

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: July 27, 2020

SUBJECT: FILE NO. PP20-008. AN UNCODIFIED ORDINANCE OF THE CITY OF SAN JOSE EXTENDING THE TERM OF CERTAIN LAND USE PERMITS AND TREE REMOVAL PERMITS BECAUSE OF THE IMPACTS OF THE COVID 19 DECLARATION OF EMERGENCY ON DEVELOPMENT.

RECOMMENDATION

The Planning Commission voted 7-0 to recommend that the City Council approve an ordinance extending the term of certain land use permits by two years from the set expiration date, and certain Tree Removal permits by eight months from the set expiration date.

OUTCOME

Approval of the proposed uncoded ordinance would automatically extend the terms of approved development permits including tree removal permits, to facilitate future implementation of projects impacted by the current COVID-19 pandemic-induced economic downturn.

BACKGROUND

On July 22, 2020, the Planning Commission conducted a public hearing on the proposed uncoded ordinance.

Staff indicated that the proposed uncoded ordinance would extend terms of specific development permits by two years for those permits that: 1) were approved on or before March 17, 2020 and were not expired on or before March 17, 2020, or 2) were expired between March 17, 2020 and the effective date of this ordinance. The proposed ordinance would also extend the term of tree removal permits that were approved and did not expire on or before March 17, 2020 and were not expired prior to the effective date of this ordinance by eight months. Any permits approved after March 17, 2020 are not subject to this extension and set date of expiration is

established during permit issuance. Staff noted that the ordinance is uncodified because it is temporary in effect and is proposed in response to the COVID-19 emergency.

Staff clarified that the proposed ordinance will not address Tentative Map approvals which are subject to State law extensions. Staff also noted that the California legislature is currently considering Senate Bill 281 which, if signed into law, would provide a two-year extension for housing entitlements that have not already been extended by local ordinance.

Staff received one letter in support of the uncodified ordinance from the Building Industry Association which indicated that the proposed extension would provide significant relief by providing a longer development window. Another letter from Preservation Action Council of San Jose (PACSJ) opposed the automatic extension in the context of preservation of San Jose's historical buildings. At the hearing, Michael Sodergren of PACSJ commented that automatic extensions and delays in projects could impact San Jose's historic fabric. He noted that while it is reasonable to assume impacts from the pandemic and that the City should work with developers to extend projects during the pandemic, a four-year pass without justifying the delay must not be given. Mr. Sodergren also stated that the ordinance should not be exempt from CEQA because the permit extensions have an impact on the environment.

Commissioner Caballero requested staff to clarify the extension timeline. Staff noted that the ordinance would grant a two-year extension to permits that had not expired as of the beginning of the shelter in place on March 17, 2020 and would also reactivate and extend any development permit that expired between that date and the adoption of this ordinance.

Commissioner Oliviero made a motion to recommend approval of the staff recommendation. Commissioner Torrens seconded the motion.

The Commission voted 7-0 to recommend that the City Council approve staff recommendation.

ANALYSIS

A complete analysis of the proposed uncodified ordinance changes is contained in the attached Planning Commission Staff Report; it provides the analysis and coordination conducted on the proposed item. The proposed ordinance is also attached.

EVALUATION AND FOLLOW-UP

If the proposed uncodified ordinance is approved by Council, the ordinance will take effect 30 days after its final adoption.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals as it facilitates reduction in resources by averting unnecessary repetition of the development review process and supports job creation by extending project viability. The development permit approvals typically involve substantial investment of time and effort, and this change responds to current circumstances related to social distancing requirements and economic hardships because of the COVID-19 emergency declaration.

PUBLIC OUTREACH

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice, including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff posted the hearing notice, staff report, and draft ordinance on the PBCE website. Staff has been available to discuss the proposal with interested members of the public.

COORDINATION

The preparation of the proposed ordinance and this memorandum were coordinated with the City Attorney's Office.

CEQA

The proposed uncodified ordinance, PP20-008, is exempt pursuant to CEQA Guidelines Section 15061(b)(3), which states that if it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment, then the activity is not subject to CEQA.

/s/

Rosalynn Hughey, Secretary
Planning Commission

For questions, please contact Michael Brilliot, Deputy Director, Planning Division at michael.brilliot@sanjoseca.gov.

Attachment: [Staff Report to Planning Commission](#)