



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting Date: May 5, 2020

Subject

Ordinance extending the validity of Planning entitlements and permits issued by the Community Development Department; extending the time for City review and action on development applications in the event state law deadlines are extended; and temporarily suspending certain CEQA requirements as provided by Executive Order N-54-20.

Recommended Action

That the City Council:

1. Find that the proposed actions are exempt from CEQA; and,
2. Enact Urgency Ordinance No. 20-XXX – “An Urgency Ordinance of the City Council of the City of Cupertino Extending the Validity of Planning Entitlements and Permits Issued by the Community Development Department; Extending the Time for City Review and Action on Development Applications in the Event State Law Deadlines are Extended; and Temporarily Suspending Certain CEQA Requirements as Provided by Executive Order N-54-20.”

Discussion

There have been several local, regional and state orders regarding Sheltering in Place in response to the COVID-19 pandemic.

- March 11, 2020: Cupertino City Manager declared a local emergency related to COVID-19, which was ratified by the City Council on March 17, 2020.
- March 16, 2020: Santa Clara County issued a Shelter-in-Place Order including limitations on non-essential work and operations, including prohibitions on most residential and almost all commercial construction.
- March 19, 2020: Governor Newsom issued a statewide Shelter-in-Place Order directing all California residents to stay home until further notice, with limited exceptions, to stop the spread of COVID-19.
- March 31, 2020: Santa Clara County issued an updated Shelter-in-Place Order effective from April 1, 2020 through May 3, 2020,
- April 29, 2020: Santa Clara County issued an updated Shelter-in-Place Order effective from May 3, 2020 through May 31, 2020.

Santa Clara County's March 31 Shelter-in-Place Order, particularly, strictly limited the types of non-essential services and work allowed throughout the County, including the City of Cupertino, and prohibited most residential construction and almost all commercial construction. The current (April 29) County Shelter-in-Place Order permits all construction projects to resume to the extent allowed under the Governor's statewide order, but requires that construction projects comply with the Construction Project Safety Protocols issued as part of the County's Order, which include social distancing, screening, sanitation requirements and other measures that may affect the speed of construction.

Under the County's March 31 Shelter-in-Place Order, many construction projects and activities were unable to move forward, and some permit applications, building permits and planning approvals may have expired or may be nearing expiration. Although the County's April 29 Order allows most construction to resume, many projects may now be behind schedule, and the Construction Project Safety Protocols included in the order may affect construction timelines, including for projects that are nearing permit expiration dates. The pending expiration of permits could create incentives to speed up work at construction sites in ways that may be inconsistent with social distancing requirements and other Construction Project Safety Protocols mandated by the County's Order.

In addition, the latest Shelter-in-Place Order continues to impose hardships on many planning and design professionals by forcing them to work from home.

Extension of planning entitlements and building permits: If adopted, the Ordinance would extend various planning entitlements and building permits that were valid as of March 16, 2020, when Santa Clara County issued the Shelter-in-Place Order, as well as applications submitted, and permits issued while the Updated Shelter-in-Place Order remains in effect.

The Ordinance would automatically extend building permit applications by 90 days and would extend issued building permits by 180 days. The Ordinance would also extend planning permit approvals for the duration of the County's Shelter-in-Place Order, plus an additional 180 days after the order is lifted, providing time for applicants to restart their projects or begin construction.

Permit Processing Deadlines: Currently, State law specifies various timelines for City action on permits and planning approvals, including under the Permit Streamlining Act, Housing Accountability Act, and Subdivision Map Act, and many of these deadlines are reflected in the City code. Staff makes every effort to process applications to ensure compliance with any State or Federal law. At this time, staff anticipates a continuation of normal business operations. However, in

the event there are challenges in meeting these deadlines, the proposed Ordinance includes a provision that should State law or a Governor's Executive Order allow the City to extend processing times for applications (including determinations and scheduling items before a hearing body such as the City Council, Planning Commission, Environmental Review Committee, etc.), the City code would automatically be revised to apply those extended deadlines. It should be noted that staff has continued to process applications (building and planning) in a timely manner during the Shelter-in-Place Order.

The Ordinance also includes a provision recognizing that the Governor's Executive Order N-54-20 of April 22, 2020 suspends certain public filing, posting, notice, and public access requirements under the California Environmental Quality Act for a period of 60 days, and noting that these suspensions apply to City actions subject to the Act.

Noticing and Public Comment

Since this is an Urgency Ordinance, no notice is required pursuant to the California Government Code. No public comment has been received with regard to this Ordinance as of the date of this staff report.

Environmental Impact (CEQA)

The proposed Ordinance is not a project as defined by section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that the Ordinance is found to be a project under CEQA, the Ordinance is considered exempt via CEQA Guidelines section 15061 (b)(3) because it can be seen with certainty to have no possibility of significant effect on the environment.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact. Projects may continue to be processed. The proposed Urgency Ordinance allows an extension of time for projects that were put on hold because of the Shelter-in-Place Order.

Prepared by: Erick Serrano, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved for Submission by: Dianne Thompson, City Manager

Attachments:

A – Draft Urgency Ordinance No. 20-XXXX