

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** OAR 661-010-0039 was amended in 2010 to require a request to file a reply brief be filed “within seven days of the date the respondent’s brief is filed.” That amendment created a filing deadline. Accordingly, LUBA will deny a motion to file a reply brief under OAR 661-010-0039 (effective in 2018), where petitioner did not move for an extension of time or obtain the written consent of the parties to file a late reply brief, petitioner filed the request to file its reply brief 48 days after the response briefs were filed and petitioner offered no explanation or justification for such an egregious delay, because the violation is not a mere “technical violation” under OAR 661-010-005. *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 1031 (2018).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** ORS 197.830(7)(a) requires that a motion to intervene be filed within 21 days after the notice of intent to appeal is filed. Under OAR 660-010-0015(1)(b), a notice of intent to appeal is filed on the date it is mailed by registered or certified mail or the date it is received by LUBA. But OAR 660-010-0015(1)(b) does not set out two dates of filing, either of which may be relied upon as the date of filing for purposes of computing the deadline for filing a motion to intervene. Rather the rule makes the date of filing the date of mailing, if mailed by registered or certified mail, with the date of filing being the date the notice of intent to appeal is received by LUBA in all other circumstances. *Holmberg v. Deschutes County*, 76 Or LUBA 512 (2017).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** LUBA will not consider an issue that was not raised in the petition for review and was raised for the first time in a motion that was received by LUBA one day before the statutory deadline for LUBA to issue its final opinion expired. *Rawson v. Hood River County*, 75 Or LUBA 200 (2017).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** LUBA will deny an untimely motion to intervene pursuant to ORS 197.830(7), where the movant was timely served a copy of the notice of intent to appeal with a certificate of filing showing the date the notice was filed. That LUBA staff allegedly misinformed the movant of the date the notice was filed is not a basis to toll the statutory deadline to intervene at ORS 197.830(7)(a). *Central Oregon Landwatch v. Jefferson County*, 62 Or LUBA 526 (2010).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Failure to contemporaneously serve a motion for attorney fees and cost bill on other parties as required by OAR 661-010-0075(2)(b) deprives those parties of the opportunity to respond to the motion, and prejudices their substantial rights. Because belated service and briefing on the motion would further delay reaching finality in the appeal, the movant’s failure of service is not a “technical violation” under OAR 661-010-0005, and LUBA will not consider the motion. *Swails v. Clackamas County*, 61 Or LUBA 503 (2010).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** When a notice of intent to appeal (NITA) is filed on behalf of a “corporation or other organization” by a person who is not an active member of the Oregon State Bar and LUBA allows seven days for an attorney to file an amended NITA, failure to file an amended NITA within that time requires dismissal of the appeal. Sending a letter stating that an attorney will represent the corporation or organization is not a

sufficient substitute for filing an amended NITA. *Waluga Neighborhood Association v. City of Lake Oswego*, 59 Or LUBA 380 (2009).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** If a petition for review is delivered to the United States Postal Service and mailed to LUBA via “Priority Mail” it is mailed by “First Class Mail” and therefore filed on the date it was delivered to the United States Postal Service under OAR 661-010-0075(2)(a)(B), where the United States Postal Service defines “First Class Mail” to include “Priority Mail.” *Canfield v. Lane County*, 59 Or LUBA 505 (2009).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Under OAR 661-010-0075(2)(a), a petition for review is filed with LUBA on the date it is mailed “by first class mail with the United States Postal Service.” If the petition for review is filed with LUBA in any other manner, the petition for review is filed on the date it is delivered to LUBA. A petition for review that is delivered to a Postal Annex store before the filing deadline expires and is thereafter delivered to LUBA by United Parcel Service on a date after the filing deadline expires is not timely filed and the appeal must be dismissed. *Lund v. City of Mosier*, 58 Or LUBA 344 (2009).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where a petition for review was not filed within the time required by LUBA’s rules, and no written consent to extend the time for filing the petition for review under OAR-661-010-0067(2) was obtained, ORS 197.830(11) and OAR 661-010-0030(1) require that the appeal be dismissed. *Verizon Wireless, LLC v. Clackamas County*, 56 Or LUBA 660 (2008).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where a petitioner has decided to seek voluntary dismissal of the appeal, to avoid delay and prejudice to other parties the petitioner should file an unequivocal motion for dismissal as soon as reasonably possible. That obligation is not met where the petitioner files an equivocal motion to dismiss on the date the petition is due, based on information that petitioner was long aware of, and that is accompanied by a nonmeritorious motion to resettle the record and restart the deadline for filing the petition for review. Under such circumstances, LUBA will dismiss the appeal for failure to file the petition for review, not based petitioner’s motion to dismiss. *Ford v. Jackson County*, 54 Or LUBA 434 (2007).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** LUBA will deny petitioners’ motion to dismiss an intervenor-respondent’s brief that is filed one day late, where (1) the late-filed brief is filed 21 days before oral argument and is only five pages long, (2) the late-filed brief largely supplements the city’s timely filed 24-page brief, and (3) petitioners neither allege nor demonstrate that their substantial rights were prejudiced by the late filing. *O’Brien v. City of Portland*, 52 Or LUBA 113 (2006).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** OAR 661-010-0067(2) requires that a motion for extension of time to file a petition for review be denied where the motion is not consented to in writing by all parties, there is no indication that intervenors ever had plans or have plans to consent to extend the deadline, and no petition for review is filed within the 21-day deadline for filing a petition for review, pursuant to OAR 661-010-0030(1). *ODOT v. City of Phoenix*, 50 Or LUBA 548 (2005).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply. Failure** to object to a motion to intervene until after the intervenor has filed a response brief and shortly before oral argument is prejudicial to the intervenor’s substantial rights and not a “technical violation” of LUBA’s rules. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Absent circumstances where delay in filing the motion to intervene is caused by the party objecting to intervention, ORS 197.830(7)(c) mandates that an untimely motion to intervene be denied. That the petitioner failed to object to the motion to intervene until after the intervenor’s brief was filed with LUBA is an insufficient basis to allow an untimely motion to intervene. *Rose v. City of Corvallis*, 49 Or LUBA 260 (2005).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** ORS 197.830(7) not only prescribes a 21-day deadline for filing a motion to intervene with LUBA, but dictates that failure to comply with that deadline shall result in denial of the motion. That the legislature chose to spell out the consequences for untimely filing of a motion to intervene indicates that the legislature wanted that deadline to be rigorously enforced and, by implication, not extended. *Grahn v. City of Newberg*, 49 Or LUBA 762 (2005).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Petitioners do not sustain their burden of demonstrating that a petition for review was timely filed, where the only evidence that bears on that question is (1) a postmark dated one day late and (2) an affidavit by petitioners’ attorney averring that he arrived at the post office two minutes prior to midnight on the day the petition for review was due, and he was “certain” that he deposited the petition for review with the postal clerk before midnight. *Bollinger v. City of Hood River*, 46 Or LUBA 602 (2004).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Given the severe consequence that dismissal of an appeal represents, and the ease with which the risk of that consequence can be avoided by filing a record objection or precautionary record objection while record disputes are resolved, a prudent petitioner will always file a record objection or precautionary record objection with any other documents that may be filed to provide notice of the parties’ negotiations concerning the content of the record. *Laurance v. Douglas County*, 44 Or LUBA 845 (2003).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where a response brief was filed a week after the brief was due, and petitioners were not made aware that the response brief had been filed until they appeared at oral argument and thus were not prepared to respond to the brief, petitioners’ substantial rights were prejudiced, and LUBA will reject the response brief. *Griffin v. Jackson County*, 41 Or LUBA 159 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** The deadline for filing the petition for review is strictly enforced, even where irregularities occur in providing petitioner with notice of the deadline for filing the petition for review. *Allen v. Grant County*, 41 Or LUBA 21 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Even assuming that petitioner failed to receive LUBA’s order notifying petitioner of the deadline for filing the petition for review, and that lack of actual or imputed knowledge of that deadline might excuse failure to file the petition on or before the deadline, petitioner has an obligation to act promptly and request appropriate relief once he learns of the deadline, to avoid prejudice to other parties’ substantial rights. An unjustified 21-day delay in filing for such relief prejudices other parties’ substantial rights and is a sufficient basis to deny the requested relief. *Allen v. Grant County*, 41 Or LUBA 21 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** An untimely filed petition for review requires dismissal of the appeal where petitioners rely on a motion to extend the time for filing the petition for review to avoid the deadline, but the motion is not signed by all the parties and petitioners are aware that all of the parties have not consented to the extension of time. *Ballou v. Douglas County*, 40 Or LUBA 377 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Petitioners do not have the right to rely on a Board order extending the time for filing a petition for review, where not all of the parties have stipulated to the extension of time and petitioners unreasonably believed that some of the intervenors were represented by a single attorney who had consented to the extension of time on behalf of only one intervenor. *Ballou v. Douglas County*, 40 Or LUBA 377 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Failure to file the petition for review within 21 days of LUBA’s receipt of the record is not excused by the fact that LUBA’s letter to the parties acknowledging receipt of the record failed to specify the date the record was received, where petitioner knew or should have known from service of the record and other information that the 21-day period to file the petition for review had commenced. *Bybee v. City of Salem*, 40 Or LUBA 187 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** LUBA will not strike a late-filed respondent’s brief, where the brief is filed 24 days before oral argument and the Board and parties will therefore have adequate time before oral argument to read the brief and prepare for oral argument. *Willhoft v. City of Gold Beach*, 39 Or LUBA 743 (2000).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Although OAR 661-010-0067(2) authorizes LUBA to suspend the deadline for filing the petition for review to allow time to rule on a motion to dismiss, the filing of a motion to dismiss or a memorandum opposing a motion to dismiss does not automatically suspend the deadline for filing the petition for review. *Wynnyk v. Jackson County*, 39 Or LUBA 500 (2001).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where the local government mailed a copy of the decision to the applicant, and petitioners timely served a notice of intent to appeal on the applicant, the fact that the applicant’s attorney did not receive a copy of either the decision or the notice of intent to appeal does not allow the applicant to file his motion to intervene beyond the 21-day deadline imposed by ORS 197.830(6). *Slusser v. Polk County*, 37 Or LUBA 1062 (2000).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Untimely submission of a motion to file a reply brief is not a technical violation of LUBA’s rules where the length of the proposed reply brief and the proximity of oral argument is such that respondents do not have adequate time to respond to the motion and prepare to respond to the proposed reply brief at oral argument. A 32-page reply brief filed two days before oral argument violates respondents’ substantial rights to the speediest practicable review of the land use decision. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** A LUBA staff misstatement concerning the correct date the record was settled by an order of the Board does not affect the date the record was settled. Parties who rely on LUBA staff to determine the date the record is settled rather than make that determination themselves by referring to the order on record objections assume the risk of such reliance. *North Park Annex v. City of Independence*, 35 Or LUBA 512 (1999).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where the petition for review is filed more than 21 days after the date the record is settled, the appeal will be dismissed. *North Park Annex v. City of Independence*, 35 Or LUBA 512 (1999).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where petitioner fails to demonstrate that its substantial rights have been prejudiced, a motion for voluntary remand filed by the local government one week prior to oral argument will be allowed. *Smith v. Douglas County*, 33 Or LUBA 682 (1997).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** When a party makes a colorable claim that it will be substantially prejudiced by LUBA’s failure to enforce its rules, LUBA will enforce the rules. *Save Amazon Coalition v. City of Eugene*, 30 Or LUBA 448 (1995).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** The requirement that a petitioner file a petition for review 21 days after the record is settled will be strictly enforced, and failure to comply will result in dismissal of the appeal. *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or LUBA 532 (1995).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Failure to file a request to file a reply brief “as soon as possible” after the respondents’ brief is filed is a technical violation of LUBA’s rules which, under OAR 661-10-005, does not affect LUBA’s review unless the substantial rights of the parties are prejudiced. *Shaffer v. City of Salem*, 29 Or LUBA 592 (1995).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where a petitioner obtains the written consent of all parties to extend the deadline for filing the petition for review, filing the written agreement one day after the petition for review was due constitutes a technical violation of OAR 661-10-067(4) and does not prevent LUBA from granting an extension of time to file the petition for review under OAR 661-10-067(2). *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 746 (1994).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** The filing of an objection to the local record suspends the time for filing a petition for review, even if the objection is not timely filed. Failure to file a record objection in a timely manner may provide a basis for denying the record objection or setting an abbreviated time for filing the petition for review, but does not provide a basis for dismissing the appeal. *Cole v. Columbia County*, 27 Or LUBA 701 (1994).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** LUBA will not consider a motion for reversal that includes arguments not contained in the petition for review, where the motion for reversal is filed three weeks after the deadline for filing the petition for review. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** If a petition for review is not filed within the time required under LUBA’s rules, ORS 197.830(10) and OAR 661-10-030(1) require LUBA to dismiss the appeal. *Hackett v. Multnomah County*, 26 Or LUBA 551 (1994).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** An intervenor-respondent’s delay in filing a motion to intervene does not prejudice the rights of any party and provides no basis for denying the motion to intervene, where the appeal proceedings are suspended by a pending motion for evidentiary hearing and the time for filing the respondents’ briefs has not yet expired. *Louisiana Pacific v. Umatilla County*, 25 Or LUBA 816 (1993).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** If a notice of intent to appeal a post-acknowledgment zone change is filed more than 21 days after petitioner was given the notice of decision it is entitled to under ORS 197.615, the appeal must be dismissed. *City of Grants Pass v. Josephine County*, 25 Or LUBA 722 (1993).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Filing an objection to the record two days after the date required by OAR 661-10-026(2), and within 10 days after the date petitioner received the record, is a technical violation of LUBA’s rules that does not affect LUBA’s review of the challenged decision. *Churchill v. Tillamook County*, 25 Or LUBA 786 (1993).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where the petitioner has neither filed a petition for review within the time required by LUBA’s rules, nor obtained an extension of time for filing the petition for review, ORS 197.830(10) and OAR 661-10-030(1) require LUBA to dismiss the appeal. *Compass Corporation v. City of Lake Oswego*, 23 Or LUBA 593 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where a motion to intervene is filed three months after the notice of intent to appeal, with no explanation for why the motion was not filed earlier, the motion to intervene is not filed “as soon as practicable after the Notice of Intent to Appeal is filed,” as required by OAR 661-10-050(2). *Rhyne v. Multnomah County*, 23 Or LUBA 703 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where intervenors’ delay in filing their motion to intervene and brief results in no delay of the appeal and no prejudice to

petitioners' substantial rights, the failures to file a timely motion to intervene and brief are technical violations of LUBA's rules and provide no basis for denying the requested intervention. *Rhyne v. Multnomah County*, 23 Or LUBA 703 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** The untimely filing of a petition for review is not a technical violation of LUBA's rules. *Weeks v. City of Tillamook*, 23 Or LUBA 255 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where a notice of intent to appeal is filed with LUBA more than 21 days after the date the challenged decision became final, under OAR 661-10-015(1) LUBA must dismiss the appeal. *Crew v. Deschutes County*, 23 Or LUBA 148 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Under ORS 197.830(8), OAR 661-10-015(1) and 661-10-075(2)(a), an appeal must be dismissed if the notice of intent to appeal is not delivered to or received by LUBA on or before the twenty-first day after the decision sought to be reviewed became final. *Pilling v. Crook County*, 23 Or LUBA 51 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where petitioners neither file a petition for review within the time required by LUBA's rules, nor obtain an extension of time to file the petition for review pursuant to LUBA's rules, ORS 197.830(10) and OAR 661-10-030(1) require dismissal of the appeal. *Hollywood Neigh. Assoc. v. City of Portland*, 22 Or LUBA 636 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** If petitioner's motion for extension of time to file the petition for review does not satisfy the requirement of OAR 661-10-067(2) for the written consent of all parties, and the petition for review was not filed within 21 days after the date the Board received the record, the appeal must be dismissed. OAR 661-10-030(1). *Ramsey v. City of Portland*, 22 Or LUBA 535 (1992).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Under LUBA's rules, if petitioner's motion for extension of time to file the petition for review does not satisfy the requirement of OAR 661-10-067(2) for the written consent of all parties, and a petition for review is not filed within 21 days after the date LUBA received the local record, the appeal must be dismissed. *Ramsey v. City of Portland*, 22 Or LUBA 295 (1991).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Failure to file a respondent's brief within the time specified in an order issued by LUBA pursuant to OAR 660-10-026(5) is a technical violation of LUBA's rules which will not interfere with LUBA's review unless the substantial rights of parties are prejudiced. Where petitioners have ample time to review respondent's brief prior to oral argument, their substantial rights are not prejudiced. *Broetje-McLaughlin v. Clackamas County*, 21 Or LUBA 604 (1991).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Petitioner's failure to file her motion for an extension of time to file record objections until three days after the record objections were due is a technical violation of LUBA's rules which will not interfere with LUBA's

review unless the substantial rights of other parties are affected. *Gray v. Clatsop County*, 21 Or LUBA 583 (1991).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** The statutory requirement to serve the notice of intent to appeal on an applicant of record is jurisdictional. However, failure to serve the notice of intent to appeal on an applicant of record within the time established by OAR 661-10-015(2) is a technical violation of LUBA’s rules which is not grounds for dismissing an appeal unless the substantial rights of parties are prejudiced. *Broetje-McLaughlin v. Clackamas County*, 21 Or LUBA 606 (1991).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Under ORS 197.830(10) and OAR 661-10-030(1), in the absence of an agreement between the parties to extend the time for filing the petition for review, the consequence of failing to file a timely petition for review is dismissal of the appeal and award of petitioner’s filing fee and deposit for costs to respondent. *Burghardt v. City of Molalla*, 20 Or LUBA 431 (1991).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** A motion to intervene in a LUBA proceeding which is filed five months after the notice of intent to appeal was filed is untimely under OAR 661-10-050(2). If the movant’s brief is not filed until two days after oral argument, providing the other parties an opportunity to respond to that brief would delay the issuance of LUBA’s final opinion. Under these circumstances, the tardy filing of the motion to intervene is not an excusable technical violation of LUBA’s rules under OAR 661-10-005. *Beck v. City of Tillamook*, 20 Or LUBA 178 (1990).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Failure to timely file a petition for review will result in dismissal of the appeal. *Bloomer v. Baker County*, 19 Or LUBA 90 (1990).

**27.10.7 LUBA Procedures/Rules – Time Limits – Failure to Comply.** Where petitioner’s cost bill is filed 38 days after LUBA’s final opinion and order was issued, without a request for an extension of time or an explanation as to why the cost bill could not have been filed in accord with OAR 661-10-075(1)(a), the cost bill is untimely and will be denied. *1000 Friends of Oregon v. Marion County*, 18 Or LUBA 906 (1990).