



# STAFF REPORT

## SAUSALITO CITY COUNCIL

---

### AGENDA TITLE

Zoning Ordinance Amendment to Add Construction Time Limit Regulations and Modify the Length of Validity of Certain Permits - ZOA 09-002

### RECOMMENDED MOTION

Provide direction to staff and continue consideration of the draft ordinance to a public hearing scheduled for November 10, 2009.

---

### SUMMARY

The draft Ordinance amends the Zoning Ordinance by adding regulations on the duration of construction projects in Sausalito and modifying the period of validity for Administrative Design Review Permits, Design Review Permits, and Non-Conformity Permits. The City Council previously reviewed the draft ordinance in September 2009. The draft ordinance addresses the City Council's concerns as well as the concerns expressed by the Legislative Committee. The time limits for completion of construction projects have been lengthened to target outlier projects which take excessive time periods to complete construction. The ordinance has been revised to allow time extensions to be requested prior to or during construction, and to allow a staff committee to grant the extension requests. In addition, the ordinance has been revised to allow Design Review Permits to be valid for two years plus a one-year extension period.

### 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 period of validity for 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 construction time limit regulations. On April 21, 2009, the Council reviewed the draft regulations and directed staff to present the proposed regulations to the Planning Commission for review and recommendation.

On May 20, 2009 and June 17, 2009, the Planning Commission held public hearings on the draft regulations (per Government Code Section 65853 *et seq.* and Zoning

---

Item: 6c  
Meeting Date: 10-20-09  
Page: 1

Ordinance Section 10.80.070). Audio from these meetings is available on the City's website. The Planning Commission also considered amendments suggested by staff regarding the period of validity for certain permits (i.e., Administrative Design Review Permits, Design Review Permits, and Non-conformity Permits). The Planning Commission suggested several modifications of the regulations and recommended City Council approval of the regulations.

On July 7, 2009 the City Council held a public hearing on the draft regulations and directed staff to make several modifications. On September 15, 2009 the City Council held another public hearing on the draft regulations and directed staff to investigate several issues. On September 23, 2009, the Legislative Committee (Mayor Leone and Vice-Mayor Weiner) as well as City Manager Politzer, City Attorney Wagner, and Community Development Director Graves met with several interested parties regarding the draft regulations. On October 12, 2009 the Legislative Committee, City Manager, City Attorney, and Community Development Director met to review modifications of the draft regulations. The attached clean copy of the ordinance (**Attachment 1**) reflects the direction provided by the Legislative Committee. Also attached is a redlined copy of the ordinance (**Attachment 2**) which highlights the changes made since the Council's last review of the draft ordinance on September 15, 2009.

**DISCUSSION**

In brief, the draft ordinance addresses two issues – construction time limits and the period of validity for certain permits. These issues are discussed below.

a) Construction Time Limits

The draft ordinance adds a new Section 10.54.100 to the Zoning Ordinance which imposes a time limit on the construction phase of all projects which require a Design Review Permit. Considerable Legislative Committee discussion has transpired on the appropriate project values and respective time limits for completion of construction. In order to provide a point of reference for establishing appropriate project values and time limits, staff conducted a survey of local engineers, contractors, and architects (see **Attachment 3** for survey results). The updated project values and time limits are listed below.

Estimated Value of Project	Construction Time Limit
\$0 to \$500,000	18 months
\$500,001 to \$1,000,000	24 months
Greater than \$1,000,000	30 months

The former lower project values and shorter time limits are listed below

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

*Time Extensions.* The regulations allow applicants to request a time extension. In the former version of the ordinance, the applicant needed to apply for the extension prior to the start of construction. Based upon direction at the September City Council meeting, this provision has been modified to allow applicants to request one or more time extensions prior to or during construction. The total amount of time granted time extensions cannot exceed six months. A second change incorporated into the regulations at the direction of the City Council is process for granting extensions. The updated version allows a staff committee to review and grant time extensions. Decisions of the staff committee can be appealed to the Planning Commission. The committee can only grant an extension if certain designated factors are present (see Section 10.54.100.D.3).

*Documentation of Estimated Values.* The draft regulations include a provision which requires applicants to submit information reasonably requested by the Community Development Director to document the estimated value of their project. This information may include an executed construction contract. Wording has been added to clarify that such documentation would only be required at the time of a building permit application (see Section 10.54.100.B).

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

<b>Period of Time That Project Remains Incomplete Beyond Applicable Time Limit</b>	<b>Penalty</b>
First 60 days	\$400 per day (i.e., \$24,000 maximum penalty applicable to this 60-day period)
61 <sup>st</sup> 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. Discussion at the Legislative Committee questioned whether the maximum penalty of \$200,000 provided an adequate incentive for applicants to complete projects in a timely manner. If the Council concludes a greater penalty is appropriate, wording could be added to allow the \$800 per day penalty to be charged until the project has been completed.

*Waiver of Penalties.* If a property owner believes that the failure to meet the applicable time limit was caused by circumstances beyond the property owner's control, the property owner may file a written statement at the time of making the deposit listed above. If the Community Development Director concurs with the property owner's statement, the CD Director can waive the penalty and return the deposit. If the CD Director does not concur with the property owner's statement, the statement is treated as an appeal of the CD Director's decision to the Planning Commission.

*Applicability of Regulations.* One of the issues discussed by the Council at the September meeting was whether the new regulations would be applicable prospectively only – or if they would be applicable to projects that are currently under construction. Staff has recommended that the regulations be applied to all projects that have not yet pulled a building permit when the ordinance goes into effect – this would include projects that have received the requisite discretionary approvals but have not commenced construction. This would not capture projects that are currently under construction. The following is a bullet point summary of how some other jurisdictions which have construction time limits in place have addressed this issue:

*Atherton:* applies to all construction for which a building permit was issued on or after the effective date of the ordinance;

*Belevedere:* silent

*Belmont:* applies to all construction, including all additions, alterations, modifications, repairs, and improvements, which requires a building permit and the time limit for completion of any building permit issued after January 1, 2002 shall be extended from the effective date of the ordinance.

*Tiburon:* all permits issued by the Building Official prior to April 15, 1994, and which have not expired by limitation shall remain subject to the provisions of Section 303(d) of the Uniform Building Code (1991 edition) as drafted by the International Conference of Building Officials. For purposes of such permits, failure to exercise due diligence and make substantial progress on the work authorized shall be deemed suspension or abandonment of the permit. All permits issued by the Building Official on or after April 15, 1994, but prior to February 15, 2002, shall expire by limitation and become null and void eighteen months from the date the permit is issued.

*Conclusion.* Based upon the survey of engineers, contractors, and architects, the updated project values and time limits (including up to six months of time extensions) will provide the vast majority of projects with adequate time for completion of construction. As a result, the Construction Time Limit regulations more accurately target outlier projects which take excessive time periods to complete construction.

b) Period of Validity for Certain Permits

The draft ordinance establishes and modifies the period of validity of the following permits.

*Administrative Design Review Permits.* Currently there is no expiration date for Administrative Design Review Permits approved by the CD Department staff. The draft ordinance would stipulate that Administrative Design Review Permits expire two years following the effective date unless an extension request has been filed prior to the expiration date.

*Design Review Permits.* Currently Design Review Permits are effective for five years following approval by the Planning Commission. In addition conflicting sections of the Zoning Ordinance allow for one-and two-year extensions of Design Review Permits (i.e., Sections 10.50.140 and 10.54.050.K, respectively). The effect of these regulations allows Design Review Permits to be valid for up to seven years (including an extension). During this time period, applicants need to complete the following actions in order to implement their Design Review Permit:

- Prepare construction drawings;
- Submit the construction drawings for plan check, make necessary revisions, and obtain construction permits;
- Obtain financing; and
- Commence construction and obtain approval of a foundation inspection (per Section 10.50.120.A).

Additional factors affecting the timing of construction are the unstable geologic formations in several areas of the community. As a result, the City Engineer severely limits grading in these hillside areas between October 15<sup>th</sup> and April 15<sup>th</sup>. Therefore, applicants in the affected hillside locations need to take this restriction period into account prior to obtaining construction permits, starting grading operations, and installing foundations.

While recognizing the multiple actions and timing considerations listed above, the current seven-year period of validity for Design Review Permits is unnecessary and excessive. This extended time period can be disruptive to neighboring residents and property owners who do not know if or when a project is proceeding. This extended time period also allows individuals to obtain design review permits for major remodels or new construction and market the approved projects for many years before making a decision to prepare construction drawings. In addition new residents or property owners may come into the neighborhood not aware that a major remodel or new construction project was approved several years earlier. Staff surveyed other Marin jurisdictions regarding the period of validity for their design review permits (see **Attachment 4** for survey results). Six of the 11 jurisdictions allow a design review permits for be valid for two to three years (including extensions). The remaining jurisdictions allow six years or unlimited time periods (including extensions).

On the basis of the two-to three-year time periods predominantly used by the southern Marin jurisdictions, the draft ordinance reduces the period of validity of Design Review Permits from five years to two years (Section 10.54.050.J) and clarifies that extensions are for one year (Section 10.54.050.K). The two-year time period provides adequate time for applicants to accomplish the actions listed above to implement their Design Review Permit. The one-year extension provides adequate time for applicants to address grading restrictions between October 15<sup>th</sup> and April 15<sup>th</sup> as well as unforeseen circumstances.

*Non-Conformity Permits.* Currently there is no expiration date for Non-Conformity Permits. The draft ordinance stipulates that Non-Conformity Permits expire two years following the effective date unless a different expiration date is stipulated at the time of approval, a construction permit has been issued and construction diligently pursued, or the permit is extended.

### **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 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 CORRESPONDENCE**

A public hearing notice will be placed in the *Marin Independent Journal* for a public hearing on November 10, 2009.

Letters and emails received to date are provided as **Attachments 5-10**.

### **FISCAL IMPACT**

The proposed ordinance has the potential to generate an unknown amount of revenue for the City through the imposition of penalties. At this time it is not possible to project

that revenue amount. There is also a cost to the City of staff time in implementing the regulations.

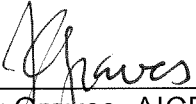
### **STAFF RECOMMENDATION**

Provide any appropriate direct to staff and continue consideration of the draft ordinance to a public hearing scheduled on November 10, 2009.

