



COUNCIL AGENDA: 08-29-06
ITEM: 11.1(L)

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: August 9, 2006

TRANSMITTAL MEMO

COUNCIL DISTRICT: 3

SNI AREA: Market-Almaden

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO EXPAND THE DIRECTOR OF PLANNING'S AUTHORITY TO APPROVE TERM EXTENSIONS FOR DEVELOPMENT PERMITS ALLOWING OFFICE USES IN THE DOWNTOWN ZONING DISTICTS. CEQA: EIR RESOLUTION NO. 72767.

The Planning Commission will hear this project on August 9, 2006. The memorandum with Planning Commission recommendations will be submitted under different cover. We hope the submittal of this staff report is of assistance in your review of this project.

JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Planning, Building and Code Enforcement at (408) 535-7800.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: August 1, 2006

COUNCIL DISTRICT: Council District 3

SNI AREAS: Market-Almaden

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO EXPAND THE DIRECTOR OF PLANNING'S AUTHORITY TO APPROVE TERM EXTENSIONS FOR DEVELOPMENT PERMITS ALLOWING OFFICE USES IN THE DOWNTOWN ZONING DISTRICTS.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance amending Title 20 of the San Jose Municipal Code to expand the Director of Planning's authority to approve term extensions for development permits allowing office uses in the Downtown Zoning Districts.

BACKGROUND

Chapter 20.100 of the Zoning Code specifies that the term of development permits shall be 24 months unless otherwise provided in a development permit. Staff has routinely included a standard condition in development permits providing for expiration in 24 months if development has not commenced. Section 20.100.500 (A) (1) of the Zoning Code authorizes the Director of Planning to approve a Permit Adjustment to extend the term of an approved development permit for up to one year, but limits the number of such term extensions to two.

Each year since 2002, office vacancy rates in the Downtown area have exceeded 20 percent, reaching a high of 25 percent in 2005. Analysts have indicated that vacancies in the area appear to be declining, but that the current rate remains at a relatively high 22.5 percent¹. During this period of high office vacancy rates, very little of the office development approved by the City in the Downtown area has been implemented and a resurgence of new office construction is not

¹ Vacancy data by Richie Commercial, San Jose Mercury News, July 25, 2006.

August 2, 2006

SUBJECT: Amendment to Title 20 to expand the Director's authority to extend development permits for office development in Downtown Zoning Districts.

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expected until the glut of available space is diminished. Office projects entitled prior to the economic downturn have either expired or are at risk of doing so in the near future. The current provisions of the Zoning Code limit the Director of Planning's ability to extend the life of the permits that have not yet expired.

The Boston Properties Site Development Permit (City File Nos. RH05-005 and RHA05-005-01) serves as an example. Originally approved in 2001 and amended in March of 2003, this Permit provides for 860,000 square feet of office development in the Downtown Core which has not yet been implemented. The second of two time extensions approved for this project via the Permit Adjustment process is set to expire on March 13, 2007; with no further time extensions possible, the Permit will expire unless the project moves forward by that date.

ANALYSIS

Office development represents a key component of the City's strategy for achieving a revitalized, transit-oriented Downtown with a strong employment base. Due to the soft office market in the Downtown area over the past several years, previously approved permits for office development in this area are in danger of expiring before they can be implemented. The proposed Code change would allow the Director of Planning the ability to preserve such permits by extending their term by as much as two additional years.

Specifically, the proposed amendment would increase, from two to four, the number of one-year term extensions the Director of Planning can approve with an Adjustment for development permits that allow office uses in the Downtown Zoning Districts. For example, in the case of the Boston Properties Site Development Permit, the proposed change would give the Director discretion to approve up to two additional term extensions that would extend the expiration date to March 13, 2009.

Staff believes that this change gives the Director of Planning an important tool to preserve and extend development permits that continue to comport with the City's objectives for office development in the Downtown area and which would otherwise require a needless repetition of the development review process and possibly discourage implementation of desirable office development. Preservation of such permits would maintain the possibility for new office development to proceed if the office market improves in the near term.

PUBLIC OUTREACH

A public hearing notice for the proposed ordinance was published in the San Jose Post Record. This notice included the Planning Commission and City Council hearing dates for the proposed ordinance revision. Staff has posted the staff report and draft ordinance as well as the hearing dates on the Department's website.

PLANNING COMMISSION

August 2, 2006

SUBJECT: Amendment to Title 20 to expand the Director's authority to extend development permits for office development in Downtown Zoning Districts.

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COORDINATION

Preparation of the proposed ordinance and this memorandum have been coordinated with the City Attorney's Office.

CEQA

The proposed ordinance is covered by the Downtown Strategy Plan Final Environmental Impact Report which was certified by the Planning Commission on June 6, 2005.

for Andrew Crabtree
JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building, and Code Enforcement



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: August 10, 2006

COUNCIL DISTRICT: Council District 3
SNI AREA: Market-Almaden

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO EXPAND THE DIRECTOR OF PLANNING'S AUTHORITY TO APPROVE TERM EXTENSIONS FOR DEVELOPMENT PERMITS ALLOWING OFFICE USES IN THE DOWNTOWN ZONING DISTRICTS.

RECOMMENDATION

The Planning Commission voted 4-1-2 (Dhillon opposed, Zito and Platten, absent) to recommend that the City Council approve the proposed ordinance amending Title 20 of the San Jose Municipal Code to expand the Director of Planning's authority to approve term extensions for development permits allowing office uses in the Downtown Zoning Districts with the addition of a five-year sunset clause.

OUTCOME

Approval of the ordinance, as recommended by the Planning Commission, would change the provisions of the Zoning Code to allow the Director of Planning, for a period of five years, to extend the term of approved development permits that allow office development in the Downtown Zoning Districts for up to two additional years. The Zoning Code currently allows the Director to approve up to two, one-year extensions with a Permit Adjustment. The recommended amendment would give the Director the discretion to approve four, one-year extensions with a Permit Adjustment. Based on the recommended sunset clause, the additional discretion granted the Director through this ordinance would expire five years from the date of its approval.

BACKGROUND

On November 9, 2005, the Planning Commission held a public hearing to consider the proposed ordinance. The Director of Planning, Building and Code Enforcement recommended approval of the

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proposed ordinance. No one spoke in favor of, or in opposition to the proposed Zoning Code amendment and the Commission closed the public hearing.

Commissioner Dhillon asked staff why the proposed ordinance did not grant the Director discretion to extend all permits, not just those allowing office uses in the Downtown, and suggested extending the provision to development permits citywide. He indicated that such a provision would do no harm. Staff clarified that the ordinance targets permits for new office development in the Downtown specifically because the down office market in this area has delayed implementation of permits so that they are in danger of expiring and that this has not been identified as a city-wide problem. Staff stated that term limits on permits are intended to allow a new public process if development does not occur within the specified time-frame of the permit, and that under normal circumstances, such a public process is appropriate to address changed conditions that may have occurred over time.

Commissioner Kalra indicated that staff had presented a well-reasoned analysis related to existing conditions and that he was hesitant to expand the proposal to address a non-existent problem. He pointed out that the Planning Commission could look at the issue again if a new problem were to arise in the future.

Commissioner Kamkar asked staff how long the downturn in the office market was expected to last. Principal Planner Mike Enderby responded that he could not speculate on future market trends, but reiterated that Downtown is unique and deserves special consideration. Commissioner Kamkar made a motion for approval of the ordinance as recommended by staff.

Commissioner Campos stated that the City's economic engine is Downtown and that its health is vital. He commended staff's research.

Commissioner Kalra asked if a time-conditioned approval would be appropriate. The City Attorney responded that the Planning Commission could recommend that the ordinance include a sunset clause. Commissioner Kalra suggested an amendment to the motion recommending that the ordinance sunset five years from approval.

Commissioner Kamkar accepted the amendment.

See additional background information in the attached memorandum from Joseph Horwedel, Acting Director of Planning, Building and Code Enforcement, to the Planning Commission, dated August 1, 2006.

ANALYSIS

See analysis in the attached memorandum from Joseph Horwedel, dated August 1, 2006.

POLICY ALTERNATIVES

The following analysis is provided by staff to clarify the alternative actions available to the Council in regard to this item

Alternative No. One: Approval of the ordinance as recommended by the Planning Commission.

Pros: Approval of the proposed ordinance would allow the extension of permits for Downtown office development that would otherwise expire, thereby facilitating future implementation of office development without the need for a new permit process. The 5-year sunset clause ensures that the provisions of the ordinance will not extend beyond their usefulness in dealing with current economic conditions, but does not prevent the City Council from renewing the provisions of this ordinance in the future if circumstances warrant.

Cons: None.

Alternative No. Two: Approval of an ordinance that expands the Director's discretion to approve term extensions for permits for office development in all areas of the City.

Pros: If a problem were identified in the future concerning the expiration of office permits for development outside of the Downtown area, the Director would have the discretion to extend such permits.

Cons: Staff's current research has not identified the potential expiration of permits for office development as a problem outside the Downtown area. In the absence of a clearly-identified purpose for expanding the Director's discretion to extend permits city-wide, such a provision may be misperceived as a change in the standard term of development permits.

Alternative No. Three: Denial of the ordinance.

Pros: None.

Cons: This alternative would provide no mechanism for extending office permits in the Downtown area during the current down office market, and existing permits would likely expire. Once expired, a new permit application and process would be necessary before the office development could be implemented.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)

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- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

A public hearing notice for the proposed ordinance, which included the Planning Commission and City Council hearing dates, was published in the San Jose Post Record. Staff has posted the staff report and draft ordinance as well as the hearing dates on the Department's website.

COORDINATION

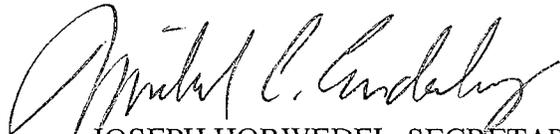
This ordinance was coordinated with the Redevelopment Agency and the City Attorney.

FISCAL/POLICY ALIGNMENT

This ordinance is consistent with the City's goals for economic development in the Downtown Core area as discussed in the attached memorandum from Joseph Horwedel to the Planning Commission, dated August 1, 2006.

CEQA

The proposed ordinance is covered by the Downtown Strategy Plan Final Environmental Impact Report which was certified by the Planning Commission on June 6, 2005.


JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Carol Hamilton at 408-535-7800.