



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: June 2, 2004

Council District: Citywide
SNI Areas: All

SUBJECT: PROPOSED ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE BY MODIFYING PROVISIONS RELATED TO ACCEPTANCE OF PERMITS, AND RECORDATION OF PERMITS, AS WELL AS ADDING NEW SECTIONS RELATED TO ABANDONMENT OF PERMITS AND ACTIONS ASSOCIATED WITH INACTIVE APPLICATIONS, AND OTHER CLARIFYING CHANGES.

RECOMMENDATION

Planning staff recommends that the Planning Commission forward to the City Council a recommendation to approve the proposed ordinance amending Title 20, the Zoning Code, of the San Jose Municipal Code by modifying provisions related to acceptance of permits, and recordation of permits, as well as adding new sections related to abandonment of permits and actions associated with inactive applications, and other clarifying changes.

BACKGROUND

In a continuing effort to streamline the development review process, the Department of Planning, Building and Code Enforcement staff has identified areas of process where changes can be made that will improve the efficiency of the process. In addition to the proposed streamlining efforts, staff has identified a new process to include in the Zoning Code that would enable the staff to respond to the need of property owners with permits or approvals to abandon such approvals and remove them from their property. A long-standing need in the Department has been to empower the staff with a process that would encourage applicants of “inactive” permits to either move forward with their application and bring them up-to-date with respect to information and fees, or withdraw their request. All of the proposed changes will serve to create a more efficient development review process and provide the necessary tools for both staff and the applicants to move forward in the development review process.

ANALYSIS

Acceptance and Recordation of Permits and Other Approvals

Title 20, the Zoning Code, currently includes a requirement for development permits and other approvals that all property owners or qualified tenants “accept” the permit or approval and agree to be bound by, comply with, and do all things required of them by all of the terms, provisions, and conditions of the permit or approval. This process of “acceptance” occurs after the time for any appeal of the permit or approval has expired and before sixty (60) days after the issuance of the permit. This process requires the applicant to take one more step after a permit is approved before the permit is recorded, a step that requires them to have a signature notarized and forwarding the notarized form with a check back to the Department. Although the Department has designed this process to be simple and straightforward, many times the information sent back is not completed as required and/or it is received after the sixty (60) days allotted, resulting in an expired permit.

Staff, not wanting to penalize applicants for missing the sixty (60) day period, researched the need for the “acceptance” with the City Attorney and after extensive discussions confirmed the ability to remove the acceptance process and rely on the appeal process as well as conditions in the permit to ensure due process as well as the acceptance of the terms and conditions of a permit or approval. All permits have an appeal period within which if an applicant does not agree with the conditions set forth in the permit he/she may appeal the Director or Planning Commission’s decision. Additionally, a standard condition already included in development permits and other approvals, refers to any action taken to implement the permit or approval is evidence of acceptance of all conditions set forth in the permit or approval and is the applicant’s intent to fully comply with said conditions.

The Department’s current practice is to provide a copy of the draft permit and conditions to an applicant one-week prior to any required public hearing. Additionally, it is staff’s intent to continue to advise all applicants’ of the rights to appeal a decision if they do not agree with the conditions set forth in a permit or approval. With the removal of the acceptance process, once the appeal period has expired, staff can record a permit and the applicant can move forward in the development process without any additional paperwork required on their part.

Privately Initiated Revocation of Permit or Approval

Currently, the only process available to remove or “revoke” a permit from a property is the Order to Show Cause process used in cases of noncompliance that is available to the Director of Planning. In rare instances, staff gets a request from a property owner who wishes for whatever reason, to remove a permit from their property that they no longer want recorded against it. The only way staff has to respond to these requests is through the Permit Amendment or Order to Show Cause (friendly) process. The issue with using these processes is the cost involved to the applicant and the time required by staff to process the request.

Staff has put some thought into the need for a different process and has developed a proposal that could accommodate these requests as they arise. Staff proposes to create an administrative process to consider such requests. If the permit or approval has yet to be implemented, the effort involved on the part of Staff would include determining if the permit or approval has been implemented and recording a Notice of Revocation with the County Recorder. For permits that have been in whole or in part been implemented, staff would need to determine the effect of revocation and decide whether the request can be granted or whether an amendment to the permit or approval is required. Staff will develop the appropriate applications and associated fees to administer this process. Staff does not anticipate a huge demand for this process yet it will serve those few customers who have the need with a less expensive and faster resolution.

Inactive Applications

Despite the diligent efforts of the Department of Planning, Building and Code Enforcement staff in the review of development review applications, there are several instances where inaction on the part of the applicant(s) causes a delay in or in some cases stop in the processing of an application, sometimes up to several years. These inactive projects not only become out of date relative to information contained in the application, but also become deficient in processing fees because of the changes in fees charged over the years. Additionally, the time necessary for a project manager to familiarize themselves with the project after a long period of inactivity is not factored into the original cost of processing. It is staff's desire to create a review process that includes incentives that encourage both staff and applicants to be diligent relative to the processing of a project.

There are already requirements in place through the Permit Streamlining Act as well as the Economic and Neighborhood City Service Area and Department performance measurement targets to guide staff's performance in the processing of development permits. Staff is proposing to include a provision in the Zoning Code, similar to what is in place in the Uniform Building Code, requiring an applicant to be diligent in the processing of their application. An application would be considered inactive if after a period of six (6) months the applicant did not provide the necessary information to continue processing their application. At that point, the Director of Planning would deem their application inactive. An applicant would then have six months to decide to reactivate their project or after the subsequent six months the Director would deem the application to be withdrawn. To reactivate a project, an applicant would be required to bring their application up-to-date with current fees with a credit of what has been paid to date. Should an applicant not want to pursue an application on file, they always have the ability to withdraw said application.

Other Corrections

Planning staff is taking this opportunity to make some minor corrections to the provisions related to general permit noticing, decision, and the term for Special Use Permits. The proposed corrections do not affect the substance of the provisions.

PLANNING COMMISSION

Subject: Title 20 Amendment Related to Acceptance, Recordation and Withdrawal of Permits

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PUBLIC OUTREACH

Public outreach has consisted of the staff report and draft ordinance being posted on the Department's Web Page prior to the Planning Commission public hearing. The draft ordinance provisions were reviewed at the May 27, 2004 Developers Roundtable. Additionally, a public hearing notice was published in the Post Record.

COORDINATION

This memo has been coordinated with the City Attorney's Office.

CEQA

Not a project.

STEPHEN M. HAASE, DIRECTOR
Planning, Building, and Code Enforcement

Acceptance PC Staff Report.doc
PBCE003/Zoning/Ordinance Revisions - new code/
Acceptance