



# STAFF REPORT

SAUSALITO CITY COUNCIL – July 7, 2009

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## AGENDA TITLE:

Ordinance Amending the Zoning Code to Add Construction Time Limit Regulations/ ZOA 09-002

## RECOMMENDED MOTION:

Staff Recommends that the City Council:

Waive First Reading, Read by Title Only and Introduce an Ordinance of the City Council of the City of Sausalito Amending Title 10 of the Sausalito Municipal Code to Add a New Section 10.54.100 Regarding Construction Time Limits, and to Modify Sections 10.54.040, 10.54.050 and 10.62 Regarding Effectiveness of Certain Permits - ZOA 09-002

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## SUMMARY

The proposed Ordinance (Attachment No. 1) amends Title 10 (Zoning Ordinance) of the Sausalito Municipal Code to add regulations on the duration of construction projects in Sausalito. In accordance with the requirements of California Government Code Section 65853 *et seq.* and Section 10.80.070 of the Zoning Ordinance the Planning Commission held noticed public hearings on the proposed ordinance and has unanimously recommended that the City Council adopt the proposed amendments to the Zoning Ordinance and that the Council consider adding provisions to the ordinance which would allow for an extension of the applicable time limit following the commencement of construction upon the discovery of unforeseen or unforeseeable circumstances (see discussion under "Issues" below).

## BACKGROUND

Sausalito does not currently have a time limit on the duration of construction projects. There are time limits imposed under the Zoning Ordinance on the effectiveness of some types of permits and the Building Code requires that a project have periodic "inspectable" events for the building permit to remain active. These types of time limits do not, however, address the problem which the attached ordinance is designed to mitigate – the ongoing construction project.

In response to the negative impacts caused by lengthy construction projects in Sausalito including the detrimental effects on residential neighborhoods caused by noise and construction traffic the City Council directed staff to prepare a construction

time limit ordinance. The Council reviewed the draft ordinance on April 21, 2009 and directed staff to present the proposed ordinance to the Planning Commission for review and recommendation.

The Planning Commission held noticed public hearings on the proposed ordinance on May 20<sup>th</sup> and June 17<sup>th</sup>. Audio from these meetings is available on the City's website. The Planning Commission's suggested modifications to the ordinance are included in the attached clean copy of the ordinance (Attachment No. 1). Also attached (Attachment No. 2) is a redlined version of the ordinance which highlights the changes that have been made since the Council last reviewed the proposed ordinance in April, 2009.

The attached draft ordinance adds a new Section 10.54.100 to the City's Zoning Ordinance which imposes a time limit on the duration of all projects which require a Design Review Permit. The time allowed for the completion of construction is based upon the project valuation as follows:

Estimated Value of Project	Construction Time Limit
\$0 to \$100,000	9 months
\$100,001 to \$500,000	12 months
Greater than \$500,000	18 months

Prior to the commencement of construction an applicant can request one 6 month extension of the applicable construction time limit. The request is reviewed by a staff committee which makes a recommendation to the Planning Commission. The Commission can only grant the extension if certain designated factors are present (see Section 10.54.100D3).

If construction is not complete within the applicable time limit the following penalties apply:

Period of Time That Project Remains Incomplete Beyond Applicable Time Limit	Penalty
First 60 days	\$400 per day (i.e., \$24,000 maximum penalty applicable to this 60-day period)
61st through 120th day	\$600 per day (i.e., \$36,000 maximum penalty applicable to this 60-day period)
121st day and every day thereafter	\$800 per day (to a maximum of the lesser of 10% of project value or \$200,000)

Upon the expiration of the construction time limit applicants are required to submit deposit(s) with the City to cover the applicable fines. If the deposits are not made a

stop work order will be issued and construction on the project will cease. If the project is completed prior to incurring fines in the full amount of the deposit any "un-incurred" fines will be returned. The imposition of penalties can be appealed to the Planning Commission.

#### Revision of Time Limits for Certain Permits

In addition to the creation of the time limit on construction the attached draft ordinance makes revisions to the Zoning Ordinance to establish or modify the time limits on the effectiveness of certain permits.

Currently there is no limit on the effectiveness of Administrative Design Review Permits. Under the proposed ordinance:

- Section 10.54.040 is amended to add a new Section J. to provide that Administrative Design Review Permits shall expire one (1) year following the effective date of the permit, provided no extension has been filed prior to the expiration date.

Design Review Permits are currently effective for 5 years. Under the proposed ordinance:

- Section 10.54.050 J is amended to provide that Design Review Permits shall expire one (1) year following the effective date of the permit provided no extension has been filed prior to the expiration date.

Currently there is no limit on the effectiveness of a Non-Conforming Permit. Under the proposed ordinance:

- Section 10.62.070 is amended to add a new Section K to provide that Nonconforming Permits shall expire one (1) year following the effective date of the permit, unless a different expiration date is stipulated at the time of approval, a building permit has been issued and construction diligently pursued, or the permit is renewed or extended.

## ISSUES

As currently drafted the proposed ordinance allows an applicant to apply for an extension of the applicable time limit (not to exceed 180 days) *prior* to the commencement of construction. Once construction has begun such an extension is no longer available. If an applicant encounters circumstances during construction that result in the completion of construction extending beyond the deadline the applicant would have an opportunity to appeal the imposition of the applicable fines on the basis that ***"... the property owner was unable to comply with the applicable time limits as a result of circumstances beyond the property owner's control."***

The Planning Commission had a thorough discussion on the merits of adding language to the proposed ordinance which would allow an applicant to apply for an extension of the applicable time limit after construction has begun upon the discovery of an unforeseen or unforeseeable condition. The Commission did not reach agreement on whether or not such an extension should be included but did agree that it should be considered by the City Council.

The discussion by the Commission in favor of adding provisions to the ordinance allowing for such an extension was based on the fact that through no fault of the applicant unforeseen and/or unforeseeable circumstances can be encountered after construction has commenced. As currently drafted if the applicant was not successful in completing the project on time they would have to wait until the applicable time limit had run and then deposit cash or post security to cover the applicable penalties (or face having the project red tagged until the deposit is made). A portion of the Commission believed that this would impose an undue hardship on an applicant.

The Commissions' discussion against adding such a provision centered around the belief that as currently drafted the ordinance acts as an incentive to complete the project on time even if changed or unforeseen/unforeseeable circumstances are encountered. At that point it would be beneficial to the applicant to work with their contractor to find ways to bring the project in on time. If that isn't possible there is still an avenue of appeal available to the applicant.

## **ENVIRONMENTAL REVIEW**

The proposed amendments, which do not affect any changes in land use or density, are categorically exempt from environmental review in accordance with Section 15305 (Minor Alterations in Land Use Limitations) of the California Environmental Quality Act (CEQA) Guidelines

## **GENERAL PLAN CONSISTENCY**

Staff has reviewed the General Plan objectives and policies and determined the proposed ordinance is consistent with the General Plan, including the following applicable objective, policy, and program:

- Objective LU-1.0. Protect and Maintain the Character of Residential Neighborhoods. Maintain the character, diversity and long term viability of the City's residential neighborhoods by establishing residential land use districts that reflect the predominant land use, scale, density, and intensity of existing development.
- Policy LU-1.8. Consider the impact of traffic on the City street system in locating development in all residential zoning districts.
- Program LU-2.5.1. Review the existing zoning ordinance use restrictions and

development standards to assure conflicts are minimized.

## **PUBLIC NOTICE AND WRITTEN COMMENTS**

Notice: At least ten days prior to the hearing date, notice of this public hearing was published in the *Marinscope*. The notice was also posted at City Hall.

Written Comments: To date, no comments have been received on this matter.

## **FISCAL IMPACT**

The proposed ordinance has the potential to generate an unknown amount of revenue to the City through the imposition of fines. At this time it is not possible to project that revenue amount. There is also a cost to the City of staff time implementing the regulations.

## **STAFF RECOMMENDATIONS**


Staff Recommends that the City Council:

"Waive First Reading, Read by Title Only and Introduce an Ordinance of the City Council of the City of Sausalito Amending Title 10 of the Sausalito Municipal Code to Add a New Section 10.54.100 Regarding Construction Time Limits, and to Modify Sections 10.54.040, 10.54.050 and 10.62 Regarding Effectiveness of Certain Permits ZOA 09-002"

## **ATTACHMENTS**

1. Ordinance of the City Council of the City of Sausalito Amending Title 10 of the Sausalito Municipal Code to Add a New Section 10.54.100 Regarding Construction Time Limits, and to Modify Sections 10.54.040, 10.54.050 and 10.62 Regarding Effectiveness of Certain Permits ZOA 09-002
2. Redlined version of the proposed ordinance highlighting revisions made subsequent to the Council's last review on April 21, 2009

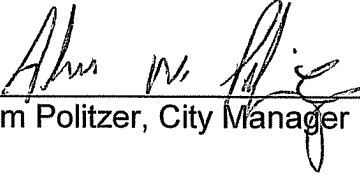
PREPARED BY:

  
Mary Anne Wagner, City Attorney

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Item #: 5A  
Meeting Date: 7-7-09  
Page #: 5

REVIEWED AND SUBMITTED BY:

  
Adam Politzer, City Manager

**Attachment No. 1**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
AMENDING TITLE 10 OF THE SAUSALITO MUNICIPAL CODE TO ADD A  
NEW SECTION 10.54.100 REGARDING CONSTRUCTION TIME LIMITS, AND  
TO MODIFY SECTIONS 10.54.040, 10.54.050 AND 10.62 REGARDING  
EFFECTIVENESS OF CERTAIN PERMITS  
ZOA 09-002

THE CITY COUNCIL OF THE CITY OF SAUSALITO DOES HEREBY ORDAIN AS  
FOLLOWS:

**Section 1.** A new Section 10.54.100 is hereby added to Chapter 10.54 of the Sausalito  
Municipal Code to read as follows:

**10.54.100 Time Limits For Construction.**

**A. Purposes.** The purpose of this ordinance is to regulate the duration of construction  
projects in order to avoid negative impacts on the City resulting from lengthy  
construction activities. Such negative impacts include detrimental effects of lengthy  
construction on residential neighborhoods, such as construction noise and increased  
traffic, reduction in available parking, and the presence of portable toilets. In addition  
to the general purposes of this Section 10.54.100, the City has adopted this Section  
10.54.100 because:

1. A continuous stream of large numbers of construction projects on private  
properties within the City for many years past has resulted in substantial and  
continuing adverse impacts on the City and its residents from construction  
activities;
2. Among those adverse impacts are long-term noise disturbances to neighbors of  
the construction projects, loss of already inadequate on-street parking due to the  
presence of large numbers of construction vehicles, and frequent closures of the  
City's narrow streets for construction deliveries and staging, which closures  
hinder and/or eliminate local and emergency access for varying periods of time;
3. Numerous private individual large-scale projects have been designed and built in  
the City involving construction for many years, thus prolonging the adverse  
construction impacts created by those projects;
4. It is in the interests of the health, safety, and welfare of the citizens of Sausalito to  
place a reasonable time limit on the duration of each construction project, so as to  
balance the needs of the project site property owner with those of nearby residents



1 and the community generally in the safe and peaceful enjoyment of their  
2 properties;

- 3  
4 5. The time limits adopted in this Section 10.54.100 allow an adequate and  
5 reasonable amount of time for the kinds of construction projects undertaken in the  
6 City; and  
7  
8 6. Substantial penalties should be imposed upon persons who violate the time limits  
9 imposed pursuant to this Section 10.54.100, so as to encourage compliance with  
10 such time limits and achieve the purposes of this Section 10.54.100.  
11

