



Council Meeting: April 21, 2009

SUBJECT: 2009-0188 – Uncodified Zoning Ordinance – Time Extensions affecting the expiration and allowed extensions of various permits and legally established uses as permitted through Title 19, Zoning Code

REPORT IN BRIEF

Due to the state of the current economy and recent State legislation extending the life of subdivision maps, staff is requesting the City Council approve a one time short-term uncodified zoning ordinance for the following:

1. Grant an automatic one (1) year extension for all planning permits which are valid as of April 1, 2009 through March 31, 2011;
2. Allow optional additional extensions of up to one year, subject to the approval of the Community Development Director, beyond that allowed in the Zoning Code; and
3. Allow more time for legally established uses which may expire within the same time frame to re-establish within two (2) years of discontinuance of the use.

BACKGROUND

On July 15, 2008, the California State Senate approved Senate Bill 1185, which provides a one year automatic extension of subdivision maps due to the current economic state. This is similar to a past legislation adopted in 1990's which also extended the life of subdivision maps due to a recession. SB 1185 is an important piece of legislation that allows larger developers to retain valid subdivision maps and thus future financing once the economy improves. The legislation does not address associated land use/planning permits that have been issued by local government.

In February the City Council considered a Use Permit application on appeal. The Council approved the application including modified conditions of approval that would provide additional time in which to exercise the permit and longer time frames to re-establish discontinued uses. The City Attorney has reviewed this portion of the motion and determined that the current zoning code will not allow these provisions as conditions of approval (shorter time frames can be approved in a Use Permit, but longer time frames cannot). The Council appeared to be concerned about the viability of the Use Permit during these uncertain economic times. This ordinance would address the life of the permit and possible discontinuances of the use and give the City legal authority to extend such permits.

Since Fall of 2008 there has been a steady decline in planning and building permit applications. This reduction coincides with dramatic changes in the local, national and world economy.

EXISTING POLICY

The City of Sunnyvale's General Plan is composed of many sub-elements which address every aspect of the City's functions and provides guiding policies which direct residents, appointed and elected officials and staff. The applicable sub-element and policies noted below provide support for the proposed time extensions. As noted above, the existing time limitations found in Title 19 have been included for reference below.

Community Vision

Goal X: ROBUST ECONOMY: To retain, attract and support strong and innovative businesses, which provide quality jobs for the city's workforce, tax revenue to support public services, and a positive reputation for Sunnyvale as a center of creativity and productivity.

Goal XV: RESPONSIVE GOVERNMENT: To continue to provide local governance which meets the many and diverse needs of the people and businesses, which is managed to be efficient, effective and compassionate, and which welcomes public participation in an open and accountable public decision making process.

Land Use and Transportation Element:

GOAL C4: Sustain a strong local economy that contributes fiscal support for desired city services and provides a mix of jobs and commercial opportunities.

Housing Sub-element:

GOAL A: Foster the expansion of housing supply to provide greater opportunities for current and future residents within limits imposed by environmental, social, fiscal and land use constraints.

Policy A.1: Maintain a supply of residential land for new housing construction.

GOAL H: Continue to maintain a working relationship with residential developers, lenders, real estate agents, brokers and others in the private sector to help implement housing policies.

Socio-Economic Element:

GOAL C: Endeavor to maintain a balanced economic base that can resist downturns of any one economic sector.

Policy C.4 Promote business opportunities and business retention in Sunnyvale.

Legislative Sub-element:

GOAL A: Assess community conditions and make appropriate changes to long-range, mid-range and short-range plans.

Zoning Ordinance:

Title 19 establishes the length of time a permit and established uses are valid as part of an approval and allowable extensions. The Moffett Park Specific Plan and General Procedures sections establish these time frames. The specific language for these sections is as follows:

Moffett Park Specific Plan (§19.29.070, Development Reserve)

- (2) *Permits for entitlement to development reserve square footage shall be valid for two years from the date of final approval by the approval authority. Two separate one-year extensions may be requested through the filing of a miscellaneous plan permit prior to the permit's expiration. The extension may be granted at the discretion of the director of community development.*
- (3) *An applicant may obtain an extended, seven-year entitlement by a non-refundable prepayment of a portion of the transportation impact fee applicable to the project. Procedures for prepayment and extended entitlement are set forth in the MPSP.*

General Procedures (§19.98.110, Expiration)

A permit shall expire and become null and void in the event that the permit has not been exercised:

- (a) *Within two years after the date such permit was approved by the final review authority except that miscellaneous plan permits and tree removal permits shall expire after one year.*
- (b) *If the use is discontinued for more than one year.*

General Procedures (§19.98.120, Extensions)

“Reasonable extensions of time not exceeding one year may be approved by the director of community development by miscellaneous plan permit if it is determined that there have been no changes of circumstances or that no substantive changes have been made to the application since the permit was approved. Extensions are only valid if approved before the pending expiration date, and are measured from that date. An extension may be approved for any time length up to a maximum of one year....”

