



DATE: APRIL 1, 2009

TO: ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE

FROM: RICHARD J. BRUCKNER, DIRECTOR OF PLANNING AND DEVELOPMENT

SUBJECT: EXTENSION OF TIME LIMITS FOR APPROVAL OF PLANNING ENTITLEMENTS

This item is for discussion purposes. Staff is developing a recommendation to extend the time limit for approval of planning entitlements. The proposed recommendation would:

- a. Authorize the Director of Planning and Development to grant an additional one-year extension to planning permits and entitlements beyond the extension currently provided by § 17.64.040.B.4 of the Municipal Code; and
- b. Provide for a sixty-day period after the effective date of the proposed ordinance, during which an applicant for a permit which had expired within one year prior to the effective date of the ordinance may submit an application for an extension; and
- c. Provide that the authority of the Director to provide such additional extensions shall sunset on December 31, 2010, unless specifically extended by the City Council.

COMMENTS FROM ADVISORY COMMISSIONS

Comments have been solicited from a number of advisory commissions, which have shaped the recommendation. However, staff is not in total concurrence with all of the comments received. Areas of difference are discussed below.

COMMENT FROM THE HISTORIC PRESERVATION COMMISSION

The proposed policy was reviewed by the Historic Preservation Commission on March 2, 2009. That commission provided the following comment:

- Each applicant that would potentially be impacted by this proposed policy should receive a notice of the City Council public hearing on this proposed policy.

Although staff concurs with the intent of the comment from the Historic Preservation Commission, there are practical difficulties in determining which applicants might be impacted by the proposed ordinance within the next eighteen months. Staff is currently developing public outreach efforts that would provide significant public notification and an opportunity to comment on the proposed ordinance.

COMMENT FROM THE DESIGN COMMISSION

The proposed policy was reviewed by the Design Commission on March 9, 2009. That commission concurred with the proposed policy with the exception that Concept Design Approvals should not be eligible for an additional extension.

Staff does not concur with eliminating Concept Design Approvals from eligibility for extensions. It is noted that the intent of the proposed ordinance is to provide additional opportunities for applicants, many of whom have experienced difficulties in securing project financing, to secure financing or overcome other obstacles necessary to moving forward with projects. The Design Commission expressed a concern that the type of financing necessary to move a project from concept to final design was generally materially different than that necessary to start construction, and therefore, if a project was stalled at concept design it was unlikely to move forward. However, it is staff's opinion that there are too many factors which potentially impact project financing to try to second guess why an individual project might be stalled at concept design. Therefore, this exception should not be made.

COMMENTS FROM THE PLANNING COMMISSION

The proposed policy was reviewed by the Planning Commission on March 11, 2009. Although there was no consensus expressed by the Planning Commission, there were three primary comments expressed with which staff disagrees.

Eliminate Considerations for Certain Types of Permits to be Extended –

Staff had initially recommended that extensions be available for certain types of permits and unavailable for other types. It was expressed that additional types of permits (e.g. Conditional Use Permits, Hillside Development Permits, Floor Area Increases, etc.) which typically occur at the early phases of project entitlement not be allowed to be extended. This comment is similar to that made by the Design Commission, and staff does not concur for the same reason.

Given the numerous factors that work to impede a project from moving forward, it is presumptive to second guess which types of permits might be necessary move forward and which might not. As a result, after additional discussions, staff has changed its recommendation and is now recommending that all permits, without exclusion, be eligible for extension and the judgment as to necessity for extension be made on a case by case basis, as is the case with the current extension provisions.

Provide for Review by the Planning Commission –

Staff has recommended that review of applications for extension be conducted by the Director of Planning and Development. It was expressed that either the review of a request for a second extension or perhaps, after the Director has granted a second extension, the review of a request for a third extension should be conducted by the Planning Commission, as this would provide additional opportunities for public input and scrutiny before a decision was made.

To provide for equal access and certainty regarding the ability to extend the validity of permits, it is suggested that this process be as objective and ministerial as possible, with no opportunity for discretionary or biased decisions. For that reason, staff does not concur with this comment.

Extension of Expired Permits -

An objection to the inclusion of permits that had previously expired was noted. However, since the purpose of the proposed ordinance is to expand opportunities for projects, that the City has determined are worthy of proceeding to development. The inclusion of such projects would facilitate expansion of these opportunities.

BACKGROUND

Currently, § 17.64.040.B of the Municipal Code provides that:

- B. Extensions of time.** Upon request by the applicant, the Director may extend the time for an approved permit to be exercised in the following manner.
1. The applicant shall file a written request for an extension of time with the Department before expiration of the permit.
 2. The Director may grant the extension, without notice or public hearing, only upon making a determination that the findings and conditions of the original approval still apply.
 3. The burden of proof is on the permittee to establish with substantial evidence that the permit should not expire. If the Director determines that the permittee has good-faith intent to presently commence the proposed project, the Director may grant a time extension for up to an additional 12 months, from the date of the decision, to extend the permit.
 4. Only one 12-month time extensions may be granted.

Due to the current economic climate, numerous projects that have secured entitlements have not been able to proceed with development. It is estimated that approximately 40 entitlements are due to expire this calendar year.

As is previously noted, comments have been solicited from a number of advisory commissions, which have shaped the recommendation. Staff had initially presented advisory commissions with a proposed seven point policy. A copy of the staff report to

the Planning Commission, which outlined those points is attached (see Attachment A). After receiving comments, staff revised its recommendation to eliminate a number of these points. Areas of difference have been previously discussed. Over and above these differences, the following advisory commission recommendations have been adopted.

Work for Simplicity –

As opposed to the creation of a new policy, with seven main points, which would revise some of the necessary findings and would be difficult to administer, a comment from the Planning Commission suggested that the proposed ordinance should predominately rely on the existing provisions and findings for extension in the Municipal Code and simply provide the Director of Planning and Development with the authority to grant one or more additional year(s) of extension.

After consideration, staff concurs with this comment and has revised the recommendation to eliminate many of the points which would provide for revisions to the policies and findings necessary for grant of an additional extension.

Reduce the Term within which a permit could be extended –

Staff had initially recommended that the proposed ordinance sunset on December 31, 2011, unless specifically extended by the City Council. However, given the difficulty of foreseeing the direction of national economic conditions, it was suggested that this term be reduced.

Staff concurs that accurate forecasting of economic conditions is difficult and has revised its recommendation to require that the proposed ordinance sunset on December 31, 2010, unless specifically extended by the City Council.

ANALYSIS

The current economic climate has resulted in the delay or abandonment of numerous development projects. If they were to proceed, each of these projects could have a positive impact on the local economy through: the employment of construction industry personnel; the purchase of materials and supplies; and the provision of employment and/or housing opportunities.

Some economic forecasts predict that the current economic downturn will continue through calendar year 2009 into 2010. The ability to retain entitlements could act as an inducement to continue to work on a project until the market rebounds. However, because an entitlement vests a project to comply with the regulations in place at the time of initial approval, and because regulations are continuously changing, the extension of entitlements would mean that a greater number of projects would be developed according to standards, which were no longer in effect. This is a situation which is anticipated by §17.10.130.E.1 of the Municipal Code, which states:

E. Effect of Zoning Code changes on projects in progress.

1. **Project with legislative or quasi-judicial approval.** A project with an effective legislative or quasi-judicial approval will be processed under the rules in effect on the effective date of the discretionary approval. These projects include a Conditional Use Permit, Design Review, Expressive Use Permit, Filming Permit, Temporary Use Permit, Variance, zone change, etc.

The number of projects that would fall under this provision has the potential to increase. The following table illustrates the potential extensions of time for a representative project under this proposed policy.

ENTITLEMENT	TIME LIMIT	1ST EXTENSION	2ND EXTENSION	TOTAL
Concept Design Approval	1 yr	1 yr	1 yr	3 yrs
Final Design Approval	2 yrs	1 yr	1 yr	4 yrs
Subtotal	3 yrs	2 yrs	2 yrs	7 yrs

Under this representative scenario a project could be developed under standards that were seven as opposed to five years old. Given the proposed limitation on the Director's authority under this proposed policy, it is unlikely that extensions exceeding this time frame would occur.

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Attachment A: Planning Commission report (March 11, 2009)