

ORDINANCE No. 185333

*Amend the Zoning Code to extend the expiration date for land use approvals, add expiration timeline for final plats, and change the effective date of automatic adjustments to dollar thresholds (Ordinance; amend Title 33)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. Title 33, Planning and Zoning, specifies when approved land use decisions expire. Typically, if a building permit is not issued within three years of the final land use decision, the land use decision expires.
2. Title 33 also states that the preliminary plan approval for a land division expires if a final plat application has not been submitted within three years of the final decision on the preliminary plan.
3. Given the current economic climate, applicants with approved land use decisions are unable to proceed forward with their projects, generally due to a weak real estate market and challenges with project financing. In stable economic conditions, development projects typically can meet the existing expiration periods identified in the Zoning Code. However, projects that would otherwise have proceeded to completion in a better economy are now delayed, and face the expiration of their approvals. Once expired, these projects must 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. Additionally, conducting such land use reviews for a second time would divert limited City staff resources from other priority projects. Extending the expiration period for approved land use decisions expedites Portland economic recovery by allowing these approved projects to proceed to the building permit review process.
4. In recognition of these economic difficulties, City Council in May 2009 amended the Zoning Code to extend the time in which applicants were required to obtain a building permit or submit a final plat application following an approved land use decision (Ordinance # 182810). For land use decisions approved between May 27, 2006 and December 30, 2008, the amendment allowed applicants until June 30, 2012 to obtain a building permit. For land use decisions approved during the same period that involved a preliminary plan approval for a land division, the amendment allowed applicants until June 30, 2012 to submit a final plat application. The City Council unanimously adopted this amendment.
5. The financial markets have improved somewhat since City Council considered the 2009 ordinance, and financial lending on development projects appears to be loosening. However, as the City's real estate conditions slowly begin to rebound, there are still many

projects that are at risk of losing their land use approvals if a building permit is not issued or a final plat application is not submitted by the June 30, 2012 expiration date.

6. The proposed amendment to Title 33 will extend the timelines for land use approvals for an additional two year period (see Exhibit A, Section I). Limiting the proposed extension to an additional two years acknowledges that the existing timelines in Title 33 are intended to better ensure that regulations and policies that were applied at the time of land use approval continue to be valid at the time the project is built. The proposed amendment respects the value of the existing timeframes in the Zoning Code, while acknowledging the difficult economic climate supports extending these timelines for a limited period.
7. The proposed amendment also establishes a maximum time limit on when applicants for a final plat application must provide *all* requested information, or complete all steps toward meeting outstanding application requirements. Under current zoning requirements, a final plat application generally becomes void if it has been inactive for 180 days from the date the Bureau of Development Services (BDS) sent a letter to the applicant requesting additional information or identifying outstanding requirements. If the applicant provides *any* of the requested information, or addresses *any* of the outstanding requirements, the application is extended an additional 180 days. With no maximum time limit on when *all* requested information must be provided, or when *all* steps toward meeting outstanding application requirements are completed, final plat application are allowed to languish indefinitely. As a result, BDS planners have “active” final plat applications dating from the 1990s, which are still vested under the old Title 34 Land Division code. The proposed amendment will require that unless *all* requested information or outstanding requirements for final plat applications is provided within three years of the initial request from the BDS, the final plat application will be voided. This better ensures that applications are reviewed against more current regulations, and allows limited BDS staff and resources to focus on truly active final plat applications.
8. The proposed amendment also addresses an ongoing administrative issue related to the automatic adjustments to the dollar thresholds identified in the Zoning Code. These dollar thresholds are changed annually, with the change based on the annual national average of the Construction Cost Index, published in the second January issue of the Engineering News-Record. The Zoning Code currently requires that these changes in dollar threshold be reflected in the Zoning Code by February 1 of each year. The February 1 date does not allow the Bureau of Planning and Sustainability (BPS) staff adequate time to make the changes and distribute the Zoning Code update package. The proposed amendment extends the date by which the dollar threshold changes must be reflected in the Code by one month, allowing BPS staff the needed time to incorporate such changes.

Findings on Statewide Planning Goals

9. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.
10. **Goal 1, Citizen Involvement**, requires the provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement:
 - On February 29, 2012, a notice of the proposed amendment was mailed to the Department of Land Conservation and Development. The notice summarized the proposed amendment, identified applicable statewide planning goals, and included text for the proposed amendment.
 - On March 13, 2012, a notice announcing the Planning and Sustainability Commission public hearing on this proposed amendment was mailed to all neighborhood associations and district coalitions, applicants who have a land use approval that will expire shortly, and other interested persons.
 - A notice of the hearing was published in the March/April 2012 issue of the *Plans Examiner*, a bi-monthly BDS publication intended to inform the building-design and construction community.
 - Information on the proposed amendment and scheduled hearing was posted on both the BDS and BPS websites.
 - The proposal was discussed at the February 2012 Development Review Advisory Committee (DRAC). DRAC is a citizen advisory body, representing those with interests in the outcome of policies, budgets, regulations, and procedures that affect development review processes. DRAC voted to support the amendment.
 - On April 10, 2012, the Planning and Sustainability Commission held a hearing to discuss and take testimony on the proposed amendments. Staff presented the proposal and public testimony was received. The Planning and Sustainability Commission closed the hearing and voted to recommend that City Council adopt the amendment.
 - On April 20, 2012, a notice announcing the City Council public hearing on the proposed amendment was mailed to those who provided testimony at the Planning Commission hearing.
11. **Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The amendment supports this goal as development of the recommendations followed established City procedures for legislative actions.

12. **Goal 9, Economic Development**, requires the provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. The proposed amendment supports this goal by providing additional time for projects previously approved through the land use review process to continue through to completion. Without the extensions to the expiration periods that are proposed in the amendment, projects approved through the land use review process would not be able to move forward. The time delay and additional costs associated with reviewing these projects a second time through a subsequent land use review procedure would further hamper the City's ability to weather the current economic downturn.
13. **Goal 10, Housing**, requires provision for the housing needs of citizens of the state. The proposed amendment is supportive of this goal. Many of the previously approved land use reviews that will be expiring in the near future include projects that expand the City's housing stock, or provide potential housing development sites (in the case of residential land division cases). Allowing these approvals to expire will delay these new housing opportunities. See also findings for Portland Comprehensive Plan Goal 4 (Housing), and Metro Title 1.
14. **Goal 11, Public Facilities and Services**, requires planning and development of a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for development. While the proposed amendment will extend the expiration date for some land use approvals by as much as five years, these approved projects will still be subject to the City's rules and regulations regarding public facilities and services that are in effect at the time the applicant submits the building permit application. As such, the City's most current rules and regulations on public facilities and services will still be applied to projects.
15. **Goal 12, Transportation**, requires provision of a safe, convenient, and economic transportation system. The Oregon Transportation Planning Rule (TPR) was adopted in 1991 and amended in 1996 and 2005 to implement State Goal 12. The TPR requires certain findings if the proposed regulation will significantly affect an existing or planned transportation facility. The proposed amendment is consistent with this goal as it does not change the policy or intent of any of the existing regulations pertaining to transportation.

Findings on Metro Urban Growth Management Functional Plan

16. The following element of the Metro Urban Growth Management Functional Plan is relevant and applicable to the proposed Zoning Code amendment:
17. **Title 1, Requirements for Housing and Employment Accommodation**, requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through citywide analysis based on calculated capacities from land use designations. The proposed amendment facilitates achieving the goals of this title by ensuring that land use decisions that approved residential and commercial development are not forced to expire due to the current economic situation. The proposed amendment provides land use applicants the opportunity to pursue building permit applications (and subsequent land use review

approvals) that are needed for these projects to be a reality and to contribute to the City's economic health and expanding residential base.

Findings on Portland's Comprehensive Plan Goals

18. The City's Comprehensive Plan was adopted by the Portland City Council on October 16, 1980, and was acknowledged as being in conformance with the statewide planning goals by the Land Conservation and Development Commission on May 1, 1981. On May 26, 1995, the LCDC completed its review of the City's final local periodic review order and periodic review work program, and reaffirmed the plan's compliance with statewide planning goals.
19. The following goals, policies, and objectives of the Portland Comprehensive Plan are relevant and applicable to the proposed Zoning Code amendment.
20. **Goal 1, Metropolitan Coordination**, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. In general, the amendment is consistent with this goal because they do not change policy or intent of existing regulations relating to metropolitan coordination and regional goals.

Policy 1.4, Intergovernmental Coordination, requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The amendment supports this policy because other government agencies were notified of this proposal and given the opportunity to comment. These agencies include Metro, Multnomah County Planning, and the Oregon Department of Land Conservation and Development.

21. **Goal 2, Urban Development**, calls for maintaining Portland's role as the major regional employment and population center by expanding opportunities for housing and jobs, while retaining the character of established residential neighborhoods and business centers.

The amendment supports this goal by allowing projects that have been approved through the City's public land use review process to proceed to development despite the current economic conditions. The amendment provides applicants with additional time to receive a building permit (or apply for subsequent needed land use reviews). Without the extension, commercial and residential projects that would enhance the City's role as an employment and population center would be stopped or delayed.

22. **Goal 4, Housing**, calls for enhancing Portland's vitality as a community at the center of the region's housing market by providing housing of different types, density, sizes, costs and locations that accommodates the needs, preferences, and financial capabilities of current and future households. The proposed Zoning Code amendment supports this goal by extending the expiration date of approved land use actions, many of which include housing development. See also findings for Statewide Planning Goal 10, Housing.
23. **Goal 5, Economic Development**, calls for the promotion of a strong and diverse economy that provides a full range of employment and economic choices for individuals and families in all parts of the city. The proposed amendment supports this goal by providing additional

time for projects approved through the land use review process to continue through to completion. Without the limited extensions to the expiration periods that are proposed in the amendment, projects approved through the land use review process would not be able to move forward. The time delay and additional costs associated with reviewing these projects a second time through a subsequent land use review procedure would further hamper the City's ability to weather the current economic downturn.

24. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and amendment of the Comprehensive Plan. This project followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement.
25. **Goal 10, Plan Review and Administration**, includes several policies and objectives. Policy 10.10, Amendments to the Zoning and Subdivision Regulations, directs that amendments to the zoning and subdivision regulations should be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. The proposed amendment is consistent with this policy by making the Zoning Code more flexible in dealing with the current economic downturn. Because existing regulations provide no opportunity for an applicant to request an extension of the expiration period for a land use approval or related land use action, development projects that will contribute to a growing City will not be possible, or will be significantly delayed. The proposed amendment provides the additional time necessary to allow these projects to proceed.
26. **Goal 12, Urban Design**, calls for enhancing Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations. The proposed amendment is intended to allow those projects that have received approval through the land use review process, often through the Design Review process, to proceed to construction and contribute to the City's urban vitality.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, the *Land Use Review Extensions Project II Recommended Draft*, dated April 23, 2012;
- b. Amend Title 33, Planning and Zoning, as shown in Section II of Exhibit A, *Land Use Review Extensions Project II Recommended Draft*, dated April 23, 2012; and
- c. Adopt the report as further findings and as legislative intent.

Section 2. If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code it adopts or amends, is held to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Section 3: The Council declares an emergency exists because further delay in extending the expiration dates will affect additional applicants, costing them time and money, and further slowing Portland's economic recovery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: MAY 16 2012

Mayor Sam Adams
Commissioner Dan Saltzman

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

Prepared by:
Douglas Hardy, Bureau of Development Services
March 23, 2012

185333

Agenda No. **185333**
ORDINANCE NO.
Title

*Amend the Zoning Code to extend the expiration date for land use approvals, add expiration timeline for final plats, and change the effective date of automatic adjustments to dollar thresholds (Ordinance; amend Title 33, Planning and Zoning).

INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams; Commissioner Dan Saltzman	CLERK USE: DATE FILED <u>MAY 03 2012</u>
COMMISSIONER APPROVAL	LaVonne Griffin-Valade Auditor of the City of Portland
Mayor—Finance and Administration - Adams <i>[Signature]</i>	By: <u><i>[Signature]</i></u> Deputy
Position 1/Utilities - Fritz	
Position 2/Works - Fish <i>[Signature]</i>	
Position 3/Affairs - Saltzman <i>[Signature]</i>	
Position 4/Safety - Leonard	ACTION TAKEN: MAY 09 2012 <i>Rescheduled to</i> MAY 16 2012 2 P.M. <i>Time Certain</i>
BUREAU APPROVAL	
Bureau: Planning and Sustainability Bureau Head: Susan Anderson <i>[Signature]</i>	
Prepared by: Jessica Richman Date Prepared: April 26, 2012	
Financial Impact & Public Involvement Statement Completed: <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date May 9, 2012	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i>	

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> Start time: 3:00 pm
Total amount of time needed: 30 minutes (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	