



Re: Exceptions to DLCD Report Regarding Appeal to the LCDC of the 2035 Comprehensive Plan's Failure to Establish a Citizen Involvement Program

Filed: March 5, 2018

These are exceptions to Department of Land Conservation and Development (the Department) Director's Report of February 2, 2018 regarding our Appeal regarding the omission of "citizen" from Portland's 2035 Comprehensive Plan (2035 CP) and the resultant failure to comply with the Goal 1 requirement for a citizen involvement program. These exceptions are filed with the Land Conservation and Development Commission (the Commission) on behalf of the Multnomah Neighborhood Association (MNA) in accordance with ORS 660-025-0160(5).

MNA Exceptions:

The MNA recommends that the Commission reject the Department's response to the appeal that we filed December 26, 2017 regarding Chapter 2 of the 2035 CP, "Community Involvement." The Department's report overlooks our fundamental concern that the 2035 CP does not fulfill the Goal 1 requirement of providing "a citizen involvement program that will insure the opportunity for citizens to be involved in all phases of the planning process."

It is our understanding that the City included Chapter 2, Community Involvement, in the 2035 CP at least in part to meet the requirements of Goal 1. We maintain that Chapter 2 does not meet the Goal 1 requirement for citizen involvement because community involvement is different from citizen involvement. Underlying our objection is that Chapter 2 is based on communities that are not guaranteed to include all citizens or geographic representation. We are not objecting to the inclusion a community involvement program, but rather to the omission of a citizen involvement program that meets the specific requirements of Goal 1.

In their response to our appeal, the Department presented Chapter 2 policies to support their assertion that citizens are included in the Chapter 2. We take exception that these policies meet the Goal 1 requirements for citizen involvement. We maintain that citizens are different from communities and consequently, the policies presented for the community involvement program do not meet the requirements for a citizen involvement program that complies with Goal 1.

Our exceptions to the Department's responses are presented following outlined boxes that contain the Department's responses.

The department recommends this appeal be rejected by the commission. If the city engages communities in the planning process, citizens will be provided the opportunity to participate; broadening the city's program to involve "communities" does not exclude citizens.

Exception 1

The Department's assertion that engaging communities in the planning process will provide citizens the opportunity to participate and not exclude citizens is unsubstantiated and contradicted by Chapter 2 "Community Involvement." The City's program is a community involvement program, not a citizen involvement program that has been broadened to include communities, as the Department implies.

The MNA is not objecting to Chapter 2 as a presentation of community involvement. The MNA supports the City's commitment to broaden participation and to increase the involvement of under-served, under-represented, and minority communities though the goals and policies of Chapter 2.

Although the City does not explicitly state that Chapter 2 "Community Involvement" is intended to fulfill Goal 1 requirements for citizen involvement, it is our understanding that this is one of the purposes of Chapter 2. However, the clear and overriding purpose of Chapter 2 is to present the City's goals and policies related to community involvement. That is the title of the Chapter and most of the goals and policies in the Chapter address community involvement exclusively.

The 2035 CP glossary defines a community as follows:

Community: *A group of people with a shared sense of identity or belonging.*

Chapter 2 does not describe how the City will select communities for planning partners or whether it will reveal the communities it has selected. The City does not address how it will select partner communities when several community with the same shared sense of identity or belonging have different and conflicting positions on issues. It does address the questions of who speaks for a community, how communities adopt their positions, how positions are documented, whether membership in a community is open and free, or most importantly for Goal 1 compliance, whether every citizen has the opportunity to be a member of a community that is a City planning partner.

The MNA maintains that while "communities" may include citizens, they may not include every citizen or even most citizens. The planning partner communities may not be open or free for all citizens. Even if every citizen belonged to a community, the City might not partner with enough

communities to ensure that every citizen has the opportunity to belong to one of its planning partner communities.

The MNA maintains that Chapter 2 does not meet the Goal 1 requirements for a citizen involvement program. Of utmost importance, Goal 1 does not exclude any citizen from its required citizen involvement program. It states that governing bodies “*shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.*” It does not restrict the program to members of communities. Chapter 2 does not guarantee that all citizens will belong to partner communities. If some citizens are not members of partner communities they will not be covered by the large number of Chapter 2 goals and policies that pertain exclusively to communities.

Land use is not the central theme of Chapter 2; it is mentioned in only one of the Chapter’s seven goals and in only eight of the Chapter’s 41 policies. In the only goal that mentions land use, Goal 2.C, the distinction is made between community and civic participation:

Goal 2.C: Value community wisdom and participation

Portland values and encourages community and civic participation. The City seeks and considers community wisdom and diverse cultural perspectives, and integrates them with technical analysis, to strengthen land use decisions.

Goal 2.C aspires to integrate community wisdom, but not contributions from more general civic participation, to strengthen land use decisions. This is the only goal that mentions land use and it explicitly excludes civic considerations that may be unrelated to cultural perspective from integration for the purpose of strengthening land use decisions.

Chapter 2 does not incorporate any of the other extensive Goal 1 requirements for land use planning into its goals. For example, under Item 1. “Citizen Involvement,” Goal 1 requires geographic representation in land use planning:

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions.

Geographic considerations are not mentioned anywhere in Chapter 2, yet it is an explicit requirement of Goal 1. The above quote also reinforces our position that Goal 1 requires that all citizens, not just community members, be involved in all phases of the planning process.

The Chapter’s eight policies that mention “land use” do not address the clear and specific requirements of Goal 1 for citizen involvement in land use planning. The limitations of each of the eight policies are detailed below:

1. Policy 2.1 “Partnerships and coordination” is the subject of our third exception and it is discussed below.
2. Policy 2.3 “Extend Benefits” pertains solely to communities and discusses land use as one of many topics. It does not address any of the Goal 1 requirements for citizen involvement.
3. Policy 2.6 “Land use literacy” strives to train and educate the public to increase understanding of land use as one of six governance education topics. This mention of “land use” could be construed to address half of subpart 2, one of the three requirements of Goal 1, Part A. Citizen Involvement.
4. Policy 2.13 “Project Scope” calls for clear expectations about land use project sponsorship, purpose, design and decision making. In one sentence it touches briefly and in a very general way on parts of Goal 1, Part A. Citizen Involvement. It is vague and only mentions establishing expectations. It does not guarantee that the public will be made aware of the level of citizen involvement that is required in Part A.
5. Policy 2.38 “Accommodation” ensures compliance with federal regulations regarding access to participation for individuals with disabilities. This is not an explicit Goal 1 requirement.
6. Policy 2.39 “Notification” requires that adequate notification about a list of subjects, including land use decisions, be provided. It does not address the complete Goal 1 notification requirements for all parts of land use decision making, including the requirement that the selection process for the CCI be well publicized and that the public be notified of its selection.
7. Policy 2.40 “Tools for effective participation” provides for clear and easy access to information about several government functions, including land use decisions. It does not meet the extensive Goal 1 requirements for information, including that the Goal 1, 4. Technical Information requirement that information necessary to reach policy decisions be available “in a simplified and understandable form” at a local public library or other location open to the public. The Goal 1 requirement is more extensive than just land use decisions and it requires that information be available at a physical location. Neither of these requirements is addressed in Policy 2.40.
8. Policy 2.41 “Tools for effective participation” ensures compliance with federal regulations regarding access to land use decisions. This not an explicit requirement of Goal 1. It should be noted that Policy 2.41 applies only to land use decisions, whereas Goal 1 covers all aspects of land use planning including preparation of plans and implementation measures, plan content, plan adoption, minor changes and major revisions in plans and implementation measures.

By focusing primarily, and in most goals and policies exclusively, on communities, Chapter 2 does not meet the fundamental criteria that a citizen involvement program include all citizens.

The MNA maintains that the goals and policies of Chapter 2 that are relevant to land use are totally inadequate to be construed as a citizen involvement program. It is incumbent upon the City to explain how the community involvement program meets the Goal 1 statutory requirements for a citizen involvement program.

Note Chapter 2 of the comprehensive plan, Community Involvement, Policy 2:

Representation. Facilitate participation of a cross-section of the full diversity of affected Portlanders during planning and investment processes. This diversity includes individuals, stakeholders, and communities represented by race, color, national origin, English proficiency, gender, age, disability, religion, sexual orientation, gender identity, and source of income.

Exception 2

The Department's response omitted the introductory paragraph that immediately proceeds the above-quoted Policy 2.24 [sic "Policy 2" above]. The introductory paragraph "Process design and evaluation" to Policies 2.24 through 2.37 is provided below in quoted italics:

"Process design and evaluation

The policies in this section guide the design of project-specific community involvement processes. They help ensure that community involvement processes for planning and investment projects fit the scope, character, and impact of the decision. These policies also promote full representation in planning and investment processes and actively involve under-served and under-represented communities. Representation can help ensure that City decisions do not further reinforce the disadvantaged position of under-served and under-represented groups and do not narrowly benefit privileged groups."

This paragraph states that the intent of Policy 2.24 "Representation" is to guide the design of project-specific community involvement processes. The focus of the policy is ensuring community representation.

Goal 1 requires that a component of the citizen involvement program "shall include an officially recognized committee for citizen involvement (CIC) that is broadly **representative of geographic areas** and interests related to land use and land-use decisions." Representation of geographic areas and interests related to land use and land-use decisions is the only explicit representation requirement in Goal 1. Geographic representation is not part of Policy 2.24 "Representation."

The policy presented by the Department does not fulfill the requirement for geographic representation required by Goal 1.

Task 4 Record at 216.

Also, in Chapter 2, Community Involvement, Policy 2.24 Representation, the city describes:

Portland benefits when community members are meaningfully involved in planning and investment decisions. By building and maintaining partnerships with individuals and a wide range of formal and informal organizations that represent a variety of interests, the City of Portland government will have a better understanding of various communities' diverse needs and concerns. These policies support building and maintaining strong and supportive relationships with an increasingly diverse and growing Portland population.

Task 4 Record at p.216

And further, city Policy 2.1 – Partnerships and coordination, (Record p. 211) identifies who the city intends to coordinate and engage with in their community involvement program:

2.1.a. Individual community members.

2.1.b. Communities of color (including those whose families have been in this area for generations such as Native Americans, African Americans, and descendants of immigrants), low-income populations, Limited English Proficient (LEP) communities, Native American communities, immigrants and refugees, and other under-served and under-represented communities.

2.1.c. District coalitions, Neighborhood Associations, watershed councils, and business district associations as local experts and communication channels for place-based projects.

2.1.d. Businesses, unions, employees, and related organizations that reflect Portland's diversity as the center of regional economic and cultural activity.

2.1.e. Community-based, faith-based, artistic and cultural, and interest-based non-profits, organizations, and groups.

2.1.f. People experiencing disabilities.

2.1.g. Institutions, governments, and Sovereign tribes.

Exception 3:

Note: The above reference is misidentified as Policy 2.24 "Representation" rather than as the "Partners in decision making" introductory paragraph to Policy 2.1 and Policy 2.2.

The aspirations in the above introductory paragraph advocate for improving the City of Portland government's understanding of "various communities' diverse needs and concerns." Although this is critical to a community involvement program, is not an explicit requirement of Goal 1.

Policy 2.1.a restricts individuals to those that are individual community members. This is consistent with a community involvement program rather than with a citizen involvement program designed to meet the requirements of Goal 1.

The Department states that Policy 2.1 identifies “who the city intends to coordinate and engage with in their community involvement program.” However, the Department omitted the first sentence of Policy 2.1:

“Partnerships and coordination. Maintain partnerships and coordinate land use engagement with: “

It is unclear from this lead sentence whether the entities listed in the Policy 2.1, subpart a through subpart g, will be in a partnership relationship, play a coordinating role, or both. It is however noteworthy that only subparts 2.1.c and 2.1.d qualify the listed entities and thus potentially restrict the participation of the listed entities. For this reason, the entities in 2.1.c appear to be restricted to providing local expertise and communication channels for place-based projects rather than participating in maintained partnerships.

Two of the 2.1.c entities, District Coalitions and Neighborhood Associations, have historically played a significant role in procedures by which the general public is involved in the on-going land-use planning process – one of the requirements of Goal 1. They currently fulfill some of the other Goal 1 requirements such as ensuring geographically-based citizen participation. However, merely mentioning these entities does not comprise a citizen involvement program. This is especially true if their roles are restricted as in Policy 2.1.c to coordinating land use engagement as communication channels.

The citing of Policy 2.1 is not a convincing argument that the City has complied with Goal 1.

Task 4 Record at p. 211

Policy 2.14 commits the city to identifying actions that could be affected by public involvement. The objection appears to assume that the city is unable or unwilling to correctly identify those actions, resulting in lost opportunities for public involvement. Policy 2.14 resides in a section of chapter 2 that includes four policies implementing comprehensive plan goal 2.D, “Transparency and accountability,” related to improving the quality of communication during the planning process. The plan also includes six other goals with implementing policies, and considering this larger context, Policy 2.14 refines and informs, and does not limit, the city’s plan to involve the public in the planning process. See, especially, goal 2.E.3.

Exception 4

It is the position of the MNA that Goal 1 requires that the City ensure that citizens have the opportunity to be involved in all phases of the planning process. The inclusion of policy language clarifying this would be acceptable and welcomed by the MNA. The current language in Policy 2.14 does not acknowledge the City’s obligation to inform citizens of their rights to participate in all phases of land use planning.

The objection does not demonstrate that the city's citizen involvement program fails to comply with Goal 1.

Exception 5

Chapter 2 "Community Involvement" is a community involvement program, not a citizen involvement program that meets the requirements of Goal 1. A large number of the goals and policies in Chapter 2 pertain exclusively to communities. We have shown in Exception 1 that communities may exclude citizens and that Goal 1 includes all citizens.

The Chapter 2 goal and policies that mention "land use," the subject of Goal 1, are insufficient to meet the requirements of Goal 1. We have shown in Exception 1 that the goal that mentions land use does not aspire to meet the requirements of Goal 1.

We have shown in Exception 1 and Exception 3 that only four of the eight policies that mention "land use" are relevant to Goal 1 requirements. We have further shown that none of the four "land use" policies completely addresses a single component of the six components A through F that must be incorporated into a citizen involvement program. The MNA has shown that Chapter 2 is not a community involvement program and it does not comply with Goal 1.

It is incumbent upon the City to demonstrate how the 2035 CP meets the requirements of Goal 1. It is also incumbent upon the Department to verify that the Goal 1 requirements have been met.