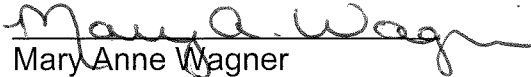
### **ATTACHMENTS**

1. Ordinance (Draft), dated 10/13/09
2. Ordinance (Draft), dated 10/13/09 -- Redlined copy showing revisions since Council's last review on 9/15/09
3. Survey Results – Sausalito Construction Time Limits, dated 10/09
4. Survey Results – Design Review Permits – Length of Validity, dated 10/1/1/09
5. Letter from Raymond Withy, date stamped 9/9/09
6. Letter from Flynn McDonald, date stamped 9/21/09
7. Letter from Raymond Withy, date stamped 9/24/09
8. Letter from Steven & Joan McArthur, date stamped 10/1/09
9. Letter from Charles Syers, date stamped 10/14/09
10. Email from Chris Elkington, date stamped 10/14/09

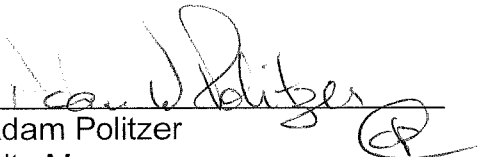
PREPARED BY:

  
\_\_\_\_\_  
Jeremy Graves, AICP  
Community Development Director

REVIEWED BY:

  
\_\_\_\_\_  
Mary Anne Wagner  
City Attorney

SUBMITTED BY:

  
\_\_\_\_\_  
Adam Politzer  
City Manager

CDD\Project-Non-Address\ZOA\09-002\CC sr 10-20-09

Item: 6C  
Meeting Date: 10-20-09  
Page: 7



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

**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 10.62.070 REGARDING THE  
LENGTH OF VALIDITY 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  
and the community generally in the safe and peaceful enjoyment of their  
properties;

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

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

31

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

Estimated Value of Project	Construction Time Limit*
\$0 to \$500,000	18 months
\$500,001 to \$1,000,000	24 months
Greater than \$1,000,000	30 months

37 \* For landscaping work (including retaining walls and grading) approved as  
 38 part of the construction project, the applicant shall have an additional ninety  
 39 (90) days to complete the landscaping work after final building inspection  
 40 approval or issuance of an occupancy permit (whichever occurs later) for the  
 41 main construction project. This additional ninety (90) days shall not apply  
 42 to construction projects solely comprised of landscaping.

6c  
10

1 **D. Extension of Construction Time Limit.**

- 2
- 3 1. a. Construction Activities. Prior to or following the commencement of
- 4 construction an applicant may apply for one or more extension(s) of the
- 5 established construction time limit, provided, however in no event shall the
- 6 total extension(s) granted exceed an additional one hundred eighty (180) days.
- 7 b. Landscaping Activities. For landscaping work (including retaining walls and
- 8 grading) approved as part of the construction project, the applicant may apply
- 9 for an extension not to exceed thirty (30) days beyond the ninety (90)-day
- 10 landscaping time limit specified in subsection C above. Such application shall
- 11 be filed prior to the expiration of the 90-day time limit and shall be considered
- 12 by the Community Development Director, who shall have the authority to
- 13 grant said extension only if, in his or her opinion, such extension beyond the
- 14 90-day landscaping time limit is warranted because of delays caused by
- 15 inclement weather or circumstances beyond the property owner's control.
- 16
- 17 2. An application for an extension of the construction time limit shall be
- 18 accompanied by complete working drawings for the construction, a written
- 19 explanation of the reasons for the requested extension, and a fee as established by
- 20 resolution of the City Council.
- 21
- 22 3. Within fifteen (15) working days of receipt of a complete application for
- 23 extension in accordance with subsection D.1.a above, said application shall be
- 24 reviewed by a committee consisting of the Community Development Director, the
- 25 Building Inspector, and the City Engineer, meeting together with the project
- 26 contractor, architect, and, at the applicant's option, the applicant and/or any other
- 27 representatives of the applicant. The committee may grant an extension if it is
- 28 determined by the committee that (i) such extension will not have a material
- 29 deleterious effect on the neighborhood in which the project is located and (ii) any
- 30 one or more of the following factors presents an unusual and substantial obstacle
- 31 to complying with the standard construction time limit:
- 32 a. Site topography;
- 33 b. Site access;
- 34 c. Geologic issues;
- 35 d. Neighborhood considerations;
- 36 e. Other unusual factors (except lack of financing).
- 37
- 38 4. The committee shall have the authority to approve requests for extension, subject
- 39 solely to the guidelines of subsection D.3 above; provided, however, that such
- 40 extensions do not result in a total construction time limit exceeding thirty-six (36)
- 41 months. Any modification by the committee of the original construction time
- 42 limit shall not extend the existing expiration date of the design review permit.
- 43 The decision of the committee to grant or deny the requested extension may be
- 44 appealed to the Planning Commission and the decision of the Planning
- 45 Commission may be appealed to the City Council in accordance with the
- 46 procedures of Chapter 10.84.

60  
11

1  
2 **E. Penalties.**  
3

- 4 1. If a property owner fails to complete construction by the applicable time limit  
5 established in this Section 10.54.100, the property owner shall be subject to the  
6 following penalties payable to the City:  
7

<b>Period of Time That Project Remains Incomplete Beyond Applicable Time Limit</b>	<b>Penalty</b>
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)

- 8  
9 2. Penalties, fees and costs due to the City pursuant to this subsection E are due each  
10 day as the penalties accrue.  
11

12 **F. Deposits.**  
13

- 14 1. Upon reaching the time limits set out in subsections C and D, if construction has  
15 not been completed, or if no final inspection has been made or a certificate of  
16 occupancy issued, the property owner or his representative shall deliver to the  
17 Community Development Department a refundable deposit (in cash or other  
18 security instrument acceptable to the City and valid for a minimum time period of  
19 two (2) years) in the amount of Twenty Four Thousand Dollars (\$24,000), plus a  
20 non-refundable administrative fee as established by resolution of the City Council.  
21  
22 2. If no deposit is made as provided in subsection F.1 above, the building official  
23 shall issue a stop work order.  
24  
25 3. On or before the sixtieth (60<sup>th</sup>) day that the project has remained incomplete, and  
26 no final inspection has been made and no certificate of occupancy issued, the  
27 property owner or his representative shall deliver to the Community Development  
28 Department an additional refundable deposit (in cash or other security instrument  
29 acceptable to the City and valid for a minimum time period of two (2) years) in  
30 the amount of Thirty Six Thousand Dollars (\$36,000), plus a non-refundable  
31 administrative fee as established by resolution of the City Council.  
32  
33 4. If no deposit is made as provided in subsection F.3 above, the building official  
34 shall issue a stop work order.  
35

600  
12

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

1 the event of an appeal, the City shall not draw on the deposit or other security  
2 instrument until the Planning Commission and, if applicable, the City Council has  
3 rendered its decision as set forth in subsection G.

- 4  
5 10. After construction is completed and all applicable penalties received by the City,  
6 any remaining cash or security instrument deposit shall be refunded or returned to  
7 the account of the property owner.  
8

9 **G. Appeals.**

- 10  
11 1. A penalty imposed pursuant to subsections B through F may be appealed to the  
12 Planning Commission on the grounds that the property owner was unable to  
13 comply with the applicable time limit as a result of circumstances beyond the  
14 property owner's control. There shall be no right to appeal until construction is  
15 completed. Any person aggrieved by the decision of the Planning Commission on  
16 the appeal may appeal to the City Council in accordance with the procedures of  
17 Chapter 10.84.  
18  
19 2. At the time the appeal is filed or within two (2) weeks thereafter, the appellant  
20 shall submit documentary and other evidence sufficient to establish that design  
21 decisions, construction drawings and documents, bids and construction contracts,  
22 permit applications, and compliance with all required permit conditions were  
23 undertaken in a diligent and timely manner. Documentary evidence shall include,  
24 but not be limited to, dated design contracts, date-stamped plans, dated  
25 construction contracts and material orders, and proof of timely payment of any  
26 deposits or fees required pursuant to any of the foregoing items. The  
27 documentary and other evidence shall demonstrate that construction delays  
28 resulted from circumstances beyond the property owner's control and despite  
29 diligent and clearly documented efforts to achieve construction completion within  
30 the applicable time limit. Penalties imposed pursuant to this Section 10.54.100  
31 shall not be modified or cancelled unless all evidence required by this subsection  
32 G.2 is submitted at the time of appeal.  
33

34 **H. Enforcement.**

- 35  
36 1. This Section 10.54.100 shall apply to all construction, including all additions,  
37 alterations, modifications, repairs, and improvements, that requires a design  
38 review permit, including a design review permit for such construction undertaken  
39 before the application for the design review permit or an amended design review  
40 permit with respect to such construction previously undertaken without a design  
41 review permit or outside a previously-issued design review permit. The time limit  
42 for completion of any design review permit issued after January 1, 2009 shall be  
43 extended from the effective date of this ordinance pursuant to the time limits  
44 specified in subsections C and D.  
45

600  
14

- 1 2. Any penalty due under subsection E in excess of the deposit made under  
2 subsection F shall be a personal debt owed to the City by the property owner(s)  
3 and, in addition to all other means of enforcement and collection, shall become a  
4 lien against the said property and shall be subject to the same penalties (including  
5 interest thereon at the maximum rate allowed by law from the date the lien  
6 attaches until the date of payment) and the same procedure and sale in case of  
7 delinquency as provided for ordinary municipal taxes.  
8

9 **I. Violations.**

- 10  
11 1. A violation of this Section 10.54.100 is a misdemeanor and shall be punished as  
12 provided in Chapter 1.05. A civil action may be commenced to abate, enjoin, or  
13 otherwise compel the cessation of violation of any provision in this Section  
14 10.54.100. In a civil action brought pursuant to this Section 10.54.100 in which  
15 the City prevails, the court may award to the City all costs of investigation and  
16 preparation for trial, the costs of trial, reasonable expenses including overhead  
17 and administrative costs incurred in prosecuting the action, and reasonable  
18 attorney fees.  
19  
20 2. As part of a civil action brought by the City, a court may assess against any  
21 person who commits, allows, or maintains a violation of any provision of this  
22 Section 10.54.100 a civil penalty in an amount not to exceed Five Thousand  
23 Dollars (\$5,000.00) per daily violation. The civil penalty is separate and distinct  
24 from penalties imposed pursuant to this Section 10.54.100.  
25  
26 3. Upon any guilty plea or judgment or conviction, in any criminal proceeding  
27 brought for the violation of this Section 10.54.100, where the defendant is entitled  
28 by law to probation, then the court may require the payment to the City of the  
29 costs and expenses as described above and the code provision incorporated by  
30 reference as one of the conditions of such probation.  
31  
32 4. The building official or the Community Development Director is authorized to  
33 order work stopped whenever work is being done contrary to the provisions of  
34 this Section 10.54.100.  
35  
36 5. Any violation of this Section 10.54.100 shall constitute a public nuisance and, in  
37 addition to being subject to any other remedies allowed by law, may be abated as  
38 provided by law.  
39

40 **Section 2.** Section 10.54.040 of the Sausalito Municipal Code is hereby amended to add  
41 a new Section J to read as follows:  
42

- 43 J. Expiration of Permit. Administrative Design Review Permits shall expire two (2)  
44 years following the effective date of the permit, provided no extension has been filed  
45 prior to the expiration date.  
46

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

3  
4 J. Expiration of Permit. Design Review Permits shall expire two (2) years following  
5 the effective date of the permit, provided no extension has been filed prior to the  
6 expiration date.

7  
8 **Section 4.** Section 10.54.050.K of the Sausalito Municipal Code is hereby amended in its  
9 entirety to read as follows:

10  
11 K. Extension. The applicant may request an extension of a Design Review Permit  
12 prior to the expiration of the permit. The Planning Commission may grant one (1)  
13 extension for up to one (1) year, in accordance with Section 10.50.140 (Extension of  
14 Approved Permits).

15  
16 **Section 5.** Section 10.62.070 of the Sausalito Municipal Code is hereby amended to add  
17 a new Section K to read as follows:

18  
19 K. Expiration of Permit. Nonconforming Permits shall expire two (2) years  
20 following the effective date of the permit, unless a different expiration date is stipulated  
21 at the time of approval, a construction permit has been issued and construction diligently  
22 pursued, or the permit is extended.

23  
24 **Section 6.** The adoption of this ordinance is exempt from the application of the  
25 California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in  
26 accordance with section 15305 (Minor Alterations in Land Use Limitations).

27  
28 **Section 7.** This ordinance shall be liberally construed to achieve its purposes and  
29 preserve its validity. If any section, subsection, sentence, clause or phrase of this  
30 ordinance is for any reason held to be unconstitutional or invalid, such decision shall not  
31 affect the validity of the remaining portion of this ordinance. The City Council hereby  
32 declares that it would have passed this ordinance and every section, subsection, sentence,  
33 clause or phrase thereof, irrespective of the fact that any one or more sections,  
34 subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

35  
36 **Section 8.** This Ordinance shall be in full force and effect thirty (30) days after the date  
37 of its adoption.

38  
39 **Section 9.** This Ordinance shall be published once within fifteen (15) days after its  
40 passage and adoption in a newspaper of general circulation in the City of Sausalito.

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

60  
16



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

AYES: COUNCILMEMBER:  
NOES: COUNCILMEMBER:  
ABSENT: COUNCILMEMBER:  
ABSTAIN: COUNCILMEMBER:

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

ATTEST:  
  
\_\_\_\_\_  
Debbie Pagliaro, City Clerk

CDD\Project – Non Address\ZOA\2009\09-002\Ord – 8-Committee Recommendations – Revised October 13, 2009

6c  
17



- 1  
2 5. The time limits adopted in this Section 10.54.100 allow an adequate and  
3 reasonable amount of time for the kinds of construction projects undertaken in the  
4 City; and  
5  
6 6. Substantial penalties should be imposed upon persons who violate the time limits  
7 imposed pursuant to this Section 10.54.100, so as to encourage compliance with  
8 such time limits and achieve the purposes of this Section 10.54.100.  
9

10 **B. Construction Time Limit Required.** As part of any application for a construction  
11 permit for a project which obtained or should have obtained a design review permit  
12 (including, without limitation, any such application with respect to improvements that  
13 have been constructed without or in violation of an existing valid design review  
14 permit, or administrative design review permits for the purposes of this Section  
15 10.54.100), the applicant shall file a reasonable estimate of the value of the project,  
16 and based thereon, a construction time limit shall be established for the project in  
17 accordance with the criteria set forth in subsection C below. The applicant shall  
18 submit information reasonably requested by the Community Development Director to  
19 support the estimated value of the project such documentation may include without  
20 limitation an executed construction contract. Compliance with such time limit shall  
21 become a condition of the design review permit. The time for completion of the  
22 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:

<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

<b><u>Estimated Value of Project</u></b>	<b><u>Construction Time Limit*</u></b>
<u>\$0 to \$500,000</u>	<u>18 months</u>
<u>\$500,001 to \$1,000,000</u>	<u>24 months</u>
<u>Greater than \$1,000,000</u>	<u>30 months</u>

60  
20

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

8 **D. Extension of Construction Time Limit.**  
9

- 10 1. a. Construction Activities. Prior to or following the commencement of  
11 construction an applicant may apply for one or more extension(s) of the  
12 established construction time limit, provided, however in no event shall the  
13 total extension(s) granted exceed an additional one hundred eighty (180) days.  
14 b. Landscaping Activities. For landscaping work (including retaining walls and  
15 grading) approved as part of the construction project, the applicant may apply  
16 for an extension not to exceed thirty (30) days beyond the ninety (90)-day  
17 landscaping time limit specified in subsection C above. Such application shall  
18 be filed prior to the expiration of the 90-day time limit and shall be considered  
19 by the Community Development Director, who shall have the authority to  
20 grant said extension only if, in his or her opinion, such extension beyond the  
21 90-day landscaping time limit is warranted because of delays caused by  
22 inclement weather or circumstances beyond the property owner's control.  
23
- 24 2. An application for an extension of the construction time limit shall be  
25 accompanied by complete working drawings for the construction, a written  
26 explanation of the reasons for the requested extension, and a fee as established by  
27 resolution of the City Council.  
28
- 29 3. Within fifteen (15) working days of receipt of a complete application for  
30 extension in accordance with subsection D.1.a above, said application shall be  
31 reviewed by a committee consisting of the Community Development Director, the  
32 Building Inspector, and the City Engineer, meeting together with the project  
33 contractor, architect, and, at the applicant's option, the applicant and/or any other  
34 representatives of the applicant. The committee may grant an extension if it is  
35 determined by the committee that (i) such extension will not have a material  
36 deleterious effect on the neighborhood in which the project is located and (ii) any  
37 one or more of the following factors presents an unusual and substantial obstacle  
38 to complying with the standard construction time limit:  
39
- 40 a. Site topography;
  - 41 b. Site access;
  - 42 c. Geologic issues;
  - 43 d. Neighborhood considerations;
  - 44 e. Other unusual factors (except lack of financing).
  - 45

**Deleted:** Provided that no construction activity has yet commenced on the project, or any part thereof, the applicant may either abandon the project and terminate its design review permit or

**Deleted:** an

**Deleted:** not to

**Deleted:** recommend to the Planning Commission

**Deleted:** ¶  
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.

60  
21

1 | 4. The committee shall have the authority to approve requests for extension, subject  
 2 | solely to the guidelines of subsection D.3 above; provided, however, that such  
 3 | extensions do not result in a total construction time limit exceeding thirty-six (36)  
 4 | months. Any modification by the committee of the original construction time  
 5 | limit shall not extend the existing expiration date of the design review permit.  
 6 | The decision of the committee to grant or deny the requested extension may be  
 7 | appealed to the Planning Commission and the decision of the Planning  
 8 | Commission may be appealed to the City Council in accordance with the  
 9 | procedures of Chapter 10.84.

**Deleted:** 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 permit. The Planning Commission

**Deleted:** Planning Commission

**Deleted:** Planning Commission

10  
11 **E. Penalties.**

12  
13 1. If a property owner fails to complete construction by the applicable time limit  
14 established in this Section 10.54.100, the property owner shall be subject to the  
15 following penalties payable to the City:  
16

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)

17  
18 2. Penalties, fees and costs due to the City pursuant to this subsection E are due each  
19 day as the penalties accrue.  
20

21 **F. Deposits.**

22  
23 1. Upon reaching the time limits set out in subsections C and D, if construction has  
24 not been completed, or if no final inspection has been made or a certificate of  
25 occupancy issued, the property owner or his representative shall deliver to the  
26 Community Development Department a refundable deposit (in cash or other  
27 security instrument acceptable to the City and valid for a minimum time period of  
28 two (2) years) in the amount of Twenty Four Thousand Dollars (\$24,000), plus a  
29 non-refundable administrative fee as established by resolution of the City Council.  
30  
31 2. If no deposit is made as provided in subsection F.1 above, the building official  
32 shall issue a stop work order.  
33  
34 3. On or before the sixtieth (60<sup>th</sup>) day that the project has remained incomplete, and  
35 no final inspection has been made and no certificate of occupancy issued, the

60c  
22

1 property owner or his representative shall deliver to the Community Development  
2 Department an additional refundable deposit (in cash or other security instrument  
3 acceptable to the City and valid for a minimum time period of two (2) years) in  
4 the amount of Thirty Six Thousand Dollars (\$36,000), plus a non-refundable  
5 administrative fee as established by resolution of the City Council.

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

1 contractor or subcontractors, shortages of supplies, riots, war, acts of terrorism,  
2 fire, epidemics, or delays of common carriers. A failure of a lender to make or  
3 fund a loan commitment shall not be deemed to be a "circumstances beyond the  
4 property owner's control."  
5

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

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

### 18 **G. Appeals.**

19  
20 1. A penalty imposed pursuant to subsections B through F may be appealed to the  
21 Planning Commission on the grounds that the property owner was unable to  
22 comply with the applicable time limit as a result of circumstances beyond the  
23 property owner's control. There shall be no right to appeal until construction is  
24 completed. Any person aggrieved by the decision of the Planning Commission on  
25 the appeal may appeal to the City Council in accordance with the procedures of  
26 Chapter 10.84.  
27

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

### 43 **H. Enforcement.**

44  
45 1. This Section 10.54.100 shall apply to all construction, including all additions,  
46 alterations, modifications, repairs, and improvements, that requires a design

6C  
24

1 review permit, including a design review permit for such construction undertaken  
2 before the application for the design review permit or an amended design review  
3 permit with respect to such construction previously undertaken without a design  
4 review permit or outside a previously-issued design review permit. The time limit  
5 for completion of any design review permit issued after January 1, 2009 shall be  
6 extended from the effective date of this ordinance pursuant to the time limits  
7 specified in subsections C and D.  
8

- 9
- 10 2. Any penalty due under subsection E in excess of the deposit made under  
11 subsection F shall be a personal debt owed to the City by the property owner(s)  
12 and, in addition to all other means of enforcement and collection, shall become a  
13 lien against the said property and shall be subject to the same penalties (including  
14 interest thereon at the maximum rate allowed by law from the date the lien  
15 attaches until the date of payment) and the same procedure and sale in case of  
16 delinquency as provided for ordinary municipal taxes.

17 **I. Violations.**

- 18
- 19 1. A violation of this Section 10.54.100 is a misdemeanor and shall be punished as  
20 provided in Chapter 1.05. A civil action may be commenced to abate, enjoin, or  
21 otherwise compel the cessation of violation of any provision in this Section  
22 10.54.100. In a civil action brought pursuant to this Section 10.54.100 in which  
23 the City prevails, the court may award to the City all costs of investigation and  
24 preparation for trial, the costs of trial, reasonable expenses including overhead  
25 and administrative costs incurred in prosecuting the action, and reasonable  
26 attorney fees.  
27
  - 28 2. As part of a civil action brought by the City, a court may assess against any  
29 person who commits, allows, or maintains a violation of any provision of this  
30 Section 10.54.100 a civil penalty in an amount not to exceed Five Thousand  
31 Dollars (\$5,000.00) per daily violation. The civil penalty is separate and distinct  
32 from penalties imposed pursuant to this Section 10.54.100.  
33
  - 34 3. Upon any guilty plea or judgment or conviction, in any criminal proceeding  
35 brought for the violation of this Section 10.54.100, where the defendant is entitled  
36 by law to probation, then the court may require the payment to the City of the  
37 costs and expenses as described above and the code provision incorporated by  
38 reference as one of the conditions of such probation.  
39
  - 40 4. The building official or the Community Development Director is authorized to  
41 order work stopped whenever work is being done contrary to the provisions of  
42 this Section 10.54.100.  
43
  - 44 5. Any violation of this Section 10.54.100 shall constitute a public nuisance and, in  
45 addition to being subject to any other remedies allowed by law, may be abated as  
46 provided by law.

60  
25



1  
2 **Section 2.** Section 10.54.040 of the Sausalito Municipal Code is hereby amended to add  
3 a new Section J to read as follows:  
4

5 J. Expiration of Permit. Administrative Design Review Permits shall expire two (2)  
6 years following the effective date of the permit, provided no extension has been filed  
7 prior to the expiration date.

Deleted: one (1)

8  
9 **Section 3.** Section 10.54.050.J of the Sausalito Municipal Code is hereby amended in its  
10 entirety to read as follows:  
11

12 J. Expiration of Permit. Design Review Permits shall expire two (2) years following  
13 the effective date of the permit, provided no extension has been filed prior to the  
14 expiration date.

Deleted: five

15  
16 **Section 4.** Section 10.54.050.K of the Sausalito Municipal Code is hereby amended in its  
17 entirety to read as follows:  
18

19 K. Extension. The applicant may request an extension of a Design Review Permit  
20 prior to the expiration of the permit. The Planning Commission may grant one (1)  
21 extension for up to one (1) year, in accordance with Section 10.50.140 (Extension of  
22 Approved Permits).

23  
24 **Section 5.** Section 10.62.070 of the Sausalito Municipal Code is hereby amended to add  
25 a new Section K to read as follows:  
26

27 K. Expiration of Permit. Nonconforming Permits shall expire two (2) years  
28 following the effective date of the permit, unless a different expiration date is stipulated  
29 at the time of approval, a construction permit has been issued and construction diligently  
30 pursued, or the permit is extended.

Deleted: one (1)

Deleted: renewed or

31  
32 **Section 6.** The adoption of this ordinance is exempt from the application of the  
33 California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in  
34 accordance with section 15305 (Minor Alterations in Land Use Limitations).  
35

36 Section 7. This ordinance shall be liberally construed to achieve its purposes and  
37 preserve its validity. If any section, subsection, sentence, clause or phrase of this  
38 ordinance is for any reason held to be unconstitutional or invalid, such decision shall not  
39 affect the validity of the remaining portion of this ordinance. The City Council hereby  
40 declares that it would have passed this ordinance and every section, subsection, sentence,  
41 clause or phrase thereof, irrespective of the fact that any one or more sections,  
42 subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

43  
44 **Section 8.** This Ordinance shall be in full force and effect thirty (30) days after the date  
45 of its adoption.  
46

Deleted: 6

1 **Section 9.** This Ordinance shall be published once within fifteen (15) days after its  
2 passage and adoption in a newspaper of general circulation in the City of Sausalito.

3  
4 **THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City  
5 Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, and was adopted at a regular meeting of the  
6 City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:

7  
8  
9  
10 AYES: COUNCILMEMBER:

11  
12 NOES: COUNCILMEMBER:

13  
14 ABSENT: COUNCILMEMBER:

15  
16 ABSTAIN: COUNCILMEMBER:

17  
18  
19 \_\_\_\_\_  
Jonathan Leone, Mayor

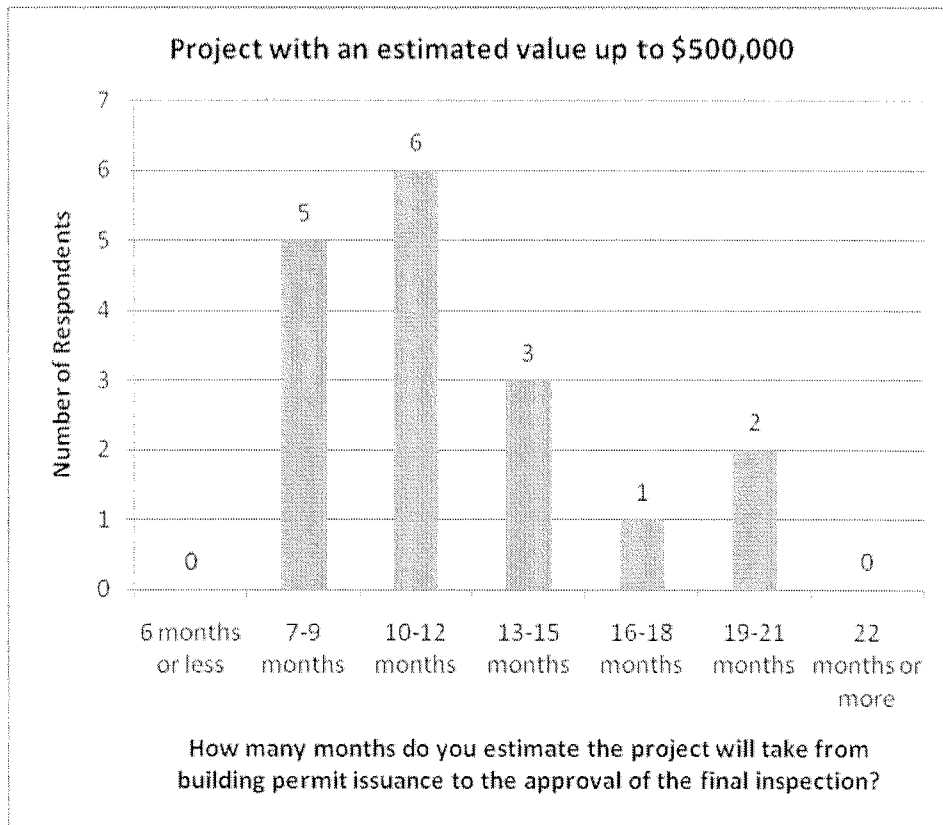
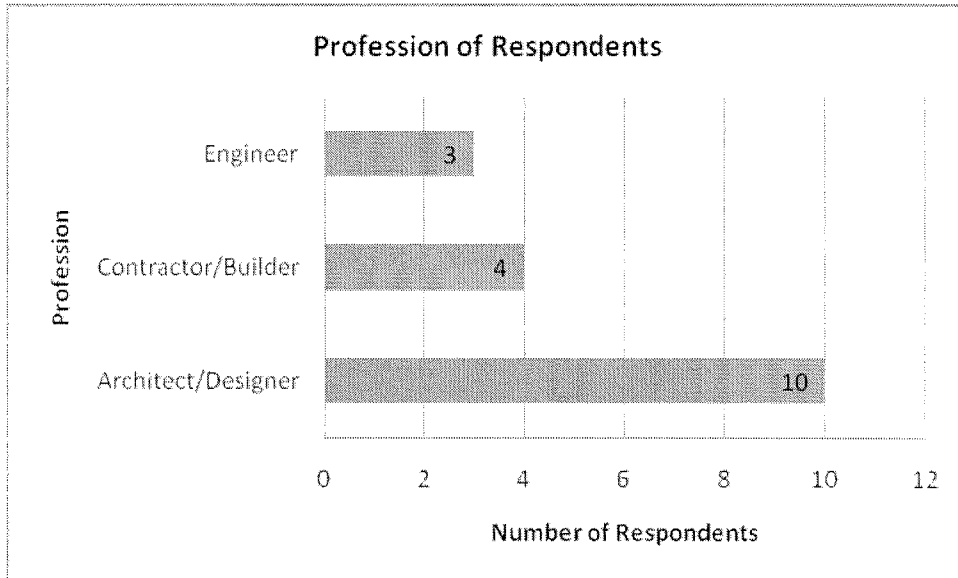
20  
21 ATTEST:

22  
23  
24 \_\_\_\_\_  
Debbie Pagliaro, City Clerk

25  
26  
27 CDD\Project - Non Address\ZOA\2009\09-002\Ord - 8-Committee Recommendations - Revised October 13, 2009  
28  
29

66  
27

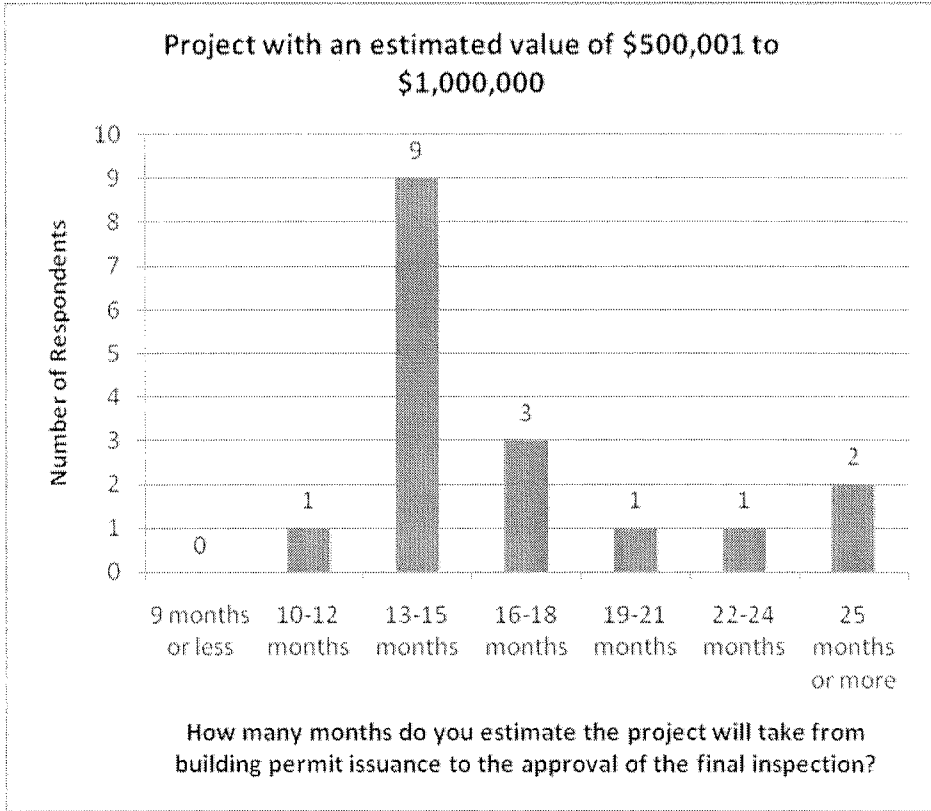
# Survey Results – Sausalito Construction Time Limits



**ATTACHMENT 3**  
(14 PAGES)

66  
29

**Survey Results – Sausalito Construction Time Limits**  
**October 2009**



6c  
30

## Respondent Comments

<p>“Provide for flexibility to increase the standard time limits based on specific factors, such as weather, unforeseen field conditions, special foundation problems etc. Give staff discretion to expand time in set increments.”</p>
<p>“Some projects are more complex in nature because of their unique location, site topography and access etc. and these constraints must be evaluated while setting time limits for individual projects. There should perhaps be a range of time-limits addressing magnitude (dollar amount) of the project but also the issues mentioned above.”</p>
<p>“If you limit construction project duration you MUST allow a realistic time frame for completion of that work. You also MUST allow for an extension of that process if there is some circumstance that was not foreseen. There can be numerous issues that delay construction. “</p>
<p>“1. While timelines can be appropriate, we need understand that in this day in age all projects need to address sustainability. Addressing these issues properly will add substantial time to a construction project. The use of the latest green building techniques adds several steps into a typical timeline that were not included just a few years ago. 2. This survey gathers data using very generic parameters. Dollar amounts are only one piece of the equation when estimating construction time lines, “</p>
<p>“Each project has its own time line depending on the site work, degree of difficulty of the design, the type of finishes and most importantly, the extent of changes created by unknown conditions, architect and/or owner preferences or codes. So each project would require monitoring of these variances in addition to the original schedule. “</p>
<p>“There are so many legitimate reasons for project schedule extensions and delays, most of which are not in the contractors' control, that placing a limit on a project schedule is arbitrary and unrealistic and puts an unfair burden on contractors, who are already under great strain, even in the best of economic times. “</p>
<p>“I have not read the regulations, but have a good understanding of what is proposed. While I think that projects that drag on for long periods of time are generally done by owner/builders or some agreement of that type, some poorly planned projects may have continuous addendums that lead to long schedules. The timeline for projects is profoundly affected by the site, engineering required, finishes and skill of the team assembled to plan and execute the work. The times checked above are generalities, and absolutely do not include the time it takes to obtain approvals. The timeline should run from the first day work is started and should be established via inspection or other method to verify that date. Other cities in Marin have ordinances geared around these concerns and while they may be prohibitively tight, they should be reviewed to see how they may be applied and modified to meet the City of Sausalito's particular concerns. “</p>
<p>“I have not reviewed them as of yet. “</p>
<p>“It is hard to estimate the time a project may take based solely on estimated value. Just like zoning has variances for different situations, there needs to be some allowance for different project types, accessibility issues, scope of work and detailing required/included. “</p>

*Survey Results – Sausalito Construction Time Limits  
October 2009*

"i think the idea to limit time are good, but they should be realistic and should have a extension period, before the fines kick in. I my experience most of the delays are caused by homeowner and their lack of decisions and changes. Keep in mind that these fines in most cases will be paid by the sausalito home owners. i think the most important thing is that contractorrs are making a effort to keep the job going and that they do not sit dormant. "

"Hi. Thanks for asking. Also, thank you for preparing and sending this email survey to obtain a broader range of feedback. However, the questions being asked are too limited. You are not asking all the cogent questions necessary to shape a workable Construction Time Limit Ordinance. In addition to the questions above, here are others that should be asked: 1. For projects that are more difficult, problematic or complex than typical projects, what is a reasonable time frame to complete such projects? 2. What would a reasonable contingency time frame be following a project's projected completion target date before a penalty fee is applied? 3. When should the start and stop dates be for timing a construction project? (I suggest the start date be when commencing physical work at the project site, and not when pulling a building permit. The ending date should be occupancy or final inspection, which ever comes first.) The new Ordinance should seek to regulate only the extreme cases, not the majority of projects. Requests to extend Construction Time Limits should be handled administratively, not requiring Planning Commission involvement. Suc requests should be readily granted if good caused is demonstrated. Limiting the duration a discretionary approval lasts should not be part of an Ordinance titled, "Construction Time Limit," because they are unrelated matters and to do so misleads the public. Do not bury changes in property rights and entitlements within dense, difficult to read draft Ordinances titled differently from other items tagged onto the draft. There is no need to reduce the existing five year term discretionary approvals last, because there is no disruption to peace in neighborhoods before construction commences. Michael Rex, Architect I look forward to your Staff Report and what I expect will include a draft Ordinance that differs from the one previously published. "

"I believe the above questions regarding length of time for construction based solely on construction cost is going to give misleading answers. Each and every question I answered I would have qualified. The bottom line is that the length of time of construction is NOT directly related to construction cost. I believe an ordinance based on this premise is ill advised and will only lead to real world problems and enforcement headaches. "

## Survey Document

As builders, architects and engineers with specialized knowledge of the construction process in Sausalito we need your input. We invite you to take an 8-question survey which should take no more than 5 minutes of your time. The survey asks you to estimate the length of time different construction projects in Sausalito will take from building permit issuance to the approval of the final inspection.

1. Are you a:

- Contractor/Builder
- Architect/Designer
- Engineer

2. Assume you are preparing a schedule for a project in Sausalito with an estimated value up to \$500,000. How many months do you estimate the project will take from building permit issuance to the approval of the final inspection?

- 6 months or less
- 7-9 months
- 10-12 months
- 13-15 months
- 13-15 months
- 16-18 months
- 19-21 months
- 22 months or more

3. Assume you are preparing a schedule for a project in Sausalito with an estimated value of \$500,001 to \$1,000,000. How many months do you estimate the project will take from building permit issuance to the approval of the final inspection?

- 9 months or less
- 7-9 months
- 10-12 months
- 13-15 months
- 13-15 months
- 16-18 months

*Survey Results – Sausalito Construction Time Limits  
October 2009*

- 19-21 months
- 22-24 months
- 25 months or more

4. Assume you are preparing a schedule for a project in Sausalito with an estimated value of greater than \$1,000,000. How many months do you estimate the project will take from building permit issuance to the approval of the final inspection?

- 15 months or less
- 16-18 months
- 19-21 months
- 22-24 months
- 25-27 months
- 28-30 months
- 31 months or more

5. What is your name and title? For example: Joe Smith, Principal

6. What is the name of your company?

7. Do you have any comments regarding the proposed construction time limit regulations in Sausalito?

8. Would you like to receive a copy of the draft regulations?



## Raw Data

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
1	Architect/ Designer	7-9 months	13-15 months	19-21 months	Christopher Raker, Principal	Raker Architects	Provide for flexibility to increase the standard time limits based on specific factors, such as weather, unforeseen field conditions, special foundation problems etc. Give staff discretion to expand time in set increments.	91 Redwood Hwy Ste. 3260 Mill Valley, CA 94941	
2	Architect/ Designer	10-12 months	13-15 months	16-18 months	Ravi Anand, Principal	Anand + Associates	Some projects are more complex in nature because of their unique location, site topography and access etc. and these constraints must be evaluated while setting time limits for individual projects. There should perhaps be a range of time-limits addressing magnitude (dollar amount) of the project but also the issues mentioned above.	600 Lake Street, San Francisco, CA 94121	<a href="mailto:anandsfo@gmail.com">anandsfo@gmail.com</a>
3	Architect/ Designer	13-15 months	16-18 months	19-21 months	Robert Hayes, CEO	Robert W. Hayes Architects and Planners	If you limit construction project duration you MUST allow a realistic time frame for completion of that work. You also MUST allow for an extension of that process if there is some circumstance that was not foreseen. There can be numerous issues that delay construction.	620 Butte Street Sausalito, CA 94965	<a href="mailto:rwharch@earthlink.net">rwharch@earthlink.net</a>

*Survey Results – Sausalito Construction Time Limits  
October 2009*

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
4	Architect/ Designer	19-21 months	25 months or more	31 months or more	John P McCoy	Don Olsen and Associates	<p>1. While timelines can be appropriate, we need understand that in this day in age all projects need to address sustainability. Addressing these issues properly will add substantial time to a construction project. The use of the latest green building techniques adds several steps into a typical timeline that were not included just a few years ago.</p> <p>2. This survey gathers data using very generic parameters. Dollar amounts are only one piece of the equation when estimating construction time lines,</p>		<a href="mailto:john@dkoar.chitects.com">john@dkoar.chitects.com</a>
5	Contractor/ Builder	7-9 months	13-15 months	25-27 months	Bob Bower, CEO	RPB Construction	<p>Each project has its own time line depending on the site work, degree of difficulty of the design, the type of finishes and most importantly, the extent of changes created by unknown conditions, architect and/or owner preferences or codes. So each project would require monitoring of these variances in addition to the original schedule.</p>		<a href="mailto:bob@rpbcconstruction.u">bob@rpbcconstruction.u</a>

60  
26

Survey Results – Sausalito Construction Time Limits  
October 2009

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
6	Engineer	13-15 months	19-21 months	25-27 months	Henry Larsen, owner	Larsen Engineering	There are so many legitimate reasons for project schedule extensions and delays, most of which are not in the contractors' control, that placing a limit on a project schedule is arbitrary and unrealistic and puts an unfair burden on contractors, who are already under great strain, even in the best of economic times.		henry@larsenengineering.com

6C  
87

Survey Results - Sausalito Construction Time Limits  
October 2009

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
7	Contractor/ Builder	7-9 months	13-15 months	22-24 months	Steve Rempe, President	Rempe Construction	I have not read the regulations, but have a good understanding of what is proposed. While I think that projects that drag on for long periods of time are generally done by owner/builders or some agreement of that type, some poorly planned projects may have continuous addendums that lead to long schedules. The timeline for projects is profoundly affected by the site, engineering required, finishes and skill of the team assembled to plan and execute the work. The times checked above are generalities, and absolutely do not include the time it takes to obtain approvals. The timeline should run from the first day work is started and should be established via inspection or other method to verify that date. Other cities in Marin have ordinances geared around these concerns and while they may be prohibitively tight, they should be reviewed to see how they may be applied and modified to meet the City of Sausalito's particular concerns.		Steve@rempe.com
8	Contractor/ Builder	10-12 months	13-15 months	19-21 months	John Conomos, President	Dromhus, Inc.	I have not reviewed them as of yet.		john@dromhusinc.com

6c  
38

Survey Results -- Sausalito Construction Time Limits  
October 2009

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
9	Architect/ Designer	10-12 months	16-18 months	22-24 months	Brad Hubbell, Principal	Hubbell Daily Architecture + Design	It is hard to estimate the time a project may take based solely on estimated value. Just like zoning has variances for different situations, there needs to be some allowance for different project types, accessibility issues, scope of work and detailing required/included.		<a href="mailto:ibh@hdarch.us">ibh@hdarch.us</a>
10	Contractor/ Builder	7-9 months	13-15 months	19-21 months	Steve Stroub, president	Stroub Construction	i think the idea to limit time are good, but they should be realistic and should have a extension period, before the fines kick in. I my experience most of the delays are caused by homeowner and their lack of decisions and changes. Keep in mind that these fines in most cases will be paid by the sausalito home owners. i think the most important thing is that contractors are making a effort to keep the job going and that they do not sit dormant.		<a href="mailto:steve@stroubconstruction.com">steve@stroubconstruction.com</a>
11	Architect/ Designer	13-15 months	16-18 months	22-24 months	Michael Matsuura, Senior Associate Architect	Michael Rex Associates	No Response		<a href="mailto:mrm@rexa.com">mrm@rexa.com</a>

*Survey Results – Sausalito Construction Time Limits  
October 2009*

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
12	Engineer	16-18 months	25 months or more	31 months or more	Nersi Hemati, Principal	Nersi Hemati, Consulting Soil Engineer	No Response		<a href="mailto:nersi@nersi-hemati.com">nersi@nersi-hemati.com</a>
13	Architect/ Designer	10-12 months	13-15 months	16-18 months	Stacey Ford, Architect	Ford Architects	No Response		<a href="mailto:snford@sbcdglobal.net">snford@sbcdglobal.net</a>

6C  
40

*Survey Results – Sausalito Construction Time Limits  
October 2009*

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
14	Architect/ Designer	19-21 months	22-24 months	31 months or more	Michael Rex, Architect	Michael Rex Associates	<p>Hi. Thanks for asking. Also, thank you for preparing and sending this email survey to obtain a broader range of feedback. However, the questions being asked are too limited. You are not asking all the cogent questions necessary to shape a workable Construction Time Limit Ordinance. In addition to the questions above, here are others that should be asked: 1. For projects that are more difficult, problematic or complex than typical projects, what is a reasonable time frame to complete such projects? 2. What would a reasonable contingency time frame be following a project's projected completion target date before a penalty fee is applied? 3. When should the start and stop dates be for timing a construction project? (I suggest the start date be when commencing physical work at the project site, and not when pulling a building permit. The ending date should be occupancy or final inspection, which ever comes first.)</p> <p>The new Ordinance should seek to regulate only the extreme cases, not the majority of projects. Requests to extend Construction Time Limits should be handled administratively, not requiring Planning Commission involvement. Suc requests should be readily granted if good caused is demonstrated. Limiting the duration a discretionary approval lasts should not</p>		<a href="mailto:Rex@RexAs.sbc.com">Rex@RexAs.sbc.com</a>

60  
41

*Survey Results -- Sausalito Construction Time Limits  
October 2009*

Respondent No.	Profession	Estimated value up to \$500,000	Estimated value of \$500,001 to \$1,000,000	Estimated value of greater than \$1,000,000	Name and Title	Company	Comments	Mailing	Email
15	Architect/ Designer	10-12 months	13-15 months	16-18 months	Eric M. Glass, AIA, Principal	GLASS ARCHITECTS	I believe the above questions regarding length of time for reconstruction based solely on construction cost is going to give misleading answers. Each and every question I answered I would have qualified. The bottom line is that the length of time of construction is NOT directly related to construction cost. I believe an ordinance based on this premise is ill advised and will only lead to real world problems and enforcement headaches.		<a href="mailto:kentc@LDSI.cc">kentc@LDSI.cc</a>
16	Engineer	10-12 months	10-12 months	15 months or less	Kent Carothers, Project Manager	Land Development Solutions	No Response		
17	Architect/ Designer	7-9 months	13-15 months	22-24 months	David Berman Architect	David Berman Architect	No Response	POBox 1764 Sausalito Ca. 94966	<a href="mailto:David@davidbermanarchitect.com">David@davidbermanarchitect.com</a>

i:\CDD\PROJECTS - NON-ADDRESS\ZOA\2009\09-002\Sausalito Construction Time Limits Survey Results.docx

56



<b>Survey Results – Design Review Permits – Length of Validity</b>			
<b>Jurisdiction</b>	<b>Initial Permit</b>	<b>Extensions</b>	<b>Total</b>
Sausalito - Current	5 Years	One 2 Year	7 Years
Sausalito - <i>Proposed</i>	2 Years	One 1 Year	3 Years
San Anselmo	1 Year*	One 1 Year	2 Years
Corte Madera	1 Year	One 1 Year	2 Years
Mill Valley	1 Year	Two 1 Year	3 Years
Ross	1 Year	Two 1 Year	3 Years
Larkspur	2 Years	One 1 Year	3 Years
Tiburon	3 Years	None	3 Years
Marin County	2 Years	Four 1 Year	6 Years
Novato	2 Years	Two 2 Year	6 Years
Belvedere	1 Year	Unlimited 1 Year	Unlimited
San Rafael	2 Years	Unlimited 1 Year	Unlimited
Fairfax	Unlimited	--	Unlimited

\* One additional year allowed on initial permit until June 30, 2010

**ATTACHMENT 4**

6C  
43

**Raymond M. Withy, Ph.D.**  
99 Miller Lane  
Sausalito, CA 94965  
1-650-799-3633  
[ray@twgadvisors.com](mailto:ray@twgadvisors.com)

RECEIVED

SEP 9 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

September 9, 2009

Members of the City Council  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

**RE: Ordinance 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**

Dear Council Members:

I am writing to express my grave concern about the time limits proposed in the draft of the above referenced ordinance that was discussed at our city council meeting on July 7, 2009, including those for the duration of a Design Review Permit and for building permits. Certain of these provisions appear to be arbitrary and bear no relation to the realities of good construction planning and actual construction activities for the average Sausalito homeowner. While in principle the general legislative intent is admirable, as drafted, the ordinance could cause considerable economic harm to many residents and ultimately to the city. Most importantly, this ordinance discriminates against the moderate, responsible, civic-minded resident – the “silent majority” -- in favor of the very wealthy. It is also a wrongheaded attempt to punish the very few who abuse the privilege of building in Sausalito by, instead, punishing everyone else, and it represents a drastic, sudden departure from the current law with no phase-in period.

**The origin of this draft ordinance**

I live at 99 Miller Lane. I am uniquely qualified to comment on the origin of this proposed legislation. It is common knowledge that the genesis of this ordinance is the lengthy construction project at 33 Miller Avenue. The only access to my property is through this construction zone, and I am affected daily by the continuing construction activities. Although, from my vantage point, this project appears, in recent years, to be much better managed, I do agree with the need to put reasonable time limits on building permits. In general this is good policy. But the ordinance is bad law, enacted in a knee-jerk response to a specific case, leading to arbitrary and potentially punitive provisions for everyone.

ATTACHMENT 5

3 PAGES

6c  
45

**The timelines are arbitrary**

There has, by the council's own admission, been little input from the construction industry on this new ordinance. There can be only limited benefit from caucusing neighboring jurisdictions and then taking the most stringent of their timelines. It seems that this was the extent of the research that a subcommittee of the council pursued. It is self-evident that Sausalito has its own unique construction challenges, and a more thorough analysis should have been commissioned. We have rightly outsourced help with historic guidelines but have let potential changes to construction timelines that could affect the economic welfare of many residents pass by without any real analysis. These timelines are arbitrary and unrealistic. Construction experts will tell you, had they been consulted, that it is impossible to complete many large projects in 18 months. The city is inviting conflict among all parties: such an ordinance will cause untold extra burden on its staff and possible significant legal costs in defending the litigation that will undoubtedly ensue from these ill conceived policies. It will harm many residents who simply want to do a good job at improving their homes—on a reasonable budget with respect for the neighbors and pursuant to a predictable plan. We should be taking a moderate stance in positioning our policies rather than adopting such draconian and potentially punitive positions.

**Proposed changes to the Design Review Permit period have no relation to construction timelines and favor the very wealthy**

The proposed changes to the duration of the Design Review Permit are particularly damaging to home owners and the city. The proposed reduction from 5 years to just 1 significantly erodes owners' property rights and entitlements, imposes significant economic hardship, and bears no relation to the problem that the city is quite correctly trying to solve; rather it creates many new problems except for the wealthiest residents. Imagine for a moment the Design Review Permit and the resultant plan that a homeowner must adhere to were akin to the city's General Plan. Now imagine that the General Plan was only valid for one year and that the City Council had to go back every 12 months to get a new General Plan approved before it could take its next planned steps—not knowing whether the General Plan, which had prior approval, would, in fact, be approved again. That situation would be untenable – and so is this provision.

Many homes in Sausalito (like mine) were built before the 1970s and, therefore, require significant structural upgrades involving considerable planning and expense before a remodel, upgrade, or addition can begin. Nearly all such projects would require a Design Review Permit as a first step and in many of these cases it would be very difficult, if not impossible, to get a building permit and construction drawings completed within a year of receiving the Design Permit unless all of this work were done upfront prior to the submission for a Design Review Permit. This would require a large expenditure of money under very uncertain circumstances that, quite frankly, would be impossible for anyone other than the very wealthy. For others, it would mean delay and resubmission to the Planning Commission with all the attendant costs and uncertainties not to mention potential changes in personnel and personal preferences and peculiarities of the members. This provision makes no sense and it would turn Sausalito into an enclave where only the wealthiest few could afford the uncertain, costly process of improving their homes. Further, the Planning Commission is already overburdened; how will it ensure timely re-reviews of prior good quality projects when its calendar is full of first time applications needing approval?

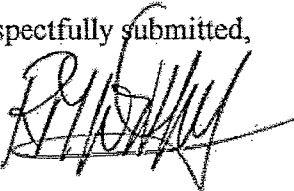
60c  
46

The City should encourage more time spent planning as that translates ultimately into better executed construction. To drastically reduce the time available for planning exacerbates the very problem the ordinance is supposed to help address.

**A prudent, slower approach is better governance**

I urge the council to slow down and get more input. I understand there may be considerable political pressure to do something--anything. However, in this case the balance must surely be in favor of caution, prudence, and good governance. At the very least, if the City Council feels compelled to enact something immediately, take the middle ground; yes, shorten some timelines, but phase them in over time, so residents have forewarning of the new rules of the game and can plan accordingly. An 80% reduction in the duration of a Design Review Permit and a change in the building permit time from unlimited to 1 ½ years for large projects is just too much too fast without giving residents who are planning home improvement projects enough warning to plan for the changes. Do not hastily enact drastic measures and create far greater problems when moderation is surely of benefit to Sausalito's residents as a whole – most importantly – its moderate, civic-minded, reasonable majority.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Raymond M. Withy', written over a horizontal line.

Raymond M. Withy

6C  
47

K. Flynn McDonald  
99 Miller Lane  
Sausalito, CA 94965  
[kfmcdonald@yahoo.com](mailto:kfmcdonald@yahoo.com)  
415 217-9003

RECEIVED

SEP 21 2009

September 21, 2009

Members of the City Council  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

**RE: Ordinance 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**

Dear Council Members:

I am writing you to request that you: (i) reconsider the change to the above-referenced ordinance that shortens the duration of the Design Review Board approval from 5 years to 1 year and (ii) seek more input on reasonable construction time limits, being particularly mindful of Sausalito's challenging construction conditions. I ask that you consider these seven points in your deliberations:

1. Just as the city needs a durable Master Plan, so does a homeowner;
2. Homeowners should be encouraged to spend more time planning and less time building; there is no need to change the duration of the Design Review Board approval;
3. The changes to the ordinance that impose construction time limits solve the problem, but the time limits must be reasonable and reflect Sausalito's unique construction challenges;
4. Homeowners of ordinary means will not be able to afford the upfront costs to get to design review, if the durability period is so severely truncated;
5. Significant changes to ordinances should be made only when the changes solve a problem and they are desired by the residents of Sausalito;
6. We are in the midst of the worst financial crisis--nation-wide and particularly in California--in the last 50 years; this is the worst time to add unnecessary financial burdens on ordinary residents to upgrade their homes; and
7. A cautious, stepwise approach would be most prudent

**1. Just as the city needs a durable Master Plan, so does a homeowner**

Throughout the City Council meeting on Tuesday, September 15, the need for Master Plans--for the parks, the waterfront, the city--came up again and again. The need for a Master Plan was repeatedly mentioned with respect to Dunphy Park and the proposed Sausalito Marine Properties project, so that decisions are not made piecemeal. Council members acknowledged the wisdom of having Master Plans, so that parties can rely on them.

ATTACHMENT 6  
4 PAGES  
6c  
49

The Design Review Board approval and the resultant plan that a homeowner must follow are similar to the city's Master Plan. Imagine the waste of time, energy, and money if the City Council had to go back every 12 months to get its Master Plan re-approved before it could take its next planned steps--not knowing whether the Master Plan, which had been approved just 12 months earlier, would, in fact, be approved again. That situation would be untenable--and so is this contemplated change to the ordinance reducing the durability of a homeowner's Master Plan to 1 year.

Homeowners need Master Plans for their homes that they can rely on. It is very expensive to prepare a design with all the attendant requirements of surveys, drawings, soils reports, arborist reports, structural plans, landscape plans, engineering plans, historical board report, materials boards, Environmental Impact Reports (if required) etc. plus fees and then to take all of it through the Design Review process and gain approval. One year is too short a time period to be able to rely on the approval. Things just do not move that fast. Nothing will have changed in the course of 1 year that justifies sunseting the approval. Homeowners, especially ones facing significant structural upgrades need more time for planning to implement their Master Plans.

**2. Homeowners should be encouraged to spend more time planning and less time building; there is no need to change the duration of the Design Review Board approval**

The problem with unnecessarily long construction projects is TOO LITTLE PLANNING. As currently constructed, the ordinance severely truncates the time available for planning. The City should encourage more time spent planning as that translates ultimately into better executed construction. To drastically reduce the time available for planning exacerbates the very problem the ordinance is supposed to help address. Time limits on the construction activity should solve the problem.

**3. The changes to the ordinance that impose construction time limits solve the problem, but the time limits must be reasonable and reflect Sausalito's unique construction challenges**

The problem that the residents of Sausalito have raised and that the City Council has been asked to address is the open-ended construction project. I applaud that. There should be reasonable time limits that are appropriate for Sausalito. The City Council surely appreciates that building conditions are very different in the surrounding communities and that their building periods may be different from ours--and for good reason. Sausalito has steep hills, narrow streets, and lots of housing stock that is going to require very significant structural upgrades. A large project on a home on a flat street with easy access that takes 1 1/2 years to complete may very well take 50% more time, if the same home were located on a steep, narrow street with difficult access. I request that the Council get more input on this issue from the professionals who carry out the work--architects, contractors, engineers, etc.--and the homeowners who must pay for it.

**4. Homeowners of ordinary means will not be able to afford the upfront costs to get to design review, if the approval period is so severely truncated**

Anyone who has been through a home improvement project knows what one's contractor says in response to the question, "How much will my home remodel project cost?" The answer, "It will cost a lot, but that is only an estimate. It could cost a lot more."

It is simply too expensive to prepare all the construction drawings prior to Design Review Board approval. They can only be prepared after approval so that only one set--the final set--need be prepared. But if the homeowner's Master Plan is only good for 1 year, any hiccup--a sick child or spouse, the loss of a job, financing falling through, unanticipated structural upgrade requirements--could cause a totally blameless delay and force the homeowner back in front of the Design Review Board--with all its attendant expense and uncertainty. For what reason? Nothing could have changed so much in one year that the once-approved homeowner's Master Plan is now no longer acceptable. Homeowners of ordinary means simply cannot live with this amount of financial risk or uncertainty.

Only the wealthiest could afford to do this and take the risk that the Commission would reject an already approved project--which was forced to come back in front of it solely because of this new 1-year limitation. Such a provision does not advance the public good, and it would turn Sausalito into an enclave where only the wealthiest few could afford the uncertain, costly process of improving their homes. Further, the Planning Commission is already overburdened; how will it ensure timely re-reviews of previously approved good quality projects when its calendar is full of first time applications needing approval?

**5. Significant changes to ordinances should be made only when the changes solve a problem and the changes are desired by the residents of Sausalito**

Just like the Prospect/Sausalito Blvd stairs (Non-Motorized Transportation Pilot Program -- Sausalito Stairs) discussed at the City Council meeting on Tuesday, September 15, this shortening of the duration of Design Review approval is like that stairway looking for someone who wanted it. I am not aware of any citizen who has come to the city and complained about the time that a homeowner has spent planning a project. A good guess is that 99.9% of people in Sausalito had no idea that this change is being contemplated. I only became aware of it because after a year's worth of preparation I am about to submit plans for design review and found out about this proposed drastic change in city policy.

**6. We are in the midst of the worst financial crisis--nation-wide and particularly in California--in the last 50 years; this is the worst time to add unnecessary financial burdens on ordinary residents to upgrade their homes**

The financial crisis is indisputable. Sausalito, unlike some of its wealthier neighbors, has many homes of modest or moderate means. This is a very important part of the housing stock of the community and makes it special. Sausalito is not an enclave reserved for the very wealthy. For most people, their homes are their most valuable asset. People of all means who are undertaking an expensive home improvement project need reasonable time periods and reasonable certainty before embarking on their project. Sausalito has a responsibility to make the process fair and affordable for everyone without imposing unnecessarily short timelines that accomplish nothing for the community. A 1-year Design Review Board approval duration accomplishes nothing that a longer period wouldn't accomplish, and it puts homeowners at great financial risk if there is any hiccup between the approval and the start of construction.

## 7. A cautious, stepwise approach would be most prudent

With respect to the stairs that no one wanted, the City Council did the right thing last Tuesday by listening to its constituents and changing its course of action. Now that this ordinance is gaining greater visibility, I urge the Council to slow down the process and accept more input. I understand the frustration over unnecessarily long construction projects and the demand to do something--anything. However, in this case the better approach must surely be the Council's unreserved openness to hearing the concerns now being raised by its residents.

If the City Council feels it must enact something more broadly, take stepwise action so that one or two specific projects do not drive legislation for everyone else in the city. That is the worse kind of legislation. Shorten the timelines for the construction phase to something reasonable and appropriate for Sausalito's challenging construction environment. But stop at that. See if that solves the problem. Direct the Planning Commission to put much more emphasis on planning prior to the beginning of construction. If the construction timeline changes don't solve the problem, then take another look.

If the City Council feels the public outcry is so loud demanding a reduction in the duration of the Design Review Board approval, then make a less drastic change, for example to 4 years or 3 years and see if that works. If not, revisit it. But an 80% reduction in the duration of a Design Review Board approval (the homeowner's Master Plan) is an extreme step that is not warranted at this time and doesn't solve the problem that has been presented by the community. It will harm many ordinary residents who simply want to do a good job improving their homes--on a reasonable budget with respect for their neighbors and pursuant to a predictable plan--without shortening the length of big construction projects, which was the problem that the community asked to be solved in the first place.

I respectfully request that you give thoughtful consideration to these concerns as you continue to think through this ordinance.

Respectfully submitted,



K. Flynn McDonald



SEP 24 2009

Adam, Herb, Jeremy, Jonathan, and Mary,

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Following up on my earlier email, Flynn and I have tried to consider all the many good points that were made at the meeting yesterday and have come up with some specific suggestions for your consideration.

**1. Construction Time Limits**

Estimated Value of Project	Construction Time Limits
\$0 to \$500,000	18 months
\$500,000 to \$1 million	24 months
\$1 million and above	30 months

These limits should minimize the need for extensions and thus significantly reduce unnecessary work on Staff. The process for getting an extension shown in the marked up draft seems sound and reasonable. With clear rules in place, the committee should be well equipped to make principled, fair decisions with respect to extensions.

**The problem of the rainy season policy and its relation to Construction Time Limits**

The problem of the rainy season policy and its relation to Construction Time Limits must be addressed. If the project has site work that is a necessary next step in the construction plan and it is held up because of the rainy season policy, then the length of time the project is held up by the applicant's complying with the policy should be added to the applicant's Construction Time Limits. This should require administrative approval only.

**2. Length of Design Review Approval**

As discussed at the meeting, the city should encourage more construction planning before a project begins because that translates into better executed construction projects.

Because of the many unforeseen hiccups that could occur after a project is approved, we suggest that the initial period be 2 years. This is a significant reduction in entitlements --60% from the current 5 years. At the same time, it is a practical, reasonable initial period giving virtually all projects the time they need to get everything ready for a well executed construction project.

The question of the extension period remains. We can see reasons for both 1-year and 2-year extensions and suggest that 18 months should work for people on both sides of this issue. This is again a significant reduction from the current 2 years—25% reduction.

This proposal results in an overall reduction from the current 7 years to 3 ½ years—50% reduction. It is not too tight and not too loose.

Jeremy mentioned that under the old timelines, an applicant had to pour and weatherize his/her foundation in order to meet the requirements of the Design Review Permit. With the shortening of the period for which the Design Review Approval is valid, we assume that this will be changed to requiring that the applicant pull a permit within the new timelines to fulfill the requirement.

**ATTACHMENT 7**  
4 PAGES  
6C  
53

## Process for the approval of an extension

With the cap on the duration of the Design Review Approval set at 3 ½ years, the application for the 18 month extension should be virtually automatic. Here, personal reasons like loss of a job, a sick spouse or child, inability to get financing, inability to find a contractor to do the job at an affordable price, etc. are all totally legitimate reasons for giving the applicant more time to get his/her ducks in a row. Since construction has not yet started, there is very little, if any, rationale for refusing to give an applicant the full time allowed by the new ordinance.

## The problem of the rainy season moratorium and its relation to the length of the Design Review Approval

The problem of the timing of a Design Review Board approval and its relation to the rainy season site work moratorium must still be addressed. Because applicants have no control over how long the DRB approval will take, it is impossible to time the submission to get approval to coincide with no rainy season restrictions. Additionally, it is best for the Staff and the Planning Commission to have work flow that is spread out as evenly as possible over the year, so it does not get bunched up with people trying to time their submissions to get approvals outside of the rainy season.

Assume that site work should take 3 months with 1 month wiggle room for things to go wrong. Give applicants who have upfront grading and site work that would be affected by the existing rainy season regulations (moratorium from Oct 15 to April 15) a choice: If DRB approval comes anytime between July 15 and March 15, give the applicant the ability to choose a "rainy season effective date" for the approval, i.e., the clock starts running from that date. For example, assuming a 2-year initial period, if the project is approved on August 15, 2009 the applicant then has until August 15, 2011 to pull a building permit. If the applicant thinks he/she can get the site work done between August 15, 2011 and October 15, 2011 when the rainy season moratorium begins, he can choose to keep the August 15 approval date. But if the applicant believes that he cannot get the site work completed in that two month window, he is free to choose any date between his approval date and the end of the rainy season moratorium (April 15, 2010) for an effective approval date. The clock starts to run from this date. With this mechanism, the applicant can adhere to the rainy season moratorium that the city has placed on him but not be penalized by it. This seems like a simple, pragmatic solution that is fair to everyone.

If the applicant does not have site work at or near the beginning of the project that could be affected by the rainy season policy, then the applicant has no option to choose a "rainy season effective date." (If the applicant has site work that could be affected by the rainy season moratorium but that site work occurs later in the project, the provision set out above for adding the time that the project is held up because of the rainy season moratorium to the applicant's Construction Time Limits addresses such a problem.)

It is essential that once an applicant receives DRB approval he/she can rely on that approval to plan the next steps for the project. If the applicant chooses a "rainy season effective date," this choice in no way affects the DRB approval that the applicant has already received. The "rainy season effective date" choice does nothing except to start the clock ticking on the length of time the DRB approval is valid.

This chart explains how this solution would work:

60c  
57

DRB approval date	Site work at or near beginning of project affected by rainy season ordinance?	Estimated time for site work (months)	Delay to project caused by rainy season policy (months)	Does applicant have the choice for a later date?	What are the "rainy season effective approval dates" that the applicant may choose?
Jan 15, 2009	Yes	4 months	3 months	Yes	Jan 15, 2009-Apr 15, 2009
Feb 15, 2009	Yes	4 months	2 months	Yes	Feb 15, 2009-Apr 15, 2009
March 15, 2009	Yes	4 months	1 month	Yes	Mar 15, 2009-Apr 15, 2009
Apr 15, 2009	Yes	4 months	0	No	None
May 15, 2009	Yes	4 months	0	No	None
June 15, 2009	Yes	4 months	0	No	None
July 15, 2009	Yes	4 months	9 months	Yes	July 15, 2009-Apr 15, 2010
Aug 15, 2009	Yes	4 months	8 months	Yes	Aug 15, 2009-Apr 15, 2010
Sept 15, 2009	Yes	4 months	7 months	Yes	Sept 15, 2009-Apr 15, 2010
Oct 1, 2009	Yes	4 months	6 months	Yes	Oct 15, 2009-Apr 15, 2010
Nov 15, 2009	Yes	4 months	5 months	Yes	Nov 15, 2009-Apr 15, 2010
Dec 15, 2009	Yes	4 months	4 months	Yes	Dec 15, 2009-Apr 15, 2010

**10.54.100 B**

The new provision in the marked up draft that an executed construction contract may be required for a Design Review submission is unreasonable. Until the project receives DRB approval, no applicant, except the wealthiest for whom money is no object, can afford a complete set of construction drawings. Without construction drawings, a homeowner cannot possibly negotiate a binding construction contract. The professional Staff can surely work with the applicant to determine which of the broad project cost buckets the project will likely fall into.

**10.54.100 D1 b.**

Landscaping can be held up for reasons beyond inclement weather. Right now, we cannot get the plants that we need. They are simply not available anywhere in California. This provision needs to be more flexible.

**10.54.100 D 3. e.**

There must be some circumstances in which financing problems are a legitimate reason for an extension. What if your bank goes bankrupt? This current economic crisis has shown us that anything can happen!

6c  
55

We have not had time to focus on any of the other provisions.

We would be happy to participate in additional informal dialogue, and we appreciate the open discussions that took place yesterday.

With best regards,

Ray Withy and Flynn McDonald

60  
56

RECEIVED

OCT - 1 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Steven & Joan McArthur  
51 Wolfback Ridge, Sausalito CA

September 29, 2009

Members of the City Council  
c/o Jeremy Graves, Community Development Director  
City of Sausalito  
420 Litho Street  
Sausalito, California 94965

**RE: ORDINANCE AMENDING THE ZONING CODE TO ADD CONSTRUCTION TIME  
LIMIT REGULATION/ZOA 09-002**

Dear Council Members:

Attached are our comments on the draft ordinance referenced above. We own a residence in Sausalito that we plan to conduct renovations to and are directly affected by the proposed ordinance, which, with all due respect, we believe is seriously flawed and accordingly needs to be revised. Please take our comments into consideration in deliberating the proposed ordinance and please consider revising the draft ordinance as recommended below.

**Discretionary Approvals:**

The draft amendment shortens the time frame for discretionary approvals, from five years to just one year. This is an unworkable and unfair revision. Understanding that the City is seeking to control the duration of construction projects, we fail to understand why doing so results in the need to also limit the duration of discretionary approvals.

It can easily take more than one year to prepare construction documents and obtain a Building Permit. Applicants can't control the duration of the plan check process, which alone can take several months to accomplish before a Building Permit is issued. Significant expense is incurred to win discretionary approvals. To possibly lose such an investment and restart the whole process due to an overly restrictive time limit is simply unfair.

We ask that the current five year limit remain in place.

**Construction Time Limit:**

Going from no construction time limit to a one year for projects over \$500K and to 1 ½ years for projects exceeding \$500K, is an unworkable and unfair revision. Projects often take longer than 1 ½ years to build. To adopt a law that is unrealistic makes no sense. We recommend that three years for projects over \$500K and five years for projects over \$500K be the allowed timeframe, with an extension for good cause approved by the Zoning Administrator.

ATTACHMENT B

2 PAGES

60  
57

**Time Limit Extension:**

The current draft Ordinance provides for a maximum six month extension to the discretionary approval and building permit time limits. This is also an unworkable and unfair proposal. Many things can occur that would necessitate the need for a time extension for a construction project. Adopting time limits that are too short is impractical and only increases the need and frequency of extension applications.

A one year extension for both discretionary approvals and Building Permits should be granted automatically, by filing a request . A second year extension should also be allowed, but only for good cause, mostly for events unforeseen or beyond one's control.

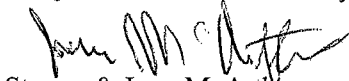
**Conclusion:**

Before you adopt the draft Ordinance, we recommend that it be amended as follows:

1. Leave discretionary approvals at the current five years.
2. Shorten construction duration to no less than 3 years for projects under \$500K and no less than 5 years for projects over \$500K.
3. Allow for an automatic one year extension for all approvals, with a second one year extension for good cause.
4. All extensions should be heard by the Zoning Administrator, rather than the Planning Commission.

We urge that you consider these suggestions so that a Zoning Ordinance is not inadvertently adopted that is simply unworkable and unfair to those who wish to improve their properties.

Sincerely,



Steven & Joan McArthur  
51 Wolfback Ridge  
Sausalito, CA

C.C. Adam Politzer, City Manager  
C.C. Mary Wagner, City Attorney

60  
58

**Charles S. Syers, DDS., MA.**  
**Diplomate, American Board of Oral**  
**And Maxillofacial Surgery**  
**P.O. Box 1879, St. Matthew Station**  
**San Mateo, California 94401**  
**650-347-2614 FAX 650-347-2680**  
**Cell: 415-819-6552**  
**94-236-0361**

**RECEIVED**

OCT 14 2009

CITY OF SAUSALITO

**October 13, 2009**

**Adam Politzer, City Manager**  
**City of Sausalito**  
**420 Litho Street**  
**Sausalito, California 94065**

Dear Mr. Politzer:

I have reviewed the ordinance amending the zoning code, and believe it to be flawed, as it will penalize approved projects in this time of financial hardship and lowered real estate values.

The new requirements will reduce construction and remodeling projects in Sausalito, leading to an exodus of architects, builders, tradesmen, and suppliers of hard and soft cost items. The amended code will encourage bootleg projects with less attention to safety and regulations, because fewer applicants will perceive fairness going through the permit process. In addition, this ordinance will encourage reluctance on the part of homeowners to consider new projects, as they will have the accurate perception of additional red tape, higher fees, penalties, and unreasonable enforcements.

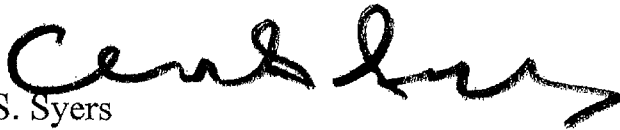
The draft ordinance must be revised to protect the five year limit on discretionary approvals. In addition, construction time limits should be doubled over what is currently proposed, and there should be extensions for cause

**ATTACHMENT 9**

60  
59

that should be reasonably granted by staff for at least one year. Once an extension is granted, the project cannot be subject to planning commission re-review, as last minute revisions and additional fees will reset the entire process into perpetual motion.

Sincerely

A handwritten signature in black ink, appearing to read "Charles S. Syers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr. Charles S. Syers

CSS:ad

cc: Mary Wagner, City Attorney  
City of Sausalito  
420 Litho Street  
Sausalito, California 94965

cc: Michael Rex, Architect  
Michael Rex Associates  
1750 Bridgeway Boulevard, Suite B211  
Sausalito, California 94965

6C  
60



**Jeremy Graves**

---

**From:** celkington [celkington@comcast.net] on behalf of chris@elkingtonbc.com  
**Sent:** Wednesday, October 14, 2009 8:06 AM  
**To:** Jeremy Graves  
**Subject:** Contrsuction Time Limit Change

As a fifty year resident and a local building contractor I feel the the proposed Time Limit Changes are unreasonable.

Chris Elkington  
Elkington Building Co.  
420 Bee St  
Sausalito, Ca 94965  
415.332.5053

**RECEIVED**

OCT 14 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

**ATTACHMENT 10**  
62  
61