

# Agenda Report

September 19, 2011

**TO:** Honorable Mayor and City Council  
**FROM:** Planning Department  
**SUBJECT: ZONING CODE AMENDMENT - TIME LIMITS AND EXTENSIONS ON PLANNING ENTITLEMENTS**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Adopt an Environmental Determination that the project is exempt from California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA because the Zoning Code Amendment is an administrative and procedural change pertaining to the time limits, extension and phasing of planning entitlements and will not have any potential for causing significant effect on the environment;
2. Approve the required findings for Zoning Code Amendments as contained in this report;
3. Approve the proposed Zoning Code Amendments regarding Time Limits and Extensions for Planning Entitlements as described in this report; and
4. Direct the City Attorney to prepare an ordinance within 60 days consistent with the provisions set forth within.

## **PLANNING COMMISSION RECOMMENDATION:**

On August 24, 2011, the Planning Commission recommended that the City Council approve the Zoning Code Amendment on Time Limits and Extensions for Planning Entitlements. The staff recommendation evolved as a result of discussions with the Commission and staff concurs with the Commission on the recommendation included in this report.

## **EXECUTIVE SUMMARY:**

Approval of this Code Amendment will alter the time limits for planning entitlements as follows.

1. The maximum allowable time limit for non-single-family projects would change from

three years to five years with the initial approval period of three years and two one-year extensions;

2. Extension requests for non-single-family projects would be reviewed by the last decision making body, rather than the Planning Director;
3. Approval periods for single-family projects would remain the same -- an initial approval of two years with a one-year extension reviewed by the Planning Director;
4. Approval for Final Design Review would change from three years to five years with review by the initial decision making body; Concept Design Review would remain as a one-year approval with the Director being the decisionmaker for a one year extension;
5. The current finding regarding a good-faith effort to presently commence the project would be replaced with a new finding that would ensure that projects are not extended if they are no longer in compliance with specific development standards and planning documents for the area;
6. Additional changes to approval periods would no longer be permitted under other sections of the code. Specifically, requests for changes to approval periods would not qualify as a major change to an approved project;
7. Approval for a major change to an approved project (based on significant changes to project design and/or siting) would reset the time clock and allow the full five years if the project is within the first three years of its approval. Major changes to a project in the fourth or fifth years of approval would reset the clock to only allow for three additional years with no extensions.

### **BACKGROUND:**

Proposed is a change to the Zoning Code (Code) to provide a longer approval period for certain planning entitlements and to remove the ability to supersede these time limits by processing a major change to an approved project.

The Code currently provides that planning entitlements (Use Permits, Variances, Design Review, Certificates of Appropriateness, etc.) are valid for a minimum of two years and allows the applicant to apply for a third year extension (by the Director) if certain findings can be made. The exception to this is Concept Design Review which is approved for only one year with a one year extension and tract and parcel maps which are governed by State law. Due to the current economic climate, the City has approved a series of temporary ordinances that allow projects to be extended for an additional fourth year. The most recent ordinance was approved in late 2010 and sunsets in December 2011.

While entitlement approvals should be limited in duration, they must also allow adequate time to fully process and initiate a project before expiration. Pasadena's rules stipulate that a project's entitlement is not vested until construction is diligently pursued. Under the current rules, three years are allocated for a project to complete design review, obtain financing, draft construction drawings, submit for plan check and make corrections, obtain permits, and begin substantial construction.

### **Development Climate**

Although three years may have been adequate in the past, challenges in project development may require additional time in order to reach the construction phase. Depending on the complexity of the project and skill of the design team in complying with City design standards, the design review process could absorb a significant amount of the approval period, posing a risk of expiration before completing plan check.

Project financing has also become much more complicated. The development financing industry has been altered by the recent economic events and may continue to place new demands and higher standards on development projects well into the future. Such demands will likely require additional time between entitlement approval and the start of construction.

Finally, as a result of the economic downturn, many development projects have been postponed while awaiting financing and/or buyers. Despite some recent positive economic indicators, it is unclear how long the economic downturn will endure and to what level development activity will return. A project with active entitlements is much more likely to be pursued than a project that has expired. With the current extension ordinance set to sunset in December, 2011, the City must consider once again the appropriate entitlement approval period for the current environment.

### **Review Authority**

The Planning Commission felt strongly that because an extension is a discretionary action that could have significant impacts that the final decision-making body should retain the authority to determine if an extension should be permitted. The original staff recommendation allowed the Planning Director to approve the first year extension and directed the second extension to the final decision-making body.

### **Single-Family Residential**

The Planning Commission suggested a two-tier system that would provide a longer approval period for projects outside single-family districts and retain the existing time period (two years with a one-year extension by the Director) for projects in single-family residential districts. Single-family projects have less need for additional time and have a potentially greater impact on the surrounding neighborhood. In general, single-family projects are not subject to a lengthy financing process and are not subject to design review, thereby shortening the overall time needed. In addition, extended projects in residential districts have a potential for more impact through noise, traffic, and dust on surrounding residences.

### **New Finding**

The current Code language requires that two findings must be made in order to approve an extension: 1) the findings and conditions of the original approval still apply; and, 2) the permittee has made good-faith intent to presently commence the proposed project and can provide evidence of such. Finding #2 is vague and difficult to enforce. It is unclear what a "good-faith intent" might be, what "presently commence" could mean,

and how the applicant would provide evidence of such.

The recommendation is to replace the second finding with a new finding that would prevent approval of an extension if there had been material changes to the land use and development standards that apply to the site. To address concerns about clarity and enforceability, staff recommends that the finding be clearly focused on the major development standards and planning documents. These would be height, setbacks, and floor area ratio (FAR) since these are the standards that dictate the building envelope of a project. Additionally, the project would need to be consistent with the General Plan, Specific Plan, and the Zoning Map. This proposed finding is clear in its intent, is more enforceable, and points directly to the concerns of the community regarding extension of projects.

#### *Variances*

Staff recommends that the new finding specify that the requirement to meet current height, setback, and floor area ratio requirements does not apply to a development standard that has previously received a variance. However, it would be applied if the development standard had been amended such that the variance is now a greater deviation from the Code than what was approved. Thus an extension could be denied.

#### *Vesting Maps*

In accordance with the Subdivision Map Act, a vesting map gives the applicant the right to process an application under the ordinances, policies, and standards in effect at the time the application is deemed complete. If a project has an approved vesting map (it can be valid for up to nine years) and the planning entitlement expires, the applicant can apply for a new entitlement. The entitlement has to be processed under the ordinances, policies, and standards that were in place at the time the vesting map was deemed complete. The City is prohibited from preempting State law by adopting an ordinance that creates a rule contrary to State law. Accordingly, the proposed second finding could not apply to projects for which a vesting map was approved, unless and/or until the vesting map expires.

#### **Major Changes to an Approved Project**

The Code allows an applicant to apply for major changes to an approved project. A major change to a project is processed with a noticed public hearing that proceeds through the same process as the original application. The hearing authority is required to reapprove the original findings that were made for the application and must make an additional finding that there are changed circumstances sufficient to justify the modification of the original approval. In the past, applications for major changes have been narrowly focused to request only a change to the approval period for an entitlement. If granted, this process allows approval period extensions outside of the regulations currently proposed. Staff recommends eliminating the ability to create a new project timeline, or effectively grant an extension, through the major change process.

In addition, under the current regulations approval of a major change to a project (not specifically requesting a timeline adjustment) resets the clock for entitlement approval, granting the applicant another two years plus the option of two one-year extensions. Staff recommends that the code amendment specify that if a project receives approval for a major change during the first three years of approved, the clock will be reset to allow three additional years plus the two extensions. If the major change is approved during year four or five, the clock will be reset for only three years, without the option for extensions.

Additionally, an applicant can apply up to two times a year for major changes. Staff proposed that only once could the additional time be granted. This allows projects to be modified if the modification is consistent with the City's General Plan, Specific Plans, and Code but does not allow an applicant to apply for changes to a project in order to further extend the time limits on a project.

### **Vesting for Approvals without a Building Permit**

Staff is also recommending modifying the Code as it relates to when a planning entitlement is deemed exercised. This is a minor amendment and one that simply clarifies the Code. An entitlement can be deemed exercised if a building permit has been issued and construction diligently pursued or the issuance of a certificate of occupancy. Some uses such as alcohol sales do not receive a building permit or a certificate of occupancy as no building permit is required. The recommendation is to include language that recognizes the commencement of the use as a means of deeming a planning entitlement as exercised. In the case of alcohol sales, this would mean that after the approval of a use permit, the applicant has received State approval and has commenced to sell alcohol.

### **Projects Impacted**

With the current allowance of four years, there are seven active projects in danger of expiring before the applicant will be able to complete the necessary steps to move forward. A list of these projects that have been approved for a fourth year and would be eligible for a fifth year is contained in Attachment A.

### **Comparison to Other Cities**

In considering changes to the Code, staff surveyed time allowances and administrative requirements in nine other cities. A review of each city's Zoning Code was conducted as well as speaking to a member of each city's planning department. The results of this survey (see Attachment B) show that there is a wide range of time limits and that there are significant differences in the way time allowances are calculated depending on when a city considers a project vested. In practice, several of the cities surveyed allow for a five-year approval period.

At what point a city considers a planning entitlement vested can add significant time to the life of an entitlement. For a number of cities the time period for entitlements is longer than what the Zoning Code allows because these cities vest the project at the plan check stage. For example, the cities of Arcadia, Burbank, Sierra Madre, and Santa

Clarita consider a project vested once it has been submitted for plan check. This means that the entitlement remains valid even though a building permit has not been issued. One city explained that there were projects that have been in plan check for two years and that the building official has the authority to renew the plan check. This process allows an entitlement to be extended indefinitely by the building official. In Pasadena a project is considered vested once a building permit has been issued and construction diligently pursued. An entitlement can expire while the project is in plan check if a permit has not yet been issued.

### **COUNCIL POLICY CONSIDERATION:**

The proposed amendment is consistent with the City's efforts to promote economic vitality, one of the Guiding Principles of the General Plan. Additionally, it is consistent with policies to promote streamlining to provide a stable and sound environment.

### **FINDINGS:**

The Code requires that prior to the approval of an amendment, the following findings must be made:

1. The proposed amendment is in conformance with the goals, policies, and objectives of the General Plan in that it is consistent with the Guiding Principle that, "Economic Vitality will be promoted to provide jobs, services, revenues, and opportunities." In particular, this amendment is consistent with Policy 10.3 - Business Expansion and Growth: Support the continuation or expansion of existing businesses in harmony with their surroundings and provide new spaces for growth and changing business requirements and Policy 10.7 - Streamlining: Provide a more stable and sound environment for investment and business decisions by reducing uncertainty and streamlining the land use entitlement approval process. This amendment will provide additional time to planning entitlements. The intent is to encourage the retention of entitlements because they act as an inducement for applicants to complete a project as the economy rebounds. If these projects were to proceed, projects could have a positive impact on the local economy. This amendment streamlines the entitlement process by lengthening the time for planning entitlements which provides a more stable and sound environment for investment.
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City because it is a procedural amendment which will extend the time limits allowed for planning entitlements. It will not change any development standards such as height, setbacks or floor area that could impact adjacent properties.

### **ENVIRONMENTAL ANALYSIS:**

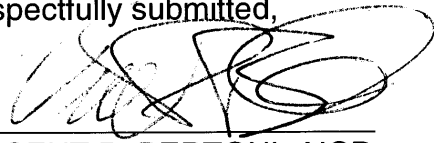
Under Article 5, Section 15061(b)(3) of the California Environmental Quality Act (CEQA), a project is exempt from CEQA if the activity is covered by the general rule that

CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This proposed Zoning Code Amendment is an administrative and procedural change pertaining to the time limits, extension and phasing of planning entitlements and will not have any potential for causing significant effect on the environment.

**FISCAL IMPACT:**

There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements. This amendment only changes the time limits on Planning Entitlements. Fees are collected for the processing of applications for extensions. These fees are intended to cover the cost of this processing.

Respectfully submitted,



VINCENT P. BERTONI, AICP  
Director of Planning

Prepared by:



Denver E. Miller  
Principal Planner

Approved by:



MICHAEL J. BECK  
City Manager

Attachments:

- Attachment A - Approved Zoning Entitlements and Design/Historic Preservation Entitlements Not Fully Implemented
- Attachment B - Time Limits and Extensions in Other Cities

APPROVED ZONING ENTITLEMENTS NOT FULLY IMPLEMENTED									
Address	Project Description	Case Number/Type	Effective Date	Extension Request	Expiration Date	Status	Eligible for a 5 <sup>th</sup> year?		
Green St W. 300	Ambassador West (AKA City Ventures and Sunrise Senior Living	CUP #3653 VTM #063103	8/14/2006	Yes 4/13/2009	10/02/2011	Extended through modification	Yes - 6 mos.		
Washington Blvd E. 2920	Soccer Field	CUP #4778	10/2/2007	Yes	10/03/2011	No bldg. permit	Yes		
APPROVED DESIGN/HISTORIC PRESERVATION ENTITLEMENTS NOT FULLY IMPLEMENTED									
Address	Project Description	Case Number/Type	Effective Date	Extension Request	Expiration Date	Status	Eligible for a 5 <sup>th</sup> year?		
Allen Ave S. 94	3-unit	Consolidated Design	11/27/2007	Two granted	11/27/2011	BLD2011-00144 - Voided	Yes		
De Lacey St S. 151	Westgate, Block 2	Final Design	12/21/2007	Two granted	12/21/2011	No bldg. permit	Yes		
Del Mar Blvd E. 1043-1053	20-unit	Consolidated Design	2/13/08	Two granted	2/25/12	No bldg. permit	Yes		
Lake Ave N. 580	Work-live@rear	Certificate of Appropriateness	12/11/2009	None	12/11/2011	BLD2008-00241 - Issued/Expired ZON2011-00071 (parking, landscaping) issued 2/28/2011	Yes		
Marengo Ave. S 229-247	21 unit	Consolidated Design	2/25/08	Two granted	2/25/2012	No bldg. permit	Yes		



**ATTACHMENT B**

<b>Time Limits and Extensions in Other Cities</b>			
<b>City</b>	<b>Initial Approval Period</b>	<b>Extension Option</b>	<b>Exercise of Rights</b>
Arcadia	1 year	TBD after request	Project is vested if in plan check; some projects have been in Plan Check for two years; Building Official determines how long project can be in plan check
Beverly Hills	3 years	Up to two 1 year	Planning and Zoning: Building Permit or Commencement of use
Burbank	180 days for CUPs and Variances; 1 year for development review unless specified in conditions <sup>1</sup>	No extensions allowed	Vested when plans are in plan check
Glendale	2 years	1 year	Zoning Code Chapter 30.41 Exercise of right or privilege
Long Beach	1 year	1 year initially; three years additional years after the first two	Building permit issued and construction pursued
Santa Monica	1 year; 18 mos. for coastal zone and 3 years for affordable housing	6 months	Commencement of use or issuance of building permit
Sierra Madre	1 year	1 year	Project vested when in plan check
West Hollywood	2 years	TBD after request; does not exceed 2 years max.	Construction commenced or use commenced
Santa Clarita	2 years	1 year (Can be extended by PC beyond 3 years)	Project vested when in plan check