

THE 120 DAY RULE

What Is The 120 Day Rule?

The 120 day rule requires local governments to take final action on land use applications within 120 days of the receipt of a complete application. The only land use applications not subject to this rule are amendments to the Comprehensive Plan map.

The 120 Day Rule is a State Requirement.

The 120 day rule is a requirement of state law (ORS 215.428), not local ordinance. The 120 day rule was passed by the 1991 legislature. The 1997 legislature changed the deadline by applying a 150 day requirement to land use applications involving property outside of an urban growth boundary.

What happens if the 120 day deadline is missed?

If a final decision is not made within the deadline, an applicant can file a "writ of mandamus" in circuit court, compelling the local government to approve the application. If the applicant shows that the 120 day deadline was missed, the application will be approved unless the local government proves that a "substantive provision of the comprehensive plan or land use regulations" is violated by the application.

Can interested parties participate in the Circuit Court Review?

Interested parties, including neighbors and Community Planning Organizations (CPOs), may "intervene" in the circuit court proceedings. However, circuit court review is a trial, and is much more formal than a land use public hearing conducted by the Hearings Officer. Parties to the mandamus action, including neighbors who intervene, may be liable for the applicant's attorney fees if the applicant prevails.

If the Circuit Court directs the local government to approve the application, will there be conditions of approval?

Applications approved by the local government always have attached several conditions of approval. Depending on the type of application, these conditions may require improvements, such as sidewalks, traffic signals, or road widening; limitations on development within natural areas such as wetlands, floodplains or stream corridors; restrictions on hours of operation or other limitations on a development. The circuit court may apply conditions, but is under no requirement to adhere to local government recommendations and does not have to apply any conditions of approval.

How difficult is it to meet the 120 Day Rule?

120 days seems like a long time to process a land use application. Actually, for applications that are handled first by the Hearings Officer, 120 days should be more than enough time. Conditional uses, zone changes and subdivisions of more than 10 lots are the applications reviewed only by the Hearings Officer. Typically, the current Hearings Officer processes these types of applications within 90 days of receipt of a complete application.

It is very difficult to meet the 120 day deadline for applications that are reviewed first by the planning staff and then appealed to the Hearings Officer. There are several requirements for notice of neighbors, agencies and CPOs, in addition to legal requirements related to the conduct of hearings that make satisfaction of the 120 day timeline challenging. These legal requirements arise both from state law (ORS 215.416 and 197.763) and from the County Zoning and Development Ordinance (e.g., section 1302).

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