



CLARIFICATION REGARDING FULL TIMELINE WAIVERS AND EXTENSIONS

DATE: January 8, 2021
TO: Interested Parties
FROM: Amber Bell, Planning Director, Land Management Division Planning
CC: Andrew Clark, County Counsel
RE: **Clarification Regarding County Acceptance and Processing of Waivers and Extensions to Statutory Timelines**

Multiple logistical and legal issues and questions surround allowances for timeline extensions and full timeline waivers. This memorandum provides clarification on Lane County's current practices for accepting and processing timeline extensions and waivers and the continued timely processing of applications subject thereto.

Background

LMD Planning strives to process applications in an efficient and timely manner, provide excellent customer service, and meet timelines and other processing requirements of Lane Code and State law. We recognize that the need sometimes arises for an applicant to request a delay in issuance of a decision in order to provide additional evidence or argument to address application criteria.

State law allows an applicant to extend the statutory timeline that requires a county to take final action for permits, limited land use decisions or zone changes, including resolution of appeals, within 120 or 150 daysⁱ. The timeline may be extended by the applicant through a request made in writing. The sum of any extensions provided may not exceed a total of 215 days. ORS 215.427(5).

Ordinance 20-05, Lane Code Chapter 14 Code Modernization, was adopted on June 16, 2020. Lane Code (LC) 14.050(2), Time Limit, includes provisions that implement and generally mirror ORS 215.427(5). The local allowance for written extension of timelines by an applicant is provided at LC 14.050(2)(d).

Neither State law nor Lane Code Chapter 14 include explicit language allowing the applicant to fully "waive" statutory timelines for a final county decision. It is generally accepted and LUBA found in *Leathers Oil Co. v. City of Newberg* (2011)ⁱⁱ that an applicant may voluntarily waive the statutory timeline entirely and give up the right to seek a writ of mandamus, and that a jurisdiction has the ability to act and rely upon such a waiver. However, neither ORS 215.427 nor *Leathers Oil* obligate a county to accept a full timeline waiver request.

Additionally, neither State law nor Lane Code Chapter 14 include language that obligates the County to delay processing a land use application after it has been deemed complete pursuant to LC 14.050 and ORS 215.427(2).

It is worth noting that LC 14.040(5) Modification of Application allows the applicant to make modifications to a complete application that exceed certain thresholds provided application criteria are met. Application requirements include payment of an additional fee and a written extension of applicable timelines for the period between the date of application completeness and the date of the modification application request. The applicable time limit for final review for an application may be extended as many times as there are

modification of applications submitted, subject to the limitations, exceptions, and clarifications in ORS 215.427.

Waivers & Extensions

Effective January 8, 2021, Lane County will no longer accept full timeline waivers, except when additional time is needed for application processing due to the following circumstances and at the Director's determination and discretion:

- The Applicant is made aware that additional information is needed to address application criteria that will take a significant amount of time for the applicant to obtain (e.g. Traffic Impact Analysis, BPA easement review, separate land use application) that staff and Applicant were unaware of during completeness review period.
- The Hearings Official does not have sufficient time to provide for open record and rebuttal periods and/or issue a decision within the mandated timeline.
- An 'Act of God' or comparable unforeseeable circumstance, such as extreme weather event, natural disaster, global pandemic, or personal/family emergency, but not including a change in law or case law, has occurred since the application was submitted. Such a circumstance has directly affected the subject property for the application or has impacted County application processing.

In such cases, a full timeline waiver must be requested in writing on the form provided by LMD Planning (enclosed, dated May 2020).

An applicant may extend the statutory timeline by providing a written request on the form provided by LMD Planning (see enclosed). The sum of any extensions provided may not exceed a total of 215 days. Please note that if an applicant requests in writing that an application be deemed complete pursuant to ORS 215.427(2)(b) or (c)ⁱⁱⁱ, LMD Planning will conduct substantive review and issue a decision based on materials provided as of the date of said request.

Application Review

Neither State law nor Lane Code include a process to place applications on "hold." Issuance of a decision may be delayed if agreed upon by the County and upon receipt of the completed, current timeline extension or waiver form provided by the Planning Director (enclosed) covering the agreed upon duration of the delay; however, please note:

- A Planning Director's decision must be issued by such a date that allows the Hearings Official decision to be issued prior to the end of the statutory timelines for a final local decision.
- The County will not accept a request to delay issuance of a decision for an unspecified time, regardless of whether a full time waiver is granted. An Applicant must provide staff an end date to the request for delay.
- The County reserves the right to continue all aspects of application processing during any delay.

Requesting an incomplete application be deemed complete pursuant to ORS 215.427(2)(b) or (c), then immediately requesting that the application be placed on "hold" to allow for the submittal and consideration of the information required to make the application complete pursuant to ORS 215.427(2)(a) is generally not an option Lane County Land Management will any longer consider.

ⁱ 215.427 Final action on permit or zone change application; refund of application fees. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

ii *Leathers Oil Co. v. City of Newberg, 63 Or LUBA 176 (2011)*

iii ORS 215.427 (2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197.311 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.