

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDINANCE NO. 1262

Amending MCC Chapters 37 and 38 – Adding Procedures Relating to Type I Permit Applications.

(Language ~~stricken~~ is deleted; underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Periodically, there is a need to amend County land use policies or regulations to address a change in law or circumstance; to implement elements of the Multnomah County Comprehensive Plan; or to make technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”). Having identified such need, the Multnomah County Planning Commission recommended the adoption of this ordinance to the Board of County Commissioners. The Planning Commission made such recommendation through adoption of the resolution described below and pursuant to its authority in MCC 37.0710 and 38.0710 and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2018-10281 relates to Type I permit application procedures applicable in unincorporated Multnomah County. Multnomah County land use permits are classified as Type I, II, III, IV and PC, based on the type of use or development proposed. Different procedural requirements apply to the different types of permits. Type I permits are issued based on standards that do not require interpretation or the exercise of policy or legal judgment. As a result, decisions on Type I permits are not “land use decisions” under state law, and Multnomah County Code historically provided less detail about Type I permit procedures. The purpose of this ordinance is to provide both clarity and certainty regarding the procedures, timeframes, criteria, enforcement, expiration, and extension of Type I applications and permits. This ordinance incorporates procedures similar to those used for other types of land use permits, providing consistency in the process to the extent appropriate.
- c. The procedures are consistent with policies set forth in the Multnomah County Comprehensive Plan, including Policy 2.40, which directs permitting procedures to be fair, equitable, and minimize the time and expense associated with obtaining permits. This ordinance implements Policy 2.40 by providing clarity with respect to processing procedures, and setting timeframes in which Type I permit applicants and Multnomah County must act.
- d. The Planning Commission’s recommendation is sound and derives from the proper execution of its duties and authority. It is in the public interest to adopt this ordinance.

Multnomah County Ordains as Follows:

Section 1. MCC 37.0580 is amended as follows:

§ 37.0580 APPLICATION REQUIREMENTS FOR TYPE ~~H I~~ – IV APPLICATIONS.

All permit applications must be submitted at the Land Use Planning Division office on the most current form provided by the county, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be met. An application shall not be approved unless it meets the applicable approval criteria.

Section 2. MCC 37.0595 is added as follows:

§ 37.0595 COMPLETENESS REVIEW – TYPE I APPLICATIONS.

(A) Upon submission of a Type I application, the Planning Director shall date stamp the application form and verify that the appropriate application fee has been submitted. The Planning Director will then review the application and evaluate whether the application is complete. Within 30 days of receipt of the application, the Planning Director shall complete this initial review and issue to the applicant a completeness letter indicating whether the application is complete. If not complete, the Planning Director shall advise the applicant what information must be submitted to make the application complete.

(B) Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days from the original application submittal date within which to submit the missing information or the application shall be void and all materials returned to the applicant. If the applicant submits the requested information within the 180-day period, the Planning Director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure in subsection (A) of this section. If the Planning Director determines the application is complete, the County may begin processing it.

(C) The approval criteria and standards which control the County's review and decision on a complete application are those which were in effect on the date the application was first submitted.

Section 3. MCC 37.0596 is added as follows:

§ 37.0596 EXPIRATION OF CURRENTLY PENDING INCOMPLETE TYPE I APPLICATIONS.

Any Type I Application that is incomplete on [EFFECTIVE DATE OF THIS ORDINANCE] (Ord. XX) shall become void, and all materials returned to the applicant, on [181-DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE], unless the applicant submits the requested information prior to [181-DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE], and the Planning Director verifies that the application, as augmented, is complete.

Section 4. MCC 37.0685 is added as follows:

§ 37.0685 EXPIRATION AND EXTENSION OF TYPE I DECISIONS.

(A) Type I permits issued pursuant to this Chapter shall expire six years after the date the permit was issued, unless the use or development was established according to all specifications and conditions of approval in the permit. The decision maker may specify an expiration period in the permit that is shorter than 6 years in order to align with the expiration period for another permit associated with the same use or development or for any other reason determined by the decision maker. Expiration of a Type I permit means that a new application is required for uses that are not established within the approval period.

(B) Extension of a Type I permit is permitted only when the use or development to be established under the Type I permit is contingent on a Type II, III, or IV permit associated with the same use or development. However, a Type I permit shall not be granted an extension beyond the expiration period of the Type II, III, or IV permit associated with the same use or development. An extension request for a Type I permit is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. The extension request may be approved provided:

(1) An applicant makes a written request for an extension of the approval period;

(2) The request is submitted to the county prior to the expiration of the approval period; and

(3) The requested extension aligns with and does not extend beyond the expiration period of a Type II, III, or IV permit associated with the same use or development.

(C) Expiration under (A) above is automatic. Failure to give notice of expiration shall not affect the expiration of a Type I permit.

(D) If a permit decision is appealed, the expiration period shall not begin until all appeals have been completed, including any remand proceedings.

Section 5. MCC 37.0692 is added as follows:

§ 37.0692 EXPIRATION OF PRIOR TYPE I PERMITS.

All Type I permits issued prior to [EFFECTIVE DATE OF THIS ORDINANCE] (Ord. XX) shall expire on [SIX YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE], unless a different timeframe was specifically included in the permit or the use or development has been established according to all specifications and conditions of approval in the permit by [SIX YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE]. Expiration of a Type I permit means that a new application is required for uses that are not established within the approval period.

Section 6. MCC 37.0702 is amended as follows:

§ 37.0702 REVOCATION OF DECISIONS.

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the County's approval, the County may institute a revocation or modification proceeding under this section.

(A) All Type I, Type II, Type III and Type IV decisions may be revoked or modified if the Planning Director determines a substantial likelihood that any of the following situations exists:

* * *

Section 7. MCC 38.0580 is amended as follows:

§ 38.0580 APPLICATION REQUIREMENTS FOR TYPE I - ~~H~~ OR TYPE III APPLICATIONS.

All permit applications must be submitted at the Land Use Planning Division office on the most current form provided by the county, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be met. An application shall not be approved unless it meets the applicable approval criteria.

Section 8. MCC 38.0590 is added as follows:

§ 38.0590 COMPLETENESS REVIEW – TYPE I APPLICATIONS.

(A) Upon submission of a Type I application, the Planning Director shall date stamp the application form and verify that the appropriate application fee has been submitted. The Planning Director will then review the application and evaluate whether the application is complete. Within 30 days of receipt of the application, the Planning Director shall complete this initial review and issue to the applicant a completeness letter indicating whether the application is complete. If not complete, the Planning Director shall advise the applicant what information must be submitted to make the application complete.

(B) Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days from the original application submittal date within which to submit the missing information or the application shall be void and all materials returned to the applicant. If the applicant submits the requested information within the 180-day period, the Planning Director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure in subsection (A) of this section. If the Planning Director determines the application is complete, the County may begin processing it.

(C) The approval criteria and standards which control the County's review and decision on a complete application are those which were in effect on the date the application was first submitted.

Section 9. MCC 38.0605 is added as follows:

§ 38.0605 EXPIRATION OF CURRENTLY PENDING INCOMPLETE TYPE I APPLICATIONS.

Any Type I Application that is incomplete on [EFFECTIVE DATE OF THIS ORDINANCE] (Ord. XX) shall become void and all materials returned to the applicant on [181-DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE], unless the applicant submits the requested information prior to [181-DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE], and the Planning Director verifies that the application, as augmented, is complete.

Section 10. MCC 38.0685 is added as follows:

§ 38.0685 EXPIRATION AND EXTENSION OF A TYPE I DECISION.

(A) Type I permits issued pursuant to this Chapter shall expire six years after the date the permit was issued, unless the use or development was established according to all specifications and conditions of approval in the permit. The decision maker may specify an expiration period in the permit that is shorter than 6 years in order to align with the expiration period for another permit associated with the same use or development or for any other reason determined by the decision maker. Expiration of a Type I permit means that a new application is required for uses that are not established within the approval period.

(B) Extension of a Type I permit is permitted only when the use or development to be established under the Type I permit is contingent a Type II, III, or IV permit associated with the same use or development. However, a Type I permit shall not be granted an extension beyond the expiration period of the Type II, III, or IV permit associated with the same use or development. An extension request for a Type I permit is not a land use decision, and is not subject to appeal as a land use decision. The extension request may be approved provided:

(1) An applicant makes a written request for an extension of the approval period;

(2) The request is submitted to the county prior to the expiration of the approval period.

(3) The requested extension aligns with and does not extend beyond the expiration period of a Type II, III, or IV permit associated with the same use or development.

(C) Expiration under (A) above is automatic. Failure to give notice of expiration shall not affect the expiration of a Type I permit.

(D) If a permit decision is appealed, the expiration period shall not begin until all appeals have been completed, including any remand proceedings.

(E) The laws of the State of Oregon concerning vested rights shall not apply in the Columbia River Gorge National Scenic Area. A person has a vested right for as long as the permit does not expire.

Section 11. MCC 38.0692 is added as follows:

§ 38.0692 EXPIRATION OF PRIOR TYPE I PERMITS.

All Type I permits issued prior to [EFFECTIVE DATE OF THIS ORDINANCE] (Ord. XX) shall expire on [SIX YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE], unless a different timeframe was specifically included in the permit or the use or development has been established

according to all specifications and conditions of approval in the permit by [SIX YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE]. Expiration of a Type I permit means that a new application is required for uses that are not established within the approval period.

Section 12. MCC 38.0702 is amended as follows:

§ 38.0702 REVOCATION OF DECISIONS.

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the County's approval, the County may institute a revocation or modification proceeding under this section.

(A) All Type I, Type II or Type III decisions may be revoked or modified if the Planning Director determines a substantial likelihood that any of the following situations exists:

* * *

Section 13. Section 3 and Section 9 of this ordinance are repealed March 15, 2019.

FIRST READING:

August 23, 2018

SECOND READING and ADOPTION:

August 30, 2018



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Lori Stegmann
Lori Stegmann, Vice-Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Katherine Thomas*
Katherine Thomas, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Director, Department of Community Services

BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. PC 2018-10281

Recommend to the Board of Commissioners the adoption of one or more ordinances amending MCC Chapters 37 and 38 relating to Type I permit procedures.

The Planning Commission Finds:

- a. The Planning Commission is authorized by Multnomah County Code Chapters 37.0710, 38.0710 and by ORS 215.110 to recommend to the Board of County Commissioners the adoption of Ordinances to amend the County Comprehensive Plan and land use regulations.
- b. The recommended changes are intended to make the Type I permit process clearer, more efficient, and shorter.
- c. The ordinance would clarify that a Type I application shall not be approved unless all of the approval criteria are met. It would also apply the goal-post rule to Type I applications, which means a Type I application would be reviewed under the standards in effect on the date the application is submitted. Those changes are consistent with what the procedure for Type II through IV permit applications.
- d. The ordinance would add a completeness review procedure for Type I applications similar to what is required for Type II through IV permit applications, which will provide timely communication to applicants who have not provided all of the information required in order to process the application. An applicant would have a 180-day timeframe to make a Type I application complete.
- e. The ordinance would add a permit expiration timeframe, which would give applicants six years to establish the use or development authorized under the Type I permit, with the opportunity to extend the permit if it is tied to a higher order permit with a later expiration date.
- f. The ordinance would also address existing incomplete Type I applications and Type I permits for uses or developments that have not yet been established. The ordinance would allow applicants with existing incomplete Type I applications 180 days from the effective date of the ordinance to make the application complete, or the application would become void. That change addresses Type I applications that are currently incomplete, some of which have been in incomplete status for years. That provision would be repealed when it is no longer operative. The ordinance would also allow those with Type I permits that were issued prior to the effective date of the ordinance, but for which the use or development has not been established, six years from the effective date of the ordinance to establish the use or development, or the permit would expire.
- g. Finally, the ordinance would add Type I permits to the list of permit types that can be revoked (through a hearing) if the permit is not being complied with.

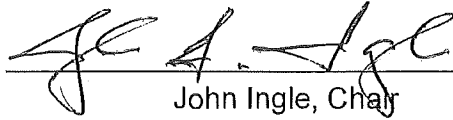
- h. No regulations are being proposed that further restrict the use of property and no mailed notice to individual property owners is required ("Ballot Measure 56" notice). Notice was published in the Oregonian newspaper and on the Land Use Planning Program internet pages. The Planning Commission held a hearing on July 2, 2018 where all interested persons were given an opportunity to appear and be heard.

The Planning Commission resolves:

The adoption of one or more ordinances amending MCC Chapters 37 and 38, in a form substantially similar to that approved by the Planning Commission, is hereby recommended for adoption by the Board of County Commissioners.

ADOPTED this 2nd day of July, 2018

PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON


John Ingle, Chair