



Demolition Delay Ordinance and Exception to Delay Notification When Applicant Simultaneously Applies for a Building Permit for a Replacement Residence

I. Introduction

The Bureau of Development Services (BDS) has prepared this summary regarding the history, purpose and implementation of the “Demolition Delay Ordinance” (Portland City Code (PCC) Section 24.55.200). This summary includes a discussion of the exception in 24.55.200(k)(1) to the notice and waiting period requirements when an applicant simultaneously seeks to demolish a single family residence and replace it with a new residential structure.¹

II. Demolition Delay Ordinance

A. Legislative History of the Demolition Delay Ordinance

Demolition delay was first included in the City Code as part of the City’s enforcement relating to dangerous and abandoned buildings. (See “Portland Residential Demolition Study and Recommendation of the Portland Planning Commission,” dated August 27, 1987 (Study)). Chapter 24.55 was originally entitled, “Abatement of Unsafe, Abandoned, and Dangerous Buildings.” The demolition delay provisions were initially intended to bring older apartment buildings and residential hotels up to relevant structural, fire and life safety standards and thus save them from demolition and maintain the City’s housing stock. (Study, pp. 35-36.) In 1983, Section 24.55.650 of the Demolition Delay Ordinance was narrowed from its prior City-wide applicability, so it only applied to residential hotels and apartment buildings, three stories or taller and with ten or more dwelling units, located in the Housing and Community Development (HCD) areas. (Study, pp. 34-35.)

B. 1987 Residential Demolition Study

The Bureau of Planning commissioned the Portland Residential Demolition Study in 1987 to evaluate the impact of residential demolitions on the City’s housing stock. (Study, p. 5.) The Study analyzed all residential demolitions within the City, evaluated alternative ways to regulate residential demolitions and presented the Bureau of Planning’s conclusions and recommendations regarding residential demolitions. The Study found that few owners of individual single-family residences had been participating in the City’s existing residential rehabilitation incentive programs. (Study, p. 35.) Consequently, the Study recommended that

¹ “Residential structure” is defined as “any building or other improvements designed or intended to be used for residential purposes.” (PCC 24.15.040.) Because PCC 24.55.200(k)(1) only applies to single-family residences, references throughout this summary to “residential structures” are limited to either single-family residences or duplexes on corner lots in single-family residential zones.

demolition delay provisions not be extended to all residential structures for which a demolition permit had been sought. (Study, pp. 35-36.) The Study further concluded that the loss of housing by demolition was not “significant enough to support the introduction of strict controls on the demolition of residential structures.” (Study, p. 7.) Instead, the Study recommended that any legislation regulating residential demolitions should: (1) be directed at sites where no subsequent development of the site was planned or proposed; (2) limit the regulatory delay if redevelopment of the site was proposed; and (3) support efforts to retain residential structures. (Study, pp. 7- 8.) The Study noted that these recommendations were consistent with the Comprehensive Plan’s housing and neighborhood goals and policies. (Study, p. 8.)

The Study evaluated five regulatory options to address housing loss from residential demolition: (1) taking no action; (2) creating a moratorium on residential demolitions; (3) requiring land use approval for demolition permits; (4) extending the City’s demolition delay procedures for larger multi-family buildings to all residential structures; and (5) instituting a waiting period with concurrent neighborhood notification before issuing a demolition permit. (Study, p. 32.) The Study concluded that enough residential structures were demolished without being replaced to warrant some action, but a moratorium was not supportable given the relatively small number of residential demolitions. (Study, pp. 33, 39.) Additionally, either extending the existing demolition delay procedures to all residential structures or making demolition delay permits land use actions would incur regulatory and administrative costs that outweighed the potential to retain residential structures. (Study, pp. 33-34, 39.) Thus, the Study concluded the best regulatory response was instituting “a waiting period between the application for and the issuance of a demolition permit for a residential structure with a waiver for applicants with an approved building permit for the site or a City demolition order.” (Study, p. 39.)

C. Ordinance 161363 (November 2, 1988)

Based on the Study recommendations, the City Council enacted Ordinance 161363 that created a new Section 24.55.700, entitled “Demolition Permits – Waiting Period Prior to Issuance” on November 2, 1988. The City Council initially considered including a requirement to notify property owners within 400 feet of the structure to be demolished. (See Memorandum from Commissioner Bogle to the City Council dated October 11, 1988.) This requirement was omitted from the ordinance as introduced because the Auditor’s Office, which would be responsible for sending the notifications, “had serious problems with the additional notification provisions” because it lacked the resources to send the notices. (Bogle Memorandum.) As adopted, the Demolition Delay Ordinance included a delay waiver if the applicant had a City order to demolish a dangerous residential structure. The ordinance did not contain an exception for a demolition permit accompanied by an application for a replacement residential structure as recommended in the Study. (Study, pp. 38-39.)

D. Ordinance 163608 (November 7, 1990)

The demolition delay exemption for a demolition permit accompanied by an application for a replacement residence was first enacted via Ordinance 163608 on November 7, 1990. This ordinance was part of a comprehensive Zoning Code rewrite. Initially, the Planning Commission’s proposed revisions to Chapter 24.55 did not include the replacement residence

exception. Instead, the exception was included based on recommendations from Margaret Mahoney, Director of the Bureau of Buildings (now the Bureau of Development Services) in a memorandum to the Mayor and Commissioners as part of the public comments to the Zoning Code update. (See Margaret Mahoney Memorandum to the Mayor and Commissioners dated June 12, 1990.) Director Mahoney’s memorandum stated that the Planning Commission’s proposed new language for Chapter 24.55 was unnecessary. Specifically, Director Mahoney noted the City Code already contained three different demolition delay provisions (PCC 24.55.650 – delay for residential buildings over 3 stories in HCD neighborhoods; PCC 24.55.700 – delay for all residential structures in residential zones; and PCC 24.35.020 – demolition delay for historical buildings). (Mahoney Memorandum, p. 1, para. #1.)

As an alternative, Director Mahoney recommended several amendments to the Planning Commission’s draft if the Council decided to adopt the Planning Commission’s proposed revisions to Chapter 24.55. Director Mahoney requested that the ordinance “[e]xempt from the delay provisions demolition permits where the permit is accompanied by an application for a building permit for a replacement, detached single family dwelling.” (Mahoney Memorandum, p. 2, para. 2.) She went on to say, “I understand that PDC [Portland Development Commission] would like to insert a provision for an appeal of the delay extension. I believe that this exemption would cover most of the cases that PDC is concerned about.” (Mahoney Memorandum, p. 2, para. 2.) She also recommended repealing all of section 24.55.650 relating to demolition delay for buildings over three stories in HCD neighborhoods because this section was unnecessary if the Council adopted the new section 24.55.700.

The version of Section 24.55.700 that the Planning Commission recommended for adoption included notice to property owners or residents within 250 feet of the site and would have allowed them to request an extension to the demolition delay period. (Recommended Draft of Zoning Code, April 1990, 24.55.700 (d)(1)(C) and 24.55.700 (f)(1), pp. 95-96.) The final version of 24.55 that the City Council adopted contained the demolition delay exception for demolition permits accompanied by applications for replacement residences, but did not include the provisions giving rights to the nearby property owners and residents. The final adopted version also contained the following commentary: “These changes to 24.55.700 are based on recommendations of the Periodic Review Housing Density task force, and reflect changes made by the Planning Commission and City Council.” (Ordinance 163608, Attachment D-8.)

