



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE

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

### RECOMMENDATIONS

- Conduct a public hearing on the proposed Zoning Ordinance Amendment to add Construction Time Limit Regulations, modify the Length of Validity of Certain Permits; and modify the duties of the Zoning Administrator; and
- Introduce the Zoning Ordinance Amendment for a first reading.

### SUMMARY

The draft ordinance amends the Zoning Ordinance to add regulations on the duration of construction projects; modify the period of validity for Administrative Design Review Permits, Design Review Permits, and Non-Conformity Permits; and modify the duties of the Zoning Administrator. The City Council reviewed the draft ordinance on October 20, 2009, made several changes, and referred the ordinance to the Planning Commission for further review. The Planning Commission recommended City Council approval of the draft ordinance with additional wording to clarify that:

- The Construction Time Limit regulations are applicable to projects which obtain an amendment of an existing design review permit;
- The maximum penalty for failure to complete construction is the lesser of 20% of the project value or \$200,000; and
- The Zoning Administrator can grant time extensions for Design Review Permits, or refer the request to the Planning Commission.

### 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 including the detrimental effects on residential neighborhoods caused by noise and construction traffic the City Council directed staff to prepare construction time limit regulations.

Beginning in May 2009 the Planning Commission held public hearings on the draft regulations, followed by City Council public hearings in July and September 2009. The draft regulations were considered by the Legislative Committee in late September and mid-October 2009. On October 20, 2009 the City Council directed staff to make several modifications and referred the draft regulations to the Planning Commission for consideration of deletion of a requirement that applicants must complete a foundation inspection in order to implement certain discretionary permits (Section 10.50.120.A).<sup>1</sup>

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<sup>1</sup> The October 20, 2009 the City Council staff report is available at the following website link:  
<http://www.ci.sausalito.ca.us/index.aspx?recordid=1306&page=43>.

The Planning Commission's recommendations, including the direction provided by City Council on October 20, 2009, are reflected in the attached clean copy of the ordinance (**Attachment 1**). 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 October 20, 2009.

## **DISCUSSION**

The modifications directed by the City Council are listed below and discussed in the November 4, 2009 Planning Commission staff report (see **Attachment 3**):

- Additional time for construction time limit extensions.
- Addition of a "weather-related grading restrictions" factor as a basis for granting a time extension for the construction time limits.
- Require noticed public hearings when the Staff Committee meets to consider time extension requests. Upon further review, staff revised this section to allow the Zoning Administrator to review time extensions requests instead of the Staff Committee.
- Clarify that the construction time limit "clock" is not stayed as a result of enforcement actions (e.g., red-tags, citations) for violations of the Municipal Code.
- Revise the Zoning Ordinance regulations pertaining to Implementation of Permits to delete wording that a foundation inspection must be conducted by the Building Official.

The Planning Commission also recommended the following modifications:

- Clarify that the Construction Time Limit regulations are applicable to projects which obtain an amendment of an existing design review permit. [Section 10.54.100.B]
- Stipulate that the maximum penalty for failure to complete construction by the applicable time limit is the lesser of 20% of the project value or \$200,000. Prior staff reports and draft ordinances contained conflicting wording on whether the maximum penalty is the lesser of 10% or greater of 10% of the project value or \$200,000. [Section 10.54.100.E.1]
- Clarify that the Zoning Administrator can grant time extensions for Design Review Permits, or refer the request to the Planning Commission. Existing wording appeared to preclude the Zoning Administrator from making such decisions. [Section 10.54.050.K]

## **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**

Notice of this public hearing was published in the *Marin Independent Journal* and posted in accordance with the requirements of Chapter 10.82 (Public Notice and Hearings).

Correspondence received after the preparation of the Planning Commission staff report is provided as **Attachment 4**. Correspondence submitted after the preparation of this staff report will be posted on the City's website (<http://www.ci.sausalito.ca.us/>) and available at the City Council public hearing.

**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.

**RECOMMENDATIONS**

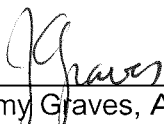
The Planning Commission and Staff recommend the City Council take the following actions:

1. Open the public hearing on the proposed Zoning Ordinance Amendment provided in **Attachment 1**;
2. Make any appropriate modifications;
3. Close the public hearing; and
4. Introduce the Zoning Ordinance Amendment for a first reading.


**ATTACHMENTS**

1. Ordinance (Draft), dated November 11, 2009
2. Ordinance (Draft), dated November 11, 2009 -- Redlined copy showing revisions since Council's last review on 10/20/09
3. Planning Commission Staff Report, dated 11/4/09
4. Email from Raymond Withy, date stamped 11/4/09

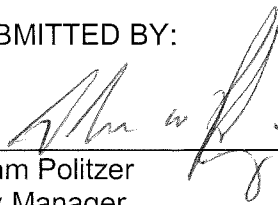
PREPARED BY:

  
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 Jeremy Graves, AICP  
 Community Development Director

REVIEWED BY:

  
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 Mary Anne Wagner  
 City Attorney

SUBMITTED BY:

  
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 Adam Politzer  
 City Manager

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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,  
MODIFY SECTION 10.50.120 REGARDING IMPLEMENTATION OF PERMITS,  
MODIFY SECTIONS 10.54.040, 10.54.050, AND 10.62.070 REGARDING THE LENGTH  
OF VALIDITY OF CERTAIN PERMITS, AND MODIFY SECTION 10.80.040.B  
REGARDING DUTIES OF THE ZONING ADMINISTRATOR.  
ZOA 09-002

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

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

**“10.54.100 Time Limits For Construction.**

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

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

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

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

12 **B. Construction Time Limit Required.** As part of any application for a construction  
13 permit for a project which obtained a design review permit, obtained an amendment  
14 of an existing design review permit, or should have obtained a design review permit  
15 (including, without limitation, any such application with respect to improvements that  
16 have been constructed without or in violation of an existing valid design review  
17 permit, or administrative design review permits for the purposes of this Section  
18 10.54.100), the applicant shall file a reasonable estimate of the value of the project,  
19 and based thereon, a construction time limit shall be established for the project in  
20 accordance with the criteria set forth in subsection C below. The applicant shall  
21 submit information reasonably requested by the Community Development Director to  
22 support the estimated value of the project such documentation may include without  
23 limitation an executed construction contract. Compliance with such time limit shall  
24 become a condition of the design review permit. The time for completion of the  
25 construction shall also be indicated on the construction permit. For projects  
26 exceeding \$500,000 in project valuation, a detailed GANTT chart (or other graphic  
27 display acceptable to the Community Development Director) depicting the sequence  
28 of steps necessary for completion of the project, including detailed information on the  
29 critical path of the project, duration of critical tasks, and predicted inspection dates,  
30 shall be submitted prior to the issuance of any construction permit. Once approved,  
31 the property owner shall provide the City with written quarterly job progress reports  
32 consistent with the approved chart.  
33

34 **C. Construction Time Limit.** Except where a longer time period is approved pursuant  
35 to subsection D below, the maximum time for completion of approved alterations,  
36 additions, modifications, repairs, or new construction, following issuance of the  
37 construction permit, shall not exceed the following limits. These limits are not  
38 altered or extended by work delays or stoppages due to the enforcement actions  
39 resulting from violation(s) of the Municipal Code.  
40

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

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. Construction Time Limit Extension.**  
 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 any  
 13 single extension granted exceed one hundred eighty (180) days, nor shall the  
 14 total extension(s) granted exceed the following:  
 15

<i>Estimated Value of Project</i>	<i>Construction Time Limit Extension</i>
<i>\$0 to \$500,000</i>	<i>270 days</i>
<i>\$500,001 to \$1,000,000</i>	<i>360 days</i>
<i>Greater than \$1,000,000</i>	<i>360 days</i>

16  
 17 b. Landscaping Activities. For landscaping work (including retaining walls and  
 18 grading) approved as part of the construction project, the applicant may apply  
 19 for an extension not to exceed thirty (30) days beyond the ninety (90)-day  
 20 landscaping time limit specified in subsection C above. Such application shall  
 21 be filed prior to the expiration of the 90-day time limit and shall be considered  
 22 by the Community Development Director, who shall have the authority to  
 23 grant said extension only if, in his or her opinion, such extension beyond the  
 24 90-day landscaping time limit is warranted because of delays caused by  
 25 inclement weather or circumstances beyond the property owner's control.  
 26

- 27 2. Application Contents. An application for an extension of the construction time  
 28 limit shall be accompanied by complete working drawings for the construction, a  
 29 written explanation of the reasons for the requested extension, and a fee as  
 30 established by resolution of the City Council.  
 31  
 32 3. Public Hearing and Notice. Within fifteen (15) working days of receipt of a  
 33 complete application for an extension in accordance with subsection D.1.a above,  
 34 the Zoning Administrator shall hold a public hearing on the said application. The  
 35 Zoning Administrator may obtain input from the Building Inspector and the City  
 36 Engineer.  
 37  
 38 4. Findings. The Zoning Administrator may grant an extension if the following  
 39 findings can be made:  
 40 a. Such extension will not have a material deleterious effect on the neighborhood  
 41 in which the project is located; and

- 1           b. Any one or more of the following factors is present and presents an unusual  
 2           and substantial obstacle to complying with the standard construction time  
 3           limit:  
 4           i. Site topography;  
 5           ii. Site access;  
 6           iii. Geologic issues;  
 7           iv. Neighborhood considerations;  
 8           v. Weather-related grading restrictions; or  
 9           vi. Other unusual factors (except lack of financing).

10  
 11           5. Conditions of Approval. The Zoning Administrator may apply reasonable  
 12           conditions of approval deemed necessary to fulfill the purposes of this Section  
 13           10.54.100.

14  
 15           5. Notice of Decision. The decision of the Zoning Administrator shall be in the  
 16           form of a written resolution and shall include the findings upon which the  
 17           decision is based, applicable conditions of approval, and a summary of the appeal  
 18           process. A written decision shall be mailed to the applicant and all parties who  
 19           participated in the process via oral or written comments.

20  
 21           6. Appeals. The decision of the Zoning Administrator may be appealed to the  
 22           Planning Commission in accordance with the procedures of Chapter 10.84.

23  
 24   **E. Penalties.**

- 25  
 26           1. If a property owner fails to complete construction by the applicable time limit  
 27           established in this Section 10.54.100, the property owner shall be subject to the  
 28           following penalties payable to the City:  
 29  
 30

<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 lesser of 20% of project value or \$200,000)

- 31  
 32           2. Penalties, fees and costs due to the City pursuant to this subsection E are due each  
 33           day as the penalties accrue.  
 34  
 35

5B  
8

1 **F. Deposits.**

- 2
- 3 1. Upon reaching the time limits set out in subsections C and D, if construction has
- 4 not been completed, or if no final inspection has been made or a certificate of
- 5 occupancy issued, the property owner or his representative shall deliver to the
- 6 Community Development Department a refundable deposit (in cash or other
- 7 security instrument acceptable to the City and valid for a minimum time period of
- 8 two (2) years) in the amount of Twenty Four Thousand Dollars (\$24,000), plus a
- 9 non-refundable administrative fee as established by resolution of the City
- 10 Council.
- 11
- 12 2. If no deposit is made as provided in subsection F.1 above, the building official
- 13 shall issue a stop work order.
- 14
- 15 3. On or before the sixtieth (60<sup>th</sup>) day that the project has remained incomplete, and
- 16 no final inspection has been made and no certificate of occupancy issued, the
- 17 property owner or his representative shall deliver to the Community Development
- 18 Department an additional refundable deposit (in cash or other security instrument
- 19 acceptable to the City and valid for a minimum time period of two (2) years) in
- 20 the amount of Thirty Six Thousand Dollars (\$36,000), plus a non-refundable
- 21 administrative fee as established by resolution of the City Council.
- 22
- 23 4. If no deposit is made as provided in subsection F.3 above, the building official
- 24 shall issue a stop work order.
- 25
- 26 5. On or before the one hundred twentieth (120<sup>th</sup>) day that the project has remained
- 27 incomplete, and no final inspection has been made and no certificate of
- 28 occupancy issued, the property owner or his representative shall deliver to the
- 29 Community Development Department an additional refundable deposit (in cash or
- 30 other security instrument acceptable to the City and valid for a minimum time
- 31 period of two years) in the amount of One Hundred Forty Thousand Dollars
- 32 (\$140,000), plus a non-refundable administrative fee as established by resolution
- 33 of the City Council.
- 34
- 35 6. If no deposit is made as provided in subsection F.5 above, the building official
- 36 shall issue a stop work order.
- 37
- 38 7. If the property owner fails to complete construction by the applicable time limit,
- 39 the applicable penalties shall accrue daily up to the maximum set out in
- 40 subsection E.
- 41
- 42 8. If the property owner believes that the failure to meet the applicable time limit
- 43 was caused by circumstances beyond the property owner's control, the property
- 44 owner may file a written statement to that effect with the Community
- 45 Development Director at the time of making the deposit as described in
- 46 subsections F.1, 3 and/or 5 above and provide any documentation substantiating



1 such grounds of appeal and the effect on the construction. If the property owner  
2 makes such filing, no part of the deposit cash or other security instrument shall be  
3 forfeited to the City if construction is completed within thirty (30) days of the  
4 deposit. If construction is completed after the thirty (30) days and the Community  
5 Development Director concurs with the property owner's statement as to the  
6 cause of the failure to meet the deadline, the Community Development Director  
7 shall waive the penalty and return the cash deposit or other security instrument to  
8 the property owner. If the Community Development Director does not concur  
9 with the property owner's statement, such statement shall be treated as an appeal  
10 under subsection G below and all the provisions of that subsection shall apply.  
11 As used in this Section 10.54.100, the term "circumstances beyond the property  
12 owner's control" shall mean events outside the property owner's reasonable  
13 control that are not caused by the property owner's willful or unlawful  
14 misconduct or gross negligence (or that of the property owner's contractor or  
15 subcontractors), such as acts of God, earthquake, labor disputes that are not  
16 caused, directly or indirectly by the property owner or the property owner's  
17 contractor or subcontractors, shortages of supplies, riots, war, acts of terrorism,  
18 fire, epidemics, or delays of common carriers. A failure of a lender to make or  
19 fund a loan commitment shall not be deemed to be a "circumstances beyond the  
20 property owner's control."  
21

- 22 9. If construction is completed after the applicable time limit, and the Community  
23 Development Director does not concur with the property owner's statement  
24 pursuant to subsection F.8, the City shall draw on the deposit or other security  
25 instrument in the amount of the applicable penalties; provided, however, that in  
26 the event of an appeal, the City shall not draw on the deposit or other security  
27 instrument until the Planning Commission and, if applicable, the City Council has  
28 rendered its decision as set forth in subsection G.  
29
- 30 10. After construction is completed and all applicable penalties received by the City,  
31 any remaining cash or security instrument deposit shall be refunded or returned to  
32 the account of the property owner.  
33

### 34 **G. Appeals.**

35

- 36 1. A penalty imposed pursuant to subsections B through F may be appealed to the  
37 Planning Commission on the grounds that the property owner was unable to  
38 comply with the applicable time limit as a result of circumstances beyond the  
39 property owner's control. There shall be no right to appeal until construction is  
40 completed. Any person aggrieved by the decision of the Planning Commission on  
41 the appeal may appeal to the City Council in accordance with the procedures of  
42 Chapter 10.84.  
43
- 44 2. At the time the appeal is filed or within two (2) weeks thereafter, the appellant  
45 shall submit documentary and other evidence sufficient to establish that design  
46 decisions, construction drawings and documents, bids and construction contracts,

1 permit applications, and compliance with all required permit conditions were  
2 undertaken in a diligent and timely manner. Documentary evidence shall include,  
3 but not be limited to, dated design contracts, date-stamped plans, dated  
4 construction contracts and material orders, and proof of timely payment of any  
5 deposits or fees required pursuant to any of the foregoing items. The  
6 documentary and other evidence shall demonstrate that construction delays  
7 resulted from circumstances beyond the property owner's control and despite  
8 diligent and clearly documented efforts to achieve construction completion within  
9 the applicable time limit. Penalties imposed pursuant to this Section 10.54.100  
10 shall not be modified or cancelled unless all evidence required by this subsection  
11 G.2 is submitted at the time of appeal.  
12

### 13 **H. Enforcement.**

- 14  
15 1. This Section 10.54.100 shall apply to all construction, including all additions,  
16 alterations, modifications, repairs, and improvements, that requires a design  
17 review permit, including a design review permit for such construction undertaken  
18 before the application for the design review permit or an amended design review  
19 permit with respect to such construction previously undertaken without a design  
20 review permit or outside a previously-issued design review permit. The time limit  
21 for completion of any design review permit issued after January 1, 2009 shall be  
22 extended from the effective date of this ordinance pursuant to the time limits  
23 specified in subsections C and D.  
24
- 25 2. Any penalty due under subsection E in excess of the deposit made under  
26 subsection F shall be a personal debt owed to the City by the property owner(s)  
27 and, in addition to all other means of enforcement and collection, shall become a  
28 lien against the said property and shall be subject to the same penalties (including  
29 interest thereon at the maximum rate allowed by law from the date the lien  
30 attaches until the date of payment) and the same procedure and sale in case of  
31 delinquency as provided for ordinary municipal taxes.  
32

### 33 **I. Violations.**

- 34  
35 1. A violation of this Section 10.54.100 is a misdemeanor and shall be punished as  
36 provided in Chapter 1.05. A civil action may be commenced to abate, enjoin, or  
37 otherwise compel the cessation of violation of any provision in this Section  
38 10.54.100. In a civil action brought pursuant to this Section 10.54.100 in which  
39 the City prevails, the court may award to the City all costs of investigation and  
40 preparation for trial, the costs of trial, reasonable expenses including overhead  
41 and administrative costs incurred in prosecuting the action, and reasonable  
42 attorney fees.  
43
- 44 2. As part of a civil action brought by the City, a court may assess against any  
45 person who commits, allows, or maintains a violation of any provision of this  
46 Section 10.54.100 a civil penalty in an amount not to exceed Five Thousand

1 Dollars (\$5,000.00) per daily violation. The civil penalty is separate and distinct  
2 from penalties imposed pursuant to this Section 10.54.100.

- 3
- 4 3. Upon any guilty plea or judgment or conviction, in any criminal proceeding  
5 brought for the violation of this Section 10.54.100, where the defendant is entitled  
6 by law to probation, then the court may require the payment to the City of the  
7 costs and expenses as described above and the code provision incorporated by  
8 reference as one of the conditions of such probation.
- 9
- 10 4. The building official or the Community Development Director is authorized to  
11 order work stopped whenever work is being done contrary to the provisions of  
12 this Section 10.54.100.
- 13
- 14 5. Any violation of this Section 10.54.100 shall constitute a public nuisance and, in  
15 addition to being subject to any other remedies allowed by law, may be abated as  
16 provided by law.”

17

18 **Section 2.** Section 10.50.120.A of the Sausalito Municipal Code is hereby amended in its  
19 entirety to read as follows:

20

21 “A. Conditions of approval prerequisite to construction have been satisfied and any  
22 required construction permits have been issued; or”

23

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

26

27 “J. Expiration of Permit. Administrative Design Review Permits shall expire two (2)  
28 years following the effective date of the permit, provided no extension has been filed  
29 prior to the expiration date.”

30

31 **Section 4.** Section 10.54.050.J of the Sausalito Municipal Code is hereby amended in its  
32 entirety to read as follows:

33

34 “J. Expiration of Permit. Design Review Permits shall expire two (2) years following  
35 the effective date of the permit, provided no extension has been filed prior to the  
36 expiration date.”

37

38 **Section 5.** Section 10.54.050.K of the Sausalito Municipal Code is hereby amended in its  
39 entirety to read as follows:

40

41 “K. Extension. The applicant may request an extension of a Design Review Permit  
42 prior to the expiration of the permit. The Zoning Administrator or the Planning  
43 Commission (upon receipt of a referral from the Zoning Administrator) may grant one (1)  
44 extension for up to one (1) year, in accordance with Section 10.50.140 (Extension of  
45 Approved Permits).”

46

1 **Section 6.** Section 10.62.070 of the Sausalito Municipal Code is hereby amended to add  
2 a new Section K to read as follows:

3  
4 “K. Expiration of Permit. Nonconforming Permits shall expire two (2) years  
5 following the effective date of the permit, unless a different expiration date is stipulated  
6 at the time of approval, a construction permit has been issued and construction diligently  
7 pursued, or the permit is extended.”  
8

9 **Section 7.** Section 10.80.040.B of the Sausalito Municipal Code is hereby amended to  
10 add a new subsection 6 to read as follows:

11  
12 “6. Extensions of construction time limits, in accordance with Section 10.54.100.D.”  
13

14 **Section 8.** The adoption of this ordinance is exempt from the application of the  
15 California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in  
16 accordance with section 15305 (Minor Alterations in Land Use Limitations).  
17

18 **Section 9.** This ordinance shall be liberally construed to achieve its purposes and  
19 preserve its validity. If any section, subsection, sentence, clause or phrase of this  
20 ordinance is for any reason held to be unconstitutional or invalid, such decision shall not  
21 affect the validity of the remaining portion of this ordinance. The City Council hereby  
22 declares that it would have passed this ordinance and every section, subsection, sentence,  
23 clause or phrase thereof, irrespective of the fact that any one or more sections,  
24 subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

25  
26 **Section 10.** This Ordinance shall be in full force and effect thirty (30) days after the date  
27 of its adoption.  
28

29 **Section 11.** This Ordinance shall be published once within fifteen (15) days after its  
30 passage and adoption in a newspaper of general circulation in the City of Sausalito.  
31

32 **THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City  
33 Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, and was adopted at a regular meeting of the  
34 City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:  
35  
36  
37

38 AYES: COUNCILMEMBER:  
39  
40 NOES: COUNCILMEMBER:  
41  
42 ABSENT: COUNCILMEMBER:  
43  
44 ABSTAIN: COUNCILMEMBER:  
45  
46

5B  
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Mayor

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ATTEST:

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

CDD\Project – Non Address\ZOA\2009\09-002\Ord – 10-PC Recommendations – Revised November 11, 2009

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,  
MODIFY SECTION 10.50.120 REGARDING IMPLEMENTATION OF PERMITS,  
MODIFY SECTIONS 10.54.040, 10.54.050, AND 10.62.070 REGARDING THE LENGTH  
OF VALIDITY OF CERTAIN PERMITS, AND  
MODIFY SECTION 10.80.040.B REGARDING DUTIES OF THE ZONING  
ADMINISTRATOR.  
ZOA 09-002

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

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

**“10.54.100 Time Limits For Construction.**

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

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

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

3  
4 5. The time limits adopted in this Section 10.54.100 allow an adequate and  
5 reasonable amount of time for the kinds of construction projects undertaken in the  
6 City; and

7  
8 6. Substantial penalties should be imposed upon persons who violate the time limits  
9 imposed pursuant to this Section 10.54.100, so as to encourage compliance with  
10 such time limits and achieve the purposes of this Section 10.54.100.

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

35  
36 **C. Construction Time Limit.** Except where a longer time period is approved pursuant  
37 to subsection D below, the maximum time for completion of approved alterations,  
38 additions, modifications, repairs, or new construction, following issuance of the  
39 construction permit, shall not exceed the following limits. These limits are not  
40 altered or extended by work delays or stoppages due to the enforcement actions  
41 resulting from violation(s) of the Municipal Code.:  
42

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

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

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

1. a. Construction Activities. Prior to or following the commencement of construction an applicant may apply for one or more extension(s) of the established construction time limit; provided, however in no event shall any single extension granted exceed one hundred eighty (180) days, nor shall the total extension(s) granted exceed the following: an additional one hundred eighty (180) days.

<i><u>Estimated Value of Project</u></i>	<i><u>Construction Time Limit Extension</u></i>
<i><u>\$0 to \$500,000</u></i>	<i><u>270 days</u></i>
<i><u>\$500,001 to \$1,000,000</u></i>	<i><u>360 days</u></i>
<i><u>Greater than \$1,000,000</u></i>	<i><u>360 days</u></i>

- b. Landscaping Activities. For landscaping work (including retaining walls and grading) approved as part of the construction project, the applicant may apply for an extension not to exceed thirty (30) days beyond the ninety (90)-day landscaping time limit specified in subsection C above. Such application shall be filed prior to the expiration of the 90-day time limit and shall be considered by the Community Development Director, who shall have the authority to grant said extension only if, in his or her opinion, such extension beyond the 90-day landscaping time limit is warranted because of delays caused by inclement weather or circumstances beyond the property owner's control.
2. Application Contents. An application for an extension of the construction time limit shall be accompanied by complete working drawings for the construction, a written explanation of the reasons for the requested extension, and a fee as established by resolution of the City Council.
3. Public Hearing and Notice. Within fifteen (15) working days of receipt of a complete application for an extension in accordance with subsection D.1.a above, the Zoning Administrator shall hold a public hearing on the said application. The Zoning Administrator may obtain input from ~~shall be reviewed by a committee consisting of the Community Development Director, the Building Inspector, and the City Engineer,~~ meeting together with the project contractor, architect, and, at the applicant's option, the applicant and/or any other representatives of the applicant.



1 4. Findings. The Zoning Administrator committee may grant an extension if the  
2 following findings can be made:

- 3 a. ~~it is determined by the committee that (i) s~~Such extension will not have a  
4 material deleterious effect on the neighborhood in which the project is  
5 located; and  
6 a-b. ~~(ii) a~~Any one or more of the following factors is present and presents an  
7 unusual and substantial obstacle to complying with the standard construction  
8 time limit:  
9 ia. Site topography;  
10 iib. Site access;  
11 iiie. Geologic issues;  
12 ivd. Neighborhood considerations;  
13 ve. Weather-related grading restrictions; or  
14 vif. Other unusual factors (except lack of financing).  
15

16 ~~54. The committee shall have the authority to approve requests for extension, subject~~  
17 ~~solely to the guidelines of subsection D.3 above; provided, however, that such~~  
18 ~~extensions do not result in a total construction time limit exceeding thirty-six (36)~~  
19 ~~months. Any modification by the committee of the original construction time~~  
20 ~~limit shall not extend the existing expiration date of the design review permit.~~  
21 Conditions of Approval. The Zoning Administrator may apply reasonable  
22 conditions of approval deemed necessary to fulfill the purposes of this Section  
23 10.54.100.  
24

25 5. Notice of Decision. The decision of the Zoning Administrator shall be in the  
26 form of a written resolution and shall include the findings upon which the  
27 decision is based, applicable conditions of approval, and a summary of the appeal  
28 process. A written decision shall be mailed to the applicant and all parties who  
29 participated in the process via oral or written comments.  
30

31 ~~4.6. Appeals. The decision of the committee-Zoning Administrator to grant or deny~~  
32 ~~the requested extension may be appealed to the Planning Commission and the~~  
33 ~~decision of the Planning Commission may be appealed to the City Council in~~  
34 ~~accordance with the procedures of Chapter 10.84.~~  
35

36 **E. Penalties.**  
37

- 38 1. If a property owner fails to complete construction by the applicable time limit  
39 established in this Section 10.54.100, the property owner shall be subject to the  
40 following penalties payable to the City:  
41

1

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 <del>greater of 10% - lesser of 20%</del> of project value or \$200,000)

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

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**F. Deposits.**

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1. Upon reaching the time limits set out in subsections C and D, if construction has not been completed, or if no final inspection has been made or a certificate of occupancy issued, the property owner or his representative shall deliver to the Community Development Department a refundable deposit (in cash or other security instrument acceptable to the City and valid for a minimum time period of two (2) years) in the amount of Twenty Four Thousand Dollars (\$24,000), plus a non-refundable administrative fee as established by resolution of the City Council.
2. If no deposit is made as provided in subsection F.1 above, the building official shall issue a stop work order.
3. On or before the sixtieth (60<sup>th</sup>) day that the project has remained incomplete, and no final inspection has been made and no certificate of occupancy issued, the property owner or his representative shall deliver to the Community Development Department an additional refundable deposit (in cash or other security instrument acceptable to the City and valid for a minimum time period of two (2) years) in the amount of Thirty Six Thousand Dollars (\$36,000), plus a non-refundable administrative fee as established by resolution of the City Council.
4. If no deposit is made as provided in subsection F.3 above, the building official shall issue a stop work order.
5. On or before the one hundred twentieth (120<sup>th</sup>) day that the project has remained incomplete, and no final inspection has been made and no certificate of occupancy issued, the property owner or his representative shall deliver to the Community Development Department an additional refundable deposit (in cash or other security instrument acceptable to the City and valid for a minimum time

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19

1 period of two years) in the amount of One Hundred Forty Thousand Dollars  
2 (\$140,000), plus a non-refundable administrative fee as established by resolution  
3 of the City Council.  
4

- 5 6. If no deposit is made as provided in subsection F.5 above, the building official  
6 shall issue a stop work order.  
7
- 8 7. If the property owner fails to complete construction by the applicable time limit,  
9 the applicable penalties shall accrue daily up to the maximum set out in  
10 subsection E.  
11
- 12 8. If the property owner believes that the failure to meet the applicable time limit  
13 was caused by circumstances beyond the property owner's control, the property  
14 owner may file a written statement to that effect with the Community  
15 Development Director at the time of making the deposit as described in  
16 subsections F.1, 3 and/or 5 above and provide any documentation substantiating  
17 such grounds of appeal and the effect on the construction. If the property owner  
18 makes such filing, no part of the deposit cash or other security instrument shall be  
19 forfeited to the City if construction is completed within thirty (30) days of the  
20 deposit. If construction is completed after the thirty (30) days and the Community  
21 Development Director concurs with the property owner's statement as to the  
22 cause of the failure to meet the deadline, the Community Development Director  
23 shall waive the penalty and return the cash deposit or other security instrument to  
24 the property owner. If the Community Development Director does not concur  
25 with the property owner's statement, such statement shall be treated as an appeal  
26 under subsection G below and all the provisions of that subsection shall apply.  
27 As used in this Section 10.54.100, the term "circumstances beyond the property  
28 owner's control" shall mean events outside the property owner's reasonable  
29 control that are not caused by the property owner's willful or unlawful  
30 misconduct or gross negligence (or that of the property owner's contractor or  
31 subcontractors), such as acts of God, earthquake, labor disputes that are not  
32 caused, directly or indirectly by the property owner or the property owner's  
33 contractor or subcontractors, shortages of supplies, riots, war, acts of terrorism,  
34 fire, epidemics, or delays of common carriers. A failure of a lender to make or  
35 fund a loan commitment shall not be deemed to be a "circumstances beyond the  
36 property owner's control."  
37
- 38 9. If construction is completed after the applicable time limit, and the Community  
39 Development Director does not concur with the property owner's statement  
40 pursuant to subsection F.8, the City shall draw on the deposit or other security  
41 instrument in the amount of the applicable penalties; provided, however, that in  
42 the event of an appeal, the City shall not draw on the deposit or other security  
43 instrument until the Planning Commission and, if applicable, the City Council has  
44 rendered its decision as set forth in subsection G.  
45

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

5 **G. Appeals.**  
6

7 1. A penalty imposed pursuant to subsections B through F may be appealed to the  
8 Planning Commission on the grounds that the property owner was unable to  
9 comply with the applicable time limit as a result of circumstances beyond the  
10 property owner's control. There shall be no right to appeal until construction is  
11 completed. Any person aggrieved by the decision of the Planning Commission on  
12 the appeal may appeal to the City Council in accordance with the procedures of  
13 Chapter 10.84.  
14

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

30 **H. Enforcement.**  
31

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

42 2. Any penalty due under subsection E in excess of the deposit made under  
43 subsection F shall be a personal debt owed to the City by the property owner(s)  
44 and, in addition to all other means of enforcement and collection, shall become a  
45 lien against the said property and shall be subject to the same penalties (including  
46 interest thereon at the maximum rate allowed by law from the date the lien

1 attaches until the date of payment) and the same procedure and sale in case of  
2 delinquency as provided for ordinary municipal taxes.

3  
4 **I. Violations.**

- 5  
6 1. A violation of this Section 10.54.100 is a misdemeanor and shall be punished as  
7 provided in Chapter 1.05. A civil action may be commenced to abate, enjoin, or  
8 otherwise compel the cessation of violation of any provision in this Section  
9 10.54.100. In a civil action brought pursuant to this Section 10.54.100 in which  
10 the City prevails, the court may award to the City all costs of investigation and  
11 preparation for trial, the costs of trial, reasonable expenses including overhead  
12 and administrative costs incurred in prosecuting the action, and reasonable  
13 attorney fees.  
14  
15 2. As part of a civil action brought by the City, a court may assess against any  
16 person who commits, allows, or maintains a violation of any provision of this  
17 Section 10.54.100 a civil penalty in an amount not to exceed Five Thousand  
18 Dollars (\$5,000.00) per daily violation. The civil penalty is separate and distinct  
19 from penalties imposed pursuant to this Section 10.54.100.  
20  
21 3. Upon any guilty plea or judgment or conviction, in any criminal proceeding  
22 brought for the violation of this Section 10.54.100, where the defendant is entitled  
23 by law to probation, then the court may require the payment to the City of the  
24 costs and expenses as described above and the code provision incorporated by  
25 reference as one of the conditions of such probation.  
26  
27 4. The building official or the Community Development Director is authorized to  
28 order work stopped whenever work is being done contrary to the provisions of  
29 this Section 10.54.100.  
30  
31 5. Any violation of this Section 10.54.100 shall constitute a public nuisance and, in  
32 addition to being subject to any other remedies allowed by law, may be abated as  
33 provided by law.”  
34

35 **Section 2.** Section 10.50.120.A of the Sausalito Municipal Code is hereby amended in its  
36 entirety to read as follows:

37  
38 “A. Conditions of approval prerequisite to construction have been satisfied and any  
39 required construction permits have been issued; or”  
40

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

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

1  
2 **Section 4.** Section 10.54.050.J of the Sausalito Municipal Code is hereby amended in its  
3 entirety to read as follows:  
4

5 “J. Expiration of Permit. Design Review Permits shall expire two (2) years following  
6 the effective date of the permit, provided no extension has been filed prior to the  
7 expiration date.”  
8

