



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: February 26, 2009

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT: AN ORDINANCE AMENDING TITLES 18 AND 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND PART 2 OF CHAPTER 18.08 OF TITLE 18 OF THE MUNICIPAL CODE, ENTITLED "PROCEDURES", TO ADD A NEW SECTION ALLOWING THE WITHDRAWAL OF, OR DEEMING WITHDRAWN, APPLICATIONS TO AMEND THE GENERAL PLAN UNDER CERTAIN SPECIFIED CIRCUMSTANCES, AND TO MAKE OTHER NONSUBSTANTIVE TECHNICAL CLARIFICATIONS TO SAID PART 2 OF CHAPTER 18.08 OF TITLE 18, AMEND SECTION 20.100.390 OF CHAPTER 20.100 AND SECTION 20.120.070 OF CHAPTER 20.120, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, TO ALLOW CERTAIN DEVELOPMENT PERMIT OR APPROVAL APPLICATIONS TO BE DEEMED WITHDRAWN DURING PERIODS OF INACTIVITY, AND AMENDING SECTION 20.100.170 OF CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THAT APPLICANTS OF DEVELOPMENT PERMITS OR APPROVALS MAY WITHDRAW APPLICATIONS

RECOMMENDATION

The Planning Commission voted 6-0-1, Commissioner Platten absent, to recommend that the City Council approve the proposed ordinance to amend Titles 18 and 20 of the Municipal Code to clarify and make consistent procedures for withdrawal by the applicant of General Plan Amendments, Development permits and Petitions for Rezonings, and to provide that the Director of Planning may "deem withdrawn" certain applications after a minimum of 12 months of inactivity by the applicant.

OUTCOME

Approval of the proposed ordinance would allow development applications on file with the City to be "deemed withdrawn" by the Director of Planning after at least 12 months have transpired with no applicant activity, thereby improving the efficiency and timeliness of development review by Planning staff who could better focus on "active" projects, and would also clarify development application and General Plan amendment withdrawal procedures.

BACKGROUND

On February 25, 2009, the Planning Commission held a public hearing to consider the proposed ordinance amendment. There was no public testimony either for or against the proposed ordinance.

Commissioner Kamkar asked for clarification on what would constitute inactivity on the part of the applicant. Staff and the city attorney clarified that a definition of "inactivity" is included in the proposed ordinance, and is defined to include when the applicant has not provided additional information, materials and/or fees requested by the Director of Planning needed for processing the application for a period of 12 months or more. Commissioner Kamkar further inquired about the process for possible extension of development or building permits which had expired. The city attorney explained that the proposed ordinance deals with applications only, not approved permits. Staff noted a proposed ordinance to provide for a possible one-year extension of some development permits is being developed and will likely come forward to Commission and Council later this year.

The Commission voted 6-0-1, Commission Platten absent to recommend approval of the proposed ordinance.

ANALYSIS

The proposed ordinance would allow for a process for projects to be classified as deemed withdrawn after 12 months have passed where there as been no activity on the part of the applicant, and clarify procedures for withdrawal of applications by the applicant. See original staff report (attached) for a full analysis and discussion of the proposed ordinance.

POLICY ALTERNATIVES

Alternative: Retain existing provisions in the Municipal Code which do not provide an administrative process to allow projects to be deemed withdrawn by the Planning Director after 12 months of applicant inactivity.

Pros: This alternative would maintain consistency of the existing Code requirements for processes over time, including the requirement for a public hearing before a decision-making body for taking action on inactive projects.

Cons: Retaining current provisions would impede the City's ability to focus staff efforts on "active" projects for more timely and efficient review, and would require significant investment of staff time and resources to get projects inactive for at least a year "off the books".

Reason for not recommending: The new "deemed withdrawn" process in the proposed ordinance offers tangible benefits in reduced time and costs for the City and applicants without compromising the objectives of the City's land use approval processes.

PUBLIC OUTREACH/INTEREST

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

March 10, 2009

Subject: Deemed withdrawn ordinance

Page 3 of 3

- **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.
- ☐ **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.

A notice of the public hearings was posted on the City website, published in the Mercury News and emailed to a list of development interests, and neighborhood associations. Staff has presented the proposed ordinance to the Developers and Neighborhood Roundtables with support generally being expressed to get old projects "off the books". One developer indicated staff should exercise caution relative to some pending projects with multi-year analyses in progress. Staff explained that the proposed procedure would provide a courtesy notice to last applicant on record to confirm ongoing work efforts. The draft proposed ordinance and the staff report have been posted on the Department's website.

COORDINATION

This project was coordinated with the City Attorney.

CEQA

CEQA: Exempt


for JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Avril Baty, at 408-535-7800.