12 **B. Construction Time Limit Required.** As part of any application for a design review  
13 permit (including, without limitation, any such application with respect to  
14 improvements that have been constructed without or in violation of an existing valid  
15 design review permit, or administrative design review permits for the purposes of this  
16 Section 10.54.100), the applicant shall file a reasonable estimate of the value of the  
17 project, and based thereon, a construction time limit shall be established for the  
18 project in accordance with the criteria set forth in subsection C below. The applicant  
19 shall submit information reasonably requested by the Community Development  
20 Director to support the estimated value of the project. Compliance with such time  
21 limit shall become a condition of the design review permit. The time for completion  
22 of the construction shall also be indicated on the construction permit. For projects  
23 exceeding \$500,000 in project valuation, a detailed GANTT chart (or other graphic  
24 display acceptable to the Community Development Director) depicting the sequence  
25 of steps necessary for completion of the project, including detailed information on the  
26 critical path of the project, duration of critical tasks, and predicted inspection dates,  
27 shall be submitted prior to the issuance of any construction permit. Once approved,  
28 the property owner shall provide the City with written quarterly job progress reports  
29 consistent with the approved chart. Prior to the commencement of any construction  
30 work on the project, the applicant may apply for an extension of the established time  
31 limit as provided in subsection D below.  
32

33 **C. Construction Time Limit.** Except where a longer time period is approved pursuant  
34 to subsection D below, the maximum time for completion of approved alterations,  
35 additions, modifications, repairs, or new construction, following issuance of the  
36 construction permit, shall not exceed the following:  
37

Estimated Value of Project	Construction Time Limit*
\$0 to \$100,000	9 months
\$100,001 to \$500,000	12 months
Greater than \$500,000	18 months

38 \* For landscaping work (including retaining walls and grading) approved as  
39 part of the construction project, the applicant shall have an additional ninety  
40 (90) days to complete the landscaping work after final building inspection  
41 approval or issuance of an occupancy permit (whichever occurs later) for the

1 main construction project. This additional ninety (90) days shall not apply  
2 to construction projects solely comprised of landscaping.

3  
4 **D. Extension of Construction Time Limit.**

- 5  
6 1. a. Construction Activities. Provided that no construction activity has yet  
7 commenced on the project, or any part thereof, the applicant may either  
8 abandon the project and terminate its design review permit or apply for an  
9 extension of the established construction time limit, not to exceed an  
10 additional one hundred eighty (180) days.  
11 b. Landscaping Activities. For landscaping work (including retaining walls and  
12 grading) approved as part of the construction project, the applicant may apply  
13 for an extension not to exceed thirty (30) days beyond the ninety (90)-day  
14 landscaping time limit specified in subsection C above. Such application shall  
15 be filed prior to the expiration of the 90-day time limit and shall be considered  
16 by the Community Development Director, who shall have the authority to  
17 grant said extension only if, in his or her opinion, such extension beyond the  
18 90-day landscaping time limit is warranted because of delays caused by  
19 inclement weather.  
20  
21 2. An application for an extension of the construction time limit shall be  
22 accompanied by complete working drawings for the construction, a written  
23 explanation of the reasons for the requested extension, and a fee as established by  
24 resolution of the City Council.  
25  
26 3. Within fifteen (15) working days of receipt of a complete application for  
27 extension in accordance with subsection D.1.a above, said application shall be  
28 reviewed by a committee consisting of the Community Development Director, the  
29 Building Inspector, and the City Engineer, meeting together with the project  
30 contractor, architect, and, at the applicant's option, the applicant and/or any other  
31 representatives of the applicant. The committee may recommend to the Planning  
32 Commission an extension if it is determined by the committee that (i) such  
33 extension will not have a material deleterious effect on the neighborhood in which  
34 the project is located and (ii) any one or more of the following factors presents an  
35 unusual and substantial obstacle to complying with the standard construction time  
36 limit:  
37  
38 a. Site topography;  
39 b. Site access;  
40 c. Geologic issues;  
41 d. Neighborhood considerations;  
42 e. Other unusual factors (except lack of financing).

43  
44 The committee shall make a written recommendation to the Planning Commission  
45 whether or not to approve the requested extension and setting forth the findings it  
46 has made justifying its decision.

- 1  
2 4. The committee's recommendation shall be placed on the next available Planning  
3 Commission agenda and publicly-noticed as an amendment to the applicant's  
4 existing design review permit. The Planning Commission shall have the authority  
5 to approve requests for extension, subject solely to the guidelines of subsection  
6 D.3 above; provided, however, that such extensions do not result in a total  
7 construction time limit exceeding eighteen (18) months. Any modification by the  
8 Planning Commission of the original construction time limit shall not extend the  
9 existing expiration date of the design review permit. The decision of the Planning  
10 Commission to grant or deny the requested extension may be appealed to the City  
11 Council in accordance with the procedures of Chapter 10.84.

12  
13 **E. Penalties.**

- 14  
15 1. If a property owner fails to complete construction by the applicable time limit  
16 established in this Section 10.54.100, the property owner shall be subject to the  
17 following penalties payable to the City:  
18

Period of Time That Project Remains Incomplete Beyond Applicable Time Limit	Penalty
First 60 days	\$400 per day (i.e., \$24,000 maximum penalty applicable to this 60-day period)
61st through 120th day	\$600 per day (i.e., \$36,000 maximum penalty applicable to this 60-day period)
121st day and every day thereafter	\$800 per day (to a maximum of the greater of 10% of project value or \$200,000)

- 19  
20 2. Penalties, fees and costs due to the City pursuant to this subsection E are due each  
21 day as the penalties accrue.  
22

23 **F. Deposits.**

- 24  
25 1. Upon reaching the time limits set out in subsections C and D, if construction has  
26 not been completed, or if no final inspection has been made or a certificate of  
27 occupancy issued, the property owner or his representative shall deliver to the  
28 Community Development Department a refundable deposit (in cash or other  
29 security instrument acceptable to the City and valid for a minimum time period of  
30 two (2) years) in the amount of Twenty Four Thousand Dollars (\$24,000), plus a  
31 non-refundable administrative fee as established by resolution of the City Council.  
32  
33 2. If no deposit is made as provided in subsection F.1 above, the building official  
34 shall issue a stop work order.  
35

- 1 3. On or before the sixtieth (60<sup>th</sup>) day that the project has remained incomplete, and  
2 no final inspection has been made and no certificate of occupancy issued, the  
3 property owner or his representative shall deliver to the Community Development  
4 Department an additional refundable deposit (in cash or other security instrument  
5 acceptable to the City and valid for a minimum time period of two (2) years) in  
6 the amount of Thirty Six Thousand Dollars (\$36,000), plus a non-refundable  
7 administrative fee as established by resolution of the City Council.  
8
- 9 4. If no deposit is made as provided in subsection F.3 above, the building official  
10 shall issue a stop work order.  
11
- 12 5. On or before the one hundred twentieth (120<sup>th</sup>) day that the project has remained  
13 incomplete, and no final inspection has been made and no certificate of  
14 occupancy issued, the property owner or his representative shall deliver to the  
15 Community Development Department an additional refundable deposit (in cash or  
16 other security instrument acceptable to the City and valid for a minimum time  
17 period of two years) in the amount of One Hundred Forty Thousand Dollars  
18 (\$140,000), plus a non-refundable administrative fee as established by resolution  
19 of the City Council.  
20
- 21 6. If no deposit is made as provided in subsection F.5 above, the building official  
22 shall issue a stop work order.  
23
- 24 7. If the property owner fails to complete construction by the applicable time limit,  
25 the applicable penalties shall accrue daily up to the maximum set out in  
26 subsection E.  
27
- 28 8. If the property owner believes that the failure to meet the applicable time limit  
29 was caused by circumstances beyond the property owner's control, the property  
30 owner may file a written statement to that effect with the Community  
31 Development Director at the time of making the deposit as described in  
32 subsections F.1, 3 and/or 5 above and provide any documentation substantiating  
33 such grounds of appeal and the effect on the construction. If the property owner  
34 makes such filing, no part of the deposit cash or other security instrument shall be  
35 forfeited to the City if construction is completed within thirty (30) days of the  
36 deposit. If construction is completed after the thirty (30) days and the Community  
37 Development Director concurs with the property owner's statement as to the  
38 cause of the failure to meet the deadline, the Community Development Director  
39 shall waive the penalty and return the cash deposit or other security instrument to  
40 the property owner. If the Community Development Director does not concur  
41 with the property owner's statement, such statement shall be treated as an appeal  
42 under subsection G below and all the provisions of that subsection shall apply.  
43 As used in this Section 10.54.100, the term "circumstances beyond the property  
44 owner's control" shall mean events outside the property owner's reasonable  
45 control that are not caused by the property owner's willful or unlawful  
46 misconduct or gross negligence (or that of the property owner's contractor or

1 subcontractors), such as acts of God, earthquake, labor disputes that are not  
2 caused, directly or indirectly by the property owner or the property owner's  
3 contractor or subcontractors, shortages of supplies, riots, war, acts of terrorism,  
4 fire, epidemics, or delays of common carriers. A failure of a lender to make or  
5 fund a loan commitment shall not be deemed to be a "circumstances beyond the  
6 property owner's control."  
7

8 9. If construction is completed after the applicable time limit, and the Community  
9 Development Director does not concur with the property owner's statement  
10 pursuant to subsection F.8, the City shall draw on the deposit or other security  
11 instrument in the amount of the applicable penalties; provided, however, that in  
12 the event of an appeal, the City shall not draw on the deposit or other security  
13 instrument until the Planning Commission and, if applicable, the City Council has  
14 rendered its decision as set forth in subsection G.  
15

16 10. After construction is completed and all applicable penalties received by the City,  
17 any remaining cash or security instrument deposit shall be refunded or returned to  
18 the account of the property owner.  
19

#### 20 **G. Appeals.**

21  
22 1. A penalty imposed pursuant to subsections B through F may be appealed to the  
23 Planning Commission on the grounds that the property owner was unable to  
24 comply with the applicable time limit as a result of circumstances beyond the  
25 property owner's control. There shall be no right to appeal until construction is  
26 completed. Any person aggrieved by the decision of the Planning Commission on  
27 the appeal may appeal to the City Council in accordance with the procedures of  
28 Chapter 10.84.  
29

30 2. At the time the appeal is filed or within two (2) weeks thereafter, the appellant  
31 shall submit documentary and other evidence sufficient to establish that design  
32 decisions, construction drawings and documents, bids and construction contracts,  
33 permit applications, and compliance with all required permit conditions were  
34 undertaken in a diligent and timely manner. Documentary evidence shall include,  
35 but not be limited to, dated design contracts, date-stamped plans, dated  
36 construction contracts and material orders, and proof of timely payment of any  
37 deposits or fees required pursuant to any of the foregoing items. The  
38 documentary and other evidence shall demonstrate that construction delays  
39 resulted from circumstances beyond the property owner's control and despite  
40 diligent and clearly documented efforts to achieve construction completion within  
41 the applicable time limit. Penalties imposed pursuant to this Section 10.54.100  
42 shall not be modified or cancelled unless all evidence required by this subsection  
43 G.2 is submitted at the time of appeal.  
44

#### 45 **H. Enforcement.**

46

- 1 1. This Section 10.54.100 shall apply to all construction, including all additions,  
2 alterations, modifications, repairs, and improvements, that requires a design  
3 review permit, including a design review permit for such construction undertaken  
4 before the application for the design review permit or an amended design review  
5 permit with respect to such construction previously undertaken without a design  
6 review permit or outside a previously-issued design review permit. The time limit  
7 for completion of any design review permit issued after January 1, 2009 shall be  
8 extended from the effective date of this ordinance pursuant to the time limits  
9 specified in subsections C and D.  
10
- 11 2. Any penalty due under subsection E in excess of the deposit made under  
12 subsection F shall be a personal debt owed to the City by the property owner(s)  
13 and, in addition to all other means of enforcement and collection, shall become a  
14 lien against the said property and shall be subject to the same penalties (including  
15 interest thereon at the maximum rate allowed by law from the date the lien  
16 attaches until the date of payment) and the same procedure and sale in case of  
17 delinquency as provided for ordinary municipal taxes.  
18

19 **I. Violations.**  
20

- 21 1. A violation of this Section 10.54.100 is a misdemeanor and shall be punished as  
22 provided in Chapter 1.05. A civil action may be commenced to abate, enjoin, or  
23 otherwise compel the cessation of violation of any provision in this Section  
24 10.54.100. In a civil action brought pursuant to this Section 10.54.100 in which  
25 the City prevails, the court may award to the City all costs of investigation and  
26 preparation for trial, the costs of trial, reasonable expenses including overhead  
27 and administrative costs incurred in prosecuting the action, and reasonable  
28 attorney fees.  
29
- 30 2. As part of a civil action brought by the City, a court may assess against any  
31 person who commits, allows, or maintains a violation of any provision of this  
32 Section 10.54.100 a civil penalty in an amount not to exceed Five Thousand  
33 Dollars (\$5,000.00) per daily violation. The civil penalty is separate and distinct  
34 from penalties imposed pursuant to this Section 10.54.100.  
35
- 36 3. Upon any guilty plea or judgment or conviction, in any criminal proceeding  
37 brought for the violation of this Section 10.54.100, where the defendant is entitled  
38 by law to probation, then the court may require the payment to the City of the  
39 costs and expenses as described above and the code provision incorporated by  
40 reference as one of the conditions of such probation.  
41
- 42 4. The building official or the Community Development Director is authorized to  
43 order work stopped whenever work is being done contrary to the provisions of  
44 this Section 10.54.100.  
45

1 4. Any violation of this Section 10.54.100 shall constitute a public nuisance and, in  
2 addition to being subject to any other remedies allowed by law, may be abated as  
3 provided by law.  
4

5 **Section 2.** Section 10.54.040 of the Sausalito Municipal Code is hereby amended to add  
6 a new Section J to read as follows:  
7

8 J. Expiration of Permit. Administrative Design Review Permits shall expire one (1)  
9 year following the effective date of the permit, provided no extension has been filed prior  
10 to the expiration date.  
11

12 **Section 3.** Section 10.54.050.J of the Sausalito Municipal Code is hereby amended in its  
13 entirety to read as follows:  
14

15 J. Expiration of Permit. Design Review Permits shall expire one (1) year following  
16 the effective date of the permit, provided no extension has been filed prior to the  
17 expiration date.  
18

19 **Section 4.** Section 10.62.070 of the Sausalito Municipal Code is hereby amended to add  
20 a new Section K to read as follows:  
21

22 K. Expiration of Permit. Nonconforming Permits shall expire one (1) year following  
23 the effective date of the permit, unless a different expiration date is stipulated at the time  
24 of approval, a construction permit has been issued and construction diligently pursued, or  
25 the permit is renewed or extended.  
26

27 **Section 5.** The adoption of this ordinance is exempt from the application of the  
28 California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in  
29 accordance with section 15305 (Minor Alterations in Land Use Limitations).  
30

31 **Section 6.** This Ordinance shall be in full force and effect thirty (30) days after the date  
32 of its adoption.  
33

34 **Section 7.** This Ordinance shall be published once within fifteen (15) days after its  
35 passage and adoption in a newspaper of general circulation in the City of Sausalito.  
36

37 **THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City  
38 Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, and was adopted at a regular meeting of the  
39 City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:  
40  
41  
42

43 AYES: COUNCILMEMBER:

44 NOES: COUNCILMEMBER:  
45  
46

1 ABSENT: COUNCILMEMBER:

2  
3 ABSTAIN: COUNCILMEMBER:

4

5

6

7

\_\_\_\_\_  
Jonathan Leone, Mayor

8 ATTEST:

9

10

11

12 \_\_\_\_\_  
Debbie Pagliaro, City Clerk

13

14

15 CDD\Project – Non Address\ZOA\2009\09-002\Ord - 7



**Attachment No. 2**

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Item #: 5A  
Meeting Date: 7-7-09  
Page #: 718

ORDINANCE NO. \_\_\_\_\_

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
AMENDING TITLE 10 OF THE SAUSALITO MUNICIPAL CODE TO ADD A  
NEW SECTION 10.54.100 REGARDING CONSTRUCTION TIME LIMITS, AND  
TO MODIFY SECTIONS 10.54.040, 10.54.050 AND 10.62 REGARDING  
EFFECTIVENESS OF CERTAIN PERMITS  
ZOA 09-002

THE CITY COUNCIL OF THE CITY OF SAUSALITO DOES HEREBY ORDAIN AS  
FOLLOWS:

**Section 1.** A new Section 10.54.100 is hereby added to Chapter 10.54 of the Sausalito  
Municipal Code to read as follows:

**10.54.100 Time Limits For Construction.**

**A. Purposes.** The City Council finds that:

1. A. Purposes. The purpose of this ordinance is to regulate the duration of construction projects in order to avoid negative impacts on the City resulting from lengthy construction activities. Such negative impacts include detrimental effects of lengthy construction on residential neighborhoods, such as construction noise and increased traffic, reduction in available parking, and the presence of portable toilets. In addition to the general purposes of this Section 10.54.100, the City has adopted this Section 10.54.100 because:

1. A continuous stream of large numbers of construction projects on private properties within the City for many years past has resulted in substantial and continuing adverse impacts on the City and its residents from construction activities;

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2. Among those adverse impacts are long-term noise disturbances to neighbors of the construction projects, loss of already inadequate on-street parking due to the presence of large numbers of construction vehicles, and frequent closures of the City's narrow streets for construction deliveries and staging, which closures hinder and/or eliminate local and emergency access for varying periods of time;

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3. The City has seen numerous Numerous private individual large-scale projects have been designed and built on a very large scale so that in the City involving construction has often continued for many years, thus prolonging the adverse construction impacts created by those projects;

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4. It is in the interests of the health, safety, and welfare of the citizens of Sausalito to place a reasonable time limit on the duration of each construction project, so as to

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1 balance the needs of the owner of the project site property owner with those of his  
2 neighbors nearby residents and the community generally in the safe and peaceful  
3 enjoyment of their properties;

4  
5 5. The time limits adopted in this Section 10.54.100 allow an adequate and  
6 reasonable amount of time for the kinds of construction projects undertaken in the  
7 City; and

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9 ~~6. Because of the large monetary value of many of the  
construction projects in the City, substantial~~

10 6. Substantial penalties should be imposed upon persons who violate the time limits  
11 imposed pursuant to this Chapter Section 10.54.100, so as to encourage  
12 compliance with such time limits and achieve the purposes of this Section  
13 10.54.100.

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15 **B.- Construction Time Limit Required.-** As part of any application for a design  
16 review permit, (including, without limitation, any such application with respect to  
17 improvements that have been constructed without or in violation of an existing valid  
18 design review permit, or administrative design review permits for the purposes of this  
19 Section 10.54.100), the applicant shall file a reasonable estimate of the ~~cost~~ value of  
20 the proposed construction project, and based thereon, a construction time limit shall be  
21 established for the project in accordance with the guidelines/criteria set forth in  
22 subsection C below.- The applicant shall submit information reasonably requested by  
23 the Community Development Director to support the estimated value of the project.  
24 Compliance with such time limit shall become a condition of the design review  
25 permit.- The time for completion of the construction shall also be indicated on the  
26 building construction permit.- For projects exceeding \$500,000 in project valuation, a  
27 detailed PERT or GANTT chart (or other graphic display acceptable to the  
28 Community Development Director) depicting the sequence of steps necessary for  
29 completion of the project, including detailed information on the critical path of the  
30 project, duration of critical tasks, and predicted inspection dates, shall be  
31 required submitted prior to the issuance of any building construction permit.- Once  
32 approved, the property owner shall provide the City with written quarterly job  
33 progress reports consistent with the approved PERT or GANTT chart.- Prior to the  
34 commencement of any construction work on the project, the applicant may apply for  
35 an extension of the established time limit as provided in subsection D below;  
36 provided that no construction activity has yet commenced on the project.

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38 -C. Construction Time Limit.- Except where a longer time period is approved pursuant  
39 to subsection D below, the maximum time for completion of approved alterations,  
40 additions, modifications, repairs, or new construction, following issuance of the  
41 building construction permit, shall not exceed the following:

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<b>Estimated Value of Project</b>	<b>Construction Time Limit*</b>
\$0 to \$100,000	9 months
\$100,001 to \$500,000	12 months
Greater than \$500,000	18 months

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1 \* For landscaping work (including retaining walls and grading) approved as  
2 part of a larger the construction project, the applicant shall have an additional  
3 ninety (90) days after the date of final inspection approval of to complete the  
4 building permit landscaping work after final building inspection approval or  
5 issuance of an occupancy permit (whichever occurs later) for the main  
6 construction project. This additional ninety (90) days shall not apply to  
7 construction projects solely comprised of landscaping.  
8  
9

10 **D.- Extension of Construction Time Limit.-**

- 11
- 12 1. a. Construction Activities. Provided that no construction activity has yet  
13 commenced on the project, or any part thereof, the applicant may either  
14 abandon the project and terminate its design review permit or apply for an  
15 extension of the established construction time limit, not to exceed an  
16 additional six (6) months, one hundred eighty (180) days.
- 17 b. Landscaping Activities. For landscaping work that was (including retaining  
18 walls and grading) approved as part of a larger the construction project,  
19 following final building inspection approval or issuance of an occupancy  
20 permit (whichever occurs later), the applicant may file an application apply  
21 for an extension not to exceed thirty (30) days beyond the ninety (90)-day  
22 landscaping time limit specified in subsection C above. Such application  
23 shall be filed prior to the expiration of the 90-day time limit and shall be  
24 considered by the Community Development Director, who shall have the  
25 authority to grant said extension only if, in his or her opinion, such extension  
26 to beyond the 90-day landscaping time limit is warranted because of delays  
27 caused by inclement weather.  
28
- 29 2. An application for an extension of the construction time limit shall be  
30 accompanied by complete working drawings for the construction, a written  
31 explanation of the reasons for the requested extension, and a fee, as established by  
32 resolution of the City Council resolution.  
33
- 34 3. Within ~~ten (10)~~ fifteen (15) working days of receipt of a complete application for  
35 extension in accordance with subsection D.1.a above, said application shall be  
36 reviewed by a committee consisting of the Community Development Director, the  
37 Building Inspector, and the City Engineer, meeting together with the project  
38 contractor, architect, and, at the applicant's option, the applicant and/or any other  
39 representatives of the applicant. The committee may recommend to the Planning  
40 Commission, and the Planning Commission may approve, an extension if it is  
41 determined ~~that by the committee that~~ (i) such extension will not have a material  
42 deleterious effect on the neighborhood in which the project is located and (ii) any  
43 one or more of the following factors presents an unusual and substantial obstacle  
44 to complying with the standard construction time limit:  
45  
46 a. Site topography;

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- b. Site access;
- c. Geologic issues;
- d. ~~d.~~ Neighborhood considerations;
- e. Other unusual factors ~~(except lack of financing).~~

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~~At the completion of such review, the~~ The committee shall make a written recommendation to the Planning Commission whether or not to approve the requested extension and setting forth the findings it has made justifying its decision. ~~The Committee shall have the authority to administratively approve requests for extension, subject solely to the guidelines of Paragraphs 2 and 3 above, provided however that such extensions do not result in a construction time limit exceeding eighteen (18) months.~~

- 4. The committee's recommendation shall be placed on the next available Planning Commission agenda and publicly-noticed as an amendment to the applicant's existing design review approval permit. The Planning Commission shall have the authority to approve requests for extension, subject solely to the guidelines of subsection D.3 above; provided, however, that such extensions do not result in a total construction time limit exceeding eighteen (18) months. Any modification by the Planning Commission of the original construction time limit shall not extend the existing expiration date of the design review approval permit. The decision of the Planning Commission to grant or deny the requested extension may be appealed ~~in writing~~ to the City Council in accordance with the procedures of Chapter 10.84.

**E. - Penalties.**

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- 1. If a property owner fails to complete construction by the applicable time limit established in this section ~~Section 10.54.100~~, the property owner shall be subject to the following penalties payable to the City:

<b>Period of Time That Project Remains Incomplete Beyond Applicable Time Limit</b>	<b>Penalty</b>
First 60 days	<del>\$400.00</del> per day (i.e., <del>\$24,000.00</del> maximum penalty applicable to this 60-day period)
61st through 120th day	<del>\$600.00</del> per day (i.e., <del>\$36,000.00</del> maximum penalty applicable to this 60-day period)
121st day and every day thereafter	<del>\$800.00</del> per day (to a maximum of the <del>lesser</del> greater of 10% of project value or <del>\$200,000.00</del> )

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1 2. ~~2.~~ Penalties, fees and costs due to the City pursuant to this section ~~subsection~~  
2 E are due each day as the penalties accrue.

3  
4 ~~3.~~ Any violation of this section shall constitute a public nuisance and, in addition to  
5 being subject to any other remedies allowed by law, may be abated as provided by  
6 law.

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8 **F. ~~Deposit~~Deposits.**

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10 1. Upon reaching the time limits set out in ~~Section~~ subsections C and D, if  
11 construction has not been completed, or if no final inspection has been made or a  
12 certificate of occupancy issued, the property owner or his representative shall  
13 deliver to the Community Development Department a refundable deposit (in cash  
14 or other security instrument acceptable to the City and valid for a minimum time  
15 period of two (2) years) in the amount of Twenty Four Thousand Dollars  
16 ~~(\$24,000.00-), plus a non-refundable administrative fee as established by~~  
17 resolution of the City Council.

18  
19 2. If no deposit is made as provided in subsection F.1 above, the building official  
20 shall issue a stop work order.

21  
22 3. On or before the sixtieth (60<sup>th</sup>) day that the project has remained incomplete, and  
23 no final inspection has been made and no certificate of occupancy issued, the  
24 property owner or his representative shall deliver to the Community Development  
25 Department an additional refundable deposit (in cash or other security instrument  
26 acceptable to the City and valid for a minimum time period of two (2) years) in  
27 the amount of Thirty Six Thousand Dollars ~~(\$36,000.00-), plus a non-refundable~~  
28 administrative fee as established by resolution of the City Council.

29  
30 4. If no deposit is made as provided in subsection F.3 above, the building official  
31 shall issue a stop work order.

32  
33 5. On or before the one hundred twentieth (120<sup>th</sup>) day that the project has remained  
34 incomplete, and no final inspection has been made and no certificate of  
35 occupancy issued, the property owner or his representative shall deliver to the  
36 Community Development Department an additional refundable deposit (in cash  
37 or other security instrument acceptable to the City and valid for a minimum time  
38 period of two years) in the amount of One Hundred Forty Thousand Dollars  
39 ~~(\$140,000.00-), plus a non-refundable administrative fee as established by~~  
40 resolution of the City Council.

41  
42 6. ~~6.~~ If no deposit is made as provided in subsection F.5 above, the building  
43 official shall issue a stop work order.

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1 | 7. 7. — If ~~at~~ the property owner fails to complete construction by the applicable  
2 | time limit, the applicable penalties shall accrue daily up to the maximum set out  
3 | in ~~Section~~subsection E.

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5 | 8. 8. — If the property owner believes that the failure to meet the applicable time  
6 | limit was caused by circumstances beyond the property owner's control, the  
7 | property owner may file a written statement to that effect with the Community  
8 | Development Director at the time of making the deposit as described in  
9 | subsections F, 1, 3 and/or 5 above and provide any documentation substantiating  
10 | such grounds of appeal and the effect on the construction. If the property owner  
11 | makes such filing, no part of the deposit cash or other security instrument shall be  
12 | forfeited to the City if construction is completed within thirty (30) days of the  
13 | deposit. If construction is completed after the thirty (30) days and the ~~building~~  
14 | ~~official~~Community Development Director concurs with the property owner's  
15 | statement as to the cause of the failure to meet the deadline, the ~~building~~  
16 | ~~official~~Community Development Director shall waive the penalty and return the  
17 | cash deposit or other security instrument to the property owner. If the ~~building~~  
18 | ~~official~~Community Development Director does not concur with the property  
19 | owner's statement, ~~such statement~~ shall be treated as an appeal under ~~Section~~  
20 | subsection G below and all the provisions of that ~~section~~subsection shall apply.  
21 | As used in this Section 10.54.100, the term "circumstances beyond the property  
22 | owner's control" shall mean events outside the property owner's reasonable  
23 | control that are not caused by the property owner's willful or unlawful  
24 | misconduct or gross negligence (or that of the property owner's contractor or  
25 | subcontractors), such as acts of God, earthquake, labor disputes that are not  
26 | caused, directly or indirectly by the property owner or the property owner's  
27 | contractor or subcontractors, shortages of supplies, riots, war, acts of terrorism,  
28 | fire, epidemics, or delays of common carriers. A failure of a lender to make or  
29 | fund a loan commitment shall not be deemed to be a "circumstances beyond the  
30 | property owner's control."

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31 |  
32 | 9. 9. — If construction is completed after the applicable time limit, and the  
33 | ~~building official~~Community Development Director does not concur with the  
34 | property owner's statement pursuant to subsection F.8, the City shall draw on the  
35 | deposit or other security instrument in the amount of the applicable penalties;  
36 | provided, however, that in the event of an appeal, the City shall not draw on the  
37 | deposit or other security instrument until the Planning Commission and, if  
38 | applicable, the City Council has rendered its decision as set forth in  
39 | ~~Section~~subsection G.

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41 | 10. 10. — After construction is completed and all applicable ~~fine~~penalties received  
42 | by the City, any remaining cash or security instrument deposit shall be refunded  
43 | or returned ~~to the account of the property owner~~.

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45 | **G. AppealAppeals.**

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1 | 1.- A penalty imposed pursuant to ~~Sections~~subsections B through F may be  
2 | appealed to the Planning Commission on the grounds that the property owner was  
3 | unable to comply with the applicable time limit ~~for reasons~~as a result of  
4 | circumstances beyond the control of the property owner and the owner's  
5 | representatives control. There shall be no right to appeal until construction is  
6 | completed. Any person aggrieved by the decision of the Planning Commission on  
7 | the appeal may appeal to the City Council. ~~The provisions in accordance with the~~  
8 | procedures of Chapter 10.84 of the Sausalito Municipal Code shall apply to the  
9 | appeal process.

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10 |  
11 | 2. At the time the appeal is filed or within two (2) weeks thereafter, the appellant  
12 | shall submit documentary and other evidence sufficient to establish that design  
13 | decisions, construction drawings and documents, bids and construction contracts,  
14 | permit applications, and compliance with all required permit conditions were  
15 | undertaken in a diligent and timely manner. Documentary evidence shall include,  
16 | but not be limited to, dated design contracts, date-stamped plans, dated  
17 | construction contracts and material orders, and proof of timely payment of any  
18 | deposits or fees required pursuant to any of the foregoing items. The  
19 | documentary and other evidence shall demonstrate that construction delays  
20 | resulted from circumstances fully out of beyond the applicant's property owner's  
21 | control and despite diligent and clearly documented efforts to achieve  
22 | construction completion within the applicable time limit. Penalties imposed  
23 | pursuant to this Section 10.54.100 shall not be modified or cancelled unless all  
24 | evidence required by this subsection G.2 is submitted at the time of appeal.

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28 | **H. -Enforcement.**

29 |  
30 | 1.- This Section 10.54.100 shall apply to all construction, including all  
31 | additions, alterations, modifications, repairs, and improvements, ~~which that~~  
32 | requires a design review permit, including a design review permit for such  
33 | construction undertaken before the application for the design review permit or an  
34 | amended design review permit with respect to such construction previously  
35 | undertaken without a design review permit or outside a previously-issued design  
36 | review permit. The time limit for completion of any design review -permit issued  
37 | after January 1, ~~2002~~2009 shall be extended from the effective date of this  
38 | ordinance pursuant to the time limits specified in ~~sections~~subsections C and D.

39 |  
40 | 2.- Any penalty due under ~~Section~~subsection E in excess of the deposit made  
41 | under ~~Section~~subsection F shall be a personal debt owed to the City by the  
42 | property owner(s) and, in addition to all other means of enforcement and  
43 | collection, shall become a lien against the said property and shall be subject to the  
44 | same penalties (including interest thereon at the maximum rate allowed by law  
45 | from the date the lien attaches until the date of payment) and the same procedure  
46 | and sale in case of delinquency as provided for ordinary municipal taxes.

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2 **I. Violations.**  
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4 1.- A violation of this Section 10.54.100 is a misdemeanor and shall be  
5 punished as provided in Chapter 1.05. A civil action may be commenced to  
6 abate, enjoin, or otherwise compel the cessation of violation of any provision in  
7 this Section: 10.54.100. In a civil action brought pursuant to this Section  
8 10.54.100 in which the City prevails, the court may award to the City all costs of  
9 investigation and preparation for trial, the costs of trial, reasonable expenses  
10 including overhead and administrative costs incurred in prosecuting the action,  
11 and reasonable attorney fees.  
12

13 2.- As part of a civil action brought by the City, a court may assess against  
14 any person who commits, allows, or maintains a violation of any provision of this  
15 Section 10.54.100 a civil penalty in an amount not to exceed Five Thousand  
16 Dollars (\$5,000.00) per daily violation. The civil penalty is separate and distinct  
17 from penalties imposed pursuant to this Section 10.54.100.  
18

19 3.- Upon any guilty plea or judgment or conviction, in any criminal  
20 proceeding brought for the violation of this Section 10.54.100, where the  
21 defendant is entitled by law to probation, then the court may require the payment  
22 to the City of the costs and expenses as described above and the code provision  
23 incorporated by reference as one of the conditions of such probation.  
24

25 3. 4.—The building official or the Community Development Director is  
26 authorized to order work stopped whenever work is being done contrary to the  
27 provisions of this Section: 10.54.100.  
28

29 4. Any violation of this Section 10.54.100 shall constitute a public nuisance and, in  
30 addition to being subject to any other remedies allowed by law, may be abated as  
31 provided by law.  
32

33 **Section 2.** Section 10.54.040 of the Sausalito Municipal Code is hereby amended to  
34 ~~added~~ add a new Section J: to read as follows:  
35

36 J. Expiration of Permit. Administrative Design Review Permits shall expire one (1)  
37 year following the effective date of the permit, provided no extension has been filed prior  
38 to the expiration date.  
39

40 **Section 3.** Section 10.54.050-J of the Sausalito Municipal Code is hereby amended in its  
41 entirety to read as follows:  
42

43 J. Expiration of Permit. Design Review Permits shall expire one (1) year following  
44 the effective date of the permit, provided no extension has been filed prior to the  
45 expiration date.  
46

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1 | **Section 4.** Section 10.62.070- of the Sausalito Municipal Code is hereby amended to add  
2 | a new Section K to read as follows:

3 |  
4 | K. Expiration of Permit. Nonconforming Permits shall expire one (1) year following  
5 | the effective date of the permit, unless a different expiration date is stipulated at the time  
6 | of approval, a building construction permit has been issued and construction diligently  
7 | pursued, or the permit is renewed or extended.

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10 | ~~Section 5.~~

11 | Section 5. The adoption of this ordinance is exempt from the application of the  
12 | California Environmental Quality Act, Public Resources Code section 21000, et seq., in  
13 | accordance with section 15305 (Minor Alterations in Land Use Limitations).

14 |  
15 | Section 6. This Ordinance shall be in full force and effect thirty (30) days after the date  
16 | of its adoption.

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19 | ~~Section 6.7.~~ This Ordinance shall be published once within fifteen (15) days after its  
20 | passage and adoption in a newspaper of general circulation in the City of Sausalito.

21 |  
22 |  
23 | **THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City  
24 | Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, and was adopted at a regular meeting of the  
25 | City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:

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28 |  
29 |  
30 | AYES:                    COUNCILMEMBER:  
31 |  
32 | NOES:                    COUNCILMEMBER:  
33 |  
34 | ABSENT:                COUNCILMEMBER:  
35 |  
36 | ABSTAIN:                COUNCILMEMBER:  
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39 | \_\_\_\_\_  
40 | Jonathan Leone, Mayor

41 | ATTEST:

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45 | DeputyDebbie Pagliaro, City Clerk

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