



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: April 27, 2009

COUNCIL DISTRICT: City-Wide
SNI AREA: All

SUBJECT

An Ordinance of the City of San José Amending Title 20 of the San José Municipal Code, the Zoning Ordinance, to Amend Section 20.100.500 Of Chapter 20.100 Part 4 to allow the Director Of Planning to reactivate certain expired development permits and to extend certain development permits for a discrete period of time and make other related clarifying changes.

RECOMMENDATION

The Planning Commission voted 6-0-1 (Cahan absent) to recommend City Council approve the proposed ordinance amending Title 20 of the San José Municipal Code to expand the Director of Planning's authority to approve the reactivation of certain expired development permits and to extend certain development permits for a discrete period of time and make other clarifying changes.

OUTCOME

Approval of the ordinance would allow special extensions to the terms of approved development permits and provide for reactivation of expired permits subject to specific limitations to facilitate future implementation of development projects delayed by the economic downturn.

BACKGROUND

On April 22, 2009, the Planning Commission held a public hearing to consider the proposed ordinance amendment. The Director of Planning, Building and Code Enforcement recommended approval of the 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 Kamkar asked for clarification as to what issue was being addressed through the proposed ordinance. The City Attorney explained that the proposed ordinance is in response to the current economic downturn and the fact that approved development permits are expiring before

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they can be implemented as developers encounter financing constraints. Staff added that the proposed ordinance will also align our City process with the new State law extending the life of tentative maps. Commissioner Kamkar further inquired about the necessity of excluding permits for residential development subject to the North San José Area Development Policy. The Director responded that provisions of the North San José Area Development Policy preclude term extensions for new residential development in order to discourage speculative development proposals and prevent residential projects that are not ready to proceed from tying up residential development capacity provided under the phasing provisions of the Policy. He added that the Policy would be coming before the City Council for some proposed revisions in the next few months, at which time the terms of permits could be considered.

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

See additional background information in the attached memorandum from Joseph Horwedel, Director of Planning Building and Code Enforcement, to the Planning Commission, dated April 15, 2009.

ANALYSIS

See analysis in the attached memorandum from Joseph Horwedel, dated April 15, 2009.

POLICY ALTERNATIVES

See analysis in the attached memorandum from Joseph Horwedel, dated April 15, 2009.

PUBLIC OUTREACH/INTEREST

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

Public outreach for this proposal complies with the City Council's Public Outreach Policy. A public hearing notice for the proposed ordinance was published in the San José Mercury News and emailed to a list of business interests, neighborhood associations and community members.

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This notice included the Planning Commission and City Council hearing dates for the proposed ordinance revision. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public. A supportive electronic communication from Terence Szewczyk was submitted and is attached to this staff report.

COORDINATION

Preparation of the proposed ordinance and this memorandum have been coordinated with the City Attorney's Office, the Redevelopment Agency and the Office of Economic Development.

FISCAL/POLICY ALIGNMENT

The proposed ordinance is consistent with the economic development goals of the San José 2020 General Plan. Permit extension proposals pursuant to this ordinance would be subject to a discretionary Permit Adjustment which would allow staff to ascertain whether the development allowed under the subject development permit continues to conform to the General Plan and Zoning Ordinance.

CEQA

Exempt.


for JOSEPH HORWEDEL, SECRETARY
Planning, Building and Code Enforcement

For questions please contact Carol Hamilton, Senior Planner, at 408-535-7837.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: April 15, 2009

COUNCIL DISTRICT: City-Wide
SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING ORDINANCE, TO AMEND SECTION 20.100.500 OF CHAPTER 20.100 PART 4 TO ALLOW THE DIRECTOR OF PLANNING TO REACTIVATE CERTAIN EXPIRED DEVELOPMENT PERMITS AND TO EXTEND CERTAIN DEVELOPMENT PERMITS FOR A DISCRETE PERIOD OF TIME AND MAKE OTHER RELATED CLARIFYING CHANGES.

RECOMMENDATION

It is recommended 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 the reactivation of certain expired development permits and to extend certain development permits for a discrete period of time and make other clarifying changes.

OUTCOME

Approval of the ordinance would allow special extensions to the terms of approved development permits and provide for reactivation of expired permits subject to specific limitations to facilitate future implementation of development projects delayed by the economic downturn.

BACKGROUND

Chapter 20.100 of the Zoning Ordinance 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 Ordinance authorizes the Director

of Planning to approve a Permit Adjustment to extend the term of an approved development permit for up to one year. The number of such term extensions is currently limited to two, except in the Downtown Zoning Districts, where development permits for office uses may have up to four (4) such term extensions on or before October 13, 2011.

Development Permit applicants and the City have invested substantial amounts of time and effort into the permits which have already been approved. Due to the current economic climate, financing has been more difficult to obtain and tenants and buyers have not materialized as anticipated when development plans were initiated. 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 Ordinance do not provide a mechanism that would allow the Director of Planning to reactivate permits that have already expired and establish the ability of the Director to extend the life of permits as noted above, which ability was established in the absence of any unusual economic conditions.

ANALYSIS

Proposed Ordinance

The permit expiration clause is included in development permits to encourage prompt implementation of approved permits and ensure that old projects designed with outdated regulations are not implemented without additional permit review. Due to the economic downturn, previously approved development permits are expiring before they can be implemented. This raises concern that expired permits, and the need to obtain new permits, will impose additional hurdles on new development already struggling to overcome economic challenges and potentially delay construction of projects that support the City's land use and economic development goals.

In response to similar concerns, Governor Schwarzenegger signed a new bill into law on July 15, 2008 that automatically extends the life of unexpired tentative maps and vesting tentative maps by one year. The law is intended to help developers through tough economic times and avoid the unnecessary and costly expiration of tentative maps. As result, the expiration dates for tentative and vesting tentative maps that were valid as of July 15, 2008, and that without this bill would otherwise have expired before January 1, 2011, are automatically extended by one year. This new law addresses only certain subdivision approvals and does nothing to extend the term of development permits approved by local agencies. The proposed ordinance would address similar issues by allowing the similar extension of development proposals.

The proposed ordinance would allow the Director of Planning the ability to reactivate and extend the term of development permits for the period between November 1, 2008 and October 13, 2011. Specifically, until October 13, 2011, the proposed amendment would increase from two to three, the number of one-year term extensions the Director of Planning can approve with a Permit Adjustment, subject to specific exceptions. The first exception applies to the Downtown Zoning Districts, where for the same time period, the proposed ordinance would increase from four to

five, the number of one-year term extensions for development permits that allow office uses until October 13, 2011. Secondly, the additional term extensions are not proposed to apply to permits for residential development subject to the North San Jose Area Development Policy. This is consistent with provisions of the North San Jose Area Development Policy which preclude term extensions for new residential development in order to discourage speculative development proposals and prevent residential projects that are not ready to proceed from tying up residential development capacity provided under the phasing provisions of the Policy.

In addition to extension of permits, the proposed ordinance allows the Director to approve a Permit Adjustment to reactivate, for up to one year and no longer than one year from expiration of the permit, any development permit that expires between November 1, 2008 and October 13, 2011 with the exception, again, of permits for residential development under the North San Jose Area Development Policy. The proposed ordinance requires that the Permit Adjustment to reactivate an expired development permit be filed no more than 180 days from the date the permit expired.

Staff believes that the proposed ordinance gives the Director of Planning an important tool to preserve and extend development permits that continue to comport with the City's objectives for development and which would otherwise require a needless repetition of the development review process and possibly discourage implementation of desirable development. Preservation of such permits would maintain the possibility for new development to proceed if the economic climate improves in the near term. The Permit Adjustment requirement for any reactivation or extension of a development permit pursuant to the proposed ordinance allows the Director discretionary review to ensure that the development allowed by the reactivated or extended permit remains in conformance with the General Plan and Zoning Ordinance.

Alternatives to the Proposed Ordinance

The following analysis is provided to clarify potential alternatives to the proposed ordinance considered in development of this proposal.

Alternative One: Approval of an ordinance that expands the Director's discretion to approve term extensions for permits for development in all areas of the City, including permits for housing development subject to the North San Jose Area Development Policy.

Pros: Application of the proposed term extensions to permits for residential development subject to the North San Jose Area Development Policy would allow for implementation of development permits that might otherwise expire and which allow housing consistent with the City's vision for development in North San Jose.

Cons: Term extensions for permits allowing residential development subject to the North San Jose Area Development Policy are inconsistent with provisions of the Policy that limit the term of development permits and could delay residential development by tying up development capacity that might otherwise be used by projects ready to proceed.

Reason for Not Selecting: This alternative is not consistent with provisions of the North San Jose Area Development Policy in regard to the term of development permits.

Alternative Two: Make no changes to the term limit provisions of the Zoning Ordinance and do not provide for reactivation of expired developments permits.

Pros: None.

Cons: This alternative would allow permits to expire that are consistent with the General Plan and otherwise comport with the requirements of the Zoning Ordinance and would impose new permit costs and process hurdles for previously approved projects with expired development permits, thereby discouraging or delaying implementation of development that supports the land use and economic development goals of the General Plan.

Reason for Not Selecting: The proposed ordinance would not achieve the objective of preserving development permits so that they can have an opportunity to be implemented when economic conditions are more favorable.

Alternative Three: Approval of an ordinance that allows for more or longer-term extensions.

Pros: This alternative may allow for implementation of more existing permits if the economic slowdown extends beyond the time period for permit extensions included in the proposed ordinance.

Cons: It may allow permits to be extended longer than is necessary to address the current economic slowdown, needlessly increase the potential for implementation of permits with outdated requirements, and provide extensions for development permits that are not similar to those allowed by the State for subdivision approvals.

Reason for Not Selecting: The proposed ordinance effectively balances the City's interest in preserving permits so that they can be implemented when the economy rebounds, with the City's interest in ensuring that new development is not implemented with any outdated requirements. It is similar to State provisions for extension of subdivision approvals and does not preclude future ordinance changes to provide for additional future extensions if deemed necessary.

GENERAL PLAN CONFORMANCE

The proposed ordinance is consistent with the economic development goals of the San José 2020 General Plan. Permit extension proposals pursuant to this ordinance would be subject to a discretionary Permit Adjustment which would allow staff to ascertain whether the development allowed under the subject development permit continues to conform to the General Plan and Zoning Ordinance.

PLANNING COMMISSION

April 15, 2009

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PUBLIC OUTREACH

Public outreach for this proposal complies with the City Council's Public Outreach Policy. A public hearing notice for the proposed ordinance was published in the San Jose Mercury News and emailed to a list of business interests, neighborhood associations and community members. This notice included the Planning Commission and City Council hearing dates for the proposed ordinance revision. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public. A supportive electronic communication from Terence Szewczyk was submitted and is attached to this staff report.

COORDINATION

Preparation of the proposed ordinance and this memorandum have been coordinated with the City Attorney's Office, the Redevelopment Agency and the Office of Economic Development.

CEQA

The proposed ordinance, PP09-070, is exempt pursuant to CEQA Guidelines Section 15061(b)(3), which states that if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, then the activity is not subject to CEQA.



JOSEPH HORWEDEL, Director
Department of Planning, Building and Code Enforcement

For more information please call Carol Hamilton at 408-535-7837.

Attachments:
Draft Ordinance
Terence Szewczyk electronic communication

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTION 20.100.500 OF CHAPTER 20.100
OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO
ALLOW FOR AN ADDITIONAL EXTENSION OF
DEVELOPMENT PERMIT TERMS OR A REACTIVATION
OF CERTAIN EXPIRED DEVELOPMENT PERMITS FOR
A TEMPORARY PERIOD OF TIME

WHEREAS, on March 30, 2009 this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP09-070, which determination has not been protested, challenged or appealed and has been considered and approved by the City Council prior to taking any approval actions on this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.500 Adjustments

A. The Director may, at the Director's sole discretion, approve an adjustment for the following elements of a Development Permit, subject to and in accordance with the provisions of this Section:

1. **General Extensions.** An extension of the term of an approved Development Permit for a period of up to but not exceeding one (1) year; provided, however, that all of the following criteria are met:

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- a. That no more than four (4) such term extensions may be approved on or before October 13, 2011 for Development Permits allowing office uses located in Downtown Zoning Districts; and
- b. That no more than two (2) such term extensions may be approved for any other type of Development Permit.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

2. Special Extension. In addition to General Extensions authorized pursuant to this Section, a one-time Special Extension of the term of an approved Development Permit prior to October 13, 2011 for a period of up to but not exceeding one (1) year; provided, however, that all of the following criteria are met:

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- a. Only one (1) such extension may be approved on or before October 13, 2011; and
- b. The Development Permit whose term would be extended with the adjustment does not allow residential development in any area described in that certain North San Jose Area Development Policy adopted by City on June 21, 2005, as that Policy may be amended from time to time.

3. Reactivations. In addition to General Extensions authorized pursuant to Section 20.100.500.A.1 above, a reactivation of a previously approved but expired Development Permit and an extension of its term for an additional period of up to but not exceeding one (1) year from its expiration date where all of the following criteria are met:

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- a. The Development Permit to be reactivated does not allow residential development in any area described in that certain North San Jose Area Development Policy adopted by City on June 21, 2005, as that Policy may be amended from time to time; and
- b. The Development Permit to be reactivated expired on a date between November 1, 2008 and October 13, 2011.

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4. Changes to an approved Development Permit but only for minor modification of architectural elements or landscape details, (including but not limited to minor storefront alterations, relocation of doors, equipment screening, minor landscape furniture and structures, benches, small trellises, and planters) which do not affect the use, intensity, general character, architectural style, circulation or other site function of the project.

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5. Signs which conform to Title 23, minor changes to approved sign programs, and sign programs that are a condition of a Development Permit.

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6. Additions, accessory buildings and minor structures such as trellises, patio covers, swimming pools and decks for one-family residences which were approved and are subject to an existing Planned Development Permit.

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7. Building Mounted Wireless Communications Antenna.

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8. Tract sales, model home sales, or leasing offices associated with an approved housing development.

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9. Temporary construction or storage yards in connection with the construction of houses or other buildings in an adjacent subdivision or lot or parcel.

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10. The creation, on or above ground through installation, construction, or replacement, of less than one (1) gross acre of impervious surface.

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11. The replacement, repaving, reconfiguration, or re-striping of parking spaces on existing surfaces.

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12. Building additions of less than five thousand (5,000) square feet in area or less than fifty percent (50%) of the building area prior to the addition, whichever is smaller, to non-residential buildings.

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13. Generators meeting performance standards for noise and air pollution.

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14. Above-ground tanks of two thousand (2,000) gallons or less.

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15. Building additions of less than two hundred (200) square feet in total area or less than ten percent (10%) of the building area prior to the addition, whichever is smaller, to two-family dwellings, provided that current parking regulations are being met and would continue to be met after the completion of any addition.

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B. Adjustments may be issued only where issuance of the adjustment would be consistent and comply with all applicable local laws in effect at the time of issuance, including without limitation the City's General Plan, the provisions of this Title, and the provisions of Title 21 of this Code.

C. An application for an adjustment must be filed on the form provided by the Director on or before the date that is three (3) business days prior to the expiration of the Development Permit proposed for adjustment and accompanied by the fees as set forth in the Schedule of Fees adopted by
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resolution of the City Council; provided, however, that an adjustment for a reactivation pursuant to subsection A.2 above must be filed on the form provided by the Director no later than one hundred fifty (150) days from that Development Permit's expiration date and accompanied by the fees set forth in the Schedule of Fees adopted by resolution of the City Council.

D. The decision to grant, deny or condition an adjustment is an administrative determination and requires no hearing or notice. The action of the Director shall be final. If the Director denies an adjustment, nothing herein shall preclude the applicant from thereafter filing an application for a Development Permit.

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E. Where property was developed prior to the requirement of a Site Development Permit, adjustments for projects as set forth in Section 20.100.610(A) may be approved without the necessity of the issuance of a full Site Development Permit.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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Shaffer, Patrice

From: Terence J. Szewczyk [terry@tscivileng.com]
Sent: Tuesday, April 07, 2009 1:38 PM
To: Shaffer, Patrice
Subject: RE: Development Permit Extension Ordinance

Patrice,
We fully support this action.
Thanks, Terry
Terence J. Szewczyk, P.E.
Principal Engineer
TS/Civil Engineering, Inc.
1776 Technology Drive
San Jose, CA 95110
(408) 452-9300 ext 220
(408) 452-9301 fax

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From: Shaffer, Patrice [mailto:Patrice.Shaffer@sanjoseca.gov]
Sent: Friday, April 03, 2009 5:05 PM
To: Shaffer, Patrice
Subject: Development Permit Extension Ordinance

The Planning Commission and City Council are scheduled to consider an amendment to the Zoning Ordinance to reinstate an expired development permit through the approval of a permit adjustment. The purpose of this amendment is to allow more time for implementation of permits during the current downturn in the economy. The Planning Commission Hearing is on April 22, 2009 at 6:30 p.m. and the City Council Hearing is on May 19, 2009 at 7:00 p.m., both in the City Council Chambers at 200 East Santa Clara Street. Here is a link to the hearing notice and draft ordinance: <http://www.sanjoseca.gov/planning/zoning/> For more information regarding this proposed amendment, please contact **Patrice Shaffer** at (408) 535-7888 or patrice.shaffer@sanjoseca.gov. Please let me know if you have any questions or comments.