

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** March 12, 2012

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**COUNCIL DISTRICT:** Citywide  
**SNI:** N/A

## TRANSMITTAL

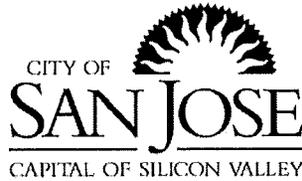
**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, AMENDING SECTION 20.100.500 OF CHAPTER 20.100 (ADMINISTRATION AND PERMITS) TO EXTEND THE PERIOD FOR THE DIRECTOR OF PLANNING TO REACTIVATE CERTAIN EXPIRED DEVELOPMENT PERMITS AND TO EXTEND CERTAIN DEVELOPMENT PERMITS FOR A DISCRETE PERIOD OF TIME.**

The Planning Commission will hear this project on March 21, 2012. 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.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Andrew Crabtree at (408) 535-7893



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** March 12, 2012

**COUNCIL DISTRICT:** Citywide  
**SNI AREAS:** All

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, AMENDING SECTION 20.100.500 OF CHAPTER 20.100 (ADMINISTRATION AND PERMITS) TO MODIFY PROVISIONS REGARDING THE ISSUANCE OF ADJUSTMENT PERMITS TO EXTEND THE TERM OF PREVIOUSLY APPROVED DEVELOPMENT PERMITS AND TO REACTIVATE CERTAIN PREVIOUSLY EXPIRED DEVELOPMENT PERMITS.**

## RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council the approval of the proposed ordinance that would amend Title 20 of the San José Municipal Code to allow for the reactivation and extension of certain Development Permits.

## OUTCOME

Approval of the ordinance would extend the time period during which the Director of Planning may issue special time extensions for approved development permits and continue to provide for reactivation of expired permits subject to specific limitations to facilitate future implementation of development projects delayed by the economic downturn.

## BACKGROUND

The Zoning Ordinance (Chapter 20.100.400) establishes a standard Development Permit duration of 24-months unless some other time period is specified within the Permit. Permits automatically expires after 24 months (or other specified period) if the use or construction of the buildings has not begun during that time period. This time limitation is established to encourage timely implementation of approved Permits and to limit the implementation of projects that were designed to meet outdated regulations or policies.

Chapter 20.100.500 of the Zoning Ordinance includes provisions that allow for General Extensions and limited Special Extensions to this time period by the Director of Planning, Building and Code Enforcement (Planning Director) through a Permit Adjustment provided that the Permit meets certain criteria. The Permit Adjustment process allows the Planning 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. Extensions may be granted more broadly through a Permit Amendment process, which includes a public hearing and provides for a more comprehensive review of the project's consistency with current regulations and policies.

The General Extension process was initially adopted by the City Council on February 4, 2003, allowing the Planning Director to extend the term of Development Permits for up to one year through a Permit Adjustment. Two such extensions may be granted.

On April 22, 2009, in response to the economic downturn, the City Council approved an ordinance granting the Planning Director further ability to approve permit time extensions during a specified time period. This provision allowed the Planning Director to issue, through a Permit Adjustment, time extensions up until October 13, 2011 as follows:

- 1) A total of four extensions could be issued for Development Permits allowing office uses located in Downtown Zoning Districts.
- 2) A one time "Special Extension" could be issued for up to two additional years to all projects citywide.
- 3) Expired Development Permits could be reactivated and extended for up to two years through a Permit Adjustment if the Permit had expired between November 1, 2008 and October 13, 2011.

On July 15, 2011, State Assembly Bill 208 extended by two years the expiration date of tentative subdivision maps that would otherwise expire between July 13, 2011 and January 1, 2014 and directed that local jurisdictions implement such extensions. The two-year extension applies to approved tentative subdivision maps and vesting subdivision tentative maps that would have expired between the bill's passage date and January 1, 2014. The proposed ordinance would also address projects that benefited from this extension by allowing for the extension of Development Permits to coincide with the extended durations of their associated tentative subdivision maps.

## **ANALYSIS**

The proposed amendment to the Zoning Ordinance would update the special provisions for Permit extensions (described above in the Background section) to allow for further extensions beyond October 13, 2011 on a limited basis. In addition to retaining the general ability to grant up to two one-year extensions for all projects citywide, the Planning Director will, under the proposed ordinance, be able to grant Special Extensions of up to two years for Development Permits which benefit from the State's two-year extension of tentative subdivision maps, and be

able to grant up to a four-year extension, including reactivation of an expired Development Permit if necessary, for Development Permits that allow development of office uses within the Downtown zoning districts. These additional extensions are applied cumulatively so that a single project may gain up to 4, 6 or 8 years of extensions beyond the original Development Permit duration if it meets any of the special criteria in combination with the General Extension allowance of 2 years.

Due to the continued economic downturn, provisions allowing for the reactivation of development permits for office uses located in the Downtown Zoning District should be extended consistent with the City's Economic Development Strategy to reduce regulatory barriers for economic development projects. The proposed ordinance gives the Planning Director 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. Construction of office projects within the Downtown area in particular will achieve multiple City goals, including those set forth in the Envision San Jose 2040 General Plan. The Permit Adjustment process gives the Planning Director adequate discretion to review changes in policies or environmental context that could warrant a more extensive Permit process. Allowing extensions for Development Permits for projects that receive extensions of their tentative subdivision maps will allow for consistency between these two entitlement actions which normally would have the same duration.

The proposed amendment to the Zoning Ordinance would add clarity and additional allowances for the granting of extensions to previously approved Development Permits, consistent with the City's goals for promoting San Jose as an Employment Center with a Destination Downtown.

### **PUBLIC OUTREACH**

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the Post Record and emailed to a list of interested groups and individuals. The proposed ordinance was presented to and discussed with development industry representatives at the January 27, 2012 Developer Roundtable and presented to and discussed with interested community members at a community meeting on February 8, 2012. 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 and this staff report have been coordinated with the City Attorney's Office.

PLANNING COMMISSION

March 12, 2012

**Subject: Ordinance for Extension and/or Reactivation of Development Permits**

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**CEQA**

Not a Project, File No. PP10-068(c); Municipal Code revisions involving no changes to the physical environment.

/s/

JOSEPH HORWEDEL, Director

Department of Planning, Building and Code Enforcement

For more information please call Laurel Prevetti at (408) 535-7901.

Attachment: Draft Ordinance

**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 MODIFY PROVISIONS REGARDING THE ISSUANCE OF ADJUSTMENT PERMITS TO EXTEND THE TERM OF PREVIOUSLY APPROVED DEVELOPMENT PERMITS AND TO REACTIVATE CERTAIN PREVIOUSLY - EXPIRED DEVELOPMENT PERMITS**

**WHEREAS**, pursuant to the provisions of the California Environmental Quality Act, together with related state and local implementation guidelines, including Title 21 of the San José Municipal Code (collectively, "CEQA"), the provisions of this Ordinance have been found to not constitute a project under CEQA pursuant to File No. PP10-068(c), Municipal Code amendments that involve no changes to the physical environment; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the City of San José on this Ordinance; and

**WHEREAS**, this Council has considered and hereby approves the evaluation and clearance performed pursuant to CEQA.

**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 in its entirety 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, that no more than two (2) such term extensions may be approved for any Development Permit.

2. **Special Extensions and 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, four (4) years from its expiration date, and not extending beyond January 1, 2014 in any event, provided that all of the following criteria are met:
- a) The Development Permit to be reactivated expired on a date between November 1, 2008 and October 13, 2011; and
  - b) The Development Permit to be reactivated allowed: office uses located in the Downtown Zoning District; or development for which a Tentative Map had been granted which Tentative Map has the same expiration date as the reactivated and extended Development Permit will have.
3. 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.
4. Signs which conform to Title 23, minor changes to approved sign programs, and sign programs that are a condition of a Development Permit.
5. 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.
6. Building Mounted Wireless Communications Antenna.
7. Tract sales, model homes sales, or leasing offices associated with an approved housing development.
8. Temporary construction or storage yards in connection with the construction of houses or other buildings in an adjacent subdivision or lot or parcel.
9. The creation, on or above ground through installation, construction, or replacement, of less than one (1) gross acre of impervious surface.
10. The replacement, repaving, reconfiguration, or re-striping of parking spaces on existing surfaces.

11. Building additions of less than five thousand (5,000) square feet in area to non-residential buildings, except that the maximum building addition size for a fast food restaurant, a 24-hour convenience market, or a convenience market with gas pumps shall be one thousand (1,000) square feet in area and the maximum building addition to a bank with a drive through shall be three thousand (3,000) square feet in area.
  12. Generators meeting performance standards for noise and air pollution.
  13. Above-ground storage tanks of two thousand (2,000) gallons or less in zoning districts other than industrial zoning districts and an above-ground storage tank of twenty thousand (20,000) gallons or less in an industrial zoning district.
  14. 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 be accompanied by the fees set forth in the Schedule of Fees adopted by resolution of the City Council.
- A. 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.

**PASSED FOR PUBLICATION** of title this            day of            , 2012, by  
the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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DENNIS D. HAWKINS, CMC  
City Clerk

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