DISCUSSION

Due to the current state of economy its likely that many discretionary planning permits (e.g. use permits) will expire. In recent years, the City has reviewed and approved numerous types and sizes of planning applications, which are not associated with a subdivision map. These permits have resulted in significant time and expense by the project applicant and staff, in addition to the time spent by Commission and Council members to review and ultimately approve projects. To facilitate future development staff has prepared an ordinance that will temporarily extend the time in which permits need to be exercised, thus when the economy turns around applicants can quickly respond.

SB 1185 extends the life of a subdivision map; however, it does not extend planning permits issued by the local governing body associated with the map, such that planning permits may expire before the associated subdivision map if a developer does not exercise the associated planning permit. The effect leaves the developer in the awkward position of having to reapply for the same or similar planning permits.

Planning permits are typically valid for one to two years (depending on permit type), and applicants may apply for a one year extension, for certain permits, subject to the review and approval of the Community Development Director. Planning permits for a specific use must be exercised or the use must commence prior to expiration of the associated planning permit in order to establish the land use entitlement. The Zoning Code further states that a use is exercised when:

- The construction of a building foundation or walls occurs;
- The dedication of land to a public entity (where applicable) occurs; or
- When the permitted use or activity begins at the subject property.

In addition to the time limit to exercise a planning permit, the Zoning Code also limits a use permitted by planning permit, once discontinued to one year, after which time the use will become null and void and a similar use must apply for a new planning permit to re-establish.

As noted above, the City has reviewed and approved numerous permits ranging from small restaurants to large scale office and residential development. Some of these approvals are nearing expiration without having been exercised and without additional extensions and these permits may expire due to the current economic conditions. In certain cases the associated subdivision map may outlive the planning application due to SB 1185. In light of the current economy and financing difficulties, City staff is recommending that the Council consider and approve the following:

- An automatic one (1) year extension for all permits approved by the Community Development Director, Planning Commission or City Council that are valid between April 1, 2009 and March 31, 2011.

- Permits which originated at a public hearing (such as Administrative, Planning Commission, Heritage Commission or City Council) and are valid between the dates of April 1, 2009 and March 31, 2011 may apply for an additional one (1) year extension beyond that allowed pursuant to Title 19 subject to review and approval by the Director of Community Development.
- Uses which have been legally established by permit pursuant to Title 19 and that have been discontinued between April 1, 2009 and March 31, 2011 are hereby allowed to be re-established within two (2) years from date of the discontinuance of the use to maintain the validity of the permit.
- For the purposes of this uncodified ordinance the term *valid* means an approved or previously approved permit which is either within its allotted permit life or approved extension within the established timeframe of April 1, 2009 through March 31, 2011. Valid permits may have the Maximum Life Span noted in Table 1 through any combination of permit life, allowed extensions, automatic extensions or additional extensions.

Permit Type	Current Code Requirements		Proposed Ordinance ¹		Maximum Life Span ³
	Permit Life	Allowed Extension(s) ²	Automatic Extension	Additional Extension ²	
MPP, TRP, DR	1 year	N/A	1 year	N/A	2 years
SDP, UP, VAR	2 years	1 year	1 year	1 year	5 years
Moffett Park Development Reserve	2 years	2 Years (1 year + 1 additional year)	1 year	1 year	6 years
Moffett Park Development Reserve with pre-payment	7 years	N/A	1 year	1 year	9 years

1. The proposed Uncodified Ordinance applies to noted permit types valid April 1, 2009 through March 31, 2011 and either within the allowed permit life or approved permit extension.
2. Project applicants must apply for an extension and receive approval prior to the permit expiration date.
3. Maximum Life Span may be acquired through any combination of permit life, allowed extensions, automatic extensions or additional extensions

For example the Fresh and Easy grocery store Use Permit Appeal reviewed and approved by the City Council on February 24, 2009 would be valid through February 24, 2011. Since the permit is valid within the established timeframe, the permit would receive an automatic one year extension extending its life to

February 24, 2012. In addition, the applicant may apply for two separate 1 year extensions, which could effectively extend the permit life to February 24, 2014. The result would allow up to 5 years to exercise the permit.

Another example, a Use Permit project approved in May 2006 would have expired in May 2008; however, the applicant applied for and was granted a 1 year extension, extending the life and validity of the Use Permit to May 2009. Since the permit was valid within the specified time frame in the proposed ordinance, the Use Permit will be valid through May 2010 and the applicant may apply for additional extension of 1 year. The result would be a Use Permit valid until May 2011.

Lastly, a Use Permit approved in March 2011 would be valid for 3 years (permit life plus the automatic extension) and the applicant may apply for two 1 year extensions, subject to review and by the Community Development Director. The Use Permit would be valid for a maximum of 5 years or until March 2016.

FISCAL IMPACT

By extending the life of these permits, development can occur with minimal delay. The City will be positively affected by being able to accommodate these developments as soon as the economy turns around.

CONCLUSION

The proposed changes will extend the life of all planning permits for one year, allow project applicants the ability to apply for an additional one year extension beyond that currently allowed in Title 19, and allow discontinued uses to re-establish with a gap of up to two years. The proposed extensions will not affect other performance or time requirements imposed or associated with the subject permit, such as Conditions of Approval. The proposed uncodified ordinance is intended to address extra/ordinary current economic conditions.

