



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Joseph Horwedel

SUBJECT: See Below

DATE: May 26, 2009

Approved

Date

COUNCIL DISTRICT: City-Wide
SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 24 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 24.02.345 AND 24.02.355 TO EXTEND THE PERIOD BEFORE BUILDING PLAN CHECK SUBMITTAL OR APPROVAL MUST BE UPDATED TO MEET THE CURRENT BUILDING CODES; AND TO INCREASE THE PERIOD OF EXTENSION TIME THE CHIEF BUILDING OFFICIAL IS AUTHORIZED TO APPROVE FOR BUILDING PERMITS AND PLAN CHECK SUBMITTALS

RECOMMENDATIONS

Approval of an Ordinance to amend Chapter 24.02 of Title 24 of the San Jose Municipal Code to extend the period before building plan check submittal or approval must be updated to meet the current building codes; and to increase the period of extension time the Chief Building Official is authorized to approve for building permits and plan check submittals.

OUTCOME

Approval of the Ordinance will:

1. Authorize the Chief Building Official (CBO) to issue permits for building projects that comply with the 2001 California Building Standards up to December 31, 2009; and
2. Allow the CBO to grant extensions that will increase the maximum extension time period of certain building permits issued by an additional 180 days and building plans approved or under review by an additional 180 days. This action will increase the maximum extension time period for building permits from 360 days to 540 days and for plan check submittal or approval from 360 days to 540 days.

BACKGROUND

The building application permit process generally involves two major phases: first is a review of the building plans, and the second phase is the issuance of a building permit. The building permit applicant submits the application, plans, specifications, calculations and other data to the Department of Planning, Building and Code Enforcement (PBCE). These are reviewed and approved by PBCE Building Division staff. If the submittals are in conformance with the requirements of Title 24 of the San Jose Municipal Code (SJMC) and other pertinent codes, laws and ordinances, the Building Division issues a building permit to the applicant. However, as defined in the SJMC, prior to issuance of the building permit, the Building Division collects plan check fees, permit fees, park fees and construction taxes.

Plan Checks

Currently, two provisions of Chapter 24.02 of Title 24 of the SJMC place limits on the time period for the validity of the approval of building plans. Subsection C of Section 24.02.355 provides that a plan check submittal or approval shall expire if a building permit is not acquired within 180 days from the date of submission, and one additional extension of 180 days if the applicant can demonstrate that circumstances beyond their control prevented them from taking action to pull their permit. Subsection A of Section 24.02.355 requires that building permits issued one year or more after January 1, 2008 must be updated to meet the 2007 California Building Standards (current building code).

Permits

Sections 24.02.340 and 24.02.345 govern permit expiration and permit extensions. Once a building permit is issued, the permit holder must begin work on the project within 180 days or the permit will expire. The permittee may apply for a 180 day extension, and under certain circumstances as described above for plan check extensions, for one additional 180 extension.

California Building Code Revisions

California enacts statewide building standards on a three year cycle. The latest version of the California Building Code (CBC) went into effect as of January 1, 2008. Building permit applications filed prior to that date were plan checked under the prior version of the CBC that is sometimes referred to as the 2001 Code, because during the period 2001 to 2007, California simply re-adopted and continued to use the 2001 version of the code.

Due to the current severe economic conditions, building permit applications for ninety six (96) projects submitted prior to January 1, 2008, and were designed to the 2001 California Building Standards (old building code) for which plan check submittal has been approved or is close to being approved, have been unable to obtain their permits by December 31, 2008. Because of the applicants' financial inability to start their projects, their plan checks and building permits have expired or will soon expire. Unless San Jose's code provisions are amended, these projects will have to be redesigned to meet current building codes. .

In the Mayor’s March 2009 budget message, the City Manager was directed to study and develop a program for automatic extensions of land use entitlements for a set and appropriate time period. After conducting an analysis of alternative options to respond to this direction, staff also conducted a survey of other Bay Area jurisdictions and Los Angeles and San Diego. Summary of survey findings is displayed below:

<i>Jurisdiction</i>	<i>Latest Date that Building Permits for Projects Designed to the 2001 CBC can be Issued</i>	<i>Plan Check Period</i>	<i>Building Permit Expiration</i>
Palo Alto	December 31, 2008 may be extended at discretion of the CBO	360 days may be extended at discretion of the CBO	180 days may be extended at discretion of the CBO
Los Gatos	December 31, 2008	360 days may be extended at discretion of the CBO	180 days may be extended at discretion of the CBO
Sunnyvale	December 31, 2008 may be extended at discretion of the CBO	360 days may be extended at discretion of the CBO	360 days may be extended at discretion of the CBO
Milpitas	December 31, 2008	360 days	360 days
City of Santa Clara	December 31, 2008	360 days	180 days
San Francisco (project valuation ≤ \$1 M)	December 31, 2009 may be extended at discretion of the CBO	720 days	900 days
San Francisco (project valuation > \$1 M)	December 31, 2009 may be extended at discretion of the CBO	1,080 days	1,260 days
Los Angeles	June 30, 2010	900 days	900 days
San Diego	June 30, 2009	540 days	540 days
San Jose (proposed)	December 31, 2009	720 days	720 days

ANALYSIS

The Administration is recommending that the relevant code sections be amended to allow certain projects to have their approvals extended so that the projects do not have to be redesigned to meet the latest version of the California Building Code.

The building plan check and building permit expiration sections in Title 24 of the SJMC encourages timely construction of building projects in order to ensure that construction is completed in accordance with the latest state construction codes.

Projects designed to the old building code for which permits were not obtained prior to January 1, 2009 have to be redesigned to comply with the current building code. Additionally, building permits of projects that did not commence construction or that suspended on-going construction have expired or are at the risk of expiring. There is concern that the need to re-file for plan check or obtain a new permit will impose additional costs on projects that are already struggling to overcome the economic challenges due to the economic downturn.

Essentially, the difference between the old and current building codes is that the current codes are more performance-based and generally allows the designer more flexibility in design while maintaining equivalent standards for health and safety as the old code. There are few exceptions where prescriptive requirements have become more stringent in the current code when compared to the old code.

Disabled Access Standards

However, there are updated standards that pertain to accessibility of buildings and sites for persons with disabilities that staff is recommending be applied to any project seeking an extension. At the time staff is considering an extension under the proposed ordinance, it will review the plans to determine if there have been any changes to accessibility requirements. The proposed ordinance will allow the Building Official the discretion to require changes to the new access standards.

Proposed Ordinance Provisions

The proposed ordinance will make two changes. First it will increase the length of the discretionary plan check extension period from 180 days to 360 days, and the permit extension period from 180 days to 360 days. The second change will delay the absolute latest date for permit issuance under the former code from December 31, 2008 to December 31, 2009

EVALUATION AND FOLLOW-UP

The approval of this ordinance will not impact current performance measures.

POLICY ALTERNATIVES

PBCE staff considered and evaluated three options.

Alternative One: Make no changes to the current permit expiration sections in Title 24 of the SJMC.

This alternative will (1) cause projects designed to the old codes to be redesigned to comply with the new codes; (2) require the applicant to re-file for plan check; and (3) allow building permits to expire. This alternative was not selected because of the burden and costs it will have on certain projects; the additional workload it will impose to the City's building plan check staff; and the delay in construction that will result once financing become available.

Alternative Two: Approval of an ordinance that will grant unlimited extensions of building plan check submittals and permits.

While this alternative may allow for the extension of building plan check submittals and permits if the economic slowdown extends beyond the time period for extensions provided in the proposed ordinance, it may result in buildings being built to outdated building codes since the State updates the building codes every three years. This alternative was not selected because it does not balance the City's desire to preserve building plan check submittals and permits so projects can be implemented in a timely manner when the economy rebounds, with the City's interest in ensuring that new buildings are not constructed with outdated building codes.

Recommended Alternative:

In consideration of the impact of the economic environment on pending projects, and factoring in anticipated workload and staffing resources, the following is recommended:

The proposed ordinance will: (1) authorize the CBO to issue permits for projects designed to the old building codes up to December 31, 2009; (2) allow the CBO to grant an additional 180 day extension of plan check submittals or approvals by increasing the maximum time period of the second extension from 180 days to 360 days; and (3) allow the CBO to grant an additional 180 day extension of building permits by increasing the maximum time period of the second extension from 180 days to 360 days.

PUBLIC OUTREACH/INTEREST (Mandatory)

Public Outreach for this proposal complies with the City Council's Public Outreach Policy. The proposed ordinance has been posted in the City's web site (www.sanjoseca.gov/building) and will be discussed at the Construction Roundtable meeting on April 29, 2009. Additionally, upon approval of the ordinance, staff will inform all building permit applicants impacted by this ordinance via email.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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These modes of notification should only supplement outreach efforts undertaken or are planned to be undertake. Additional outreach should be noted as a result of the determination that the item was of “Significant Public Interest”.

COORDINATION

The relevant sections of the proposed ordinance were coordinated with the Fire and Public Works departments. This memorandum and proposed ordinance wee coordinated with the City Attorney’s Office.

CEQA

Exempt.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Edward Tolentino at 408-535-7791.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 24.02.340 AND 24.02.355 OF CHAPTER 24.02 TITLE 24 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW FOR THE FURTHER EXTENSION OF PLAN CHECKS AND BUILDING PERMITS

WHEREAS, on June 16, 2009, the Department of Planning, Building and Code Enforcement presented report demonstrating the need, based upon extraordinary financial circumstances, for further extension of plan checks and building permits that had been based on the prior edition of the California Building Code; and

WHEREAS, the City Council desires to provide relief to applicants and permittees that are undergoing financial difficulties in completing their projects by allowing for the extension of their plan checks and permits issued under the prior edition of the CBC by allowing for the possibility of the extension of those permits to a date no later than December 31, 2009; and

WHEREAS, this Ordinance was found to be categorically exempt under the provisions of the California Environmental Quality Act of 1970, as amended, on May 18, 2009.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 1. Section 24.02.345 of Chapter 24.02 of Title 24 of the San Jose Municipal Code is amended to read as follows:

24.02.345 Permit Time Extensions

- A. A permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit, if the permittee can demonstrate that, for good and satisfactory reasons, it is not feasible to commence the work within the required time.
- B. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days upon payment of appropriate fees and a written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.
- C. Permits shall not be extended more than once, except that, the Building Official may approve a maximum of one additional extension of ~~one hundred and eighty~~ Three Hundred Sixty (180360) days when the applicant demonstrates that special unusual circumstances exist. In this case, the Chief Building Official may require that additional fees be paid and plans be revised to partially or fully comply with the current codes.
- D. Permit time extension when there are multiple permits on a single project must comply with all of the following:

1. For the purpose of permit expiration, all permits associated with a single project (i.e., same address, suite, portion of building) will be considered as one project. If an inspection has been performed on any of the permits for the project, all permits will be considered to have been extended for an additional 180 days. However, no permit more than three years old may be extended by the extension of another permit on the same project.
2. In order to extend a permit described in subsection 1, above, one of the permits must be extended subject to aforementioned limitations and payment of required fees. Additionally, an inspection indicating that the applicant has made substantial progress must be requested and performed on the permit that has been extended within 180 days, from the date of permit issuance.

Section 2. Section 24.02.355 of Chapter 24.02 of Title 24 of the San Jose Municipal Code is amended to read as follows:

24.02.355 Plan Check Renewals and Extensions

- A. All plan check submittals and approvals must be updated to meet this Title when the permit is issued one year or more after January 1, 2008~~9~~.
- B. When a plan check submittal or approval has expired, then it must be resubmitted and appropriate fees paid for review for conformance with the current codes
- C. Plan Check Time Extensions for one-building projects must comply with the following.
 1. A plan check submittal or approval may be extended one time for an additional 180 days by applicant making a written request to Building Official and paying appropriate fee.
 2. Plan check submittal or approval for one-building projects shall not be extended more than once, except that, the Building Official may approve an extension of not more than ~~one hundred and eighty~~ Three Hundred Sixty (180360) days when the applicant demonstrates that circumstances beyond the control of applicant have prevented action from being taken. In this case, the Chief Building Official may require that additional fees be paid and plans be revised to partially or fully comply with the current codes.

PROPOSE)

- D. Plan Check Time Extensions for ongoing multi-building projects must comply with all of the following:
1. A plan check submittal or approval may be extended one time for an additional 180 days by applicant making written request to Building Official and paying appropriate fees.
 2. If a permit for at least one building has been issued, then the plan check approval is valid for 180 days from the latest permit issuance date, subject to the above limitations. The plan check approval may be extended for an additional Three Hundred Sixty (~~180~~360) day period by applicant making a written request to Building Official and paying appropriate fees, subject to the above limitations.
 3. Plan check submittal or approval for multi-building projects shall not be extended more than once, except that, the Building Official may approve an extension of not more than Three Hundred Sixty (~~180~~360) days when the applicant demonstrates that circumstances beyond the control of applicant have prevented action from being taken. In this case, the Building Official may require that additional fees be paid.

PASSED FOR PUBLICATION of title this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk