

Agenda Report

TO: CITY COUNCIL

DATE: JULY 13, 2009

THROUGH: ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE
(JUNE 3, 2009)

FROM: CITY MANAGER

SUBJECT: EXTENSION OF TIME LIMITS FOR APPROVAL OF PLANNING
ENTITLEMENTS

RECOMMENDATION

It is recommended that, after a public hearing, the City Council:

1. Find the proposed ordinance to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code § 21080(b)(9) and State CEQA Guidelines Section 15321 (Enforcement Actions by Regulatory Agencies);
2. Direct the City Attorney to return within 60 days with an ordinance which 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

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). However, after receiving comments from the Planning Commission, staff revised its recommendation to eliminate a number of these points.

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. In response, staff developed public outreach efforts that provided 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 and that 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 four primary comments expressed.

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, 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 additional year 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.

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, 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, staff is now recommending that all permits 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 this review 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.

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.

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.

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 payment of regulatory fees and taxes. Attached is an abbreviated listing (see Attachment B) of projects in the City of Pasadena, which have entitlements which are due to expire in 2009.

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.

PUBLIC OUTREACH

This proposed ordinance was discussed with the Economic Development and Technology Committee on April 1, 2009. That Committee requested that staff conduct public outreach to solicit comments on this proposed ordinance. In response, staff:

- Prepared a web page to explain the proposed ordinance. That web page included the ability to comment on line;
- Prepared a public notice directing respondents on how to comment on the proposed ordinance, and where additional information could be obtained (including directions to both the web page and a staff contact); and
- Emailed the public notice to all neighborhood associations City-wide and over 50 organizations and/or individuals, including all those individuals that had previously expressed an interest in the proposed ordinance.

Eight written comments were received in response to this outreach effort. A copy of these comments is included as Attachment C to this report. These comments expressed both support, opposition and qualified support for the proposed ordinance.

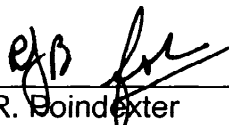
FISCAL IMPACT

The proposed ordinance would not have a direct impact on finances to the City. However, it has the potential to result in indirect payment of fees for permits, inspection and property taxes if projects, that would otherwise be stalled or abandoned, are able to secure permits and complete construction. The extent of these potential additional revenues from fees and taxes is undetermined.

Respectfully submitted,


for MICHAEL J. BECK
City Manager

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Planning Division Manager

Approved by:


Richard J. Bruckner
Director of Planning & Development

- Attachment A: Planning Commission report (March 11, 2009)
- Attachment B: Partial listing of project entitlements schedule to expire in 2009
- Attachment C: Comments received from public