

Expiration Date Extension Project

REGULATORY RELIEF DUE TO THE COVID-19 PANDEMIC

AS-ADOPTED DRAFT
AUGUST 2020

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Section I: Introduction

Project Summary

The Expiration Date Extension Project addresses several issues related to the administration of the Portland Zoning Code (Title 33, Planning and Zoning) and the economic impacts of the COVID-19 pandemic on the development market. It will amend the Zoning Code to extend the expiration date of some land use reviews, final plats, pre-application conferences, non-conforming update agreements, and Master Plans; maintain inclusionary housing rates that are set to increase; and allow for virtual neighborhood contact meetings. The proposal also includes a minor amendment to address a typo in the Zoning Code.

- 1. Land Use Review Extensions – Within the City, extend the expiration date of land use reviews approved between March 8, 2017 and January 1, 2021 until January 1, 2024. For land divisions and Multnomah County Pocket areas, extend the expiration date for approvals between August 10, 2017 and January 1, 2021 until January 1, 2024.**

The Portland Zoning Code contains regulations that specify when land use review approvals expire. Most land use review approvals expire if a building permit for the project is not issued within three years of the final decision. Preliminary Plan approvals for land divisions expire if a final plat application is not submitted within three years of the final Preliminary Plan decision.

The COVID-19 crisis has created economic uncertainty in the market making it more difficult for development projects to move forward and has also slowed the pace of construction. Additionally, the public health emergency declaration impacted the Bureau of Development Services' ability to intake and issue permits. Given these conditions, it is more difficult for applicants to proceed within the timelines set out in the Zoning Code, increasing project cost and delay that could hinder the city's economic recovery.

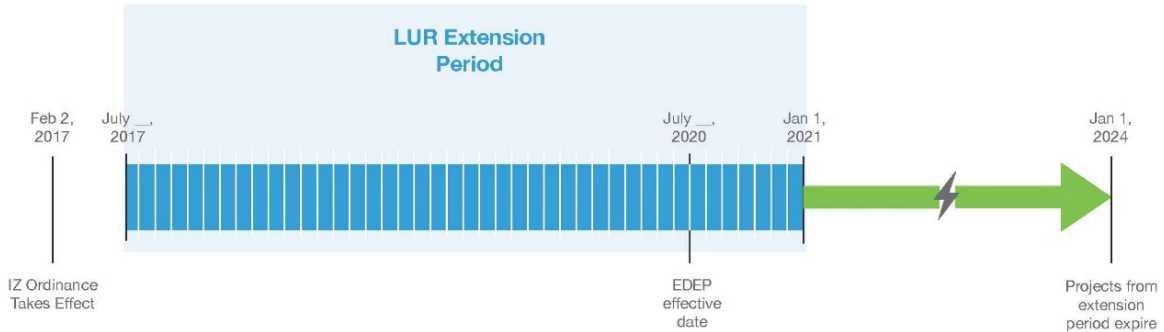
To address these issues this project proposes to extend expiration dates of land use reviews and preliminary plans approved up to three years before the pandemic's effects began to be felt in Portland (March 8, 2017, the date of the Governor's Emergency Declaration) and approximately five months after the effective date of this ordinance (January 1, 2021) until January 1, 2024. This means that land use reviews approved in the three years leading up to the COVID-19 crisis hitting Portland in March 2020 and for approximately nine months following will be granted an extension of up to 44 months.

The Recommended Draft contained language that would set the "start date" for the proposal as three years prior to the effective date of this ordinance. Because the impacts of the pandemic began in March 2020, Council decided to apply the EDEP land use review extension amendment retroactively, but creating "carve outs" for preliminary plan approvals and those approvals that apply in Unincorporated Multnomah County under Title 33 jurisdiction ("County pockets") pursuant to ORS 92.285 and ORS 215.110. For those "carve out" approvals, the start date is August 10, 2017.

While it remains unclear how long the COVID-19 economic effects will linger, the extension period will provide a buffer for applicants to see these projects through to completion. The goal is to allow sufficient time for approved projects to weather the current market situation, while

also limiting the length of the extension so that conditions and regulations considered at the time of the approval remain relevant.

This project is in alignment with similar land use review extensions that were passed in 2009 and 2012 in response to the 2008 economic crisis. At that time, City Council first extended the expiration dates for land use reviews approved between May 2006 and December 2008 to June of 2012. When the economy did not recover by 2012 as expected, City Council extended those land use expirations until June of 2014.



2. Pre-Application Conferences. Extend expiration dates of all pre-application from one year after the pre-application conference is held until two years after the conference.

Pre-application conferences are a part of the land use review process that provide applicants with technical, design, and procedural assistance prior to the submittal of an application. Pre-applications also provide notification to recognized organizations of large-scale projects.

For Type III and Type IV reviews, which includes most high-impact reviews, a pre-application is required. For most other reviews, a pre-application conference is optional. Following the pre-application conference, the BDS and other City agencies provide the applicant with a summary of recommendations and information from the meeting. For land use reviews that require a pre-application conference, the application must be submitted within one year of the conference or the pre-application conference expires and a new conference must be held.

Given the impacts the COVID-19 crisis is having on the development market, pre-application conferences may expire during this period of economic uncertainty and when the ability to submit a building permit or meet with City staff is limited. While the overarching theme of this project is to respond to COVID-related issues, the Planning and Sustainability Commission recommended and Council concurred that it was appropriate to extend the timeframe for pre-application conferences more broadly. This is to ameliorate the added expense and delays for larger projects that result when pre-application conferences expire due to longer timelines for more complex projects. Rather than just focus on a subset of larger projects which are impacted by COVID-related delays, such as Master Plan projects, the Commission recommends extending all pre-application expirations.

3. Final Plat Extensions – Grant the applicant 365 days to respond to a request for information or make progress on their application before it is voided.

The final plat process is the second step of the land division process that follows the approval of the preliminary plan. The final plat shows the final surveyed layout of the land division including all lots, tracts, easements and rights-of-way. Information documenting compliance with all City requirements and conditions of approval is reviewed with the final plat.

Final plats must be completed within three years from the time the first response for additional information (checksheet) is sent to the applicant. The process generally involves some back-and-forth between the applicant and the planner. Under the current code, the applicant is given 180 days to respond to a request for information or to otherwise make progress towards completing the final plat. If they fail to do so, the application can be voided. This project proposes to grant the applicant 365 days to respond to a request for information or make progress on their application before it is voided. The change applies to all final plats submitted before January 1, 2021, excepting those that have already expired or been voided as of the effective date of this proposal. The intent is to grant some flexibility to applicants in light of the uncertainty facing the development and construction markets due to COVID-19.

4. Neighborhood Contact Meetings – Allow neighborhood contact meetings held between March 8, 2020 and January 1, 2024 to be held remotely.

Neighborhood contact is a set of outreach steps that must be taken before certain land use reviews and development permits can be submitted for approval. The neighborhood contact steps provide an opportunity for members of the community to provide feedback to the property owner or developer on the design and other aspects of the development. Certain types of development proposals require the applicant to set up a public meeting or a meeting with the neighborhood association to present the project. Given the social distancing necessary to prevent the spread of the COVID-19 pandemic, this proposal will allow neighborhood contact meetings held between March 8, 2020 and January 1, 2021 to be held remotely using video conferencing technology, provided a phone-in option is also available.

5. Extension for Inclusionary Housing Provision Rates – Delay the January 2021 increase of the inclusionary housing rates in neighborhoods outside the Central City and Gateway plan districts to January 1, 2022.

The Inclusionary Housing (IH) standards set the rate at which affordable housing must be provided for housing projects. Under the current code, the standard for projects outside of the Central City and Gateway plan districts is lower than is required inside these plan districts. The lower rate is currently set to expire on January 1, 2021. This project proposes to delay the January 2021 increase of the inclusionary housing rates in neighborhoods outside the Central City and Gateway plan districts to January 1, 2022.

The Bureau of Planning and Sustainability and Portland Housing Bureau closely monitor the City's Inclusionary Housing program to ensure that the program is producing affordable units through multi-family development. There are currently a significant number of projects with Inclusionary Housing units already permitted or in the permitting process. The disruption to the national and regional economy due to the COVID-19 pandemic is creating uncertainty for residential development projects. This amendment will alleviate some of that uncertainty.

6. Nonconforming Upgrades Option 2 Extension – Extend the compliance period for applicants with an active Option 2 Covenant in effect on March 8, 2020 until January 1, 2022

Nonconforming upgrades are required upgrades to sites with development that is out of conformance with the current Zoning Code. These provisions require upgrades to nonconforming development that affect the appearance and impacts of a site. The upgrades are triggered when a building permit is submitted and the value of the proposed alterations is over a certain dollar threshold. To complete upgrades, an applicant has two options. Under the first option, the applicant must complete the upgrades at the time of the project that triggers the upgrades; however, the upgrades are limited to 10 percent of the value of the project. Under the second option, the applicant is given more time (up to five years) to complete the upgrades, but at the end of that period, the entire site must be brought into conformance. Under Option 2, the applicant must apply to delay the upgrades and must also record a covenant specifying what upgrades will be made and the date by which the upgrades must be completed.

This project proposes to extend the compliance period for applicants with an active Option 2 Covenant in effect on March 8, 2020 until January 1, 2022 or until the end date recorded in the covenant, whichever is later.

7. Con-Way Master Plan Extension – Extend the expiration of the Con-way Master Plan until January 1, 2024.

Northwest Master Plans are required for a certain area of NW Portland that is known as the Con-way site (shown on Zoning Code Map 562-9 and approved through LU 12-135135 MS). This plan sets the planning area boundaries, outlines a scheme for the urban design and project phasing, and includes a plan amendment process, approval criteria and design guidelines for the area. New projects within the Master Plan boundaries are subject to Design Review using those design guidelines. The Zoning Code stipulates that Northwest Master Plans expire after 10 years, though they can be extended through an amendment process. Unless amended, the Con-way Master Plan will expire on October 2, 2022.

To date, nine blocks within the Con-Way Master Plan area have submitted or been approved for building permits, while another six are still in the concept and design phases. Like other development projects citywide, the Con-way projects are subject to delays and uncertainty due to the COVID-19 pandemic and in need of relief similar to what is being offered to other land use review sites through this project. Additionally, the Con-way Master Plan went through a comprehensive planning process that involved the neighboring community and a broad range of stakeholders and the end result was a concept amenable to those stakeholders, including the Northwest District Association. Expiration of the Con-way Master Plan could mean the loss of that work if a new master plan must be developed. To that end, this project proposes to extend the expiration of the Con-way Master Plan until January 1, 2024.

8. List of Terms Typo – Update List of Terms.

The Better Housing by Design project was adopted by City Council on December 18, 2019. With that adoption, the Title 33 Definitions Chapter (33.910) was amended to add new terms and definitions. The corresponding term for each definition in Chapter 33.910 is also listed in Chapter 33.900 List of Terms. The code amendments adopted amended the Chapter 33.910 Definitions but not 33.900 List of Terms. This project proposes to update the List of Terms in Chapter 33.900.

Section II: Zoning Code Amendments

This section presents staff proposed zoning code amendments. The section is formatted to facilitate readability by showing draft code amendments on the right-hand (odd) pages and related commentary on the facing left-hand (even) pages.

Underlined formatting indicates added text, while ~~strikethrough~~ formatting shows what text is deleted.

Commentary

33.245 Inclusionary Housing

These changes extend the expiration date for the lower inclusionary housing rates that currently apply outside the Central City and Gateway plan districts.

33.245.040.A.2.1 Inclusionary Housing Standards

A phase-in period of lower inclusion rates for both the mandatory and voluntary options outside the Central City and Gateway plan districts were adopted on December 21, 2016. The rates for these areas were set at 15 percent of units at 80 percent MFI and 8 percent of units at 60 percent MFI. In 2018, the phase-in period was extended to January 1, 2021, which would increase the inclusion rate to 20 percent of units at 80 percent MFI and 10 percent of units at 60 percent MFI citywide. This proposal extends the phase-in period to January 1, 2022.

The Bureau of Planning and Sustainability and Portland Housing Bureau closely monitor the City's Inclusionary Housing program to ensure that the program is producing affordable units through multi-family development. There are currently a significant number of projects with Inclusionary Housing units already permitted or in the permitting process. The disruption to the national and regional economy due to the COVID-19 pandemic is creating uncertainty for residential development projects. Therefore, the Bureau of Planning and Sustainability and the Portland Housing Bureau proposes delaying for one year the January 2021 increase of the inclusion rates in neighborhoods outside the Central City and Gateway Regional Center to allow time for the development market to adjust to economic disruption caused by the COVID-19 pandemic and to study the effectiveness of the IH program citywide.

33.245 Inclusionary Housing

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33.245.040 Inclusionary Housing Standards

Affordable dwelling units must be provided as follows, or a fee-in-lieu of providing affordable dwelling units must be paid. Adjustments are prohibited:

- A. On-site affordable dwelling units.** When the affordable dwelling units will be located on-site, affordable dwelling units must be provided at one of the following rates. For the purpose of this Section, affordable dwelling units located within the boundaries of a Central City Master Plan are considered to be on-site:
1. [No change]
 2. Outside the Central City and Gateway plan districts. Outside the Central City and Gateway plan districts, affordable dwelling units must be provided at one of the following rates:
 - a. Rates before January 1, ~~2021~~2022:
 - (1) 8 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income; or
 - (2) 15 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 80 percent of the area median family income.
 - (3) Alternate calculation method. As a way to encourage the creation of larger affordable dwelling units, using one of the percentages stated above, the number of affordable dwelling units required may be calculated based on the total number of bedrooms in the new or altered building. For example, using the 10 percent rate, a new building with 60 two-bedroom dwelling units could provide 6 two-bedroom affordable units or 4 three-bedroom affordable units.
 - b. Rates on and after January 1, ~~2021~~2022. The rates shown in Paragraph A.1. apply outside the Central City and Gateway plan districts on and after January 1, ~~2021~~2022.
- B.** [No change]

Commentary

33.258 Nonconforming Situations

This change extends the timeframe during which upgrades must be made to bring nonconforming development into compliance with the Zoning Code.

33.258.070.D.2.d.(2)

Generally, projects for alterations on sites with nonconforming development over a certain valuation threshold trigger required upgrades to bring the site into conformance with the zoning code. An applicant has two options to do so. Under the first option, the applicant must complete the upgrades as part of the project that triggers the upgrades; however, the upgrades are limited to 10 percent of the value of the project. Under the second option, the applicant is given more time (up to five years) to complete the upgrades, but at the end of that period, the entire site must be brought into conformance. Under Option 2, the applicant must apply to delay the upgrades and must also record a covenant specifying what upgrades must be made and the date by which the upgrades must be completed.

This amendment extends until 2022 the timeframe for projects that were approved for Option 2 upgrades and had a recorded covenant at the time the COVID-19 public health emergency was declared.

33.258 Nonconforming Situations

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33.258.070 Nonconforming Development

A.-C. [No change]

D. Development that must be brought into conformance. The regulations of this subsection are divided into two types of situations, depending upon whether the use is also nonconforming or not. These regulations apply except where superseded by more specific regulations in the code.

1. [No change]

2. Nonconforming development with an existing nonconforming use, allowed use, limited use, or conditional use. Nonconforming development associated with an existing nonconforming use, an allowed use, a limited use, or a conditional use, must meet the requirements stated below. When alterations are made that are over the threshold of Subparagraph D.2.a., the site must be brought into conformance with the development standards listed in Subparagraph D.2.b. The value of the alterations is based on the entire project, not individual building permits.

a.-c. [No change]

d. Timing and cost of required improvements. The applicant may choose one of the following options for making the required improvements:

(1) Option 1. Under Option 1, required improvements must be made as part of the alteration that triggers the required improvements. However, the cost of required improvements is limited to 10 percent of the value of the proposed alterations. It is the responsibility of the applicant to document the value of the required improvements. When all required improvements are not being made, the applicant may choose which of the improvements listed in Subparagraph D.2.b to make. If improvements to nonconforming development are also required by regulations in a plan district or overlay zone, those improvements must be made before those listed in Subparagraph D.2.b.

