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OAKLAND

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CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Councilmember Rebecca Kaplan

(510) 238-7008

December 2, 2014

Re: A RESOLUTION (A) EXTENDING UNTIL DECEMBER 31, 2015 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, 2015 OR DURING 2015, 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.

Dear Fellow Council Members:

This resolution is being proposed to extend the validity of Planning approvals, Creek Permits and Tree Protection Permits that may otherwise expire on/before January 1, 2015 or during 2015 until December 31, 2015 and to maintain housing investments in Oakland. The current City Council authorized extension period expires on December 31, 2014.

Extensions would not be granted to any property that has been cited as a nuisance property for blight under OMC Chapter 1.12.

These extensions would 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, as well as resulting in the economic benefits of construction jobs, contribute to the overall housing stock, and increase revenues to the city through property taxes and real estate transfer taxes.

Item
CED Committee
December 2, 2014

BACKGROUND

In 2008, the City Council approved a construction extensions of up to three years as a response to the extraordinary circumstances of the economic downturn. In 2011, 2012 and 2013 extensions were granted for periods of up to 1 year, in hopes that the following year would allow more development to occur to construction and completion.

In 2013 we saw the signs of a turnaround in the housing market in developer interest, and pre-application meetings, and project financing in Oakland is slowly coming around.

ANALYSIS

ABAG points to the only solution to housing market pressures in Oakland and the region is to increase housing stock of all types and serving all income levels. Looking at approved applications in our major projects list, a wide variety of housing types would benefit from the extension ranging from multi-family affordable housing to single family homes, senior housing to lofts.

Project approval process is a costly and time –intensive one. If project approvals expire prior to construction, developers have to choose whether or not to go through the expensive and laborious approval process again.

The October 2014 Major Projects List indicates there are 27 major residential or mixed use projects and 8 major commercial projects that had permits approved in 2014, that had not begun construction. These projects represent over 6,000 residential units of all types, sizes and serving a variety of income levels, 19,000 s.f. of retail space, over 100,000 s.f. of commercial space and hundreds of millions of dollars invested into our local economy through job creation, contracting and purchasing as well as increased property tax and transfer tax revenues. It is not clear how many of these projects will be able to begin construction before their permits expire.

As with the original resolution and subsequent extensions, extensions would not be granted when involving property that has been issued an administrative citation under OMC Chapter 1.12 (“Administrative Citation”) as well as 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 blight, nuisance and/or violations of codes or 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 approved Compliance Plan, whichever is earlier, and/or (ii) such violations or penalties are under timely appeal. 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 corrected in a timely manner and no timely appeal is filed, the city may terminate said extension.

Item
CED Committee
December 2, 2014

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 January 31, 2015.

As it is the intent of council to adopt a nexus study and identify related impact fees in the upcoming year, which will apply citywide, this extension is not meant to exclude the application of the fees to these projects. How fees may apply to projects that receive an extension will be determined when the nexus fee discussion comes to council.

SUSTAINABLE OPPORTUNITIES

Economic: Development of these projects will result in both direct and indirect economic benefits to the City through job creation, additional units added to the general housing stock, increased property taxes and real estate transfer taxes, as well as business development opportunities.

Environmental: Development of these projects will result in vacant, underutilized and/or blighted properties being cleaned up, developed and maintained. As well as contributing to infill housing and work opportunities which address the City's Climate Action Plan and Transit First policies.

Social Equity: Development of these projects represents a broad spectrum of housing types and income levels. Adding housing units in general will alleviate housing demand which over time can have a positive affect by moderating or lowering housing prices.

Respectfully submitted,



Ada Chan for Councilmember Rebecca Kaplan

Item
CED Committee
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2014 NOV 25 AM 11:50

DRAFT

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION (A) EXTENDING UNTIL DECEMBER 31, 2015 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, 2015 OR DURING 2015, 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 approval 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 AB333, which further extended by 2 years the life of vesting tentative and tentative maps that had not already been expired and that otherwise would have expired before January 1, 2012; and

WHEREAS, on July 15, 2011, the Governor signed AB208, 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 AB333; and

WHEREAS, on July 11, 2013, the Governor signed AB116, 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 recovery in Oakland, but not to the extent that smaller 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 the City of Oakland at no cost to the City;

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 13.15 and Development Related Tree Protection Permits issued under the authority of Chapter 12.36 expiring on or before January 1, 2015 or during 2015 is hereby extended through December 31, 2015, upon timely request and payment of 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 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 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, 2014; 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 duration of the litigation.

IN COUNCIL, OAKLAND CALIFORNIA _____

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES –

ABSTENT-

ABSTENTION –

ATTEST _____

LaTonda Simmons
City Clerk and Clerk of the Council
Of the City of Oakland, California