterion of approval for Site Design Review is that "*The proposal complies with the applicable standards in section 18.4.6 Public Facilities, and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property.*" The Planning Commission reiterates that this is the third phase of the subdivision and that all city facilities were sized for the expected density during the first phase. The Planning Commission further notes that all city utilities are available and installed in the adjacent rights-of-ways. The Planning Commission notes that Staff have communicated with the Public Works Department and that there are no known capacity issues to any of the utilities. The Planning Commission notes that the application includes details on the electrical plan and that the storm drain will be designed for Low Impact in accordance with the RVSS stormwater quality design manual. The Planning Commission finds that this criterion of approval has been met.

2.7.5 The Planning Commission notes that the last criterion of approval for Site Design Review is that "*The approval authority may approve exceptions to the Site Development* *and Design Standards of part 18.4 if the circumstances in either subsections below, are found to exist…*" The Planning Commission notes that there are no requested exceptions to the above standards and finds that this criterion of approval has been met.

2.7.6 The Planning Commission concludes based on the above and finds that all applicable approval criteria for Site Design Review approval have been satisfied.

2.8 The approval criteria for "Tree that is not a hazard" first require that "*The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards.*" The Planning Commission notes that the only tree proposed for removal is within a building envelope of a proposed building in area 7. The Planning Commission notes that without considering the proposed development it is impossible to address the relevant findings for a non-hazard tree removal. The Planning Commission concludes that the tree removal in area seven must be denied at this time.

2.9 The Planning Commission notes that following proper public notice, a public hearing was held on December 10, 2024 where testimony was received, and exhibits were presented.

2.9.1 The Planning Commission deliberated, and a motion was made approving the Outline Plan as well as Residential Site Design Review. The application was approved subject to the conditions of approval in the Staff Report along with added conditions of approval presented by staff regarding the removal of consideration of area 7. The amendments were read into the record and are set out below as conditions of approval #3 and #4.

2.10 The Planning Commission notes that the record includes the applicant's submittal, the Staff Report dated December 10, as well as the testimony received at the public hearing, each of these by their reference are incorporated herein as if set out in full.

2.10.1 The Planning Commission finds that there is substantial evidence in the record to make findings that each of the criteria of **approval** for Outline Plan and Residential Site Design Review have been met.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearings on this matter, the Planning Commission concludes that the request for a 13-lot unit Performance Standards Option (PSO) subdivision Outline, as well as residential site design review for areas 4, 5, and 6 is supported by evidence contained within the whole record and is **approved** including the conditions of approval below.

The conditions of approval are below:

1- That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.

2- That the applicant apply for final plan approval pursuant to AMC 18.3.9.040.B within 18 months of this outline plan approval prior to any development or construction.

3- The conceptual plans for area #7 are not approved here and have been provided for illustrative purposes only. Development of areas #7 shall require Site Design Review approval. The ultimate development of areas #7 shall comply with the minimum density standards of the NMNP.

4- That all proposed public improvements including sidewalk, curb, gutter, park row landscaping/irrigation and alley be installed, including surrounding area 7, prior to the recording of final plat.

5- That permits shall be obtained from the Ashland Public Works Department prior to any additional work in the public right of way.

6- That a final Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.

7- That a final survey plat shall be submitted within 12 months of Final Plan approval and approved by the City of Ashland. Prior to submittal of the final subdivision survey plat for signature:

    a. All easements including but not limited to public and private utilities, drainage, irrigation, mutual access, conservation area easements, and fire apparatus access shall be indicated on the final subdivision plat submittal for review by the Planning, Engineering, Building and Fire Departments.

    b. Subdivision infrastructure improvements including but not limited to utilities, driveways, streets, and conservation area easements, shall be completed according to approved plans, inspected, and approved.

    c. Electric services shall be installed underground to serve all lots, inspected, and approved. The final electric service plan shall be reviewed and approved by the Ashland Electric, Building, Planning and Engineering Divisions prior to installation.

    d. That the sanitary sewer laterals and water services including connection with meters at the street shall be installed to serve all lots within the applicable phase, inspected and approved.

8- That the building permit submittals shall include the following:

    a. Identification of all easements, including but not limited to any public and private utility easements, mutual access easements, conservation area easements, and fire apparatus access easements.

b. Solar setback calculations demonstrating that all units comply with the performance Solar Setback Standard as approved in the outline and final plans.

c. Final lot coverage calculations demonstrating how lot coverage complies with the lot coverage approved in the outline and final plans.

d. That storm water from all new impervious surfaces and runoff associated with peak rainfalls must be collected on site and channeled to the City storm water collection system through the curb or gutter at a public street, a public storm pipe, an approved public drainage way, or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.

Lisa Verner
Planning Commission Approval

1-14-25
Date

THE CITY OF ASHLAND

BEFORE THE CITY COUNCIL

MARCH 4, 2025

IN THE MATTER OF PLANNING ACTION #PA-APPEAL-2025-00020 AN APPEAL OF PLANNING ACTION #PA-T2-2024-00054 WHICH APPROVED A REQUEST FOR OUTLINE PLAN APPROVAL FOR A PERFORMANCE STANDARDS OPTION (PSO) SUBDIVISION, AND A REQUEST FOR RESIDENTIAL SITE DESIGN REVIEW APPROVAL. THE APPLICATION ALSO INCLUDES A REQUEST FOR A VARIANCE TO DRIVEWAY WIDTH AND A TREE REMOVAL PERMIT.	)	**FINDINGS, CONCLUSIONS, AND ORDERS.**
OWNER: CMK DEVELOPMENT LLC	)	
APPLICANT: TAYLORED ELEMENTS	)	

RECITALS:

1) The subject property is tax lot #8600 of Assessor's Map 39-1E-04-AD (it does not presently have a street address). The property was created as lot-31 of Kestrel Park Phase II and was reserved for this final phase of the Kestrel Park Subdivision.

2) The application is an appeal of the Planning Commission's approval for, inter alia, outline plan approval for a PSO subdivision and Site Design Review approval.

3) In accordance with Ashland Municipal Code (AMC) 18.5.1.060.I the City Council's review of a Type-2 Decision is confined to the record of the proceeding before the Planning Commission. The record includes the application materials, the Planning Commission Staff Report dated December 10, 2024, and the Planning Commission Findings of Fact dated January 14, 2025. By their reference each is hereby incorporated herein as if set out in full.

4) The relevant approval criteria include Outline Plan at AMC 18.3.9.040.A.3, supplemental approval criteria for the NMNP at AMC 18.3.5.030.C, Site Design Review at AMC 18.5.2.050, Variance at AMC 18.5.5.030, and Tree Removal at AMC 18.5.7.040.B.2. These are set out in full in the Planning Commission Findings referenced above, and for parsimony are not repeated here.

5) The Planning Commission, following proper public notice, held a public hearing on December 10, 2024. Testimony was received, and exhibits were presented. The Planning Commission deliberated and approved the application subject to conditions of approval. On January 14, 2025, the Planning Commission adopted findings, conclusions and orders addressing the relevant approval criteria and conditions of approval.

6) Subsequent to the mailing of the Notice of Decision and the Planning Commission's adopted

findings, an appeal was timely filed by Vida Taylor et al. The appeal application included the required form, and a three-page letter listing eight points of appeal signed by Ms. Taylor and nine others.

a. The appeal application also included a four-page letter titled "Testimony on Kestrel Park Phase IIII Site Development" which is a near identical letter to what was previously submitted by Mr. Kinsinger on December 5th and again on February 18th. The majority of the Kinsinger letter raises concerns that had to do with "Area 7" which was removed from consideration. The other issues raised in the Kinsinger letter overlap entirely with the eight issues raised in the Taylor letter including street design standards, alley access, lot coverage and building design.

7) The eight assignments of error for the appeal are summarized below:

a. That the standards provided at AMC 18.3.5.030.C are not met. This section of code is the "Supplemental Approval Criteria" for the North Mountain Neighborhood plan. The appellant specifically cites density, building design, building orientation, and concerns about increased traffic.

b. That the standards provided at AMC 18.3.5.100.C.3 are not met. This section of code is specific to the design requirements of alleys for the North Mountain Neighborhood. The appellant raises concerns with the number of units taking vehicular access from an extension of existing alleys.

c. The third appeal issue restates the concern that the standards provided at AMC 18.3.5.030.C are not met. The appellant then specifically cites concerns with the multifamily development building design, and parking being 'Infront of the buildings.

d. That the standard provided at AMC 18.3.9.040 are not met. This section address "Adequate key City facilities" and the appellant raises concerns with police and fire protection, and adequate transportation.

e. That the standards provided at AMC 18.5.2.050.C are not met. This section addresses compliance with Chapter 18.4. The appellant then specifically cites concerns regarding density, traffic, and evacuation.

f. That the standards provided at AMC 18.3.5.100.A are not met. This section address "Site Development and Design Standards for 'Housing' for the North Mountain Neighborhood. The appellant then specifically cites building orientation, building design, parking, and fire protection.

g. That the standards provided at AMC 18.4.4.070 are not met. This section addresses the required open space. The appellant then specifically cites concerns regarding lot-coverage, building design, views, and generally the development of multi-family housing.

h. The eighth appeal issue does not include a code citation but raises concerns with fire safety and evacuation.

8) The City Council, following proper public notice, held a public hearing on March 4, 2025. Testimony was received from staff, the appellant, and the applicant.

9) The City Council notes that the appeal process is limited to evaluating whether substantial evidence in the record supports the Commission's decision and whether any legal errors were made. The City Council determined that there is substantial evidence in the record to find that the proposal complies with the applicable approval criteria, including zoning, density, site design, and infrastructure requirements established in the North Mountain Neighborhood Plan.

10) The City Council considered each of the eight issues raised on appeal and found that there is substantial evidence in the record to support the Planning Commission decision approving the application.

11) The City Council deliberated and voted (5-1) in favor of the following motion:

> "To affirm the decision of the Planning Commission and reject the appeal for the reasons that there is substantial evidence in the record to support the Planning Commission's decision, that the Planning Commission did not commit any errors of law, and to adopt the Planning Commission's Findings of Fact as the City Council's own."

Now, therefore, the City Council of the City of Ashland finds and concludes as follows:

DECISION

Based on the record of the Public Hearings on this matter, the City Council affirms the decision of the Planning Commission and rejects the appeal for the reasons that there is substantial evidence in the record to support the Planning Commission's decision. The City Council finds that the Planning Commission did not commit any errors of law, and to adopts the Planning Commission's January 14, 2025 Findings of Fact and conditions of approval as the City Council's own.

Tonya Graham
City Council Approval

3/10/25
Date

DISCUSSION ITEMS

Public Meeting Law Training

Excerpt

Chapter 4: Making Land Use Decisions

Welcome to Chapter 4 – Making Land Use Decisions. In this section, we discuss the different types of land use decisions made by city and county government, time requirements for these decisions and the public hearing and appeals processes. We have divided them into specific sections for easy reference.

It is important to note that this chapter is only a general summary of planning procedures and requirements. For information about a specific statute, legal precedent, goal or rule, cities and counties should contact the appropriate governmental agency. If you have legal issues or concerns, consult an attorney who specializes in land use law.

Local Land Use Decisions

According to state law, there are three main types of land use decisions: legislative, quasi-judicial and ministerial. In most cases, public notice is required. Public hearings are required for certain types of decisions. Although local governments must establish procedures and requirements consistent with state statutes, they have considerable flexibility in assigning responsibility for decisions. For example, in many cases, staff makes the initial decision, subject to appeal to the planning commission. Some planning commission decisions may be appealed to the governing body. Some jurisdictions employ hearings officers to make certain types of land use decisions which are then subject to appeal to the planning commission or governing body. In all cases, local government land use decisions may be appealed to the Land Use Board of Appeals, or LUBA. All decisions must be consistent with state statutes, the statewide planning goals, case law and other applicable legal requirements.

Limited land use decisions and expedited land divisions are special categories of local decisions that are subject to specific procedures and standards outlined in state statutes.

Legislative Land Use Decisions

Legislative decisions establish local land use policies. They typically become part of the comprehensive plan or zoning code. In the case of map designations, legislative decisions are applicable to broad geographical areas rather than single properties or sites. In most communities, proposed legislative amendments to the comprehensive plan or zoning code are considered first by the planning commission, which holds one or more public hearings. The commission's recommendation is then considered by the governing body which holds at least one public hearing before taking final action.

Quasi-Judicial Land Use Decisions

Local governmental bodies make quasi-judicial decisions when they apply existing policies or regulations to specific situations or development proposals. Other quasi-judicial decisions amend the zoning or comprehensive plan map, policies or regulations in relation to a specific development proposal. Additional examples of quasi-judicial decisions are conditional use permits, variances, partitions, subdivisions, annexations and road and street vacations.

Ministerial Land Use Decisions

Ministerial land use decisions are made by local planning staff based on clear and objective standards and requirements applicable to a specific development proposal or factual situation. Examples include building permits for a use permitted by code or a determination that a proposed structure meets setback or height requirements. Ministerial decisions do not require a public notice or hearing.

Limited Land Use Decisions and Expedited Land Divisions

To streamline approval of relatively minor actions within an urban growth boundary, or UGB, the legislature has approved two other kinds of decisions. The first, limited land use decisions, are made by the locally designated decision-maker and are subject to procedures and notice requirements outlined in state statutes. Examples include tentative partitions, tentative subdivisions, site review and design review.

The second, expedited land divisions for residential uses within a UGB, are made by planning staff after public notice. They are subject to procedures and requirements outlined in state statutes. The local government may not hold a hearing on such an application and must make its decision within 63 days of the application. Decisions may be appealed to a referee hired by the local government and finally to the State Court of Appeals according to state law.

Process

Procedures for legislative and quasi-judicial land use decisions are outlined in statutes and interpreted through case law. These procedures are ultimately incorporated into local plans and ordinances. Legislative procedures are generally more flexible than quasi-judicial procedures because they deal with relatively broad public policy issues. Quasi-judicial procedures are often more complex and specific, and require "due process." This is a legal term that entitles all affected parties prior notification of a proposed action and the opportunity to present and rebut evidence before an impartial tribunal. For quasi-judicial decisions, governing body members, hearings officers and planning commission members should avoid or limit communications outside of the formal public hearing process. They are required to disclose any contact outside the public hearing regarding a specific case in order to provide an opportunity for rebuttal or other corrective action. The local government must maintain a record of the proceedings and adopt findings of fact regarding the reasons for their decision. Within UGBs, this process must be completed within 120 days. Outside UGBs, the process must be completed within 150 days. In both cases, there are specific provisions to extend the time limit.

Land Use Application

Legislative land use decisions are subject to post acknowledgment plan amendment (PAPA) requirements contained in state statutes. For quasi-judicial land use decisions, the 120- or 150-day review process begins after the planning staff receives required application forms and supporting information that advocate for a certain land use or proposed development. Many local governments will schedule pre-application conferences with the prospective applicant.

Public Notice

Notice for legislative land use decisions must be provided to the public as outlined in local procedures and must be forwarded to the Director of DLCD as required by the state statute. DLCD provides notice to those who have requested to be included on the agency's notice list.

For quasi-judicial decisions, specific parties must be notified at least 20 days prior to the public hearing: the applicant; property owners within 100 feet of the property if within a UGB, within 250 feet if located outside a UGB and within 500 feet if located within a farm or forest zone; and any neighborhood or community organizations whose boundaries include the site. Some local governments also require that notice be posted on the property.

Public Hearing

For legislative decisions, the planning commission usually holds initial hearings on a proposal before forwarding its recommendation to the governing body. Legislative decisions require final action by the governing body. Hearing procedures are relatively flexible and there are no limitations on outside contact between decision makers and the public.

For quasi-judicial decisions, most cities and counties hold at least one hearing before the planning commission or hearings officer prior to forwarding a recommendation or allowing an appeal to the governing body. At the hearing, the presiding officer summarizes the procedures and planning staff describes the case, including the applicable criteria in the comprehensive plan or zoning code, and its recommendation.

Applicants then present their case for approval and others may support them. Opponents then have the opportunity to challenge the applicant's case. All parties have the right to present and rebut evidence directed toward the applicable criteria. Failure to raise an issue orally or in writing in advance of or during the hearing precludes appeal to LUBA on that issue. This is commonly referred to as the "raise it or waive it" requirement. Under state law, some types of land use decisions may be made without a hearing if notice is provided and no party requests it.

Decision and Findings

Legislative decisions require a record and findings, but the requirements are less rigorous than for quasi-judicial decisions. The record must be adequate to show that the legislative action is within the legal authority of the city or county. The record must show that the jurisdiction followed applicable procedures. Legislative decisions must be consistent with substantive requirements in state statutes and the statewide planning goals. For example, an updated housing element must be consistent with ORS 197.303-314 and Statewide Planning Goal 10 (Housing).

After hearing the staff report and public testimony on an application for a quasi-judicial decision, the hearings body makes its decision. As noted before, this must be based only on applicable criteria in the local code and relevant evidence and testimony. There are four choices of action: approve the application; approve the application subject to specific conditions; deny the application; or continue the review process to obtain additional information. In this case, the applicant may need to agree to a time extension.

The final decision must include findings of fact and conclusions of law that are adequate to explain the basis for the action. Draft findings are often prepared by staff and may be available in advance of the hearing. Adoption of findings may occur immediately following the hearing and include any modifications to the draft, based on additional evidence and testimony. In some cases, the prevailing party, legal counsel or staff are asked to prepare the final version of the findings which are then adopted at a separate meeting before the time limit expires. The final decision must be based on what is known as "substantial evidence" that a reasonable person would rely on in reaching the decision.

Appeals

Local ordinances specify how initial decisions by local staff, a hearings officer, or the planning commission can be appealed to the local governing body. Certain appeals are limited to evidence submitted to the initial decision-maker and may include an opportunity for additional oral or written argument.

As we have noted before, only parties that have stated their case before the local government have 21 days to file a Notice of Intent to Appeal with LUBA. Following this filing, and during a timeframe prescribed by law the local government must provide the complete record of the proceedings with the board. Once the record is filed and accepted, the petitioner and respondent(s) file their briefs with the board. LUBA will hear oral arguments from the parties and issue a written opinion that either affirms, reverses, or remands the decision for additional consideration. The board's decision may be appealed to the Court of Appeals, or finally, to the Oregon Supreme Court. Specific timelines in state law provide for a speedy review of land use decisions and increase certainty for both the community and applicant.

Alternatives to formal appeals include mediation, which can save all parties time and money. For more information on mediation assistance, contact DLCD.

Staff Role

Planning staff are usually the first individuals an applicant meets. They are responsible for explaining all procedures and requirements, reviewing the application for completeness and preparing the staff report. Staff presents its report and recommendation to the decision maker. Often, the staff recommendation is accepted with or without conditions. Staff generally prepares the final decision documents and findings of fact documenting the reasoning to support the decision.

A pre-application conference with prospective applicants may help them understand the procedures and requirements for the land use proposal, including any additional research or information that may be needed. In some cases, applicants may be encouraged to meet with neighborhood groups or other affected parties to review their proposal.

Staff prepares a public notice for proposed land use decisions that describes the location of the subject property, the nature of the application and the proposed use. The notice also explains: criteria from the comprehensive plan and land use regulations that pertain to the application; the date, time, and location of the public hearing; the name of a local government representative to contact; and requirements for public testimony and how the hearing is conducted. When a staff report is prepared, it must be made available to all interested parties seven days prior to the public hearing. In some cases, the staff report includes draft findings explaining the reasoning for the recommended decision.

As noted earlier, LUBA may remand or return a case to the local government for additional review. If a decision is remanded, the local government must decide whether to proceed, based on the existing record or to allow additional evidence and testimony. Legal requirements related to remand may be complicated. Staff should work with their legal counsel to define procedures and requirements before the remand is formally considered.

Ex Parte Contact, Bias and Conflicts of Interest

Ex Parte Contact

An ex parte contact occurs when a decision-maker receives information, discusses the land use application or visits the site in question outside the formal public hearing. This does not include discussions with and information received from staff. Failure to disclose such contact may result in reversal or remand of the decision. If ex parte contact does occur, the decision-maker must disclose it on the record at the hearing, describe the circumstances under which it occurred and present any new evidence introduced through that contact. The presiding officer must give parties the opportunity to rebut the substance of the ex parte contact. State statutes clearly delineate requirements for ex parte contacts.

Bias

Bias occurs when decision-makers have a prior judgment of the case that prevents them from making an objective decision based on the facts. Such decision-makers should excuse themselves from the proceedings. Even though bias is often subjective, not all personal views or positions are actual bias in the eyes of the law. While it is not unusual for decision-makers to have a perspective or background, the threshold test is if this will influence their decision. Decision-makers should carefully consider any issues related to their personal bias and be prepared to step aside if necessary.

Conflict of Interest

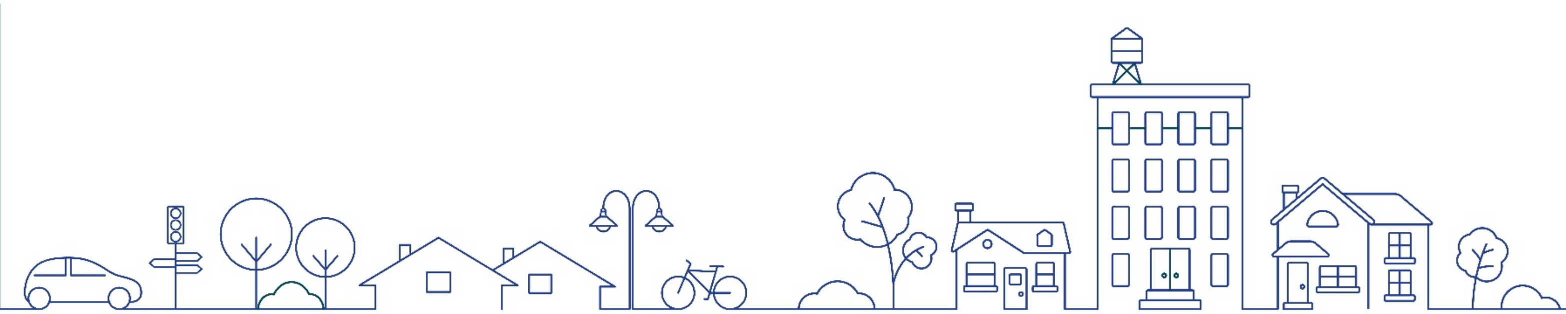
A conflict of interest occurs if any action by public officials results in financial gain or loss to themselves or a relative or business associate. According to state law, it must be disclosed. There are two types of conflicts of interest, actual and potential. An actual conflict of interest is one that would occur as a result of the decision. If that is likely, the decision-maker must disclose it and not participate in the decision. A potential conflict is one that could occur as a result of the decision. In that case, disclosure is still required, but the decision-maker may participate in the decision.

Legal Issues Related to Ex Parte Contacts, Bias or Conflicts of Interest

Decision makers should consult with the local government's legal counsel if they have any questions or concerns regarding Ex parte contacts, Bias or Conflicts of Interest.

Oregon Municipal Handbook

CHAPTER 9:
PUBLIC MEETINGS LAW



League of Oregon Cities

Published by the League of Oregon Cities
September 2020

Table of Contents

Chapter 9: Public Meetings Law

The purpose of the Oregon Public Meetings Law (OPML) is to make decision-making of state and local governing bodies available to the public. This policy is stated expressly in the law: “The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of [this law] that decisions of governing bodies be arrived at openly.”[1]

That policy is given effect through various substantive provisions contained under ORS 192.610 to ORS 162.690, discussed below.[2] Although compliance with these provisions might reduce the speed and efficiency of local decision-making, local residents benefit from a better understanding of the facts and policies underlying local actions. The required process and formality also can make it easier for cities to justify a decision if one is later challenged in an administrative or judicial proceeding.[3]

This chapter will touch on the basic requirements of the law, beginning with the criteria for what gatherings constitute “meetings” and what organizations constitute “governing bodies” under the OPML.[4] Where applicable, the OPML generally requires that meetings be open to the public unless an executive session is permitted, that proper notice be given, and that meeting minutes and votes be recorded.[5] The OPML also governs the location of meetings.[6] Finally, the OPML includes enforcement provisions for when these provisions are violated.[7]

Please note that this chapter is meant to provide LOC members with an overview of the OMPL. LOC members with specific questions are encouraged to contact their city’s attorney. Further, note that this chapter of the Handbook is based extensively on material in the Oregon Attorney General’s Public Records and Meetings Manual (2019). LOC strongly recommends that cities purchase the print version of this manual, which is updated every two years. A free online version is available at https://www. doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/. Finally, note that the Oregon Department of Justice (ODOJ) reserves its legal advice for the state of Oregon and its agencies; as such, cities with specific questions on the OPML again should consult their legal counsel.

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1 ORS 192.620.
2 *Id.*
3 *See, e.g.*, ORS 192.650. By recording the minutes of any meeting, including the “substance of any discussion on any matter,” cities build a record that shows the basis for their actions. This record can dispel claims that a city’s action is arbitrary, discriminatory, retaliatory, etc.
4 ORS 192.610.
5 ORS 192.630 to ORS 192.660.
6 *Id.*
7 ORS 192.680.

I. Covered Entities

Understanding the scope of the OPML is critical for ensuring compliance with the law. In short, the OPML applies to **(A)** governing bodies of a public body that **(B)** hold meetings for which a quorum is required to make a decision or deliberate toward a decision on any matter.[8] The first of those elements addresses the *who* of the OPML — that is, which entities are subject to the law. The second of those elements addresses the *what* of the OPML — that is, what types of meetings are subject to the law. This section addresses the first of those elements.

A. Governing Bodies of Public Bodies

The OPML applies only to the "governing bodies" of a public body."[9] A public body includes state bodies, any regional council, a county, a city, a district, or any other municipal or public corporation.[10] A "public body" also includes a board, department, commission, council, bureau, committee, subcommittee, or advisory group of any of the aforementioned entities.[11] A "governing body," meanwhile, does not just mean city council; it means two or more members of any public body with "the authority to make decisions for or recommendations to a public body on policy or administration."[12] The following subsections examine in more detail the authority to make decisions and recommendations, and what entities might in turn qualify as a "governing body."

Examples:

A city is a public body under ORS 192.610(4), and a five-member city council is a governing body of the city. Further, a planning commission of a city is also a public body, and a three-member board of commissioners is a governing body of the planning commission. ORS 192.610(3).

i. A body that makes decisions for a public body

A body with the authority to make decisions for a public body on "policy or administration" is a governing body.[13] For instance, cities are public bodies and their governing bodies are city councils. Sometimes, cities delegate decision-making authority to lower bodies, such as planning commissions; these too are governing bodies for the purposes of the OPML.

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8 ORS 192.610(5); ORS 192.630(1).
9 ORS 192.630(1).
10 ORS 192.610(4).
11 *Id.*
12 ORS 192.610(3).
13 ORS 192.610(3).

ii. A body that makes recommendations to a public body

A body that has the authority to make recommendations to a public body on policy or administration is itself "a governing body" under the OPML.[14] These recommending bodies are sometimes called "advisory bodies."[15] From time to time, a local government agency or official may appoint a group or committee to gather information about a subject. If this "advisory body" makes a recommendation to a governing body, then it shares the title of governing body and becomes subject to the OPML.[16]

For cities, common examples of bodies that make recommendations to a governing body include subcommittees of the city council and city boards and commissions. The OPML applies to local advisory bodies and all of their members, including private citizens. The language of the OPML is not limited to public officials; rather, it applies to all "members" of a body making decisions or recommendations to a public body, even if all of the members are private citizens.[17]

B. Governing Bodies of Certain Private Bodies

Technically, only "public bodies" are covered by the OPML.[18] However, it is at least possible that some private bodies might fall under the gamut of the law if they assume clear public functions.

There is no test for determining whether or when a private entity should be considered a "public body" for purposes of the OPML. Therefore, cities should consult their attorney when in doubt about whether a private body is covered by the law. Note that the Oregon Supreme Court follows a six-part test for determining when a private entity is the "functional equivalent" of a "public body" under Oregon's Public Records Law.[19] Those factors include (1) the entity's origin, (2) the nature of the functions, i.e., whether the function performed is traditionally private or public, (3) the scope of authority exercised by the entity, (4) whether the entity receives financial support from the government, (5) the degree of government control over the entity, and (6) the status of the entity's offices and employees.[20] That said, the OPML has its own definition of "public body," and so it is not clear whether these factors apply in the meetings context.[21]

[14] ORS 192.610(3).
[15] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 138 (2019).
[16] ORS 192.610(3).
[17] ORS 192.610(3).
[18] ORS 192.610.
[19] *See* Marks v. McKenzie High School Fact-Finding Team, 319 Or 451, 463-65 (1998) (interpreting ORS 192.311).
[20] *Id.*
[21] ORS 192.610(4).

II. Covered Meetings

The previous section explained that the OPML applies to the "governing bodies" of a public body."[22] Not every action that a governing body takes, of course, is subject to the OPML. Only a "meeting" of a governing body of a public body is subject to the law.

The OPML defines a meeting as **(1)** the "convening of a governing body" in order to **(2)** "make a decision or deliberate toward a decision" and for which **(3)** "a quorum is required."[23] Taken together, a meeting only occurs where a governing body convenes, reaches a quorum, and discusses or deliberates on city matters.[24] This section examines each of these elements under the OPML and how courts have interpreted them.

Before reviewing the meeting elements, please note that at least <u>two</u> categories of gatherings that might otherwise qualify as "meetings" under the OPML have been exempted by statute.[25] As such, these gatherings are not "meetings" for the purposes of the OPML.

- The on-site inspection of any project or program; and
- A gathering of any national, regional, or state association to which the public body or its members belong. This includes any monthly, quarterly, or annual gatherings of the League of Oregon Cities or National League of Cities.

A. 'Convening' a Meeting

For governing bodies, the most natural method of convening is in person. Of course, modern technology provides many other ways for members of a governing body to convene with one another. Because convening might occur by accident, members of governing bodies need to be mindful about how they communicate with each other and staff to avoid holding a "meeting" under the OPML.

