

STAFF REPORT to the PLANNING COMMISSION

For the July 2, 2018 Public Hearing

**AMENDMENTS TO THE PROCEDURES RELATING TO TYPE I
APPLICATIONS**

(CASE FILE: PC-2018-10281)

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1.0 INTRODUCTION

One of the Land Use Planning Division's (LUP) goals for 2018 is to make the Type I application process clearer, more efficient, and to shorten the overall application processing time.

In reviewing current procedures and practices with respect to how LUP processes and issues Type I permits, staff has identified areas in need of improvement and proposed solutions.

The proposed text amendments are shown in Sections 2.0 and 3.0 below. Amendments in Section 2.0 consist of text that would be amended in or added to Chapter 37. The equivalent Chapter 39 sections are also shown as placeholders for the consolidated code, which has not yet been adopted by the Board of Commissioners.

Amendments in Section 3.0 would amend Chapter 38, which is the land use and development code for Multnomah County's portion of the Columbia River Gorge National Scenic Area.

The proposed amendments would accomplish the following:

1. Clarify that a Type I application shall not be approved unless all of the approval criteria are met.
2. Add a completeness review procedure for Type I applications similar to what is required for Type II through IV permit applications. This addresses the need to provide timely communication to applicants who have not provided all of the information required in order to process the application.

3. Add a 180-day timeframe for an applicant to make a Type I application complete. The 180-day timeframe is the same timeframe provided for Type II-Type IV applications. This addresses the issue of permit applications remaining incomplete for years after the initial application is made.
4. Apply the goal-post rule to Type I applications, which means a Type I application will be reviewed under the standards in effect on the date the application is submitted.
5. Allow applicants with existing incomplete Type I applications 180 days from the effective date of this proposed ordinance to make the Type I application complete, or the application will become void. This addresses Type I applications that are currently incomplete, some of which have been in incomplete status for years. This provision is applicable for a set timeframe and will be repealed when it is no longer operative.
6. Provide a permit expiration timeframe, which gives 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 (*e.g.*, a Type II Significant Environmental Concern Permit). The six-year timeframe was chosen because it aligns with the maximum six-year approval period for dwelling approvals in resource zones.
7. Allow those with Type I permits that were issued prior to the effective date of this proposed ordinance, but for which the use or development has not been established, six years to establish the use or development, or the permit will expire. This answers the question of whether a very old Type I permit can still be acted upon if the applicant did not establish the use or development within a few years of the permit's issuance.
8. Adds Type I permits to the list of permit types that can be revoked (through a hearing) if the permit is not being complied with.

2.0 PROPOSED AMENDMENTS TO CHAPTER 37 & PROPOSED CHAPTER 39
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Double Underlined code is new and ~~strikethrough~~ is deleted:

§ 37.0580 (§ 39.1125) APPLICATION REQUIREMENTS FOR TYPE I ~~II-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.

§ 37.0595 (§ 39.1133) 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.

§ 37.0596 (§ 39.1134) 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.

§ 37.0685 (§ 39.1183) – 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.

§ 37.0692 (§ 39.1187) - 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.

§ 37.0702 (§ 39.1200) 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:

3.0 PROPOSED CODE AMENDMENTS TO EXISTING MCC CHAPTER 38

§ 38.0580 APPLICATION REQUIREMENTS FOR TYPE I ~~II 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.

§ 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.

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.

§ 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 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.

§ 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.

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