

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** December 3, 2009

**COUNCIL DISTRICT:** 4  
**SNI AREA:** N/A

**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 IN THE NORTH SAN JOSE DEVELOPMENT POLICY AREA.**

## RECOMMENDATION

The Planning Commission voted (6-0-1, Cahan absent) to recommend that the 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 within the North San José Development Policy area the reactivation of certain expired development permits and to extend certain development permits for a discrete period of time.

## OUTCOME

Approval of the ordinance would allow special extensions to the terms of approved development permits subject to specific limitations to facilitate future implementation of residential projects within the North San José Area, granting those projects the same opportunity for an extension as previously granted for projects in the remainder of the City.

## BACKGROUND

On December 2, 2009, the Planning Commission held a public hearing to obtain testimony on the proposed ordinance. No members of the public spoke. A motion to recommend that the City Council approve the proposed ordinance passed (6-0-1, Cahan absent) without Planning Commission discussion or comment.

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**Subject: Ordinance Allowing Permit Extensions and Reactivations**

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### **ANALYSIS**

For complete analysis, including alternatives, please see the original staff report to the Planning Commission (see attached).

### **EVALUATION AND FOLLOW-UP**

If the City Council approves the proposed ordinance, then the Director of Planning would have the ability to consider the reactivation and/or extension of development permits within the North San Jose Development Policy area per the direction provided by the City Council in June 2009.

### **PUBLIC OUTREACH**

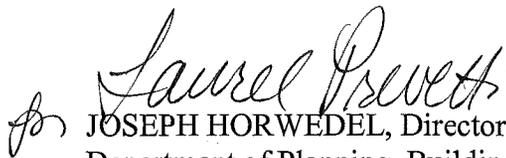
Public outreach for this proposal complies with the City Council's Public Outreach Policy. A public hearing notice for the proposed ordinance was published in the San José Post Record and emailed to a list of business interests, neighborhood associations and community members. This notice included the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

### **COORDINATION**

The preparation of the proposed ordinance has 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 Laurel Prevetti at 408-535-7800.



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** November 25, 2009

**COUNCIL DISTRICT:** 4

**SNI AREA:** N/A

**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 IN THE NORTH SAN JOSE DEVELOPMENT POLICY AREA.**

## RECOMMENDATION

It is recommended that the Planning Commission recommend that the 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 within the North San José Development Policy area the reactivation of certain expired development permits and to extend certain development permits for a discrete period of time.

## OUTCOME

Approval of the ordinance would allow special extensions to the terms of approved development permits subject to specific limitations to facilitate future implementation of residential projects within the North San José Area, granting those projects the same opportunity for an extension as previously granted for projects in the remainder of the City.

## 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.

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In May 2009, the City Council approved a special ordinance amending the Zoning Ordinance to give the Director of Planning additional ability to grant permit extensions for the period between November 1, 2008 and October 12, 2011. Specifically, until October 13, 2011, the ordinance allowed an increase from two to three in the number of one-year term extensions the Director of Planning can approve with a Permit Adjustment, subject to specific exceptions for the Downtown Zoning District and for residential projects subject to the North San José Area Development Policy. The latter exception was included to create consistency with provisions of the North San José Area Development Policy which preclude term extensions for new residential development in order to discourage speculative development proposals and to prevent residential projects that are not ready to proceed from tying up the residential development capacity provided under the phasing provisions of the Policy.

In June 2009, the City Council modified the North San José Area Development Policy to give the Director of Planning the authority to grant time extensions. In addition, the Council directed the Planning Director to issue two year time extensions to those North San José residential projects that have demonstrated their commitment to completing the implementation of their entitlements (e.g., acquired land, executed parkland agreements, submitted utility plans to the Department of Public Works, etc.). The ordinance which is the subject of this memorandum would enable the Director to extend Planning Permits in North San José.

The other major change to the North San José Area Development Policy in June consisted of reserving 20% of the residential unit "pool" capacity available (1,600 housing units) in each of the Policy Phases specifically for Below Market Rate units. The current version of the Policy is available at:

[http://www.sanjoseca.gov/planning/nsj/docs/NSJADP\\_1stAmendAffordableExtensions1andTIF.pdf](http://www.sanjoseca.gov/planning/nsj/docs/NSJADP_1stAmendAffordableExtensions1andTIF.pdf)

Council further directed that the Director provide a "fair assessment" of the status of those Phase 1 projects that have not made much progress since receiving their Planning permits and recommend whether or not those projects should be guaranteed unit or square footage allocations. This analysis will be presented to the City Council in a supplemental memorandum in advance of the December 15, 2009 consideration of this proposed ordinance.

Finally, Council also directed outreach to the development community, interested stakeholders, and the North San José Neighborhoods Taskforce occur for other proposed modifications to the North San José Area Development Policy (such as retail and hotel capacities) and the proposed urban design guidelines. This work is proceeding in parallel to this proposed ordinance.

### ANALYSIS

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. For projects within the North San José Development Policy area, 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 do not establish the ability of the Director to extend the life of permits, which ability was established in the absence of any unusual economic conditions.

The economic downturn, particularly within the residential development industry, has been prolonged beyond previous expectations. The proposed ordinance would allow the Director of Planning to extend permits within the North San José Development Policy area, satisfying Council direction consistent with the amended North San José Development Policy. In addition, the ability to grant extensions will help meet the City's desire to respond quickly to improvements in the housing market, make use of North San José residential capacity to meet Citywide housing construction goals, and move forward with projects that implement the City's vision for North San José.

### ALTERNATIVE

**Alternative to the Proposed Ordinance:** Make no changes to the term limit provisions of the Zoning Ordinance and do not provide for reactivation of expired developments permits in North San José.

**Pros:** Limiting the extension of permits within the North San José area would likely result in the expiration of existing entitlements, allowing residential development capacity to return to a "pool" of capacity available for new development projects.

**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 North San José Area Development Policy and the General Plan.

**Reason for Not Selecting:** The alternative would not satisfy Council direction, would be inconsistent with the North San José Area Development Policy, and 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.

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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, the North San José Area Development Policy, and the Zoning Ordinance.

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 José Post Record 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.

COORDINATION

The preparation of the proposed ordinance has 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.

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

For more information please call Laurel Prevetti at 408-535-7800.

Attachment:  
Draft Ordinance

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 IN THE NORTH SAN  
JOSE DEVELOPMENT POLICY AREA

WHEREAS, on [complete date] 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 that 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:
  - 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.

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

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up to but not exceeding two (2) years; provided, however, that only one (1) such extension may be approved on or before October 13, 2011.

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 two (2) years from its expiration date provided that: the Development Permit to be reactivated expired on a date between November 1, 2008 and October 13, 2011.

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.
5. Signs which conform to Title 23, minor changes to approved sign programs, and sign programs that are a condition of a Development Permit.
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.
7. Building Mounted Wireless Communications Antenna.
8. Tract sales, model home sales, or leasing offices associated with an approved housing development.
9. Temporary construction or storage yards in connection with the construction of houses or other buildings in an adjacent subdivision or lot or parcel.
10. The creation, on or above ground through installation, construction, or replacement, of less than one (1) gross acre of impervious surface.
11. The replacement, repaving, reconfiguration, or re-striping of parking spaces on existing surfaces.

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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.

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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 .  
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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.
  13. Generators meeting performance standards for noise and air pollution.
  14. Above-ground tanks of two thousand (2,000) gallons or less.
  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.
- 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 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: (1) September 1, 2009 for a Development Permit that expired on November 1, 2008 through and including July 3, 2009, or (2) sixty (60) days from that Development Permit's expiration date for a Development Permit that expired on or after July 4, 2009, and all applications must 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.
- 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.

RD:VMT  
11/24/2009

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk