

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Although a city may not take procedural short-cuts that it knows or reasonably should know will prejudice one or more party’s substantial rights and thereby provide a reasonably certain basis for an appeal to and remand by LUBA, ORS 197.835(10)(a)(B) or ORS 227.178 do not prohibit a city from expediting its local review process to meet the 120-day deadline, provided that expedited process does not require one or more parties to sacrifice their substantial right to fully and fairly present their position on the merits of the application. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** The ORS 227.178(1) requirement that a city render a final decision on a permit application within 120 days is not satisfied by a *pro forma* denial. To comply with ORS 227.178(1) and comply with the ORS 197.835(10)(a)(B) requirement that the city not take action to avoid the requirements of ORS 227.178, the city’s decision must be a *real* decision that is made in good faith, in the sense that the decision is supported by findings and is based on an evidentiary record that the city could reasonably believe are adequate to allow that decision to be defended in the event of an appeal to LUBA. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Neither the text of ORS 197.835(10)(a)(B) nor contextual statutes dictate that *any* deviation by a city from its procedures to render a timely final decision within the 120-day deadline imposed by ORS 227.178(1) necessarily constitutes an “action [taken] to avoid the requirements of ORS \*\*\* 227.178,” within the meaning of ORS 197.835(10)(a)(B). *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** The actions taken to avoid the requirements of ORS 227.178, which may provide a basis for reversal by LUBA under ORS 197.835(10)(a)(B), are not limited to a city’s final action. Actions the city takes before adopting its final decision may also violate the statute. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

**25.3.5 Local Government Procedures - Compliance with Statutes - Time Limit for Final Action.** LUBA may consider extra-record evidence where there are disputed allegations regarding whether a city took action for the purpose of avoiding the ORS 227.178 requirement that the city take final action on certain permit applications within 120 days. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005).

**25.3.5 Local Government Procedures - Compliance with Statutes - Time Limit for Final Action.** ORS 227.178 and 227.179 envision three routes to final action on a permit application: (1) a final local government decision within 120 days; (2) a final local government decision in more than 120 days followed by a refund of one-half of the application fee; or (3) a failure to issue a final decision within 120 days followed by a

petition for a writ of mandamus to compel the local government to approve the permit or demonstrate to the circuit court that approval of the permit would violate a substantive provision of its comprehensive plan or land use regulations. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005).

**25.3.5 Local Government Procedures - Compliance with Statutes - Time Limit for Final Action.** If a city or county adopts a “spurious, bad faith” denial of a “permit, limited land use decision or zone change application” under ORS 215.427 or 227.178 for the purpose of avoiding one of the statutory consequences for failing to take timely action on an application, such a decision constitutes an “action \* \* \* for the purpose of avoiding the requirements of ORS 215.427 or 227.178,” within the meaning of ORS 197.835(10)(b)(B). *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Generally, where a civil statute of limitation is changed to shorten the limitation period, the change is applied prospectively only. But where the statute is changed to lengthen the limitation period, the change applies both prospectively and retroactively. Applying that principle to ORS 215.417, forest template dwelling permits with a two-year duration that were issued before ORS 215.417 took effect, but which had not yet expired on the date ORS 215.417 took effect, must be honored for four years. *Butori v. Clatsop County*, 45 Or LUBA 553 (2003).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** An assignment of error that alleges a planning commission may only make recommendations to the city council and may not make a final decision on an application for a conditional use permit for a home occupation is without merit where (1) ORS 227.090(h) specifically authorizes planning commissions to carry out the statutory provisions governing land use permits and (2) the city’s zoning code specifically authorizes the planning commission to make decisions on conditional use permits. *Roe v. City of Union*, 45 Or LUBA 660 (2003).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Petitioners may not argue that a city’s decision to deny its application was for the purpose of avoiding the 120-day decision deadline set out at ORS 227.178, when the challenged decision was rendered five days after that deadline. *Oregon Child Devel. Coalition v. City of Madras*, 43 Or LUBA 184 (2002).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Where a county has a unified zoning map and comprehensive plan map, any application for a zoning map amendment is by necessity also an application for a comprehensive plan map amendment. A combined zoning and comprehensive plan map amendment application is not one of the three kinds of land use applications described in ORS 215.427(1), and for that reason the fixed goal post rule at ORS 215.427(3) does not apply. *Rutigliano v. Jackson County*, 42 Or LUBA 565.

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** That the city council declined to hear petitioner’s local appeal of a planning commission site design approval does not provide a basis to reverse the city’s decision or award attorney fees to petitioner under ORS 197.835(10), even if the city council’s decision was motivated by a desire to avoid violating the ORS 227.178(1) requirement that the city issue a final decision on an application for a limited land use decision within 120 days. ORS 197.835(10) applies where the local government *denies* an application in a bad faith attempt to avoid the requirements of ORS 227.178. It does not apply to a decision approving an application. *Elliott v. City of Redmond*, 40 Or LUBA 242 (2001).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** For purposes of ORS 215.428(1), a decision is not "final" at the time the oral decision is made where the local code provides the decision becomes final 10 days after the written decision is filed unless the county board grants a rehearing on its own motion. *Miller v. Multnomah County*, 33 Or LUBA 644 (1997).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** ORS 197.835(10)(a)(B), which allows LUBA to reverse a local government's decision and order development approval when denial of the application was for the purpose of avoiding the 120-day limit of ORS 215.428, does not apply to good faith denials on the merits of the application, whether timely or untimely. *Miller v. Multnomah County*, 33 Or LUBA 644 (1997).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Backdating of a final written decision to correspond to the date of an earlier oral decision denying an application does not constitute an action taken to avoid the 120-day rule established by ORS 215.428, within the meaning of ORS 197.835(10)(a)(B), when the denial was made on the merits and not for the purpose of avoiding the 120-day rule. *Miller v. Multnomah County*, 33 Or LUBA 644 (1997).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** The 120-day time limit for local government action stated in ORS 215.428 applies by its terms only to initial local proceedings on an application, not to proceedings on remand. *Fraley v. Deschutes County*, 31 Or LUBA 566 (1996).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Where a local ordinance requires the city to act on an application within 36 days after filing, LUBA will read that ordinance consistently with state statute to require the city to act within 36 days of the date the application is deemed complete. *Thornton v. City of St. Helens*, 31 Or LUBA 287 (1996).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** The existence of a writ of mandamus remedy in circuit court under ORS 227.178(7) for delay in processing an application does not affect either the city's review

of the application or LUBA's jurisdiction if the remedy is not exercised. *Sullivan v. City of Woodburn*, 31 Or LUBA 192 (1996).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** Where a county's approval of a permit is mandated by an order of the circuit court issued pursuant to a writ of mandamus under ORS 215.428(7), the county's decision approving the permit is not a "land use decision," as defined in ORS 197.015(10), because the county was not required to apply its comprehensive plan or land use regulations in adopting that decision. *Gearhard v. Klamath County*, 22 Or LUBA 377 (1991).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** An applicant for development approval has the burden of establishing compliance with all relevant approval criteria during the local proceedings, regardless of whether the 120 day period referred to in ORS 215.428(7) expires. *Adams v. Jackson County*, 20 Or LUBA 398 (1991).

**25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action.** A county does not exceed its jurisdiction in taking final action on a permit application after the 120-day time limits established by ORS 215.428(1) and its code have elapsed; and its decision will be given effect. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).