

**CITY OF ST. HELENA
PLANNING DEPARTMENT 1480 MAIN STREET-ST. HELENA, CA 94574
PLANNING COMMISSION**

DECEMBER 17, 2013

AGENDA ITEM: 10.2

City of St. Helena initiated **ZONING ORDINANCE TEXT AMENDMENT** amending Title 17, Chapter 17.08, Section 17.08.120 of the Municipal Code to **PROVIDE FOR PROCEDURES TO DETERMINE WHETHER LAND USE PERMITS OR OTHER DISCRETIONARY DEVELOPMENT APPROVALS EXPIRE OR LAPSE FOR FAILURE TO TIMELY ESTABLISH THE PERMITTED USE.**

PREPARED BY: Greg Desmond, Interim Planning Director and Bob Pittman, City Attorney

SUMMARY

Currently, the municipal code provides that except for a general plan amendment, zoning ordinance text amendment, rezoning or amendment of a specific plan, a permit (i.e., use permit, variance, etc.) or other discretionary approval shall be valid for a period of one year from the date such approval becomes effective or for as long as any subdivision map concurrently approved is valid, whichever is longer.

The purpose of this amendment is to establish a procedure for the City to enforce its ordinance imposing time limits on discretionary land use permits and approvals. The purpose of imposing such limits is to prevent the reservation of land for future purposes when the permittee has no good faith intent to presently commence upon the proposed use.

In enforcing this requirement, the City desires to act in accordance with procedures that are consistent with appellate decisions such as *Community Development Commission v. City of Ft. Bragg* (1988) 204 Cal.App.3d 1124 that hold that discretionary approvals may not be deemed to have expired or lapsed without affording the holder of the approval due process to establish whether the holder has acted diligently and in good faith to establish the approved use.

PROPOSED AMENDMENTS

The following is the amended section with existing language in black, proposed new language in purple text and language to be removed in ~~red-strike-out~~ text.

17.08.120 Term of permits and approvals.

Except for a general plan amendment, zoning ordinance text amendment, rezoning or amendment of a specific plan, a permit (i.e., use permit, variance, etc.) or other discretionary approval authorized by this title shall be valid for a period of one year from the date such approval becomes effective or for as long as any subdivision map concurrently approved is valid, whichever is longer. A permit or other discretionary approval shall become effective the day following the expiration of the appeal period if no appeal is filed or the day following the denial of an appeal. The following shall apply to the expiration of permits or other discretionary approval:

A. A permit or other discretionary approval shall remain valid as long as the use authorized by the permit is lawfully established prior to the expiration of the permit, or the holder of the permit or other discretionary approval has timely established to the satisfaction of the planning director a good faith, diligent effort to lawfully establish the use pursuant to the procedures set forth by this section.

B. A permit or other discretionary approval shall remain valid as long as there is a valid building permit for construction authorized by the permit. If the building permit expires, or if no building permit has been issued for construction authorized by the permit or other discretionary approval during the one year that the permit is valid, the permit or other discretionary approval shall become null and void unless an extension of time has been granted pursuant to Section 17.08.130, or the holder of the permit or other discretionary approval has timely established to the satisfaction of the planning director a good faith, diligent effort to lawfully establish the use pursuant to the procedures set forth by this section.

C. Any permit or discretionary approval which authorizes the establishment of any use which has been exercised by receiving a building permit or a zoning compliance determination shall expire and become null and void when such use has ceased for a period of six consecutive months, ~~whether or not it is the intent to abandon the use;~~ unless the holder of the permit or other discretionary approval has timely established to the satisfaction of the planning director a good faith, diligent effort to continue the use pursuant to the procedures set forth by this section.

D. If only a portion of a project is completed pursuant to a permit authorizing its development, the permit or other discretionary approval for the balance of the project shall expire if no substantial action is taken toward completion of the balance of the project in a one-year period.

E. No later than thirty (30) days prior to each annual expiration of any permit or other discretionary approval, the holder of such permit or discretionary approval shall provide the planning director with information sufficient for the planning director to determine whether the holder of the permit or other discretionary approval has attempted to establish or continue the approved use diligently and in good faith.

F. After having reviewed the submittal, the planning director shall determine whether the permit or other discretionary approval should be deemed to have expired or lapsed pursuant to this Section. The planning director's determination shall be based on factors including, without limitation, efforts to obtain financing, creation of architectural or engineering plans, drawings and specifications, or letting or negotiation of contracts necessary to establish the use.

G. If the planning director determines that the holder of the permit or other discretionary approval has not attempted to establish or continue the approved use diligently and in good faith, the planning director shall notify the holder of the permit or other discretionary approval in writing of that determination, and that the permit or other discretionary approval is expired, lapsed and null and void. The planning director's determination that the permit or other discretionary approval has expired may be appealed to the Planning Commission by the holder of the permit or other discretionary approval. If the planning director determines that the holder of the permit or other discretionary approval has attempted to establish or continue the approved use diligently and in good faith, the planning director shall notify the holder of the permit or other discretionary approval in writing of that determination, and that the permit or other

discretionary approval has been extended for an additional period. Any such extension shall be for a period of one year and shall be subject to the requirements set forth in subsections (A) and (B) of this section for establishing the use within that time period and the requirements set forth in subsection (E) for submitting additional information prior to the expiration of any such extension. The planning director's determination to extend the permit or other discretionary approval shall be final.

H. If the holder of a permit or discretionary approval fails to timely submit the evidence required by subsection (E) of this section and said holder has not otherwise established the use authorized by such permit or other discretionary approval, the planning director shall be deemed to have determined that the holder of the permit or other discretionary approval has not attempted to establish or continue the approved use diligently and in good faith and that the permit or other discretionary approval is expired, lapsed and null and void as provided in subsection (G) of this section.

ANALYSIS: CEQA

The staff finds that the action to adopt this Zoning Ordinance Text Amendment is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the action is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3). The activity is covered by the general rule which exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment.

STAFF COMMENTS / RECOMMENDATIONS

Staff recommends that the Planning Commission open the public hearing and receive public testimony, identify any specific issues or amendments, and make recommendations to City Council.

PLANNING COMMISSION ACTION

1. Determine that the ordinance amendments are categorically exempt from the requirements of the California Environmental Quality Act (CEQA pursuant to CEQA Guidelines Section 15061(b)(3).
2. Open public hearing, take testimony, amend as necessary and recommend City Council approval of a Zoning Ordinance Text Amendment to Section 17.080.120.

ATTACHMENTS

None