Outside in-person meetings, the OPML applies to teleconferences, web conferences, and more generally to "telephone or electronic communications."[26] Moreover, the OPML applies in exactly the same way to these meetings as it does to in-person meetings.[27] Inherent in this are

[22] ORS 192.630(1).
[23] ORS 192.610(5).
[24] *Id.* Under the OPML, a decision is any action that requires a "vote of the governing body." ORS 192.610(1).
[25] ORS 192.610(5).
[26] ORS 192.670.
[27] *Id.*

logistical issues, such as guaranteeing public attendance to the meeting and ensuring that the medium of communication can accommodate everyone who wishes to attend. Local governing bodies must solve these issues and comply with all other OPML requirements if they hold a meeting that it is not in-person.[28]

It may be possible for a governing body to convene through serial communications on a topic.[29] In 2015, the Oregon Court of Appeals found that three county commissioners — a quorum of the governing body — had violated the OPML by using a series of phone calls and emails to reach a county decision.[30] While the Oregon Supreme Court reversed the ruling, the court did not express an opinion one way or the other on serial communications.[31] Therefore, that portion of the Court of Appeals ruling still holds at least some weight.

The Court of Appeals noted "not all private, serial communications among members" are OPML violations.[32] Just as it is with meeting in person, members of a governing body may correspond through email or voicemail on topics unrelated to city business. These serial communications may become an issue only when they are "conducted for the purpose of deliberation or decision."[33]

B. Meeting 'Quorum'

By law, a meeting cannot take place without a "quorum" of the governing body.[34] Oddly enough, the term "quorum" is not defined in the OPML. For cities, quorum requirements often are set by charter, bylaws, council rules, or ordinance. In the absence of a specific definition, the general definition of "quorum" under state law is a majority of the governing body.[35]

If a quorum of members convenes, then the OPML will apply unless the subject matter discussed is completely unrelated to a city decision or recommendation. Conversely, if less than a quorum convenes, then a "meeting" has not taken place, as that term is defined in the law.

Quorum is a technical requirement. As a <u>practice</u>, cities should take care not to deliberate toward decisions or recommendations in small groups. Gatherings that are below quorum and

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[28] *Id.*
[29] See Handy v. Lane County, 274 Or App 644, 664-65 (2015), *reversed on other grounds*, 360 Or 605 (2016).
[30] *Id.*
[31] *See generally* Handy v. Lane County, 360 Or 605 (2016).
[32] *See* Handy, 274 Or App at 664-66 (2015).
[33] *Id.* The Court of Appeals noted that a plaintiff likely needs "some evidence of coordination, orchestration, or other indicia of a purpose…to deliberate or decide out of the public eye." *Id.*
[34] ORS 192.630.
[35] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 142 (2019).

clearly deliberations violate (if nothing more) the policy of OPML, which is to include the public in the decision-making process.[36]

Significantly, meetings that do not require a quorum are not "public meetings" under the OPML. As such, meetings with staff generally do not constitute public meetings. A single city council member may meet with staff to discuss city business because staff are not members of the city council.

C. Meeting for a 'Decision'

By law, members of a governing body only meet for purposes of the OPML if they are making or deliberating toward a "decision."[37] The OPML defines a "decision" as the following:

> Any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.[38]

In other words, only topics that relate to the business of the governing body trigger the OPML. This subject matter requirement means that members of a governing body are free to gather to discuss a number of topics — sports, television, literature — as long as these do not concern the work of the governing body. Similarly, if a quorum of a governing body meets to discuss matters on which it has no authority to make a decision, it is not a "meeting" under the OPML either.[39]

Social Gatherings? A quorum of a governing body is permitted to meet in a social setting without triggering the OPML. Care must be taken, however, to avoid any discussion of public policy or administration, lest the social gathering evolve into an illegal public meeting.

Yet where the topics do relate to matters concerning the governing body, any discussion by a quorum of the body will trigger the OPML. As noted by the ODOJ, even meetings "for the sole purpose of gathering information" fall under the OPML.[40] Accordingly, the LOC recommends that members of governing bodies avoid discussing with each other <u>any</u> of the facts or context of local matters unless they are participating in a proper public meeting.

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[36] ORS 192.620.
[37] ORS 192.610(5).
[38] ORS 192.610(1)
[39] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 144 (2019) (citing 38 Op Atty Gen 1471, 1474, 1977 WL 31327 (1977)).
[40] *Id.*

III. REQUIREMENTS

The last two sections answered the *who* and the *what* of the OPML, namely what entities and what meetings of those entities are subject to the law. Now comes the meeting requirements, including rules on notice, meeting location, and the recording of minutes and votes. The OPML also requires public attendance, and many laws further require public participation. This section addresses these requirements and the challenges that accompany it.

A. Meeting Types and Notice

As a reminder, each city in Oregon is subject to its own individual charter, municipal code and rules of procedures. Public notice is a common topic of local procedure. As such, the LOC recommends that cities conduct a thorough review of applicable charter provisions, municipal code sections, and their respective city's rules and procedures to ensure that those provisions do not provide additional requirements to be followed when creating and posting a public notice. This section will address the minimum notice requirements under state law.

i. When Notice is Required

The OPML requires public notice to be given any time a governing body of a public body holds a "meeting" as defined under the law.[41] Therefore, all regular, special, and emergency meetings require notice, though the amount of notice depends on the meeting type. Generally, notice is required for any interested persons and any media outlet that has requested notice.[42]

ii. Contents of the Notice

ORS 192.640(1) requires a notice for meetings which are open to all members of the public to contain, at a minimum, the following information:

- Time of the meeting;
- Place of the meeting; and
- A list of the principal subjects anticipated to be considered at the meeting.

While the first two items are self-explanatory, the list of principal subjects is less clear. While publishing the agenda along with the notice is generally sufficient for this requirement, the

[41] ORS 192.640.
[42] *Id.*

ODOJ recommends that the list of principal subjects "be specific enough to permit members of the public to recognize the matters in which they are interested."[43] This means that notices should avoid repeating generic descriptions, such as "consideration of a public contract," and should instead state qualities specific to the subject, such as "consideration of contract with X company to provide Y services."[44]

Occasionally, a governing body may wish to discuss a subject that was not on the list, perhaps because the issue arose too late to be included in the notice. As a matter of state law at least, the absence of a subject from a notice does not preclude the governing body from discussing it; under the OPML, the list of *anticipated* subjects does "not limit the ability of a governing body to consider additional subjects."[45]

Beyond these requirements, a common practice is to include information in the notice for persons with disabilities. The OPML mandates that public bodies make all meeting locations accessible to persons with disabilities.[46] The ODOJ suggests that notices include the name and telephone number of a city employee who can help a person in need of a reasonable accommodation.[47]

iii. Amount of Notice

The number of days in advance a city must give notice of a public meeting depends on the type of meeting to be conducted. For regularly scheduled meetings, notice must be "reasonably calculated" to provide actual notice of the time and place of the meeting "to interested persons including news media which have requested notice."[48]

For special meetings, i.e. non-regular meetings, notice must be provided at least 24 hours in advance to "the general public" and again to "news media which have requested notice."[49] The only exception to the 24-hour notice rule for special meetings is an emergency meeting.

For an emergency meeting, the governing body must show that "an actual emergency" exists and must describe the circumstances of the emergency in the meeting minutes.[50] Even these meetings require notice; the OPML requires that emergency meetings be noticed in a

[43] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 151 (2019).
[44] *Id.*
[45] ORS 192.640.
[46] ORS 192.630(5).
[47] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 151 (2019).
[48] ORS 192.640(1).
[49] ORS 192.640(3).
[50] *Id.*

manner that is "appropriate to the circumstances."[51] Furthermore, an emergency meeting may only be used to discuss matters pertaining to the emergency.[52] In *Oregon Association of Classified Employees v. Salem-Keizer School District,* the Oregon Court of Appeals found that a school district had violated the OPML by using an emergency meeting held for budget reasons to discuss a "contract approval," a non-emergency matter.[53] The LOC recommends that cities use emergency meetings only in clear emergencies and only as a way to respond to the emergency.

iv. Noticing Executive Sessions

If the type of meeting to be held is an executive session, the governing body holding the executive session is required to give notice in the manner described above.[54] In addition, the notice must be sent to each member of the governing body.[55] No member of the governing body can be excluded from receiving notice of the executive session, even if it is known that the member is unable to attend the meeting. In addition, when providing notice of an executive session, the notice is required to state the specific provision of the OPML that authorizes the executive session.[56] Finally, unless the executive session is necessary to respond to an emergency, the notice of the session must be provided with a minimum of 24 hours' notice.[57]

The LOC Guide to Executive Sessions explores these issues and offers sample notices.[58]

B. Proper Meeting Space

The OPML requirements for a public meeting space fall roughly into four categories. First, the meeting space must have appropriate **capacity.**[59] Second, the meeting space must be within the right **geography**.[60] Third, the meeting space must satisfy criteria for **accessibility**.[61] Fourth, the space must be a place of **equality**.[62]

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[51] *Id.*
[52] *See* Or. Ass'n of Classified Employees v. Salem-Keizer Sch. Dist. 24J, 95 Or App 28, 32 (1989).
[53] *Id.*
[54] ORS 192.640(2).
[55] *Id.*
[56] *Id.*
[57] ORS 192.640(3).
[58] LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2017), https://www.orcities.org/application/files/7415/6772/9151/GuidetoExecutiveSessions-03-27-19.pdf (last accessed June 29, 2020).
[59] ORS 192.630(1).
[60] ORS 192.630(4)
[61] ORS 192.630(5).
[62] ORS 192.630(3).

i. Capacity

The OPML provides that any and all public meetings must "be open to the public" and that anyone interested in attending "shall be permitted to attend."[63] Based on this language, it should be inferred that governing bodies need to anticipate roughly how many citizens will be interested in a meeting and plan accordingly. A meeting space that is woefully inadequate for the expected turnout likely is a violation of the OPML.

ii. Geography

The OPML lays out certain criteria for the location of a governing body's meeting. The provisions are presented in an "either/or" list, and so not all of the criteria need to be satisfied. The OPML requires that a meeting space *either* be **(1)** "within the geographic boundaries" of the public body, **(2)** at the public body's "administrative headquarters," *or* **(3)** the nearest practical location.[64] Generally speaking, the LOC recommends public meetings be held within the city unless exigent circumstances arise. In the event of "an actual emergency necessitating immediate action," these criteria do not apply and the governing body may hold an emergency meeting at a different location than the ones described here.[65]

iii. Accessibility

In two main ways, the OPML requires accessibility for persons with disabilities.[66] First, meetings subject to the OPML must be held in places accessible to individuals with mobility and other impairments.[67] Second, the public body must make a "good-faith effort" to provide an interpreter at the request of deaf or hard-of-hearing persons.[68]

Cities can find guidance on the first requirement, and the potential penalties for failure to comply, under laws and regulations of the Americans with Disabilities Act (ADA). As for the "good faith" requirement, this can be enforced only through the OPML.[69] The law defines a "good-faith effort" as "including … contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services."[70]

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[63] ORS 192.630(1).
[64] ORS 192.630(4). A fourth option for most public bodies is to hold a public meeting within "Indian country." *Id.*
[65] *Id.*
[66] See ORS 192.630(5)(a).
[67] *Id.*
[68] *Id.*
[69] *See* ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 154-55 (2019).
[70] ORS 192.630(5)(e).

iv. Equality

Public bodies are prohibited from holding meetings where discrimination is practiced on the basis of race, color, creed, sex, sexual orientation, national origin, age, or disability.[71] Generally, a public body may not hold a meeting at a location that is used by a restricted-membership organization, but may if the location is not primarily used by such an organization.[72]

C. Recording and Retaining Minutes

The OPML requires that the governing body of a public body provide for sound, video, or digital recording, or written minutes, of its public meetings.[73] Whatever the format, the record of the meeting must include the following categories of information:

(a) All members of the governing body present;
(**b)** All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, <u>the vote of each member by name</u>;[74]
(d) The substance of any discussion on any matter; and
(e) Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting. [75]

When recording minutes, the objective is not to include every word said at the meeting, but rather to provide "a true reflection of the matters discussed at the meeting and the views of the participants."[76] Upon conclusion of the meeting, the minutes must also be available to the public "within a reasonable time."[77] The ODOJ notes that, with some exceptions, the minutes should also be "available to persons with disabilities in a form usable by them, such as large print, Braille, or audiotape."[78]

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[71] ORS 192.630(3).
[72] *Id.*
[73] ORS 192.650(1).
[74] Note that the recording of minutes requires the "vote of each member by name" to either be recorded or made available on request. This means that members of a governing body cannot vote anonymously. The Court of Appeals has held, however, that the "absence of a recorded vote alone is not reversible error." *See* ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 158-59 (2019) (citing Gilmore v. Bd. of Psychologist Examiners, 81 Or App 321, 324 (1986)).
[75] ORS 192.650(1).
[76] *Id.*
[77] *Id.*
[78] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 161 (2019).

Finally, the OPML requires that minutes or another record of a public meeting must be preserved for a reasonable time.[79] However, the Secretary of State's Retention Schedule for cities requires minutes of non-executive session meetings to be retained permanently.[80] Executive session minutes must be retained for 10 years.[81] The LOC recommends that cities consult with their attorney before setting a retention schedule for meeting minutes.

D. Public Attendance and Participation

The OPML is a public attendance law, not a public participation law. Generally, meetings of a governing body of a public body are open to the public unless otherwise provided by law.[82] Yet while the law guarantees the right of public attendance, the law does *not* guarantee the right of public participation. In fact, the OPML only expressly mentions public participation in two specific contexts: the opportunity for "public comment" on the employment of a public officer and the opportunity for "public comment" on the standards to be used to hire a chief executive officer.[83]

Importantly, public participation laws *do* exist elsewhere under state and local laws. In many cases, public participation might be required by another statute, a state regulation, or by a local charter or ordinance. For example, a city ordinance may require the city council to hear public comment when the council considers whether to condemn private property for public use. Similarly, state law requires cities to provide an opportunity for public testimony during the annual budgeting process.[84] State regulations, meanwhile, require that "[c]itizens and other interested persons [have] the opportunity to present comments orally at one or more hearings" during the periodic review of a local comprehensive plan.[85] For this reason, the LOC cautions cities to consult their attorney before choosing to withhold opportunities for public comment. Note that there is no rule *against* public participation if cities wish to allow it at meetings.

i. Maintaining Order

For cities, the charter ordinarily designates a specific person with authority to keep order in council meetings, often the mayor or the council president. For other governing bodies serving the city, the one with this authority likely is the leader of the body, such as the head, chair, or president of a particular committee, group, or commission. Generally speaking, a city may adopt

[79] *Id.* at 162 (citing *Harris v. Nordquist*, 96 Or App 19 (1989)).
[80] OAR 166-200-0235.
[81] *Id.*
[82] ORS 192.630(1).
[83] ORS 192.660(7)(d)(C); ORS 192.660(7)(d)(D).
[84] ORS 294.453
[85] OAR 660-025-0080(2).

meeting rules and a violation of these rules can be grounds for expulsion. For more information on maintaining order in council meetings, consult the LOC's Model Rules of Procedure for Council Meetings.[86]

Reasonable restrictions also may be placed on public participation. However, care must be taken to protect the freedom of speech under the First Amendment and Article 1, Section, of the Oregon Constitution. For example, the First Amendment protects the interest of citizens who are "directing speech about public issues to those who govern their city."[87] Speech is a protected right that can be enjoyed not only through **actual speech** but also through **expressive conduct**, such as making a gesture, wearing certain clothing, or performing a symbolic act.[88] While the right to speech is "enormous," it is subject to content-neutral limitations.[89] Further, no city is required to "grant access to all who wish to exercise their right to free speech on every type of government property, at any time, without regard to the disruption caused by the speaker's activities."[90]

a. The Time, Place, and Manner of Speech

Under federal law, a city's council meeting or similar meeting is considered a limited public forum.[91] At a minimum, any expression of speech at a limited public forum in Oregon can be limited through time, place and manner restrictions.[92] Time, place and manner restrictions are simply that — rules regulating the **time** in which a person may speak, the **place** in which a person can speak, and the **manner** in which the speech can be made. An important caveat is that all of these restrictions must be viewpoint neutral.[93] The restrictions also must serve a "legitimate interest" and provide "ample alternatives for the intended message."[94]

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[86] League of Oregon Cities, Model Rules of Procedure for Council Meetings (2017), https://www.orcities.org/application/files/1115/7228/7626/ModelRulesofProcedure3-15-19.pdf (last accessed July 9, 2020).
[87] *See* White v City of Norwalk, 900 F2d 1421, 1425 (9th Cir 1990).
[88] *See* Virginia v. Black, 538 U.S. 343, 358 (2003).
[89] *See White*, 900 F. 2d at 1425 (1990).
[90] *See* Walsh v Enge, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015) (quoting Cornelius v. NAACP, 473 U.S. 788, 799 (1985)).
[91] *See White*, 900 F. 2d at 1425 (1990).
[92] *See* State v. Babson, 355 Or 383, 408 (2014). Under federal law, expressions of speech in a limited public forum can also be subject to "content-based" rules, provided those rules are both "viewpoint neutral" and "reasonable." *Enge*, 154 F. Supp. 3d at 1128. Thus, under federal law, a city council could limit the *content* of a public comment to the subject-matter at hand as long as it did not apply this rule unevenly. *White*, 900 F. 2d at 1425 (1990). In Oregon, however, the free speech clause Oregon Constitution appears to prohibit any "content-based" regulation of speech. *See* Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or 275, 288 (2006). Cities should err on the side of caution by permitting speech on any "subject" at meetings and limiting only its time, place, and manner.
[93] *See White*, 900 F. 2d at 1425 (1990).
[94] *See Babson*, 355 Or at 408 (2014).

Because these restrictions are constitutional, local governing bodies generally can establish a specific format for speech at a council meeting or other public meeting. For example, a city's budget committee may choose to limit public comment to the start of a hearing and limit the amount of time a person may speak. Limiting public comment to the start of a public hearing is not legally contentious.

The challenge of time, place, and manner restrictions is ensuring that the restrictions are enforced consistently and equally to all speakers and that the restrictions cannot be construed as discriminating against a given viewpoint.[95] That said, cities generally will avoid triggering the First Amendment if their restrictions serve "purposes unrelated to the content of expression."[96] This is true even if an otherwise valid restriction, under particular circumstances, "*incidentally* burdens some speakers, messages or viewpoints."[97]

b. Disruptive Conduct

A good example of an "incidental" restriction on speech is rules on disruptive conduct. As noted above, cities and other governments are not required to tolerate "actual disruptions" when carrying out government business. So, even if the disruptive activity is a voice or some form of expressive conduct, i.e., speech, it can be regulated.[98] The rule against actual disruptions means that governing bodies may override one's freedom of speech in certain circumstances, such as when an audience member is shouting loudly at others or when an individual refuses to sit down long after their allotted speaking time has ended. The general rule of thumb is that the disruption has to be preventing the governing body from completing its work.

Conversely, cities must allow any actions that are not "**actual**" disruptions to the governing body's ability to conduct business.[99] In *Norse v. City of Santa Cruz*, for example, the Ninth Circuit Court of Appeals found that an audience member giving the Nazi salute did not actually interfere with or interrupt the public meeting and that the city therefore had not been justified in removing the individual from the meeting.[100] In reaching its decision, the *Norse* Court found that "[a]ctual disruption means actual disruption. It does not mean constructive

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[95] *See Norse v City of Santa Cruz*, 629 F3d 966, 976 (9th Cir 2010) (noting that viewpoint neutrality is a key element under the First Amendment),
[96] Alpha Delta Chi-Delta Chapter v Reed, 648 F3d 790, 800 (9th Cir 2011) (quoting, in part, Ward v Rock Against Racism, 491 US 781, 791, 109 S Ct 2746, 105 L Ed2d 661 (1989)).
[97] *Id.*
[98] *Norse*, 629 F.3d at 976.
[99] *Id.*
[100] *Id.*

disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption."[101]

c. **Barring Disruptive Individuals**

It is not uncommon for a person desiring to make their point to cause several disruptions at the same meeting or over a series of meetings. The constant disruption of public meetings by the same person, despite repeated warnings and removals, often leads public officials to consider suspending the person from future public meetings. Unfortunately, any efforts to suspend or ban individuals from future hearings are highly suspect and likely unconstitutional.

On two separate occasions, federal courts have held that prohibiting a disruptive person from attending future meetings, and from entering the entirety of a government facility, is not permitted under the First Amendment. In *Reza v. Pearce*, the Ninth Circuit Court of Appeals ruled that "imposing a complete ban" on a person's entry into a government building "clearly exceeds the bounds of reasonableness … as a response to a single act of disruption."[102] Similarly, in *Walsh v. Enge*, a federal district court found that the city of Portland could not "prospectively exclude individuals from future public meetings merely because they have been disruptive in the past."[103] Note, however, that a district court decision is not binding precedent. While neither of these cases conclusively answers the question of whether a frequently disruptive individual can be barred from future hearings, they cast serious doubt that a court would uphold such an action.

For a description of these cases and a more detailed overview of the options available to cities for handling disruptive members of the public at public meetings, see the LOC's Legal Guide to Handling Disruptive People in Public Meetings (2017).[104]

IV. EXECUTIVE SESSIONS

An executive session is a public meeting that is closed to members of the general public. Executive sessions may only be held for certain reasons and the other meeting requirements discussed above still apply, such as notice, location, and minute-keeping requirements.[105]

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[101] *Id.*
[102] Reza v Pearce, 806 F.3d 497, 505 (9th Cir 2015).
[103] *See* Walsh v Enge, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015).
[104] LEAGUE OF OREGON CITIES, LEGAL GUIDE TO HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS (2017), https://www.orcities.org/application/files/2715/6116/0383/LOCWhitePaperonDisruptiveCitizens-FINAL5-5-17.pdf (last accessed June 29, 2020).
[105] *See* ORS 192.660; *see also* ORS 192.610(2) (defining an executive session as a "meeting.").

For a thorough assessment of how executive sessions apply to cities, including sample notices and a model media policy, consult the LOC Guide to Executive Sessions.[106]

A. Executive Sessions for Municipalities

The Oregon Legislative Assembly has identified 14 circumstances in which an executive session is authorized.[107] Of these, 10 circumstances are likely to be used by municipalities:

1. Employment of a public officer, employee, staff member or individual agent.

Members of governing bodies may generally deliberate whether to employ individuals that meet this description. That said, this exception does not apply to any public officer, employee, staff member, or chief executive officer unless **(1)** the position has been advertised **(2)** and there already exists an adopted regular hiring procedure. In addition, with respect to public officers, the public must have had an opportunity to comment on the officer's employment. With regard to chief executive officers, there must be adopted hiring criteria and policy directives. This type of executive session cannot be used for either of the following purposes:

- To fill a vacancy in any elected office, public committee or commission, or advisory group; [108] or
- To discuss an officer's salary.[109]

2. Dismissal, disciplining, or hearing complaints or charges relating to a public officer, employee, staff member or individual agent who does not request an open hearing.

