

March 22, 2016

To: Portland Planning and Sustainability Commissioners

From: Eric Engstrom, Bureau of Planning and Sustainability
Peter Hurley, Bureau of Transportation

RE: Response to PSC TDM Procedural Questions

At your March 8 hearing and March 10 officers briefing you asked several procedural questions about Transportation Demand Management (TDM) implementation. Below are the questions as we heard them and our responses. Please let us know if you have additional questions.

Q: Who approves the TDM Plan in a Type II process?

A: The Campus Institution Zone Title 33 changes proposes to simplify approval of a TDM plan from a Type III process (currently required for a Conditional Use Master Plan) to a Type II process. In a Type II process the assigned Bureau of Development Services planner makes a decision based on the 33.852 approval criteria for the Transportation Impact Review, including the Transportation Demand Management Plan, based on a recommendation from the Bureau of Transportation.

Q: To whom is a Type II decision appealable?

A: The decision can be appealed to a Hearings Officer, then to LUBA.

Q: Are Administrative Rules appealable?

A: The City has adopted a uniform process for adopting administrative rules and other policy documents, established in Chapter 1.07 Documentation of Rules and Policies. Section 1.07.020.C. states "'Administrative rule" means binding requirements, regulations or procedures that are formally adopted by the City Council or a City official pursuant to rule-making authority expressly delegated by the Council. Administrative rule making authority must be adopted by Binding Resolution or Ordinance."

1.07.080 Status of the PPD states in part "Administrative rules are binding pursuant to the delegation of authority under which the rules were adopted. Documents in the repository are not land use decisions and do not in any manner constitute criteria for future decisions in the land use context."

Depending on what the authorizing code says, a bureau director may be given authority to adopt administrative rules, or in some cases the Council may ask that the rule be adopted by Council. An administrative rule may specify a hearing and/or an appeal process. For example, the admin rule may specify that the initial decision is made by staff, but an interested party may ask for reconsideration by the Director. Typically decisions made using the authority of an admin rule are final at the bureau director level. Assuming the rule or the application of it does not violate state or federal laws, the decisions are not appealable to LUBA or another court.