E. Subsequent Amendments to Chapter 24.55

Since the 1990 revisions, the City Council has adopted the following amendments to Chapter 24.55:

- **Ordinance 167088 (enacted November 3, 1993)**, which added subsections 750 (Administrative Review), 800 (Appeals to Code Hearing Officer), and 850 (Dangerous Building Enforcement Fees) and made minor amendments to section 250 (Enforcement) regarding structures required to be demolished.
- **Ordinance 171455 (enacted July 30, 1997)**, which completely overhauled Chapter 24.55. Revisions included amending the title to read “Building Demolition” (changed

from “Abatement of Unsafe, Abandoned, and Dangerous Buildings”) and repealed the entire chapter, except for the sections entitled “Demolition – Debris – Barricades – Nuisances” and the demolition delay section entitled “Demolition Delay – Housing Preservation.” This section was re-numbered from 24.55.700 to 24.55.200, its current number.

- **Ordinance 176955 (enacted October 9, 2002)**, which changed the references from “Bureau of Buildings” to “Bureau of Development Services.” This was the last revision to the Demolition Delay Ordinance.

III. Notification of Residential Demolition Permit Applications

The Demolition Delay Ordinance requires BDS to post notice of the application for demolition on the site for 30 days and to send written notice to the organizations recognized by the Office of Neighborhood Associations. (PCC 24.55.200(D).) As noted above, the City Council has twice rejected proposals to require additional notice to the neighbors. The Auditor estimated the administrative costs of providing such notices would be between \$3,500 and \$6,000 annually as of 1988. (Bogle Memorandum to Mayor and Council dated October 11, 1988, as part of Ordinance 161363.) Moreover, when an application for the demolition permit is accompanied by an application for a replacement residence, the demolition delay provisions, including notice, do not apply. According to BDS Permitting Services staff, most demolition delay permit applications for single-family residences are preceded by applications for replacement residential structures. Consequently, single-family residential demolitions often occur without notification based on the current requirements in Chapter 24.55.

IV. What Constitutes a “Demolition?”

The Oregon State Building Codes (ORS Chapter 455) and Portland City Code Titles 24 and 33 govern building construction and development in Portland. None of these three codes defines demolition. BDS staff is currently working on developing criteria to distinguish between “major alterations/additions/remodels” and those projects that are less extensive.

V. Air Quality Issues Concerning Demolition

The Oregon Health Authority regulates lead-based paint, and the Oregon Department of Environmental Quality (DEQ) regulates asbestos. Because the State, not the City, has regulatory jurisdiction over lead-based paint, air quality and asbestos, BDS does not include air quality matters as part of its demolition delay procedures. However, BDS has informed the State that citizens have expressed health concerns related to the demolition of older structures, as well as referred citizens to the Oregon Health Authority at (971) 673-0440 for lead-based paint issues and to DEQ for asbestos-related issues at 1-888-997-7888. More contact information and links to the OHA and DEQ websites are available on the BDS website at <http://www.portlandoregon.gov/bds/article/408867>.

VI. Summary

The demolition delay exception for a single-family residential demolition permit accompanied by an application for a replacement residence originated from the 1987 Residential Demolition Study. The Study recommended that the City Council adopt legislation that included a demolition delay period between the application for the issuance of a residential demolition permit, which would be waived for applicants with an approved building permit for a replacement residential structure or a City demolition order. (Study, pp. 36-39.) Although the Demolition Delay Ordinance as originally enacted in 1988 did not contain the waiver for approved replacement residences, the City Council subsequently included this demolition delay waiver in 1990 as part of the Zoning Code rewrite project. Their decision was based on the 1987 Study and the recommendation of Margaret Mahoney, the Director of the Bureau of Buildings. The justification for the waiver included data from the Study that single family residential demolitions negatively impacted the housing stock in Portland enough to warrant encouraging applicants for residential demolition permits to replace single-family residential structures with another residence.

The Study found this approach consistent with the City's Comprehensive Plan housing and neighborhood goals by encouraging housing preservation. Although various drafts of the Demolition Delay Ordinance have included notice to surrounding property owners, those provisions have never been included because the administrative costs of providing the notice outweigh their potential benefit to the preservation of overall housing stock.

BDS is in the process of developing criteria for major alterations/additions/remodels, so these more extensive projects will be subject to additional reviews and process.

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