



AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Planning-Related Permit Extensions

DATE: November 6, 2013

City Administrator

Date

Approval

11/19/13

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt:

A Resolution (A) Extending Until December 31, 2014 The Expiration Date Of Permits Issued Under The Authority Of Title 17 Of The Oakland Municipal Code (Planning Code), Creek Protection Permits Issued Under The Authority Of Chapter 13.16 Of The Oakland Municipal Code, And Development-Related Tree Protection Permits Issued Under The Authority Of Chapter 12.36 Of The Oakland Municipal Code That Otherwise Would Expire On Or Prior To January 1, 2014 Or During 2014, Upon Request And Payment Of The Administrative Fee And (B) Memorializing The Long-Standing Practice Of Extending The Time Frame For Land Use Related Permits That Have Been Litigated In Court By The Length Of The Litigation Period.

OUTCOME

The proposed legislation will extend the validity of Planning approvals, Creek Permits, and Tree Protection Permits that may otherwise expire on/before January 1, 2014 or during 2014 until December 31, 2014. There is currently a City Council authorized extension period which expires on December 31, 2013.

BACKGROUND/LEGISLATIVE HISTORY

In November 2008, Council passed Resolution No. 81723 C.M.S., extending development entitlements until December 31, 2011. That extension applied to all planning approvals granted under Title 17 of the OMC (Planning Code) such as Design Review, Conditional Use, and Variance perms that expired before January 1, 2011. It also applied to creek protection permits issued under the authority of Chapter 13.16 of the OMC. In June, 2011, the Council authorized a

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similar extension via Resolution No. 83424 C.M.S., covering the period January 1, 2012 through December 31, 2012, and again in July 2012 the Council authorized an extension via Resolution No. 83989 C.M.S., covering the period January 1, 2013 through December 31, 2013. This proposed extension would cover the period from January 1, 2014 through December 31, 2014 and would also include Development-Related Tree Protection Permits.

ANALYSIS

The initial extension authorized by the Council in 2008 was issued at the height of the economic downturn, and covered a period of up to 3 years. Subsequent extensions in 2011 and 2012 were granted for 1-year periods, since in each year some economic recovery was evident, and so the time periods were limited to 1-year, in hopes that the following year would allow more development to proceed to construction and completion. At this time in 2013, increasing signs of a turnaround in the debilitated housing market are evidenced by increased interest from the development community, including more projects changing ownership as investment and construction interest is increasing. While the signs have been promising, the market in Oakland, especially for larger-scaled projects, still remains relatively sluggish. Staff anticipates continued improvement in the market in 2014, with more projects expected to come forward with building permits and actual commencement of construction. The Brooklyn Basin (Oak-to-Ninth) project and some Temescal area projects are just a few project approvals that are anticipated to move forward in 2014. As the economic recovery continues in 2014, this current resolution would likely be the last one to extend development related permits.

The project approval process is a costly and time-intensive one, requiring meetings with staff, community members, and usually public hearings at the Planning Commission and sometimes City Council. If project approvals expire prior to construction, developers have to choose whether or not to go through the expensive and laborious approval process again.

In addition to planning permits and creek protection permits, staff is also recommending that the current extension also apply to development-related tree protection permits, which are generally issued for a one-year period, subject to a one-year extension, and accompany planning approvals. Since the tree permit process is integral to the overall development process, staff believes it makes sense to include such permits under this extension resolution.

Planning staff believes that more than 50 projects would take advantage of this extension (including more than 20 major projects of 50 dwelling units or more and 30 or more single family homes and small-scaled residential projects). These projects represent more than 2,500 residential dwelling units and more than 250,000 square feet of commercial space.

The proposed resolution would also memorialize what has been standard practice for many years: If litigation is filed challenging any land-use related decisions (including planning, creek

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and development-related tree protection permits, as well as subdivisions), then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in the Conditions of Approval are automatically extended for the duration of the litigation.

As with the original resolution, and the two subsequent extension resolutions, extensions would not be granted when involving property that has been issued an administrative citation under OMC Chapter 1.12 ("Administrative Citation"). This resolution expands that reference to also include citations under OMC Chapter 1.08 ("Civil Penalties"), as well as properties that are the subject of any civil litigation by the City to abate blight, nuisances and /or enforce codes/standards. Extensions would be granted, however, if (i) the project sponsor has abated the blight, nuisance and/or violations of codes or standards, and paid any and all outstanding fines and penalties prior to the end of the one-year extension time period or in accordance with an approved Compliance Plan, whichever is earlier; and/or (ii) such violations or penalties are under timely appeal. Furthermore, in the event that a property included in a permit that has been extended pursuant to this resolution receives a new notice of violation for blight, nuisance, or violation of codes/standards, an administrative citation, civil penalty, or is involved in litigation as stated above that is not timely corrected, and not timely appeal is filed, the City may terminate said extension.

Extensions granted under this resolution would only apply to active permits. That is those under which work has been initiated and diligently pursued or that have not otherwise expired at the time of the extension request, provided that the request for extension was received on or prior to December 31, 2013.

Although the granting of extensions would be a ministerial action (that is, staff would not exercise its discretion if all the requirements related to payment of fees, permit validity, and blight/nuisance status are met), the administrative appeal section in OMC Chapter 17.132 would also apply to the decisions made pursuant to this resolution.

PUBLIC OUTREACH/INTEREST

Over the past several months, many inquiries from developers and property owners with project approvals have been received. This resolution requires no notice beyond the regular agenda posting.

COORDINATION

This proposal was reviewed by and coordinated with the City Attorney's Office, and this report has been reviewed by the Budget Office.

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COST SUMMARY/IMPLICATIONS

The administration of extension requests pursuant to this resolution would be cost recovered through payment of extension fees authorized by the Master Fee Schedule, which are currently \$450.97 for each extension requested.

Adoption of this resolution will not create any costs for the City of Oakland and will indicate a continued commitment to property owners and developers interested in investing in Oakland's future.

SUSTAINABLE OPPORTUNITIES

Economic: Development of these projects result in many economic benefits including new construction jobs, new housing opportunities for varying income levels, new retail and other commercial job opportunities, improved infrastructure, and increased property taxes and real estate transfer taxes.

Environmental: Development of these projects often result in vacant and/or blighted properties being cleaned up and replaced by new construction, cleanup of toxic lands, and additional urban housing and working opportunities that further the City's transit-first policy.

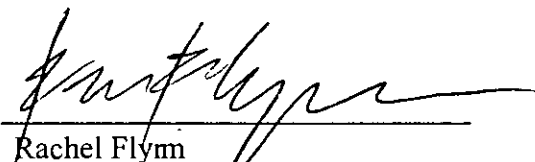
Social Equity: Development of these projects represent a broad spectrum of housing types, from single family homes to studio apartments, as well as 1-, 2- and 3- bedroom apartment units, and cover a range of price points serving varied income-levels. The provision of adding housing units, in general, serves to relieve housing demand, which over time can have a positive affect by moderating or lowering housing prices.

CEQA

Adoption of this resolution is exempt from CEQA pursuant to CEQA Guidelines 15061(b)(3), General Rule, and also 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). It should be noted that each of the individually entitled projects that may be covered by this resolution have all been independently evaluated pursuant to CEQA.

For questions regarding this report, please contact Scott Miller, Zoning Manager, at 238-2235 or smiller@oaklandnet.com.

Respectfully submitted,



Rachel Flynn
Director, Department of Planning and Building

Prepared by:
Scott Miller, Zoning Manager
Planning and Zoning Division

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

DRAFT

City Attorney

RESOLUTION No. _____ C.M.S.

2013 NOV 21 AM 9:29

Introduced by Councilmember _____

A RESOLUTION (A) EXTENDING UNTIL DECEMBER 31, 2014 THE EXPIRATION DATE OF PERMITS ISSUED UNDER THE AUTHORITY OF TITLE 17 OF THE OAKLAND MUNICIPAL CODE (PLANNING CODE), CREEK PROTECTION PERMITS ISSUED UNDER THE AUTHORITY OF CHAPTER 13.16 OF THE OAKLAND MUNICIPAL CODE, AND DEVELOPMENT-RELATED TREE PROTECTION PERMITS ISSUED UNDER THE AUTHORITY OF CHAPTER 12.36 OF THE OAKLAND MUNICIPAL CODE THAT OTHERWISE WOULD EXPIRE ON OR PRIOR TO JANUARY 1, 2014 OR DURING 2014, UPON REQUEST AND PAYMENT OF THE ADMINISTRATIVE FEE AND (B) MEMORIALIZING THE LONG-STANDING PRACTICE OF EXTENDING THE TIME FRAME FOR LAND USE RELATED PERMITS THAT HAVE BEEN LITIGATED IN COURT BY THE LENGTH OF THE LITIGATION PERIOD.

WHEREAS, the extraordinary economic downturn, housing market decline, and difficulty in obtaining loans has resulted in construction projects being stalled, despite having completed the planning approval process which often entails substantial costs and time; and

WHEREAS, the City Council wishes to encourage investment and revitalization activities in our neighborhoods and corridors, and encourage the improvement of vacant or underutilized land and deteriorated buildings; and

WHEREAS, Senate Bill 1185, approved by the Governor on July 15, 2008, provided one year extension to approvals of tentative subdivision maps, which allows cities to preserve development applications that are set to expire and that cannot be processed presently due to prevailing adverse economic conditions in the construction industry; and

WHEREAS, on July 15, 2009, the Governor signed AB 333, which further extended by 2 years the life of vesting tentative and tentative maps that had not already expired and that otherwise would have expired before January 1, 2012; and

WHEREAS, On July 15, 2011, the Governor signed AB 208, which extends the expiration of tentative maps and vesting tentative maps that would have expired between the bill's passage date and January 1, 2014 and also applies to projects that were extended pursuant to AB 333; and

WHEREAS, On July 11, 2013, the Governor signed AB 116, which extends the expiration of tentative maps and vesting tentative maps that were approved after January 1, 2000 and unexpired as of July 11, 2013 by a period of 2 years; and

WHEREAS, the economic downturn has showed some signs of slow recovery in Oakland, but not to the extent that the vast majority of projects have pulled, or will pull, building permits in 2013; and

WHEREAS, extending the validity of planning- related approvals granted by the City would help retain investment in Oakland at no cost to the City; now, therefore be it

RESOLVED, that the expiration date of permits issued under the authority of the Oakland Municipal Code (OMC) Title 17 (Planning Code), Creek Protection Permits issued under the authority of OMC Chapter 13.16, and Development-Related Tree Protection Permits issued under the authority of OMC Chapter 12.36 expiring on or before January 1, 2014 or during 2014, is hereby extended through December 31, 2014, upon timely request and payment of the administrative extension fee in the Master Fee Schedule (Ordinance No. 12880 CMS), except as provided below; and be it

FURTHER RESOLVED, That this extension shall not apply to properties that (a) have been issued an administrative citation under OMC Chapters 1.08 (“Civil Penalties”) and/or 1.12 (“Administrative Citation”); or (b) are the subject of any civil litigation/lawsuits by the City to abate blight, nuisances and/or enforce codes/standards unless (i) the project sponsor has abated the blight, nuisance and/or violations of codes or standards, and paid any and all outstanding fines and penalties prior to the end of the one-year extension time period or in accordance with an approved Compliance Plan, whichever is earlier; and/or (ii) such violations or penalties are under timely appeal. Furthermore, in the event that a property included in a permit that has been extended pursuant to this resolution receives a new notice of violation for blight, nuisance, or violation of codes/standards, an administrative citation, civil penalty, or is involved in litigation as stated above that is not timely corrected, and no timely appeal is filed, the City may terminate said extension; and be it

FURTHER RESOLVED, That this extension shall only apply to active permits -- those under which work has been initiated and diligently pursued or that have not otherwise expired at the time of the extension request -- provided, however, the request for extension was received by the Planning and Building Department on or prior to December 31, 2013; and be it

FURTHER RESOLVED, That the decision to grant an extension is ministerial, but that the appeal section contained in Oakland Municipal Code Chapter 17,132 applies to the administrative determination and interpretations made pursuant to this resolution (with respect to payment of fee, validity of permit, and blight status); and be it

FURTHER RESOLVED, That pursuant to standard City practice, if litigation is filed challenging any land-use related approvals (including planning, creek and development-related tree protection permits, as well as subdivisions), even for those land-use related approvals not requesting extensions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in the Conditions of Approval are automatically extended for the durations of the litigation.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California