

ORDINANCE NO. 28511

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18 OF THE SAN JOSÉ MUNICIPAL CODE, ENTITLED “PROCEDURES,” TO ADD A NEW SECTION ALLOWING THE WITHDRAWAL OF, OR DEEMING WITHDRAWN, APPLICATIONS TO AMEND THE GENERAL PLAN UNDER CERTAIN SPECIFIED CIRCUMSTANCES, AND TO MAKE OTHER NONSUBSTANTIVE TECHNICAL CLARIFICATIONS TO SAID PART 2 OF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JOSÉ MUNICIPAL CODE, TO ALLOW CERTAIN DEVELOPMENT PERMIT OR APPROVAL APPLICATIONS OR REZONING APPLICATIONS TO BE DEEMED WITHDRAWN UNDER CERTAIN CIRCUMSTANCES OF INACTIVITY, AND AMENDING SECTION 20.100.170 OF CHAPTER 20.100.170 OF CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE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

WHEREAS, this Ordinance has been found to be categorically exempt from environmental review pursuant to the provisions of the California Environmental Quality Act of 1970 and regulatory guidelines promulgated pursuant thereto, together with Title 21 of the San José Municipal Code, and more specifically pursuant to Section 15061(b)(3) of the CEQA Guidelines, under File No. PP09-014.

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

SECTION 1. Part 2 of Chapter 18.08 of Title 18 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**Part 2
PROCEDURES**

18.08.100 Planning Commission Hearing

- A. Prior to adoption of the General Plan or an amendment thereto by the City Council, the Planning Commission shall hold a public hearing.

- B. Notice of the time and place of the hearing shall be published once in a newspaper of general circulation in the City at least ten (10) days before the date set for hearing.
- C. The public hearing shall be concluded no later than sixty (60) days from the date that the public hearing is opened by the Commission.
- D. Failure of the Commission to hold the hearing or make a report shall be deemed to be a negative recommendation and shall not deprive the Council of authority to adopt the General Plan or a proposed amendment thereto.

18.08.110 City Council Hearing

- A. After receipt of the report from the Planning Commission or after failure of the Commission to report to the City Council within the period of time as specified by Section 18.08.100, and prior to adopting the General Plan or any amendment thereto, the Council shall hold at least one public hearing.
- B. Notice of the time and place of the hearing shall be published once in a newspaper of general circulation in the City at least ten (10) days before the date set for hearing.
- C. After such hearing, the Council may, by resolution, adopt any amendment to the General Plan as the Council may deem appropriate. Nothing herein shall preclude the Council from modifying or changing any amendment to the General Plan as the Council may deem appropriate.

18.08.120 Withdrawals of General Plan Amendment Applications

- A. An application for an amendment to the General Plan may be withdrawn by the applicant at any time prior to the point in time that notice of the time and place of the public hearing by the City Council on the amendment has been provided for in a newspaper pursuant to the provisions of Section 18.08.110.

- B. After the point in time that notice of the time and place of the public hearing by the City Council on the amendment has been provided for in a newspaper pursuant to the provisions of Section 18.08.110, the application may be withdrawn by the applicant only with the consent of the City Council provided at the public hearing.

SECTION 2. Section 20.100.170 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.170 Amendment or Withdrawal of Applications

- A. The applicant may amend or withdraw the application at will at any time prior to the opening of the required public hearing on the application. Thereafter, the application may be amended or withdrawn only with the consent of the decision maker before whom the matter is pending.
- B. The application may be amended in any way except where:
1. A change in boundaries would result in a change in the requirements for notice pursuant to Section 20.100.190; or
 2. A change is determined by the Director not to be covered by the environmental clearance issued for the application pursuant to Title 21.
- C. A change in the application may require additional fees to be paid as set forth in the Schedule of Fees related to the change.

SECTION 3. Section 20.100.390 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.390 Inactive Applications

- A. The Director of Planning shall have the authority to pursue a final decision on any Permit or other approval application on file with the Director for a period of at

least six (6) months where there is inactivity on the application on the part of the applicant for at least six (6) consecutive months.

- B. Alternatively, if an applicant fails to process his or her application on file with the Director and such inactivity by the applicant on the application continues for a period of at least six (6) consecutive months and additional work would be required by the Director to continue to process the application, the Director shall have the authority to require the applicant to first pay additional fees to continue processing the application in order to account for work that was not paid for under the original application fee or in cases where the application fees paid by the applicant were at a different rate than those fees in effect at the time of reactivation of the application after a period of inactivity by the applicant.
- C. In addition to the ability provided to the Director pursuant to the provisions of this Section to pursue a final decision on any Permit or other approval application on file with the Director, the Director also shall have the authority to deem an application withdrawn without holding any hearing on that application where the period of inactivity on an application on the part of the applicant has transpired for at least twelve (12) consecutive months. The Director shall provide a courtesy notice to the applicant at the last known address of the applicant on record with the Director of the Director's intention to deem an application withdrawn at least thirty (30) days prior to deeming such application withdrawn, and the notice shall specify the date that the application is to be deemed withdrawn.
- D. For purposes of this Section "inactivity" on an application means that the Director has requested from the applicant or has provided the applicant with notice of additional information, materials and/or fees needed by the Director from the applicant to continue to process the application and the applicant has failed to respond to that request or notice.

SECTION 4. Section 20.120.070 of Chapter 20.120 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.120.070 Withdrawal of Petition; Inactive Petition

- A. When Notice of a Public Hearing has been given pursuant to Section 20.120.060, no petition which has been filed pursuant to Section 20.120.020 requesting the zoning or rezoning of any property may be withdrawn except with the consent of the decision maker at the Public Hearing.

- B. If any petition for zoning or rezoning filed pursuant to Section 20.120.020 experiences a period of inactivity for at least twelve (12) consecutive months, the Director may thereafter deem such petition withdrawn without scheduling that petition for a Public Hearing. The Director shall provide a courtesy notice to the property owner(s) who petitioned for the zoning or rezoning at the last known address for the property owner(s) on record with the Director of the Director's intention to deem the petition withdrawn pursuant to the provisions of this Section at least thirty (30) days prior to deeming such petition withdrawn, and the notice shall specify the date that the petition is to be deemed withdrawn.

- C. For purposes of this Section "inactivity" on a petition means that the Director has requested from the property owner(s) or has provided the property owner(s) with notice of additional information, materials and/or fees needed by the Director from the property owner(s) to continue to process the zoning or rezoning petition and the property owner(s) has(have) failed to respond to that request or notice.

PASSED FOR PUBLICATION of title this 10th day of March, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk