



# City of Sunnyvale

## Agenda Item

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20-0436

Agenda Date: 5/11/2020

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### REPORT TO PLANNING COMMISSION

#### **SUBJECT**

Recommend that the City Council Introduce an Uncodified Ordinance to Authorize One-Year Extensions of Land Use Entitlements and Legal Non-Conforming Uses Due to the COVID-19 Emergency, and Find that the Action is Exempt from the California Environmental Quality Act

#### **BACKGROUND**

Permits issued under Title 19 of the Sunnyvale Municipal Code (SMC), and comparable provisions of the Moffett Park Specific Plan and the Peery Park Specific Plan, expire if the entitlements granted by the permit are not exercised within two years from the date of decision (except that miscellaneous plan permits and tree removal permits expire after one year). To “exercise” a permit is defined in SMC Section 19.12.060(9) as completion of a building foundation or walls, dedication of land or easements to a public entity, actual commencement of the authorized use, or completion of significant improvements to the property. SMC Section 19.98.120 allows the Director of Community Development to extend this period of time for a maximum of one year.

Additionally, SMC Section 19.98.110 provides that permits authorizing a use of property will expire if the use is discontinued for more than one year and SMC Section 19.50.100 provides that the right to continue a legal non-conforming use is extinguished if the non-conforming use is abandoned for either six months (in the case of unenclosed uses) or one year (in the case of a use of a building).

On March 16, 2020, in response to the spread of COVID-19, the Health Officer of the County of Santa Clara released an order directing all individuals living in the County to shelter at their place of residence except to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and government services. Further, the order directed all businesses and governmental agencies to cease non-essential operations at physical locations in the County, including non-essential construction activities.

The County’s March 16 order has been updated in response to the flattening of the curve of COVID infections, and as of May 4, 2020, construction activity is allowed to continue. This aids projects already under construction, but it is still expected that projects not yet in construction may experience delays due to funding issues and that some projects under construction may also be delayed due to funding issues.

#### **EXISTING POLICY**

##### **Sunnyvale General Plan**

##### **CHAPTER 3 - LAND USE AND TRANSPORTATION ELEMENT**

##### **Goal LT-11 - Supportive Economic Development Environment**

Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.

## **CHAPTER 2 - COMMUNITY VISION**

Policy CV - 1.2 - Provide accurate and thorough information in a timely manner to ensure that community members have an opportunity to respond effectively.

### **ENVIRONMENTAL REVIEW**

The action being considered is not a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

### **DISCUSSION**

The financial impacts of the COVID-19 emergency are uncertain; the shut-down has already resulted in widespread unemployment and many experts are predicting a period of global economic recession. This situation may lead to loss of financing for some developers (which may have otherwise been in place prior to the shelter-in-place order), or the necessity to delay the start of construction on an entitled project. These financial hardships may also cause some businesses operating as legal non-conforming or with a Use Permit to close temporarily or permanently and it may take longer than the one-year period for a replacement business to open. In the case of projects with approved Use Permits, under the existing ordinance, if the property was vacant beyond the time allowed a new Use Permit would be required prior to the tenant occupying the vacant space.

Additionally, the Order has instituted restrictions on what is considered essential business. Examples for the City include:

- Reduced functionality of the One Stop Permit Center, including a hiatus in the issuance of new building permits;
- Cancellation of Planning Commission and Heritage Preservation Commission meetings in March and early April;
- Postponed development application hearings scheduled for the City Council; and
- Paused intake of major development planning permit applications (now being accepted again electronically).

Under these circumstances, it may prove difficult for applicants with entitled projects to exercise their entitlement permit within the two years allowed for exercising a planning permit. The shelter-in-place orders essentially halted all construction activity within the City with limited exceptions for essential public works projects, repairs and maintenance necessary for health and safety, and multifamily residential projects that have at least 10% affordable units. The April 29, 2020 Santa Clara County Order permits construction, but only pursuant to Construction Safety Protocols included in appendices to the Order.

Expiration of permits for a discontinued use and the need to apply for a new permit to re-establish operations would require staff resources and could present a potential time and financial hardship on the applicant to go through the public hearing process. Therefore, extending the time during which a use may be discontinued would allow businesses flexibility in occupying previously approved spaces, and give the City additional time to process associated tenant improvement permits. Staff is recommending an automatic extension of one additional year for any non-exercised permit valid

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during the COVID-19 emergency, and the option of one additional one-year extension if conditions warrant.

The Zoning Code allows legal non-conforming uses to continue; however, if the use is abandoned or is discontinued (for specified time frames), subsequent use of that land needs to comply with the provisions of Zoning Code. The rationale is for small gaps in time in the continuity of legal non-conforming uses with the expectation that eventually a non-conforming use can be abated. The extra burden of the shelter in place order may prematurely close these uses. Staff recommends, in the case of the legal non-conforming uses, if discontinued after March 16, 2020 (the date of the first Santa Clara County shelter-in-place order), the time periods stated in SMC Section 19.50.100 (six months for an unenclosed use and one year for uses within a building) will be tolled until the termination of the local COVID-19 state of emergency or one year, whichever is shorter.

The proposed ordinance is similar to an ordinance that the Sunnyvale City Council adopted in 2009 during the last economic recession. The action extended all land use permit entitlements for an additional one year following the date of decision (two years total) and allowed the Director of Community Development to grant permit extensions for up to one additional year beyond any other extensions. Finally, the proposed ordinance will also give businesses and property owners more time to maintain their existing permit for a previously permitted or legal non-conforming use.

### **FISCAL IMPACT**

Adoption of the proposed ordinance as described in this report will have no direct fiscal impact on the City. Extension of the expiration dates will facilitate development projects to proceed more quickly without having to go through the Planning entitlement process if a permit expires.

### **PUBLIC CONTACT**

Notice of the Planning Commission and City Council Public Hearing is published in the *Sun* newspaper, the Agenda is posted on the City's official notice bulletin board, and the Staff Report and Agenda are posted on the City of Sunnyvale's Web site.

### **ALTERNATIVES**

Recommend that the City Council:

1. Introduce an Uncodified Ordinance to Authorize One-Year Extensions of Land Use Entitlements and Legal Non-Conforming Uses Due to the COVID-19 Emergency (Attachment 1 to the report), and Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).
2. Introduce an Uncodified Ordinance with modifications.
3. Do not introduce the ordinance.

### **STAFF RECOMMENDATION**

Recommend that the City Council Choose Alternative 1: Introduce an Uncodified Ordinance to Authorize One-Year Extensions of Land Use Entitlements and Legal Non-Conforming Uses Due to the COVID-19 Emergency (Attachment 1 to the report), and Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

The adoption of the proposed ordinance to extend land use entitlements and the duration of time that a property with a valid Use Permit can be vacant is key in showing that the City is being responsive

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to the community, and permit expirations. Adopting the proposed ordinance to extend the expiration duration of entitlement permits allows the City to issue building permits at the speed that is possible under the circumstances and provides additional time for property owners to respond to changing conditions. If the project is no longer viable, they can choose to abandon the permit and submit a new application. The extension on the timeline for which a Use Permit or legal non-conforming use remains valid for a property in vacancy will help to maintain occupancy even if turnover occurs due to financial hardships.

Prepared by: Amber Blizinski, Principal Planner

Reviewed by: Andrew Miner, Assistant Director, Community Development

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Draft Ordinance
2. Link to the March 16, 2020 Order
3. Link to the March 31, 2020 Order
4. Link to the April 29, 2020 Order