



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: April 12, 2012

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

The Planning Commission voted 6-0-1 (Commissioner Kamkar absent) to recommend the City Council approve an ordinance change to amend Title 20 of the San José Municipal Code to allow for the reactivation and extension of certain Development Permits through an Adjustment Permit.

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

On April 11, 2012, the Planning Commission conducted a public hearing on the proposed ordinance. See attached staff report for additional background information and analysis of the proposed amendments to the Zoning Ordinance (Title 20).

ANALYSIS

Staff made a brief presentation regarding the proposed ordinance. One member of the public spoke in support of the ordinance. There was no Planning Commission discussion of the proposed ordinance change.

CEQA

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

/s/

JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions, please contact Laurel Prevetti at 408-535-7901.

Attachments:

Planning Commission Staff Report.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: March 29, 2012

COUNCIL DISTRICT: Citywide
SNI AREAS: All

SUPPLEMENTAL MEMORANDUM

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.

REASON FOR THE SUPPLEMENTAL

Based upon additional input received from property owners who could potentially benefit from the proposed ordinance change, staff is revising its recommendation as described in the following memorandum.

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.

In 2009 the City amended the Zoning Ordinance to allow the Planning Director greater flexibility, for a limited time period, to extend the term of Development Permits as an incentive for development projects which had been impacted by the economic downturn to move forward to implementation. The current proposed amendment would give the Planning Director the ability to further extend a small subset of previously approved Development Permits. As initially drafted, the proposed amendment would allow for the extension of Development Permits issued during specified and limited time periods for:

1. Commercial projects within the Downtown.
2. Projects with an approved subdivision map that was extended through State legislation.

Staff is recommending that the proposed amendment be revised to also allow for the extension of Development Permits for small residential projects, within the City's Urban Service Area, for which a final Tract Map has been recorded.

ANALYSIS

The proposed amendment to the Zoning Ordinance is intended to allow specific types of development projects, which have been delayed due to the economic downturn, to move forward to implementation without needing to repeat the Planning Permit process. Allowing the extension of Development Permits, which would otherwise expire, is intended to provide an incentive for the implementation of these projects which are consistent with the City's General Plan, *Envision San Jose 2040*.

The *Envision San Jose 2040* General Plan includes the following policy which addresses projects what had received entitlements prior to the *Envision* General Plan update:

IP-1.4 Implementation of existing planned development zonings and/or approved and effective land use entitlements, which were previously found to be in conformance with the General Plan prior to its comprehensive update, are considered as being in conformance with the *Envision General Plan* when the implementation of such entitlements supports its goals and policies.

Recognizing that in some cases small residential projects, within the City's Urban Service Area, have moved through the City's entitlement processes including completion of a Planned Development Zoning and recordation of a Tract Map or Final Map, staff is recommending that the Planning Director be given the authority to extend the duration of the associated Development Permit for a two year time period in order to allow such projects to be implemented without a new Development Permit process. Limiting such projects to residential subdivisions of 10 or fewer units within the Urban Service Area will help to insure that the projects otherwise conform to the City's General Plan. The Planning Director will be able to evaluate proposed extensions for consistency with the General Plan as well as CEQA and other City requirements through an administrative process. Being able to grant extensions through an administrative process will give the Planning Director an incentive to offer land developers who have been negatively impacted by the economic downturn.

COORDINATION

The preparation of the proposed ordinance and this staff report have been coordinated with the City Attorney's Office.

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

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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,

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a. that no more than two (2) such term extensions may be approved for any Development Permit.

2. **Special Extensions.** In addition to General Extensions authorized pursuant to this Section, the Director may approve a one-time, Special Extension of the term of an approved Development Permit for which a Tentative Map had been granted and which otherwise would expire between July 13, 2011 and January 1, 2014, for a period of up to but not exceeding two (2) years so that with the Special Extension, the term of the Development Permit will coincide with the expiration date of the associated Tentative Map.

3. **Reactivations and Special Extensions.** In addition to General Extensions authorized pursuant to Section 20.100.500 .A.1 above and Special Extensions authorized pursuant to Section 20.100.500.A.2 above, the Director may approve a Reactivation of a previously approved but expired Development Permit, and an Extension of its term, provided that either of the following criteria are met:

a) The term of the Development Permit may be extended up to, but not exceeding four (4) years from its expiration date if the Development Permit to be reactivated expired on a date between November 1, 2008 and October 13, 2011; and the Development Permit to be reactivated allowed office uses located in the Downtown Zoning District; or

b) The term of the Development Permit may be extended up to, but not exceeding, two (2) years from its expiration date if the Development Permit to be reactivated allows development of a residential project of ten (10) dwelling units or less located within the Urban Service Area and for which a Final Map had been recorded between January 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.

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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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8. Tract sales, model homes 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 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.

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

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14. 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.

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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

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however, that all of the following criteria are met:

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

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term for an additional period of up to but not exceeding, two (2) years from its expiration date ing in any event

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New provision as of 3-27

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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.

PLANNING COMMISSION

March 12, 2012

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

Page 4 of 4

COORDINATION

The preparation of the proposed ordinance and this staff report have been coordinated with the City Attorney's Office.

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