PUBLIC CONTACT

Public contact was made through publishing in the *Sun* newspaper, by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site. In addition, separate notice was sent to applicants with major projects with recent or soon to expire permits.

ALTERNATIVES

1. Adopt the uncodified Zoning Ordinance in Attachment A with suggested time frames as of April 1, 2009 through March 31, 2011.
2. Adopt an uncodified Zoning Ordinance with modified time frames or other modifications.
3. Take no action on the Zoning Ordinance.

RECOMMENDATION

Alternative 1, adopt the Uncodified Zoning Ordinance with the suggested time frame of as of April 1, 2009 through March 31, 2011.

City staff is recommending that the City Council approve the Uncodified Zoning Ordinance extending the life of planning applications and established uses to allow project applicants and property owner's time to weather the current economy. The City Council may approve additional extensions at a later date if warranted.

Reviewed by:

Hanson Hom, Director, Community Development
Prepared by: Shaunn Mendrin, Senior Planner
Reviewed by: Trudi Ryan, Planning Officer

Approved by:

Gary Luebbers
City Manager

Attachments

- A. Interim Ordinance

ORDINANCE NO. _____

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SUNNYVALE EXTENDING THE LIFE
OF SPECIFIC PERMITS WHICH ARE CURRENTLY
ACTIVE PURSUANT TO TITLE 19 (ZONING) OF THE
SUNNYVALE MUNICIPAL CODE**

WHEREAS, Title 19 (Zoning) of the Sunnyvale Municipal Code establishes permit types, specific plan districts and general procedures including approval process, life of permit and extensions, and

WHEREAS, Section 19.98.110 of the Sunnyvale Municipal Code provides that permits shall become null and void if not exercised within two (2) years from the date of approval by the final review authority except that Miscellaneous Plan Permits and Tree Removal Permits shall become null and void if not exercised within one (1) year; and

WHEREAS, Section 19.98.120 of the Sunnyvale Municipal Code allows the director of community development to approve extensions of time up to one (1) year to exercise any permit initially considered at a public hearing if requests for an extension of time are received and approved prior to the expiration of the original permit; and

WHEREAS, Section 19.98.110 of the Sunnyvale Municipal Code provides that any use that requires a permit that is discontinued for more than a year shall expire and become null and void; and

WHEREAS, Chapter 19.29 the Sunnyvale Municipal Code includes provisions for the Moffett Park Specific Plan zoning district and the Moffett Park Specific Plan development reserve and provides that permits for entitlement to development reserve square footage shall be valid for two years from the date of final approval by the approval authority and that two separate one-year extensions may be requested through the filing of a miscellaneous plan permit prior to the permit's expiration. The extension may be granted at the discretion of the director of community development; and

WHEREAS, Chapter 19.29 of the Sunnyvale Municipal Code also includes provisions for the Moffett Park Specific Plan zoning district and the Moffett Park Specific Plan development reserve and provides that an applicant may obtain an extended, seven-year entitlement by a non-refundable prepayment of a portion of the transportation impact fee applicable to the project.

WHEREAS, the City of Sunnyvale has approved numerous permits of varying scale pursuant to Title 19 of the Municipal Code. Such permits have been reviewed and approved by the director of community development, planning commission or city council. Current timelines established by Title 19 will result in the expiration of such permits within the near future or they have expired in the recent past; and

WHEREAS, due to the current economy and state of funding needed to accommodate many permits the current timeline established for these permits is an undue hardship on applicants and property owners. The City Council finds that it is desirable to extend the life of such permits.

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

Permit extensions - Uncodified Ordinance

The current economic climate caused many construction projects to be deferred until adequate financing can be secured by applicants and property owners. The current timeline established for permits issued by the City of Sunnyvale is an undue hardship on these applicants and requires interim local government assistance.

(a) All permits, approved pursuant to the provisions of the City of Sunnyvale Municipal Code, Title 19, that are valid as of April 1, 2009 through March 31, 2011, are granted an additional one (1) year in which to exercise the permit.

(b) In addition to the provisions in (a) above and all other extensions of time that are available pursuant to Title 19 of the Sunnyvale Municipal Code, any permit that was initially considered at a public hearing (administrative hearing, planning commission, heritage preservation commission or city council) and is valid as of April 1, 2009 through March 31, 2011, may be granted up to an additional one (1) year extension by the Director of Community Development if approved before the pending expiration date of the permit.

(c) All uses which have been legally established by permit pursuant to Title 19 and that have been discontinued for a period of one (1) year, with any portion of that year occurring between April 1, 2009 and March 31, 2011, and that would otherwise expire and become null and void, are hereby authorized to re-establish within two (2) years from date of the discontinuance of the use to maintain the validity of the permit.

(d) Nothing in this ordinance shall affect other performance or time requirements imposed or associated with the subject permit (Conditions of Approval).

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 3. CEQA COMPLIANCE. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2009, and adopted as an uncodified ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2009, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney