

Land Use Review Extensions Project II

Recommended Draft

April 23, 2012

ADOPTED

Land Use Review Extensions Project II was adopted without change by City Council on May 16, 2012.

Ordinance#: 185333

Effective: May 16, 2012



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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April 20, 2012

Mayor Adams and Portland City Council
Portland City Hall
1121 SW 4th Avenue
Portland, OR 97204

Subject: Land Use Review Extensions Project II

Dear Mayor Adams and City Commissioners:

On April 10, 2012, the Portland Planning and Sustainability Commission held a hearing and unanimously approved the Land Use Review Extensions Project II. Staff proposed three amendments to the Zoning Code, which are explained in the *Recommended Draft*.

The most time-sensitive of the amendments is the proposal to extend the expiration date of a limited set of land use reviews and land division preliminary plans by two years. A previous ordinance, adopted by City Council in 2009, extended the expiration dates to June 2012. Because of the continued struggling real estate market and limited lending, some applicants have been unable to proceed with their development plans. The proposed amendment, to further extend land use approvals for a limited period, is one tool the City can use to eliminate barriers to Portland's economic recovery.

The Planning and Sustainability Commission received testimony in support of the amendments and unanimously recommends that City Council:

- Adopt the ordinance;
- Adopt the report titled *Land Use Review Extensions Project II: Recommended Draft*; and
- Amend the Zoning Code as shown in the report.

We thank you for your consideration of our recommendation.

Sincerely,

André Baugh
Chair



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Table of Contents

I. Report and Recommendation	1
II. Amendments to the Zoning Code	3

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I. Report

The Land Use Review Extension Project II project addresses three issues related to the administration of the Zoning Code (City Title 33, Planning and Zoning).

1. **Land Use Review Extension.** The Portland Zoning Code contains regulations that specify when land use approvals expire. Most land use approvals expire if a building permit for the project is not issued within three years of the final land use decision, while Preliminary Plan approvals for land divisions expire if a final plat application is not submitted within three years of the final decision on the Preliminary Plan.

Because of the condition of the economy, many applicants who have received land use approvals have found it difficult to proceed within the timelines set out in the Zoning Code. Once expired, these projects have to go through the entire land use review process again at substantial cost and further delay. This cost and delay could further slow the City's economic recovery.

In 2009, City Council extended the expiration dates to June 30, 2012 for land use reviews approved between May 27, 2006 and December 31, 2008. At the time, it was expected the economy would have recovered by mid-2012. Because Oregon's economy has yet to recover, **this project proposes to extend expiration dates an additional two years to mid-2014.**

Land use reviews approved after December 31, 2008 are not covered by the extension currently in the code, and expire three years after approval. Because of the timing of this project, some of the land use reviews approved in early 2009 will expire by the time the approvals are further extended by this proposal. We are not legally able to "resuscitate" approvals that have expired, and so have drafted the regulations to recognize this gap.

For example, a conditional use approved on January 2, 2008 would normally have expired on January 2, 2011. Under the amendments adopted in 2009, the conditional use now expires on June 30, 2012. The amendments proposed with this project will further extend that expiration date to June 30, 2014. However, an conditional use approved on January 2, 2009 will have expired on January 2, 2012. Because it has already expired, the amendments proposed with this project will not affect it. If the amendments proposed with this report are adopted by emergency ordinance to take effect immediately, the gap—the time during which approvals will expire—will be slightly more than four months¹.

2. **Final Plat Expiration.** After an application for a final plat has been submitted, the Bureau of Development Services sends a letter to the applicant that identifies missing information and outstanding requirements that must be completed prior to final plat approval. If the applicant provides *any* of the requested information or completes steps towards meeting the outstanding requirements, the application is extended and is not voided. There is no ultimate time limit by which *all* the missing information and outstanding requirements must be addressed. There are a number of final plats that have been "in process" for more than five years, and some for far longer than that². **This proposal will place a maximum period of three years from the date the letter is sent for the applicant to provide all missing information and address outstanding requirements.** This will apply only to final plat applications submitted after this amendment is adopted—it will not be retroactive.

¹ Based on the 536 land use applications reviewed by BDS in 2011, the four-month gap will affect approximately 178 approvals.

² There are 56 final plats still "under review" that were submitted before the end of 2009. Of those 56, 19 (34%) are at least five years old, and an additional 29 (52%) are at least four years old. There are 5 plats from the 1990s, and the oldest plat was submitted in 1993—for a preliminary plan approved in 1985.

3. **Date of Automatic Adjustments to Dollar Thresholds.** The Zoning Code requires automatic adjustments to certain dollar thresholds in the Code every year. The changes happen on February 1 and are based on figures published in the second January issue of the Engineering News-Record (ENR). The time between the second January issue of the ENR and February 1 can create difficulties for staff preparing the updates to the Code, so **this proposal would change the date the automatic dollar thresholds are adjusted to March 1.**

Recommendation of the Planning and Sustainability Commission

The Planning and Sustainability Commission recommends that City Council:

- Adopt this report;
- Amend the Zoning Code as shown in this report; and
- Adopt the ordinance.

II. Amendments to Zoning Code

RECOMMENDED ZONING CODE LANGUAGE

Language to be **added** is underlined
Language to be **deleted** is shown in ~~striketrough~~

AMEND CHAPTER 33.730, QUASI-JUDICIAL PROCEDURES

33.730.130 Expiration of an Approval

A. Expiration of unused land use approvals issued prior to 1979. [No change.]

B. When approved decisions expire.

1. Land use approvals, except as otherwise specified in this section, expire if:
 - a. Generally.
 - (1) Within 3 years of the date of the final decision a City permit has not been issued for approved development; or
 - (2) Within 3 years of the date of the final decision the approved activity has not commenced.
 - b. Exception. Final decisions that became effective between May 27, 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011 expire if a City permit has not been issued for approved development or the approved activity has not commenced by June 30, 2014.
2. Zoning map and Comprehensive Plan map amendments do not expire.
3. Conditional Use Master Plans and Impact Mitigation Plans expire as specified in Chapters 33.820 and 33.848, or in the plans themselves.
4. Multiple developments.
 - a. Generally. Where a site has received approval for multiple developments, and a City permit is not issued for all development within 3 years of the date of the final decision, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply. Examples of multiple developments include phased development and multi-building proposals.
 - b. Exception. On sites where the final decisions became effective between May 27, 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011, and a City permit is not issued for all development by June 30, 2014, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply.
5. Planned Developments. Where a Planned Development (PD) has been approved, and a building permit is not issued for all development within 10 years of the date

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Language to be **deleted** is shown in ~~strikethrough~~

of the final decision, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply.

6. Preliminary plans.
 - a. Generally. Approved preliminary plans for land divisions expire if within 3 years of the date of the final decision an application for approval of Final Plat has not been submitted.
 - b. Exception. Final decisions on preliminary plans that became effective between May 27, 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011, expire if an application for approval of Final Plat has not been submitted by June 30, 20~~12~~14.
7. Final Plats. Final Plats expire if they are not submitted to the County Recorder to be recorded within 90 days of the final decision.
8. Large industrial sites. Where the Preliminary Plan is approved under the provisions of Chapter 33.664, Review of Land Divisions on Large Sites in Industrial Zones, the following applies:
 - a. Generally.
 - (1) The approved Preliminary Plan expires if within 3 years of the final decision an application for approval of a Final Plat for part or all of the site has not been submitted.
 - (2) Applications for approval of a Final Plat for the entire site must be submitted within 5 years of the date of final approval of the Preliminary Plan. Where Final Plat approval has not been requested for portions of the site within this time limit, the Preliminary Plan approval does not expire, but can no longer be used as a basis for Final Plats; all conditions continue to apply, but no new lots may be created without another Preliminary Plan Review.
 - b. Exception. Final decisions for Preliminary Plans that became effective between May 27, 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011 expire if an application for approval of a Final Plat for part or all of the site has not been submitted by June 30, 20~~12~~14. Where Final Plat approval has not been requested for portions of the site within this time limit, the Preliminary Plan approval does not expire, but can no longer be used as a basis for Final Plats; all conditions continue to apply, but no new lots may be created without another Preliminary Plan Review.
9. Staged Final Plats. Where the Preliminary Plan is approved under the provisions of Sections 33.633.200 through .220, Staged Final Plats, the following applies:
 - a. Application for approval of a Final Plat for part or all of the site.
 - (1) Generally. The approved Preliminary Plan expires if within 3 years of the final decision an application for approval of a Final Plat for part or all of the site has not been submitted.

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Language to be **deleted** is shown in ~~strikethrough~~

- (2) Exception. Final decisions for Preliminary Plans that became effective between May 27, 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011 expire if an application for approval of a Final Plat for part or all of the site has not been submitted by June 30, 2012~~14~~.
- b. Applications for approval of a Final Plat for the entire site. Applications for approval of a Final Plat for the entire site must be submitted within 5 years of the date of submittal of the first Final Plat application. Where Final Plat approval has not been requested for portions of the site within this time limit, the Preliminary Plan approval does not expire, but can no longer be used as a basis for Final Plats; all conditions continue to apply, but no new lots may be created without another Preliminary Plan Review.
10. Land use approvals in conjunction with a land division. Land use approvals reviewed concurrently with a land division do not expire if they meet all of the following. This includes Planned Unit Developments (PUDs) and Planned Developments (PDs) reviewed in conjunction with a land division. This also includes amendments made to land use approvals where the original approval was reviewed concurrently with a land division:
- a. The decision and findings for the land division specify that the land use approval was necessary in order for the land division to be approved;
- b. The final plat of the land division has not expired; and
- c. Development or other improvements have been made to the site. Improvements include buildings, streets, utilities, grading, and mitigation enhancements. The improvements must have been made within 3 years of approval of the final plat. For final plats approved between May 27 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011, the improvements must have been made by June 30, 2012~~14~~.
11. Land use approvals in conjunction with a Planned Unit Development (PUD) or Planned Development (PD). Land use approvals reviewed concurrently with a PUD or PD do not expire if they meet all of the following. If the PUD or PD is as described in Paragraph B.5, the land use approvals reviewed in conjunction with the PUD or PD do not expire, but no additional development may occur without another review.

Land use approvals reviewed in conjunction with a PUD or PD and a land division are subject to Paragraph B.10 rather than the regulations of this paragraph:

- a. The decision and findings for the PUD or PD specify that the land use approval was necessary in order for the PUD or PD to be approved;
- b. The PUD or PD has not expired;
- c. Development or other improvements have been made to the site. Improvements include buildings, streets, utilities, grading, and mitigation enhancements. The improvements must have been within 3 years of final

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approval of the PUD or PD. For a PUD or PD receiving final approval between May 27, 2006 and December 31, 2008 or between *three years before the effective date of this regulation* and June 30, 2011, the improvements must have been made by June 30, 2012~~14~~.

- 12. Expedited Land Divisions. Land Divisions reviewed through the Expedited Land Division procedure in 33.730.013, are subject to the regulations of ORS 197.365 through .375. When the regulations of ORS 197.365 through .375 conflict with the regulations of this section, the regulations in ORS supercede the regulations of this section.

C and D. [No change.]

AMEND CHAPTER 33.663, FINAL PLATS

33.663.110 Voiding of Final Plat Application

A. Generally. An application for Final Plat review will be voided where:

- 1. The Director of BDS has sent written comments to the applicant, requesting additional information or identifying outstanding requirements that must be completed prior to final plat approval; and
- 2. The final plat review has remained inactive for 180 days from the date the Director’s letter was mailed. The plat is considered inactive if the applicant has not provided any of the requested information, or completed steps toward meeting any of the outstanding requirements for final plat approval; or
- 3. It has been more than three years from the date the Director's written comments were mailed, even if the plat has been active. This paragraph applies to applications for Final Plat Review submitted after *the effective date of this regulation*.

B. Exception. For final plat applications that were submitted before December 31, 2009, the 180 day period identified in A.2, above, is extended to 365 days. This exception applies only to applications that have not expired or been voided as of May 27, 2009.

AMEND CHAPTER 33.700, ADMINISTRATION AND ENFORCEMENT

33.700.075 Automatic Changes to Specified Dollar Thresholds

The sections listed below include dollar thresholds. These thresholds will be increased or decreased each year on ~~February~~ March 1. The change will occur automatically, and the new dollar amount will be placed in the Zoning Code without being subject to the procedures for amending the Zoning Code. The change will be based on the annual national average of the Construction Cost Index (CCI), as published in the second January issue of the Engineering News-Record.

A. and B. [No change.]