(2) Option 2. Under Option 2, the required improvements may be made over several years, based on the compliance period identified in Table 258-1. However, by the end of the compliance period, the site must be brought fully into compliance with the standards listed in Subparagraph D.2.b. When this option is chosen, the following applies:

Commentary

- Before a building permit is issued, the applicant must submit the following to BDS:
 - Application. An application, including a Nonconforming Development Assessment, which identifies in writing and on a site plan, all development that does not meet the standards listed in subparagraph D.2.b.
 - Covenant. The City-approved covenant, which is available in the Development Services Center, is required. The covenant identifies development on the site that does not meet the standards listed in subparagraph D.2.b, and requires the owner to bring that development fully into compliance with this Title. The covenant also specifies the date by which the owner will bring the nonconforming development into full compliance. The date must be within the compliance periods set out in Table 258-1. The covenant must be recorded as specified in Subsection 33.700.060.B.
- The nonconforming development identified in the Nonconforming Development Assessment must be brought into full conformance with the requirements of this Title that are in effect on the date when the permit application is submitted. The compliance period begins when a building permit is issued for alterations to the site of more than \$300,000. The compliance periods are based on the size of the site. The compliance periods are identified in Table 258-1.
- By the end of the compliance period, the applicant or owner must request that the site be certified by BDS as in compliance with the standards listed in Subparagraph D.2.b. on the date when the permit application was submitted. A permit documenting full conformance with these standards is required and must receive final inspection approval prior to BDS certification.
- If certification is requested by the end of the compliance period and BDS certifies the site as in compliance, a two-year grace period begins. The grace period begins at the end of the compliance period, even if BDS certifies the site before the end of the compliance period. During the grace period, no upgrades to nonconforming development are required.
- If certification is not requested, or if the site is not fully in conformance by the end of the compliance period, no additional building permits will be issued until the site is certified.
- If the regulations referred to by Subparagraph D.2.b, or in D.2.b itself, are amended after the Nonconforming Development Assessment is received by BDS, and those amendments result in development on the site that was not addressed by the Assessment becoming nonconforming, the applicant must, at the end of the grace period, address the new nonconforming development using Option 1 or Option 2. If the applicant chooses Option 2, a separate Nonconforming Development Assessment, covenant, and compliance period will be required for the new nonconforming development.

Commentary

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

- For covenants that were in effect on March 8, 2020, the compliance period expires on the later of January 1, 2022 or the period in the recorded covenant.

| Table 258-1 Compliance Periods for Option 2 | |
|--|--------------------------|
| Square footage of site | Compliance period |
| Less than 200,000 sq. ft. | 2 years |
| 200,000 sq. ft. or more, up to 500,000 sq. ft. | 3 years |
| More than 500,000 sq. ft., up to 850,000 sq. ft. | 4 years |
| More than 850,000 sq. ft. | 5 years |

E.-G. [No change]

Commentary

33.562 Northwest Master Plans

The changes in this chapter grant an extension to the timeframe for a Northwest Master Plan. Northwest Master Plans are required for a certain portion of NW Portland that is known as the Con-way site (shown on Map 562-9). Only one Northwest Master Plan land use review has been approved under this code section (LU 12-135162 MS), the Con-way Master Plan. This plan sets the planning area boundaries, outlines a scheme for the urban design and project phasing, and includes a plan amendment process, approval criteria, and design guidelines for the area. New projects within the Master Plan boundaries are subject to Design Review using those design guidelines.

33.562.300.H Duration of the Northwest Master Plan

This code section specifies that Northwest Master Plans remain in effect for 10 years unless the plan is amended or updated. As noted above, the Con-Way Master Plan is the only adopted Northwest Master Plan. If the Con-way Master Plan expires before the build-out of the site is completed, a new Master Plan must be adopted for projects within the area designated on Map 562-9 that propose an expansion of floor area or exterior improvements greater than 1,500 square feet, with a few exceptions.

Without being amended through the quasi-judicial process (as specified in Chapter 33.562 and the adopted Con-Way Master Plan), the Plan would expire on October 2, 2022 (10 years from the effective date of the Con-way Master Plan approval). This code change would extend that expiration to January 1, 2024 to allow the applicant more time to complete the build-out of the Master Plan area.

33.562 Northwest Plan District

562

33.562.300 Northwest Master Plan

A.-G. [No change]

H. Duration of the Northwest Master Plan. The Northwest Master Plan must include proposed uses and possible future uses that might be proposed for at least 3 years and up to 10 years. An approved Northwest Master Plan remains in effect for 10 years, unless the plan is amended or updated, with the exception of Northwest Master Plans approved prior to August 10, 2017, which remain in effect until January 1, 2024. When the Northwest Master Plan is amended or updated, the application for amendment or revision must include a discussion of when the next update will be required.

I. [No change]

Commentary

33.663 Final Plats

The changes in this chapter allow extra time for applicants to complete final plats that were in process prior to the onset of the COVID-19 crisis and also grants some flexibility for plats submitted through the end of 2021.

33.663.110 Voiding of Final Plat Application

Generally, final plat applicants must respond to requests for additional information regarding the final plat within 180 days, otherwise the City can void the final plat application. This code change allows for 365 days of inactivity before the final plat is voided. This is a temporary reprieve and only applies to plats submitted before January 1, 2021 and that have not expired or been voided prior to the effective date of the ordinance.

33.663 Final Plats

663

33.663.110 Voiding of Final Plat Application

- A. Generally.** An application for Final Plat review will be voided when:
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 the applicant has not provided any of the requested information or completed any steps toward meeting the outstanding requirements within 180 days. If the applicant provides some information or completes some steps toward meeting the outstanding requirements within 180 days the application of final plat review will not be voided; or
 2. It has been more than 3 years since the Director of BDS has sent the initial set of written comments requesting additional information or identifying outstanding requirements that must be completed prior to final plat approval and the applicant has not provided all of the requested information and completed all of the steps necessary to meet the outstanding requirements. This paragraph does not apply to applications for final plat review submitted on or before May 16, 2012.
- B. Exception.** For final plat applications that were submitted before ~~December 31, 2009~~January 1, 2021, the 180-day period identified in A.1, above, is extended to 365 days. This exception applies only to applications that have not expired or been voided as of ~~May 27, 2009~~August 10, 2020.

Commentary

33.705 Neighborhood Contact

The changes in the section expand the options for conducting neighborhood contact that meet social distancing requirements.

33.705.020 Neighborhood Contact Steps

Certain types of development proposals require the applicant to present the proposal at a public meeting or a meeting with the neighborhood association. Given the social distancing necessary to prevent the spread of the COVID-19 pandemic, this proposal will allow neighborhood contact meetings held between March 8, 2020 and January 1, 2024 to be held remotely using video conferencing technology, provided a phone-in option is also available.

Chapter 33.705 Neighborhood Contact

705

33.705.020 Neighborhood Contact Steps

- A. [No change]
- B. **Neighborhood contact II.** Neighborhood contact II requires the following meeting, notification and posting steps:
 - 1.-3. [No change]
 - 4. Meeting. The applicant must schedule and attend one public meeting. Notes from the meeting and an explanation of any changes made to the proposal as a result of comments received at the public meeting must be emailed or mailed to the neighborhood association, district neighborhood coalition, business association, school district and any meeting attendees who provide an email or postal address, before an application for a land use review or building permit can be accepted. The meeting must:
 - a. Be held at least 14 days before applying for a land use review or a building permit, and at least 14 days after sending the email or letter and posting signs required by Paragraphs B.2. and B.3.
 - b. Be held at a location within the neighborhood where the proposed development is located or at a location that is not more than two miles from the boundary of the neighborhood within which the proposed development is located and within the boundaries of the district neighborhood coalition in which the proposed development is sited. Meetings held between March 8, 2020 and January 1, 2024 may be held remotely using online video conferencing technology. The selected technology must have a phone-in option available to those without access to a computer or mobile device;
 - c. Be held at a time between 6 p.m. and 9 p.m. Monday through Friday, or between 1 p.m. and 6 p.m. on Saturday or Sunday and which does not conflict with a scheduled neighborhood association meeting unless held in conjunction with a neighborhood association meeting;
 - d. Be open to the public; and
 - e. Be in a location that provides access to all members of the public. If requested by a member of the public at least three days prior to the meeting, the applicant must provide language services, alternative formats, auxiliary aids, or other reasonable requests that ensure barrier free access.
 - 5. [No change]

Commentary

C. Neighborhood contact III. Neighborhood contact III requires the following meeting, notification and posting steps:

1.-3. [No change]

4. Meeting. If the neighborhood association does not reply to the applicant meeting request within 14 days, or hold a meeting within 45 days, the applicant must schedule and attend one public meeting. Notes from the meeting and an explanation of any changes made to the proposal as a result of comments received at the public meeting must be emailed or mailed to the neighborhood association, district neighborhood coalition, business association, school district and any meeting attendees who provide an email or postal address, before an application for a land use review or building permit can be accepted. The meeting must:

- a. Be held at least 14 days before applying for a land use review or a building permit, and at least 14 days after sending the email or letter and posting signs required by Paragraphs C.1. and C.2.
- b. Be held at a location within the neighborhood where the proposed development is located or at a location that is not more than two miles from the boundary of the neighborhood within which the proposed development is located and within the boundaries of the district neighborhood coalition in which the proposed development is sited. Meetings held between March 8, 2020 and January 1, 2024 may be held remotely using online video conferencing technology. The selected technology must have a phone-in option available to those without access to a computer or mobile device;
- c. Be held at a time between 6 p.m. and 9 p.m. Monday through Friday, or between 1 p.m. and 6 p.m. on Saturday or Sunday and which does not conflict with a scheduled neighborhood association meeting unless held in conjunction with a neighborhood association meeting; and
- d. Be open to the public; and
- e. Be in a location that provides access to all members of the public. If requested by a member of the public at least three days prior to the meeting, the applicant must provide language services, alternative formats, auxiliary aids, or other reasonable requests that ensure barrier free access.

5. [No change]

Commentary

33.730 Quasi-Judicial Procedures

The changes in this chapter extend the expiration dates for certain pre-application conferences and land use reviews. The economic consequences of the COVID-19 pandemic have created uncertainty in the development markets while the public health emergency declaration impacted the Bureau of Development Services' ability to intake and issue permits. Given these conditions, it is more difficult for applicants to proceed within the timelines set out in the Zoning Code, increasing project cost and delay that could hinder the city's economic recovery. These code changes are designed to allow flexibility for developers and property owners to adjust to these changing conditions. The goal is to allow sufficient time for approved projects to weather the current market situation, while also limiting the length of the extension so that conditions and regulations considered at the time of the approval remain relevant.

33.730.050 Pre-Application Conference

Pre-application conferences normally expire after one year from the date of the conference if the land use review or building application are not submitted by that date. This code change will extend the expiration date for all pre-conferences from one year to two years. While the overarching theme of the EDEP is to respond to COVID-related issues, the PSC felt that it was appropriate to extend the timeframe for pre-application conferences permanently. This is to ameliorate the added expense and delays for larger projects that result when pre-application conferences expire because of longer timelines for more complex projects. Rather than just focus on a subset of larger projects, such as Master Plan projects (as was also proposed), the PSC opted to recommend extending all pre-application expirations.

33.730 Quasi-Judicial Procedures

730

33.730.050 Pre-Application Conference

A.-F. [No change]

- G. **Time limit.** A pre-application conference is valid for one~~one~~ year~~two years~~. If more than one~~one~~ year~~two years~~ has elapsed between the date of the pre-application conference and the date the land use review application is submitted, a new pre-application conference is required.

Commentary

33.730.130 Expiration of an Approval

Land use review and preliminary plan approvals normally expire after three years from the date approval. This code change will grant an extension of up to 44 months for land use reviews approved between March 8, 2017 and January 1, 2021. This **does not** apply to preliminary plan approvals or land use reviews located in Multnomah County Pocket areas. For those land use reviews, the "start date" is August 10, 2017 (three years back from the effective date of this ordinance).

The Recommended Draft contained language that would set the "start date" for the proposal as three years prior to the effective date of this ordinance for all land use reviews and preliminary plans. Initially, staff was under the impression that this was the earliest possible "start date" due to a prohibition in state law against applying an ordinance retroactively to a land use review that had expired. Further research determined that, while ORS 92.285 and ORS 215.110 contained prohibitions on retroactive ordinances pertaining to land divisions or in county jurisdictions, there was no similar prohibition in ORS 227 governing city jurisdictions. Because the impacts of the pandemic on city permitting functions and on the economy began in March 2020, Council decided to apply the EDEP land use review extension amendment retroactively, while carving out land division approvals and those approvals that applied to Unincorporated Multnomah County under Title 33 jurisdiction ("County pockets") pursuant to ORS 92.285 and ORS 215.110.

The existing expiration periods in the Zoning Code are intended to 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 longer the period between approval and actual construction, the greater the chance regulations and policies will change. Additionally, substantive changes in the neighborhood surrounding the site are more likely to occur with longer expiration periods; neighborhood characteristics are often considered during land use approvals. This code change balances the need to provide relief to applicants affected by the economic downturn while respecting the value of the existing timeframes in the Zoning Code.

