

# *City of Brisbane*

## *Planning Commission Agenda Report*

TO: Planning Commission For the Meeting of 10/13/11

FROM: Tim Tune, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: **STUDY SESSION:** Planning and Subdivision Permit Expirations, Extensions and Revocations; Appeal Periods; Hearing Deadlines; and Notification Requirements

**RECAP:** At the September 8<sup>th</sup> study session, the Commission requested that staff look into situations in which administrative approval of planning permit extensions might be appropriate. Consistent timing of expiration for various types of planning permits was also encouraged.

**EXPIRATIONS:** As shown in the table on the following page, the terms for which planning and subdivision permits remain valid vary. While the Brisbane Municipal Code sets a 1-year term as standard for Use Permits and Variances, 2 years is the term for Design Permits, Planned Development Permits and Tentative Maps.

Given current economic conditions, not even a 2-year term has proven long enough to line up financing, get a Building Permit issued and commence construction, particularly given the restriction on grading during the 6 months of the year designated as the “wet season” (October 15th through April 15th per Brisbane Municipal Code Sections 15.01.040.41 & 15.01.270). Then there are difficulties in trying to keep up with Building Code changes, since new editions typically come out in 3 to 6 year cycles. Brisbane Municipal Code amendments may occur more frequently, but enacting ordinances will usually specifically exempt projects that have received planning approvals but have not yet obtained Building Permits.

Staff suggests that a consistent 3-year term be set for planning permits, as well as tentative maps. Three years is the maximum length of time tentative maps may remain valid, if the 2 year minimum standard set by the Subdivision Map Act is lengthened by local ordinance [Government Code Sections 66452.6(a) & 66463.5, attached]. To provide flexibility, the approving body should be authorized to impose a different term as appropriate. For example, the Planning Commission may wish to keep Use Permits for outdoor uses on a short leash, while uses inside an existing building might be permitted to continue in perpetuity. Staff would also suggest that the Zoning Ordinance provide for a standard one-time 2-year extension, for a total potential term of 5 years, the maximum currently allowed for Design Permits and Planned

TIME LIMITS		
Permit	Expiration	Extension
Temporary Use Permit	45 days per BMC Section 17.32.020.B.4	No provision
Sign Permit	1 year to install as condition of approval	No provision
Use Permit	1 year to establish per BMC Section 17.48.010 or longer as condition of approval	No provision
Variance	1 year to build per BMC Section 17.48.010 or longer as condition of approval	No provision
Design Permit	2 years to begin construction per BMC Section 17.42.060.A	Up to a total of 3 years per BMC Section 17.42.060.B
Planned Development Permit	2 years to begin construction per BMC Section 17.28.110.A	Up to a total of 3 years per BMC Section 17.28.110.B
Tentative Parcel or Subdivision Map or Vesting Tentative Map	2 years to file Final Map per BMC Sections 16.16.270 or 16.42.080 [3 years permissible per Government Code Section 66452.6(a)(1) & 66463.5; see Section 66452.6 for additional provisions]	By 1 year at a time per BMC Sections 16.16.270 or 16.42.080 [up to 6 years permissible per Government Code Section 66452.6(e)]; occasional automatic extensions by State law (most recently per Government Code Section 66452.23)
Interim Use Permit	Up to 5 years per BMC Section 17.41.080.A, longer subject to City Council approval per BMC Section 17.41.080.B	Up to a total of 5 years per BMC Section 17.41.080.D
Wireless Telecommunications Facilities Administrative Permit	None specified in BMC	No provision
Grading Permit Review	None specified in BMC	No provision
Secondary Dwelling Unit Permit	None specified in BMC	No provision

Development Permits. Sign Reviews, Secondary Dwelling Unit Permits and the like, because they are approved administratively, should be dealt with separately.

The various permits approved by the Planning Commission for a project should run concurrently, particularly if a Tentative Map is involved. Government Code Section 65863.9 specifies that any Planned Development Permit approved by a local agency in conjunction with a Tentative Subdivision Map shall not expire sooner than the approved Tentative Map or any extension thereof, unless specified otherwise. In response to economic downturns, the State occasionally adopts legislation that automatically extends the life of Tentative Parcel Maps, Tentative Subdivision Maps and Vesting Tentative Maps (most recently via AB 208 adopting Government

Code Section 66452.23). Although this legislation also extends any related State approvals, it does not extend any other local approvals. In addition, Development Agreements adopted per Government Code Sections 65864-65869.5 may include a provision that the related planning permit approvals shall have the same expiration date as the Development Agreement.

The goal line for planning permits to reach before expiration currently also varies by permit type. Per BMC Section 17.48.010, Use Permits logically expire “if not used” before the deadline. Design Permits expire “unless prior to such expiration date a building permit for the structure which is the subject of the permit is issued and construction is commenced” per BMC Section 17.42.060.A. BMC Section 17.28.110.A identifies alternative endpoints for Planned Development Permits as “a building permit is issued and construction is commenced on the site or structure constituting the subject of the PD permit, or a certificate of occupancy is issued for such site or structure, or, if no building permit or certificate of occupancy is required, the use or activity authorized by the PD permit is commenced upon the site.” The standard condition of approval staff recommends states that a Variance shall expire “if a building permit has not yet been issued for the approved project or if a building permit has been issued but allowed to lapse.”

Staff suggests that all planning permits involving construction refer to the same points in the development timeline in order to set consistent deadlines. To avoid the issues raised by the project-in-process at 3836 Bayshore Boulevard, staff suggests that planning permits remain valid as long as a building permit is being diligently pursued through the application, issuance and inspection process. Per 2010 California Building Code Section 105.3.2 (attached), building permit applications are deemed abandoned if the permit has not been issued within 180 days, “unless such application has been pursued in good faith;” except that the building official may grant one or more 90-day extensions. Per CBC Section 105.5 (attached), once a building permit is issued, it “shall become invalid” unless work is begun within 180 days or if the work is suspended or abandoned for 180 days. BMC Sections 15.12.130.B & C (attached) have amended the Building Code to set 1-year limits on single-family residential building permits and 2-year limits on all other building permits, with 1-year extensions in either case subject to approval by the building official. Accordingly, staff suggests:

Insert the following into BMC Chapter 17.46, Variances (deleting BMC Section 17.48.010); and in place of BMC Section 17.42.060.A, regarding Design Permits, and BMC Section 17.28.110.A, regarding Planned Development Permits:

*Variances/Design Permits/Planned Development Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if*

*the Building Permit issued for the project becomes invalid; except that a Variance/Design Permit/Planned Development Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Variance/Design Permit/Planned Development Permit shall have the same expiration date as the Development Agreement.*

Insert the following into BMC Chapter 17.40, Use Permits (deleting BMC Section 17.48.010):

*Use Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if the approved use has not yet been established; except that a Use Permit issued in conjunction with a Variance, Design Permit, Planned Development Permit and/or Tentative Map shall expire concurrently with the Variance, Design Permit, Planned Development Permit or Tentative Map, including any automatic extensions thereof through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Use Permit shall have the same expiration date as the Development Agreement.*

Revise BMC Section 16.16.270, Time Extensions of Approved Tentative Maps, to read:

16.16.270 – *Expiration and Time extensions of approved tentative maps.*  
An approved or conditionally approved tentative map shall expire *three (3) years* ~~twenty-four (24) months~~ after its approval or conditional approval *or as provided by state law.* The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map shall be filed without first processing an application for a new tentative map. Upon application by the subdivider to the planning director, filed prior to the expiration of the approved or conditionally approved tentative map, the time within which such map expires may be extended by the planning commission. No extension period shall exceed *two (2) years* ~~twelve (12) months~~.

**ADMINISTRATIVE APPROVAL OF EXTENSIONS:** There are already on the books a number of different planning permits that may be approved administratively (see table on following page). If the Planning Commission does not want to have to review all extensions of planning permits, that duty could be delegated to the Community Development Director acting as Zoning Administrator (see BMC Chapter 17.56). The Zoning Administrator already has the authority to approve applications for certain amendments or modifications to Design Permits per

ADMINISTRATIVE APPROVAL PROCESS			
Title	Permit	Public Hearing	Notice
Planning Director	R&D uses in SP-CRO District not requiring a Use Permit per BMC Sections 17.18.020.K & 17.18.035.A, B & C	No	To City Council of right to require hearing (15 day appeal period)
Zoning Administrator	Wireless telecommunications facilities per BMC Sect. 17.32.032.D; Solar Energy System Height Exceptions per BMC Sect. 17.32.060.C	No	To property owners within 300 ft. to submit written comments within 10 days (15 day appeal period)
Zoning Administrator	Minor Modifications to lot area, coverage, setback and fence height regulations per BMC Sect. 17.56.090	No	To property owners within 75 ft. of action taken and right to appeal within 15 days
Zoning Administrator	Sign Permits for illuminated signs, etc., per BMC Tables 17.36.020, 17.36.020A-1 & 17.36.020.A-2	Yes	To owners and occupants of properties on both sides and across the street 10 days before hearing (15 day appeal period)
Zoning Administrator	Design Permit amendments per BMC Sect. 17.42.070.A; Variances per BMC Sect. 17.56.050; Interim Use Permit extensions per BMC Sect. 17.41.080.D; Accessibility Improvement Permits per BMC Sect. 17.32.060.D, 17.32.070.A.1.f & 17.32.080; Large Family Day Care Homes per California Health & Welfare Code Sects. 1597.46(a)(3) & 1597.465	Yes	To owners of property within 300 ft. 10 days before hearing (15 day appeal period)

BMC Sections 17.42.070.A.1 & 2. Approving an extension would be similar to amending a permit condition specifying when the permit expires.

If the standard initial term for planning permits is to be 3 years, staff suggests that extensions be limited to 2 years, so as to maintain the combined maximum of 5 years currently allowed for Design Permits and Planned Development Permits. The same time frame is suggested for tentative map extensions (subject to the exceptions provided by Government Code Section 66452.6), but Government Code Section 66452.6(e) specifically requires that they be approved by either the City Council or Planning Commission. If a project is not able to get underway within 5 years, then it would have to start the process all over. If a project is expected to take more than 5 years to get started from the beginning, then the applicant should propose a

Development Agreement with the initial application submittals, allowing a longer timeframe for approvals.

Staff suggests that the Zoning Administrator approval of planning permit extensions follow the model set by the wireless telecommunications facilities administrative approval process (per BMC Section 17.32.032.D). Notice would be given to property owners within a 300 ft. radius that the Zoning Administrator intends to approve the extension, unless someone specifically requests a hearing by the Zoning Administrator. The Zoning Administrator would have no authority to originate any amendment of the original conditions of approval (BMC Sections 17.28.120.A, 17.42.070.A.1 & 2 allow the Zoning Administrator to approve amendments requested by applicants only). Assuming the Planning Commission wants to avoid involvement in the extension process, any appeals of the Zoning Administrator's approval would go directly to the City Council.

**FINDINGS FOR EXTENSIONS:** The Municipal Code does not contain specific findings for the approval of extensions, so the original findings applicable to the type of planning permit at hand would still be required. Per BMC Section 17.28.110.B, "Extension of a PD permit is not a matter of right and the approving authority may deny the application or grant the same subject to conditions. No extension shall be granted unless the approving authority is able to make all of the findings required for approval of the original permit." Similar language is used for the extension of Design Permits in BMC Section 17.42.060.B. Regarding Use Permits for Interim Uses in the Baylands, BMC Section 17.41.090 states, "There is no vested right or legal entitlement to an extension and the decision on any application for extension shall be within the sole discretion of the approving authority." Similarly, "A use permit, design permit or grading permit issued prior to or concurrently with a vesting tentative map, and any other prior, concurrent or subsequent permits, approvals, extensions and entitlements issued with respect to the development, may be subsequently modified or revoked to the extent otherwise permitted by law so long as the vested right granted by subsection A of this section is not violated," per BMC Section 16.42.090.C.

In practice, staff processes an extension application as an update of the previous application. Changes in circumstances, including applicable code requirements, are considered in updating recommended findings and conditions of approval, but a complete reanalysis of the project is typically not undertaken.

If extensions are to be processed administratively, with no authority to amend the original conditions of approval as part of that process, then the required findings should be limited to confirming that circumstances under which the planning permit was originally granted, including applicable land use regulations, have not substantially changed. Otherwise, if the extension process entirely reopens the original approval, then it would serve no purpose to differentiate

itself from just starting the project approval process all over from square one. If the Zoning Administrator were unable to make the required findings, he or she would be authorized to refer the matter directly to the City Council without a denial and appeal being required.

Accordingly, staff suggest that the following be inserted into BMC Chapter 17.40, regarding Use Permits; BMC Chapter 17.46 regarding Variances; BMC Section 17.42.060.B, regarding Design Permits; and BMC Section 17.28.110.B, regarding Planned Development Permits:

*A Use Permit/Variance/Design Permit/Planned Development Permit may be extended by the Zoning Administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Use Permit/Variance/Design Permit/Planned Development Permit. The application for extension shall be filed prior to the expiration date of the Use Permit/Variance/Design Permit/Planned Development Permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.*

*If the Zoning Administrator determines that an extension should be granted, the Zoning Administrator shall give written notice of such intended decision to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. The notice shall advise the property owners that they have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise the property owners that they have the right to appeal a decision of the zoning administrator to the city council.*

*In granting an extension, the zoning administrator is not authorized to initiate any amendments of the original conditions of approval.*

*No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the permit was originally approved. The zoning administration may refer any extension application to the city council for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the city council shall be processed in accordance with the same procedure applicable to an appeal.*

**APPEAL PERIODS AND THE EFFECTIVE DATE OF APPROVAL:** Per BMC Sections 17.40.060.C, 17.46.040.B, 17.56.100 & 17.56.110, the effective date of Use Permits, Variances and Zoning Administrator decisions is the 7th day after approval, but this is inconsistent with BMC Section 17.52.020.A, which provides for a 15-day appeal period. Design Permits, in comparison, "...shall become effective upon the expiration of fifteen (15) days following the date on which the design permit was granted by the planning commission, unless an appeal has been taken to the city council pursuant to Chapter 17.52 of this title" (BMC Section

17.42.050.B). There is no appeal period applicable to Planned Development Permits, because by ordinance they require the approval of the City Council.

Per the State Subdivision Map Act, actions taken under BMC Title 16, Subdivisions, are subject to a 10-day appeal period (see BMC Sections 16.44.010 & 16.44.020). This raises the question as to whether planning permits that are approved simultaneously with tentative subdivision or parcel maps for the same project should also be subject to a 10-day appeal period (note that there is no appeal for vesting tentative maps, because by ordinance they require approval of the City Council).

Accordingly, staff suggests that the following language be used in BMC Sections 17.40.060.C, 17.46.040.B, 17.56.100 & 17.56.110:

*Use Permits/Variances/Design Permits shall become effective upon the expiration of fifteen (15) days following the date on which the Use Permit/Variance/Design Permit was granted by the Zoning Administrator/Planning Commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Use Permits/Variances/Design Permits approved in conjunction with a Tentative Subdivision Map or Tentative Parcel Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.*

It would also be helpful to clarify how deadlines would be interpreted if they fall on a day on which City Hall is closed (weekends or holidays) or when City Hall closes early (Fridays at 1 p.m.). Per BMC Section 1.02.070, "day" means calendar day, midnight to midnight, including weekends and holidays. A 15-day appeal period means that the deadline for submitting the appeal is by close of business on the 15<sup>th</sup> calendar day after the approving body takes action. If the deadline falls upon a weekend or holiday or any other day that the city offices are closed for the entire day, the ordinance should clarify that the deadline is the first "business day" (as defined by BMC Section 1.02.010) thereafter. Staff suggests that the following be added as a new section in the Appeals chapter:

*If the deadline for filing any appeal specified in this title falls upon a Saturday, Sunday, holiday or any other day on which the city offices are closed for the entire day for any reason, the deadline shall be by close of business on the first business day thereafter.*

**HEARING NOTIFICATION AND DEADLINES:** According to the Permit Streamlining Act (Government Code Section 65943), the City has 30 days to review planning permit applications to determine whether they are complete. Once deemed complete, an application's environmental status must be determined within another 30 days (State CEQA Guidelines Section 15102). If it is then determined that a project is categorically exempt from the California Environmental Quality Act, the City must act on the application within 60 days [Government Code Section



6590(a)(4)], or 50 days for Tentative Parcel or Subdivision Maps (Government Code Sections 65952.1 & 66452.1). If a Negative Declaration is required, it must be completed and adopted within 180 days from the date the application was deemed complete (State CEQA Guidelines Section 15107), and the City then has 60 days more to act on the application [Government Code Section 65950(a)(3)]. If an Environmental Impact Report (EIR) is required, the City must act on the application within 180 days from certification of the EIR [Government Code Section 65950(a)(1)]. Exceptions to and extensions of these deadlines are provided in Government Code Sections 65943(d), 65950(a)(2) & (b) and 65957.

Thus, BMC Sections 17.40.040 & 17.46.030 requiring that the hearing of all Use Permit and Variance applications "...shall be held within forty-five (45) days after the filing of the application" are inconsistent with State law. Staff suggests that these sections should be revised to incorporate some of the language used in BMC Section 17.28.050, regarding Planned Development Permits, and BMC Section 17.42.030, regarding Design Permits, while those sections should simply reference Chapter 17.54, Appeals:

*Public hearing by planning commission-Notice. The Planning Commission shall conduct a public hearing on the application for a Planned Development Permit/Use Permit/Design Permit/Variance. Notice of such hearing shall be given as set forth in Chapter 17.54.*

Government Code Section 65091(a)(4) specifies that when a provision of the Code requires notice of a public hearing to be given, such notice shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. Such public notice is required for rezonings (Government Code Section 65853), specific types of Zoning Ordinance amendments (Government Code Sections 65850 & 65854), Variances and Use Permits, including the revocation, modification or appeal of any Variance or Use Permit [Government Code Section 65905(a)]. While BMC Sections 17.28.050 (Planned Development Permits), 17.42.030 (Design Permits) and 17.54.020.C (Public Hearings) are consistent with these requirements, BMC Section 17.54.030 specifically regarding Use Permits, Variances and appeals is out of conformance and should be corrected.

Staff suggests that Section 17.54.030 be revised to incorporate some of the language used in BMC Sections 17.28.050 & 17.42.030, as well as Government Code Sections 65094:

17.54.030 – Use Permits, variances, *design permits and planned development permits and appeals*—Notice requirements.

A. Whenever an application for a variance, or a ~~conditional~~ use permit or *design permit or planned development* ~~other~~ permit, for revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with

conducting a public hearing thereon, *notice of the public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mail to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted, notice of hearing shall be given by notice through the United States mails, with postage prepaid using addresses from the last equalized assessment roll, or alternatively, from such other records of the assessor or tax collector as contain more recent addresses in the opinion of the body, or by both publication at least once in a newspaper of general circulation, published and circulated in the city, and by posting the notice in at least three (3) conspicuous places close to the property affected.*

~~B. When mailed notice is used, notice shall be given to all owners of property within one hundred (100) feet of the exterior boundaries of the property for which an application is being heard. The notices shall be mailed not less than ten (10) or more than thirty (30) days before the scheduled hearing.~~

~~C. When posted notice is used, posting shall be on utility poles on both sides of the property frontage and across the street from the subject property.~~

~~D. Notices specified in subsections B and C shall specify the type and magnitude of the application to be considered, the place where copies of the application may be reviewed, the time, date and place of the hearing and the right to appear and be heard. The notice shall include the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.~~

**ZONING ADMINISTRATOR:** California Government Code Section 65900 provides for the creation of the position of Zoning Administrator, whose potential responsibilities are outlined in Section 65901. Municipal Code Chapter 17.56 lists the specific powers and duties assigned to the Zoning Administrator in Brisbane, as noted above.

For clarity's sake, staff suggests that Chapter 17.56, Administration, be renamed "Zoning Administrator." BMC Section 17.56.040 should be revised to include a line from Section 17.56.100 to require that an appeal of a Zoning Administrator action taken up by a Planning Commissioner shall be subject to the public hearing scheduling and notification procedures in Chapter 17.54 (see above). Similar language could be used in BMC Section 17.52.020.B regarding appeals of Planning Commission actions by members of the City Council.

**Attachments:**

Government Code Sections 66452.6, 66452.23 & 66463.5

2010 California Building Code Sections 105.3.2 & 105.5

Brisbane Municipal Code Section 15.12.130

Government Code Sections 65090-92, 65094, 65096, 65850, 65853, 65854, 65856,  
65857, 65901 & 65905

**Government Code**

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred seventy-eight thousand dollars (\$178,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2005, and each calendar year thereafter, the amount of one hundred seventy-eight thousand dollars (\$178,000) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within

40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than

January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

66452.23. (a) The expiration date of any tentative map, vesting tentative map, or parcel map for which a tentative map or vesting tentative map, as the case may be, has been approved that has not expired on or before the date that the act that added this section became effective, and that will expire before January 1, 2014, shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6, 66452.11, 66452.13, 66452.21, 66452.22, or 66463.5.

(c) Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on or before the date that the act that added this section became effective. This extension shall be in addition to any extension provided for in Sections 66452.13, 66452.21, and 66452.22.

(d) (1) For purposes of this section, the determination of whether a tentative map or parcel map expires before January 1, 2014, shall count only those extensions of time pursuant to subdivision (e) of Section 66452.6 or subdivision (c) of Section 66463.5 approved on or before the effective date of the act that added this section, and any additional time in connection with the filing of a final map pursuant to subdivision (a) of Section 66452.6 for a map that was recorded on or before the effective date of the act that added this section.

(2) The determination made pursuant to this subdivision shall not include any development moratorium or litigation stay allowed or permitted by Section 66452.6 or 66463.5.

(e) The provisions of Section 65961 relating to conditions that may be imposed upon or after a building permit for a subdivision of single- or multiple-family residential units or a parcel map for a subdivision for which no tentative map was required, are modified as set forth in subdivisions (e) and (f) of Section 65961 for tentative maps extended pursuant to this section.

66463.5. (a) When a tentative map is required, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

(b) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings, and no parcel map of all or any portion of the real property included within the tentative map shall be filed without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(c) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or

periods not exceeding a total of six years. Prior to the expiration of an approved or conditionally approved tentative map, upon the application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(d) (1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) Once a moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(e) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (c), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is, or was, pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(f) For purposes of this section, a development moratorium shall include a water or sewer moratorium or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a parcel map.

(g) Notwithstanding subdivisions (a), (b), and (c), for the purposes of Chapter 4.5 (commencing with Section 66498.1), subdivisions (b), (c), and (d) of Section 66498.5 shall apply to vesting tentative maps prepared in connection with a parcel map except that, for purposes of this section, the time periods specified in subdivisions (b), (c), and (d) of Section 66498.5 shall be determined from the recordation of the parcel map instead of the final map.

6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

**105.3.1 Action on application.** The *building official* shall examine or cause to be examined applications for *permits* and amendments thereto within a reasonable time after filing. If the application or the *construction documents* do not conform to the requirements of pertinent laws, the *building official* shall reject such application in writing, stating the reasons therefor. If the *building official* is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the *building official* shall issue a *permit* therefor as soon as practicable.

**105.3.2 Time limitation of application.** An application for a *permit* for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a *permit* has been issued; except that the *building official* is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated. [OSHPD 1, 2, & 4] *Time limitation shall be in accordance with Title 24, Part 1, Chapter 7, Section 7-129.*

**105.4 Validity of permit.** The issuance or granting of a *permit* shall not be construed to be a *permit* for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a *permit* based on *construction documents* and other data shall not prevent the *building official* from requiring the correction of errors in the *construction documents* and other data. The *building official* is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

**105.5 Expiration.** Every *permit* issued shall become invalid unless the work on the site authorized by such *permit* is commenced within 180 days after its issuance, or if the work authorized on the site by such *permit* is suspended or abandoned for a period of 180 days after the time the work is commenced. The *building official* is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

**105.6 Suspension or revocation.** The *building official* is authorized to suspend or revoke a *permit* issued under the provisions of this code wherever the *permit* is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

**105.7 Placement of permit.** The building *permit* or copy shall be kept on the site of the work until the completion of the project.

## SECTION 106 FLOOR AND ROOF DESIGN LOADS

**106.1 Live loads posted.** Where the live loads for which each floor or portion thereof of a commercial or industrial building is or has been designed to exceed 50 psf (2.40 kN/m<sup>2</sup>), such design live loads shall be conspicuously posted by the owner in that part of each *story* in which they apply, using durable signs. It shall be unlawful to remove or deface such notices

**106.1.1 Snow Load Posting.** [OSHPD 1, 2, 3 & 4, DSA-SS & DSA-SS/CC] *Snow loads used in design shall be posted as for live loads.*

**106.1.2 Load Posting Responsibility.** [OSHPD 1, 2 & 4] *The owner or governing board shall be responsible for keeping the actual load below the allowable limits.*

**106.2 Issuance of certificate of occupancy.** A certificate of occupancy required by Section 111 shall not be issued until the floor load signs, required by Section 106.1, have been installed.

**106.3 Restrictions on loading.** It shall be unlawful to place, or cause or permit to be placed, on any floor or roof of a building, structure or portion thereof, a load greater than is permitted by this code.

## SECTION 107 SUBMITTAL DOCUMENTS

**107.1 General.** Submittal documents consisting of *construction documents*, statement of *special inspections*, geotechnical report and other data shall be submitted in two or more sets with each *permit* application. The *construction documents* shall be prepared by a *registered design professional* where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the *building official* is authorized to require additional *construction documents* to be prepared by a *registered design professional*.

**Exception:** The *building official* is authorized to waive the submission of *construction documents* and other data not required to be prepared by a *registered design professional* if it is found that the nature of the work applied for is such that review of *construction documents* is not necessary to obtain compliance with this code.

**107.2 Construction documents.** *Construction documents* shall be in accordance with Sections 107.2.1 through 107.2.5.

**107.2.1 Information on construction documents.** *Construction documents* shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when *approved* by the *building official*. *Construction documents* shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the *building official*.

**107.2.2 Fire protection system shop drawings.** Shop drawings for the *fire protection system(s)* shall be submitted to indicate conformance to this code and the *construction documents* and shall be *approved* prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

G.2.16



15.12.130 Permits--Expiration. A. Every permit issued by the building official under the provisions of this code shall expire and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned for a period of one hundred eighty (180) days at any time after work is commenced. Before such work can be recommenced, a new permit shall be first obtained therefor, the fee for which shall be one-half (1/2) the amount required for a new permit for such work; provided, that no changes have been made or will be made in the original plans or scope of such work; and, provided further, that such suspension or abandonment has not exceeded one year. The building official may, in his discretion, waive the operation of this section where delay in commencing work or the suspension of work has been caused by acts of God.

B. Single-family residential permits are valid for one year and are renewable for additional periods of one year each. The building official is authorized to grant renewals, based upon a finding that work on the project is continuing in a satisfactory manner, or that there are justifiable reasons for postponement or delay of the work.

C. All other permits are valid for two (2) years and are renewable for additional periods of one year each. The building official is authorized to grant renewals, based upon a finding that work on the project is continuing in a satisfactory manner, or that there are justifiable reasons for postponement or delay of the work. (Ord. 526 § 4, 2007; Ord. 291 § 1(part), 1983; Ord. 243 § 1015, 1978).

15.12.140 Permits--Suspension and revocation. The building official may, in writing, suspend or revoke a permit issued under provisions of this code or the construction codes whenever the permit is issued in error or on the basis of incorrect information supplied, or is in violation of any ordinance or regulation or any of the provisions of said codes. (Ord. 243 § 1016, 1978).

15.12.150 Penalty fee for commencing work without permit. A. Whenever any construction or work for which a permit is required by this code or the construction

**Government Code**

65090. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be published pursuant to Section 6061 in at least one newspaper of general circulation within the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing, or if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a local agency considers the adoption or amendment of policies or ordinances affecting drive-through facilities, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

65091. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be given in all of the following ways:

(1) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property as shown on the latest equalized assessment roll. Instead of using the assessment roll, the local agency may use records of the county assessor or tax collector if those records contain more recent information than the information contained on the assessment roll. Notice shall also be mailed to the owner's duly authorized agent, if any, and to the project applicant.

(2) When the Subdivision Map Act (Div. 2 (commencing with Section 66410)) requires notice of a public hearing to be given pursuant to this section, notice shall also be given to any owner of a mineral right pertaining to the subject real property who has recorded a notice of intent to preserve the mineral right pursuant to Section 883.230 of the Civil Code.

(3) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

(4) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of using the assessment roll, the local agency may use records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.

(5) If the notice is mailed or delivered pursuant to paragraph

(3), the notice shall also either be:

(A) Published pursuant to Section 6061 in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.

(B) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a hearing is held regarding a permit for a drive-through facility, or modification of an existing drive-through facility permit, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation in any hearing on, or appeal of the denial of, a drive-through facility permit. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled, is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

65092. (a) When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed.

(b) As used in this chapter, "person" includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

65094. As used in this title, "notice of a public hearing" means a notice that includes the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

65096. (a) Notwithstanding any other provision of law, whenever a person applies to a city, including a charter city, county, or city and county, for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, general or specific plan amendment, or any entitlement for use which would permit all or any part of a cemetery to be used for other than cemetery purposes, the city, county, or city and county shall give notice pursuant to Sections 65091, 65092, 65093, and 65094.

(b) Those requesting notice shall be notified by the local agency at the address provided at the time of the request.

(c) Notwithstanding Section 65092, a local agency shall not require a request made pursuant to this section to be annually renewed.

(d) "Cemetery," as used in this section, has the same meaning as that word is defined in Section 8100 of the Health and Safety Code.

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for offstreet parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

65853. A zoning ordinance or an amendment to a zoning ordinance, which amendment changes any property from one zone to another or imposes any regulation listed in Section 65850 not theretofore imposed or removes or modifies any such regulation theretofore imposed shall be adopted in the manner set forth in Sections 65854 to 65857, inclusive. Any other amendment to a zoning ordinance may be adopted as other ordinances are adopted.

When the legislative body has requested the planning commission to study and report upon a zoning ordinance or amendment which is within the scope of this section and the planning commission fails to act upon such request within a reasonable time, the legislative body may, by written notice, require the planning commission to render its report within 40 days. Upon receipt of the written notice the planning commission, if it has not done so, shall conduct the public hearing as required by Section 65854. Failure to so report to the legislative body within the above time period shall be deemed to be approval of the proposed zoning ordinance or amendment to a zoning ordinance.

65854. The planning commission shall hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance. Notice of the hearing shall be given pursuant to Section 65090 and, if the proposed ordinance or amendment to a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to Section 65091.

65856. (a) Upon receipt of the recommendation of the planning commission, the legislative body shall hold a public hearing. However, if the matter under consideration is an amendment to a zoning ordinance to change property from one zone to another, and the planning commission has recommended against the adoption of such amendment, the legislative body shall not be required to take any further action on the amendment unless otherwise provided by ordinance or unless an interested party requests a hearing by filing a written request with the clerk of the legislative body within five days after the planning commission files its recommendations with the legislative body.

(b) Notice of the hearing shall be given pursuant to Section 65090.

65857. The legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be

referred to the planning commission for report and recommendation, but the planning commission shall not be required to hold a public hearing thereon. Failure of the planning commission to report within forty (40) days after the reference, or such longer period as may be designated by the legislative body, shall be deemed to be approval of the proposed modification.

65901. (a) The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance. The board of zoning adjustment or the zoning administrator may also exercise any other powers granted by local ordinance, and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business.

(b) In accordance with the requirements for variances specified in Section 65906, the legislative body of the city or county may, by ordinance, authorize the board of zoning adjustment or zoning administrator to decide applications for variance from the terms of the zoning ordinance without a public hearing on the application. That ordinance shall specify the kinds of variances which may be granted by the board of zoning adjustment or zoning administrator, and the extent of variation which the board of zoning adjustment or zoning administrator may allow.

65905. (a) Except as otherwise provided by this article, a public hearing shall be held on an application for a variance from the requirements of a zoning ordinance, an application for a conditional use permit or equivalent development permit, a proposed revocation or modification of a variance or use permit or equivalent development permit, or an appeal from the action taken on any of those applications.

(b) Notice of a hearing held pursuant to subdivision (a) shall be given pursuant to Section 65091.