

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Subsection (1) of ORS 215.427 imposes either a 120-day or a 150-day deadline for a local government to take final action on a permit or zone change application. Subsection (2) of that statute gives a county 30 days to advise permit applicants who submit incomplete applications what is needed to make the application complete, and also sets out the three ways an application may be deemed complete. Subsection (3) of that statute freezes the approval standards, as of the date the application was first submitted, if the application is complete when submitted or rendered complete “within 180 days of the date the application was first submitted.” Subsection (4) of that statute renders the application “void” on the one hundred and eighty-first day after the application was “first * * * submitted,” if the applicant has not by that time complied with one of the submittal requirements set out in that subsection or subsection (2) to make the application complete. *Bora Architects, Inc. v. Tillamook County*, 76 Or LUBA 330 (2017).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Where a petition for writ of mandamus to compel a decision approving a permit application was filed with the circuit court before the earliest date on which the county took action to reduce its final decision to writing, the circuit court has exclusive jurisdiction regarding the permit application. *Rogue Advocates v. Josephine County*, 73 Or LUBA 98 (2016).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Where a petitioner’s notice of intent to appeal a decision was filed at LUBA after the board of county commissioners was unable to take action on a local appeal of a planning director’s decision that approved a permit application, but before the board of county commissioners reduced its decision to writing, the notice of intent to appeal was filed prematurely. Where the permit applicant files a petition for writ of mandamus more than 14 days after the board of commissioners’ hearing at which they failed to take action, and before the board of commissioners approved the minutes of that hearing, the circuit court has exclusive jurisdiction regarding the permit application, and LUBA does not have jurisdiction over the appeal. ORS 215.429(2) and (4). *Rogue Advocates v. Josephine County*, 73 Or LUBA 98 (2016).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. An application is not void under ORS 227.178(4) where the city does not identify any missing information, and the petitioner provided a clear statement that no additional information will be provided, resulting in the application being deemed complete under ORS 227.178(2). *Smith v. City of Gearhart*, 71 Or LUBA 184 (2015).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. ORS 227.178, the “120-Day Rule,” requires cities to take final action on a permit application within 120 days after the application is deemed complete. If the city does not take final action within 120 days, then ORS 227.179(1) provides a remedy for applicants: the right to seek a writ of mandamus in circuit court to compel the city to approve the permit application. *Leathers Oil Company v. City of Newberg*, 63 Or LUBA 176 (2011).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. ORS 227.178(5) allows an applicant to extend the 120-day deadline for a final decision on a permit application for a specified period of time up to 245 days, and potentially gives the city

up to one year to take final action. Only the applicant can seek to extend the 120-day deadline, and such a request or requests must be made in writing. *Leathers Oil Company v. City of Newberg*, 63 Or LUBA 176 (2011).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Where an applicant voluntarily and completely waives the 120-day deadline and the associated right to seek mandamus if the city exceeds that deadline, nothing in ORS 227.178(5) divests a city of jurisdiction to act and rely upon such a waiver in making a decision on an application more than 365 days after the application is deemed complete. *Leathers Oil Company v. City of Newberg*, 63 Or LUBA 176 (2011).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. A written request for more time to correct land use violation on property that arose under a previously issued permit does not constitute a “written request” under ORS 215.427(5) to extend the 120-day deadline for the county to take final action on a subsequent application to partition the property. *Sperber v. Coos County*, 61 Or LUBA 477 (2010).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Under ORS 215.427(8), when a county fails to take timely action on a permit application, a permit applicant is entitled to a refund of “either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater,” and ORS 215.427(8) further provides that in that circumstance “[t]he applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits.” Under ORS 215.427(8), when a county is required to refund initial permit application fees, it may not require the permit applicant to pay additional fees for any additional proceedings that may be required to respond to a LUBA remand of the county’s permit decision. *Sperber v. Coos County*, 61 Or LUBA 477 (2010).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Under ORS 215.427 and 215.429, where a county does not issue a final decision within the applicable 120 or 150-day deadline, the consequence is that the applicant may either elect to continue with the application process or file a petition for writ of mandamus to compel the county to approve the application. Where the applicant elects to continue with the application process after the deadline, a subsequent county decision approving or denying the application is not void or moot because it is issued after the applicable deadline. *Davis v. Polk County*, 58 Or LUBA 1 (2008).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Where a city discovers late in a proceeding on a partition application that its code may require application of certain subdivision approval standards, the city should identify any applicable subdivision standards and give the applicant the opportunity to demonstrate compliance with them, even if that would require the city to make its decision after the statutory deadline for taking final action on the application has passed. However, it is inconsistent with ORS 227.178(3) for the city to summarily deny the partition and effectively force the applicant to submit a new application, where that denial is not based on any applicable standard or criteria. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Reversal is not warranted under ORS 197.835(10)(a)(A) where a city denies a partition application three weeks prior to expiration of the 120-day deadline based on the city’s belief that the proposed partition must be processed as a subdivision, where the city mistakenly believed that its only option was to deny the application and effectively require the applicant to submit a new application, but there is no indication in the record that the city denied the application to avoid the 120-day rule. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

25.3.5 Local Government Procedures – Compliance with Statutes – Time Limit for Final Action. Under ORS 227.178(4), an incomplete application becomes automatically void on the one hundred and eighty-first day after it is submitted unless the applicant takes one of the steps enumerated in the statute to preserve the application from becoming void. *Painter v. City of Redmond*, 56 Or LUBA 311 (2008).

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 (2002).

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).