A governing body may hold an executive session on disciplinary matters; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.[110] Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS

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[106] LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2017), https://www.orcities.org/application/files/7415/6772/9151/GuidetoExecutiveSessions-03-27-19.pdf (last accessed June 29, 2020).
[107] ORS 192.660.
[108] *See* ORS 192.660; *see also* ORS 192.660(7)(a)-(d).
[109] *See generally* 42 Op Atty Gen 362, 1982 WL 183044 (1982).
[110] ORS 192.660(2)(b).

Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city's deductible if a lawsuit or wrongful termination complaint is subsequently filed.

3. Persons designated by the governing body to carry on labor negotiations.

This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf during labor negotiations.[111] Note that this is one of the few meetings where news organizations and the media can be excluded from an executive session.[112]

4. Persons designated by the governing body to negotiate real property transactions.

This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf regarding real property transactions.[113] A real property transaction likely may include the purchase of real property, the sale of real property, and/or negotiations of lease agreements.[114] The deliberations conducted during an executive session held under this provision must concern a specific piece of property or properties — the session may not be used to discuss a city's long-term property needs.[115]

5. Information or records that are exempt by law from public inspection.

In order to hold an executive session under this provision, the information and records to be reviewed must otherwise be exempt from public inspection under state or federal law.[116] The most common source for public records exemptions is Oregon's Public Records Law and the attorney-client privilege under ORS 40.225.

6. Preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

A governing body may use this provision to meet in executive session when it has good reason to believe it is in competition with other governments on a "trade or commerce" issue.[117]

7. Rights and duties of a public body as to current litigation or litigation likely to be filed.

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[111] ORS 192.660(2)(c).
[112] ORS 192.660(4).
[113] ORS 192.660(2)(e).
[114] ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 165 (2019).
[115] *Id.* (citing Letter of Advice to Rep. Carl Hosticka, 1990 WL 519211 (OP-6376) (May 18, 1990)).
[116] ORS 192.660(2)(f).
[117] ORS 192.660(2)(g).

A governing body may use executive sessions as a way to consult with legal counsel about current or pending litigation.[118] In the event the litigation is against a news organization, the governing body must exclude any journalist who is affiliated with the news organization.[119]

8. Employment-related performance of the chief executive officer of any public body, a public officer, employee, or staff member who does not request an open hearing.

A governing body may hold an executive session to evaluate an employee's performance; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.[120] Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city's deductible if a lawsuit or wrongful termination complaint is subsequently filed.

9. Negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

This provision allows cities to conduct negotiations about certain public investments.[121] The final decision on these investments must occur in an open public meeting (see below).[122]

10. Information on the review or approval of certain security programs.

In order to hold an executive session under this provision, the security program must be related to one of the areas identified under ORS 192.660(2)(n). These include telecommunication systems and the "generation, storage or conveyance of" certain resources or waste.[123]

B. Final Decision Prohibition

Under the OPML, executive sessions must not be used "for the purpose of taking any final action or making any final action."[124] While final decisions cannot be made, city councils and other public bodies may still reach a consensus during an executive session. This provision simply guarantees that the public is made aware of the deliberations. Thus, a formal vote in a

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[118] ORS 192.660(2)(h).
[119] ORS 192.660(5).
[120] ORS 192.660(2)(i).
[121] ORS 192.660(2)(j).
[122] ORS 192.660(6).
[123] ORS 192.660(2)(n).
[124] ORS 192.660(6).

public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.[125]

C. Media Representation at an Executive Session

Representatives of the news media must be allowed to attend all but two types of executive sessions.[126] The news media may be excluded from an executive session held to conduct deliberations with a person designated by the governing body to carry on labor negotiations or an executive session held by a school board to discuss certain student records.[127] Also, remember that a city council or other public body must exclude any member of the press if the news organization the reporter represents is a party to the litigation being discussed during the executive session.[128]

Even though news organizations are permitted to attend virtually every executive session, governing bodies may prohibit news organizations from disclosing certain specified information.[129] Unless a governing body specifies what information is prohibited from disclosure, news organizations are free to report on the entire executive session. It also is worth noting that there is no penalty or punishment under the OPML against a news organization that shares information from an executive session without the city's permission.

The term "representatives of the media" is not defined by the OPML or in case law. However, the Oregon attorney general recently issued an advisory opinion wherein it concluded that under Oregon law "news-gathering representatives of institutional media" are permitted to attend executive sessions and the term is "broad and flexible enough to encompass changing technologies for delivering the news."[130] The conclusion reached by the attorney general seems to imply that bloggers and other social media news entities are authorized to attend executive sessions. In reaching this conclusion, the attorney general relied heavily on what it believes are the stated reasons the Legislative Assembly allowed the media to attend executive sessions when the law was originally adopted.[131]

Due to the ambiguity around who is or isn't a "representative of the media," the LOC recommends that cities generally permit any person providing the public with news, including internet bloggers, to attend executive sessions. Some cities may seek to establish a stricter media

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[125] *See* ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 173-75 (2019).
[126] ORS 192.660(5).
[127] *Id.*
[128] ORS 192.660(5).
[129] ORS 192.660(4).
[130] *See generally* Op Atty Gen 8291 (2016).
[131] *Id.*

attendance policy and, if so, those cities need to undertake a meaningful and in-depth discussion with their city attorney before drafting such a policy. Denying "representatives of the media" access to meetings can lead to costly litigation.

V. ENFORCEMENT

A. General Enforcement

Any person affected by a decision of a governing body of a public body may file a lawsuit to require compliance with, or prevent violations of, the OPML by members of the governing body.[132] Lawsuits may be filed by "any person who might be affected by a decision that might be made."[133]

A plaintiff may also file suit to determine whether the OPML applies to meetings or decisions of the governing body.[134] Under ORS 192.680(5), any suit brought under the OPML must be commenced within 60 days following the date the decision becomes public record.[135]

A successful plaintiff may be awarded reasonable attorney fees at trial or on appeal.[136] Whether to award these or not is in the court's discretion.[137] If a court finds that a violation of the OPML was the result of willful misconduct by a member or members of the governing body, each is liable for the amount of attorney fees paid to the successful applicant.[138]

If a governing body violates the OPML in a decision, the decision is not necessarily void. In the case of an unintentional or non-willful violation of the OPML, the court has discretion to void a decision, but such an action is not mandatory.[139] The law permits a governing body that violates the OPML to reinstate the decision while in compliance with the law.[140] If a governing body reinstates an earlier decision while in compliance with the law, the decision will not be voided and the decision is effective from the date of its initial adoption.[141]

Importantly, reinstatement of an earlier decision while in compliance with the law will not prevent a court from voiding the earlier decision "if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of

[132] ORS 192.680(2).
[133] *See* Harris v. Nordquist, 96 Or App 19, 23 (1989).
[134] ORS 192.680(2).
[135] ORS 192.680(5).
[136] ORS 192.680(3).
[137] *Id.*
[138] ORS 192.680(4).
[139] ORS 192.680(1).
[140] *Id.*
[141] *Id.*

the governing body."[142] In that case, the court will void the decision "unless other equitable relief is available."[143]

B. Civil Penalties for Violations of ORS 192.660

Apart from the enforcement provisions described above, the Oregon Government Ethics Commission may review complaints that a public official has violated the executive session provisions of the OPML as provided in ORS 244.260.[144] The commission has the authority to interview witnesses, review minutes and other records, and obtain other information pertaining to executive sessions of the governing body for purposes of determining whether a violation occurred.[145] If the commission finds a violation of the executive sessions provisions, the commission may impose a civil penalty not to exceed $1,000.[146] If, however, the violation occurred as a result of the governing body acting on the advice of its legal counsel, the civil penalty may not be imposed.[147]

[142] ORS 192.680(3).
[143] *Id.*
[144] ORS 192.685(1).
[145] ORS 192.685(2).
[146] ORS 244.350(2)(a).
[147] ORS 244.350(2)(b).