



# Request for an Evidentiary Hearing and Waiver of Right to a Decision within 120 Days

State law requires the City to issue a final decision on your land use proposal within 120 days of receiving a complete application. In order to ensure that the decision on your land use review application is rendered within 120 days, any appeal of your proposal to City Council will be held based on evidence submitted as part of your first hearing to the Hearings Officer, Design Commission, or Historic Landmarks Commission.

If you prefer a hearing on appeal to City Council where anyone may bring in new facts and evidence (an "evidentiary hearing"), you must request a full 245-day extension of the 120-day review period by completing this form within 21 days of submitting your land use review application. You may choose to extend the 120-day review period for up to 245 days at any point in the land use review process. However, if the request is received more than 21 days after the application date, any appeal to City Council will be on-the-record and no new evidence can be submitted.

**STAFF USE ONLY**

Date Land Use Application received by BDS \_\_\_\_\_ Case File No. \_\_\_\_\_

Date this form is due to BDS for evidentiary hearing \_\_\_\_\_

**APPLICANT: Complete all sections below. Please Print Legibly.**

DATE: \_\_\_\_\_

TO: Bureau of Development Services  
Attention: Case Planner  
1900 SW Fourth Avenue, Suite 4500  
Portland, OR 97201

REGARDING: Type of Land Use Review \_\_\_\_\_

Site Address/Street \_\_\_\_\_

Tax Account Number(s) \_\_\_\_\_

**I understand the following information:**

1. I have the right, under State law, to a final decision on my application no more than 120 days after my application is determined to be complete by BDS staff.
2. I am not required to sign this form. If I do not sign this form, the City of Portland will process my application to meet the 120-day requirement.
3. By signing this form, I am making an irrevocable decision to extend the review period a full 245 days, and may not change my mind later except by withdrawing this application, filing a new application, and paying the associated fee.
4. By signing this form, I am waiving my right under State law to a final decision on my application with the 120-day review period. I am waiving my right to file any legal action to enforce the 120-day review period.

**All applicants must print their name and sign this form.**

Print Name \_\_\_\_\_ Day Phone \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_ Day Phone \_\_\_\_\_

Signature \_\_\_\_\_

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## 120-day Review Period Information

State law requires that the City make a final decision on your application no more than 120 days after it is deemed complete. State law also allows an applicant to extend the 120-day review period for an additional 245 days. Generally, we have been able to meet the 120-day deadline. However, where the proposal is complex or there is an appeal to City Council, it is difficult to meet this deadline. This is due to the amount of time required to review cases, make findings, provide time for neighbors to comment, and hold public hearings.

The 1995 Oregon Legislature adopted new laws which change how this 120-day period is calculated, and these laws make it much more difficult for us to meet the timeline. As a result, City Council adopted a resolution allowing us to comply with the new laws. The way this affects you, the applicant, is that an appeal of your proposal to City Council will be held based only on the evidence already in the record.

Our Type III procedure provides for a hearing before a Land Use Hearing Officer or a commission (Design or Landmarks). It also provides for a hearing before City Council if there is an appeal. Our Zoning Code allows City Council to choose how it will hear appeals. City Council may hold a full evidentiary hearing, or the Council may hear the appeal “on the record.” An evidentiary hearing is one where anyone may bring in new facts and evidence. For instance, a neighbor or applicant could bring a traffic study to the City Council hearing and request that Council consider it, even though it was not submitted to the original review body (Hearings Officer, Design Commission or Historic Landmarks Commission).

For an “on the record” appeal, the City Council relies only on the testimony and other evidence that was submitted to the original decision-maker—evidence that is “in the record.” For an appeal based on the review body’s decision and record, the appellant presents arguments to the Council about what is wrong with the review body’s decision. The person that did not file the appeal is responsible for defending the decision. Neither side presents new evidence, and no new issues may be raised. Hearing appeals that are “on the record” saves considerable time, and makes it possible to meet the 120-day review period requirement.

The right to a final decision within 120 days is the applicant’s right and guarantee under State law. The only

way this can be changed is if the applicant requests that any appeal include an evidentiary hearing. If you prefer the process that allows for a full evidentiary hearing if there is an appeal, you must extend the 120-day review period by a full 245 days. We will still handle your application differently, but still in a timely manner.

There are several reasons why you may want to extend the 120-day review period. The most significant advantage is that it allows time for all parties—you, the neighbors, and the city agencies—to work together to develop solutions. It allows time for you to provide additional information in response to concerns, and to help everyone better understand the application. This can avert a costly appeal to City Council or even to the Land Use Board of Appeals (LUBA), but it does take time. In addition, it allows for modification to the proposal as it moves through the process. This gives you the opportunity to change your project to address concerns or improve the proposal. Extending the 120-day review period allows for flexibility in the nature, number, and types of hearings that can be held so your case is reviewed in the way best suited to your particular case. Finally, it allows for a full evidentiary hearing if there is an appeal to City Council. This would allow new information to be submitted, including new information to support your application.

Although we think the longer process can benefit everyone involved, you are fully entitled to the 120-day process. If you prefer that option, do not sign or return this form. We will then proceed in processing your application within the required 120-day review period. If you prefer to extend the 120-day review period by 245 days, you must sign and return this form to the Bureau of Development Services within 21 days of submitting your application.

Once you choose the timeline you want to follow, we will include that information in the notice to neighbors, and process your application accordingly. For that reason, once you choose a timeline, you may not change your request. If you choose the 120-day review period, you may not opt for an evidentiary appeal hearing unless you start the entire process over, including a new application fee. Conversely, once you choose to extend the review period by 245 days, you may not demand that a final decision be issued within 120 days.

For more information regarding 120-day review period, contact the planner assigned to your case, or the Development Services Center at 823-7526.

*For more information visit or call the Planning and Zoning staff at the Development Services Center at 1900 SW 4th Ave, Suite 1500, 503-823-7526*

Information is subject to change, for current Portland Zoning Code visit [www.portlandoregon.gov/zoningcode](http://www.portlandoregon.gov/zoningcode)