33.730.130 Expiration of an Approval

A. [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. Within the City, final decisions that became effective between ~~May 27, 2006~~ March 8, 2017 and ~~December 31, 2008~~ January 1, 2021 or between May 16, 2009 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~~ January 1, 2024. Within the portion of unincorporated Multnomah County that is subject to City zoning, final decisions that became effective between August 10, 2017 and January 1, 2021 expire if a City permit has not been issued for approved development or the approved activity has not commenced by January 1, 2024.
2. Zoning map and Comprehensive Plan map amendments do not expire.
3. Conditional Use Master Plans, Impact Mitigation Plans, and Transportation Impact Reviews expire as specified in Chapters 33.820, 33.848, and 33.852, 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. Within the City, on sites where the final decisions became effective between ~~May 27, 2006~~ March 8, 2017 and ~~December 31, 2008~~ January 1, 2021 or between May 16, 2009 and June 30, 2011 and a City permit is not issued for all development by ~~June 30, 2014~~ January 1, 2024, the approval does not expire but no additional development may occur without another review. Within the portion of unincorporated Multnomah County that is subject to City zoning, on sites where the final decisions became effective between August 10, 2020 and January 1, 2021 and a City permit is not issued for all development by January 1, 2024, 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 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.

Commentary

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~~August 10, 2017 and ~~December 31, 2008~~January 1, 2021 or between ~~May 16, 2009 and June 30, 2011~~ expire if an application for approval of Final Plat has not been submitted by ~~June 30, 2014~~January 1, 2024.
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 on preliminary plans that became effective between ~~May 27, 2006~~August 10, 2017 and ~~December 31, 2008~~January 1, 2021 or between ~~May 16, 2009 and June 30, 2011~~ expire if an application for approval of Final Plat has not been submitted by ~~June 30, 2014~~January 1, 2024. 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.
 - (2) Exception. Final decisions on preliminary plans that became effective between ~~May 27, 2006~~August 10, 2017 and ~~December 31, 2008~~January 1, 2021 or between ~~May 16, 2009 and June 30, 2011~~ expire if an application for approval of Final Plat has not been submitted by ~~June 30, 2014~~January 1, 2024.

Commentary

- 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~~August 10, 2017 and ~~December 31, 2008~~January 1, 2021 or between ~~May 16, 2009 and June 30, 2011~~, the improvements must have been made by ~~June 30, 2014~~January 1, 2024.
 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 approval of the PUD or PD. Within the City limits, for a PUD or PD receiving final approval between ~~May 27, 2006~~March 8, 2017 and ~~December 31, 2008~~January 1, 2021 or between ~~May 16, 2009 and June 30, 2011~~, the improvements must have been made by ~~June 30, 2014~~January 1, 2024. Within the portion of unincorporated Multnomah County that is subject to City zoning, for a PUD or PD receiving final approval between August 10, 2017 and January 1, 2021, the improvements must have been made by January 1, 2024.

Commentary

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

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.-D. [No change]

Commentary

33.900 List of Terms

This is a technical amendment to add the names of terms that were inadvertently left out of the Better Housing by Design project that was adopted by City Council in December 2019. As part of that project, three definitions were added to 33.910, Definitions, and one definition was deleted. This chapter, 33.900, List of Terms should have been amended as well to reflect those changes. This amendment corrects that mistake.

33.900 List of Terms

900

Sections:

33.900.010 List of Terms

33.900.010 List of Terms

The following terms are defined in Chapter 33.910, Definitions, unless indicated otherwise.

Courtyard

~~Exterior Courtyard~~

Residential Structure Types

- Accessory Dwelling Unit
- Attached Duplex
- Attached House
- Duplex
- Dwelling Unit
- Fourplex
- Group Living Structure

- House
- Houseboat Moorage
- Manufactured Dwelling
 - Manufactured Home
 - Mobile Home
 - Residential Trailer
- Multi-Dwelling Development
- Multi-Dwelling Structure
- Single Room Occupancy Housing (SRO)
- Triplex

Street Types

- Arterial
- Common Green
- Dead-End Street
- Local Service Street
- Partial Street
- Shared Court
- Street
- Through Street
- Transit Street