9 **Section 5.** Section 10.54.050.K of the Sausalito Municipal Code is hereby amended in its  
10 entirety to read as follows:  
11

12 “K. Extension. The applicant may request an extension of a Design Review Permit  
13 prior to the expiration of the permit. The Zoning Administrator or the Planning  
14 Commission (upon receipt of a referral from the Zoning Administrator) may grant one (1)  
15 extension for up to one (1) year, in accordance with Section 10.50.140 (Extension of  
16 Approved Permits).”  
17

18 **Section 6.** Section 10.62.070 of the Sausalito Municipal Code is hereby amended to add  
19 a new Section K to read as follows:  
20

21 “K. Expiration of Permit. Nonconforming Permits shall expire two (2) years  
22 following the effective date of the permit, unless a different expiration date is stipulated  
23 at the time of approval, a construction permit has been issued and construction diligently  
24 pursued, or the permit is extended.”  
25

26 Section 7. Section 10.80.040.B of the Sausalito Municipal Code is hereby amended to  
27 add a new subsection 6 to read as follows:  
28

29 “6. Extensions of construction time limits, in accordance with Section 10.54.100.D.”  
30

31 **Section 8.** The adoption of this ordinance is exempt from the application of the  
32 California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, in  
33 accordance with section 15305 (Minor Alterations in Land Use Limitations).  
34

35 **Section 9.** This ordinance shall be liberally construed to achieve its purposes and  
36 preserve its validity. If any section, subsection, sentence, clause or phrase of this  
37 ordinance is for any reason held to be unconstitutional or invalid, such decision shall not  
38 affect the validity of the remaining portion of this ordinance. The City Council hereby  
39 declares that it would have passed this ordinance and every section, subsection, sentence,  
40 clause or phrase thereof, irrespective of the fact that any one or more sections,  
41 subsections, sentences, clauses or phrases be declared unconstitutional or invalid.  
42

43 **Section 10.** This Ordinance shall be in full force and effect thirty (30) days after the date  
44 of its adoption.  
45

1 **Section 11.** 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 \_\_\_\_\_  
20 Mayor


21 ATTEST:

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

26  
27  
28 CDD\Project – Non Address\ZOA\2009\09-002\Ord – 10-PC Recommendations – Revised November 11, 2009  
29

# STAFF REPORT

## SAUSALITO PLANNING COMMISSION

**PROJECT** Construction Time Limit Regulations/ ZOA 09-002  
**MEETING DATE** November 4, 2009  
**STAFF** Jeremy Graves, Community Development Director   
**APPLICANT** City of Sausalito

### REQUEST

Review and make a recommendation to the City Council on the draft ordinance which adds a new Zoning Ordinance Section 10.54.100 regarding construction time limits, modifies Section 10.50.120.A regarding implementation of permits, modifies Sections 10.54.040, 10.54.050 and 10.62.070 regarding effectiveness of certain permits, and modifies Section 10.80.040.B regarding duties of the Zoning Administrator.

### BACKGROUND

- On May 20, 2009 and June 17, 2009, the Planning Commission held public hearings on the draft regulations. At the conclusion of the hearings, the Commission suggested several modifications of the regulations and recommended City Council approval of the regulations.
- On July 7, 2009 and September 15, 2009, the City Council held public hearings on the draft regulations and directed staff to research and make several modifications.
- On September 23, 2009, the Legislative Committee (Mayor Leone and Vice-Mayor Weiner) and staff met with several interested parties regarding the draft regulations.
- On October 12, 2009 the Legislative Committee reviewed the draft regulations and forwarded the draft regulations to the full City Council.
- On October 20, 2009 the City Council held a public hearing on the draft regulations, directed staff to research and/or make several modifications (discussed below). The Council also referred the draft regulations to the Commission for consideration of deletion of a requirement that applicants must complete a foundation inspection in order to implement certain discretionary permits (Section 10.50.120.A). See **Exhibit C** for the October 20, 2009 City Council staff report.

### DISCUSSION

At the conclusion of the City Council hearing on October 20, 2009 staff was directed to make the following modifications. These modifications are reflected in the attached clean copy (**Exhibit A**) and redlined copy (**Exhibit B**) of the ordinance.

- Allow applicants to request additional time extensions. The resultant total extensions which can be granted are listed below. (Section 10.54.100.D)

<i>Estimated Value of Project</i>	<i>Construction Time Limit Extension</i>
<i>\$0 to \$500,000</i>	<i>270 days</i>
<i>\$500,001 to \$1,000,000</i>	<i>360 days</i>
<i>Greater than \$1,000,000</i>	<i>360 days</i>

**ATTACHMENT 3**  
(16 PAGES)



- Add a “weather-related grading restrictions” factor as a basis for granting a time extension. (Section 10.54.100.D.3.e)
- Require noticed public hearings when the Staff Committee (i.e., Community Development Director, City Engineer, Building Inspector) meets to consider time extension requests. Upon further review, staff has revised this section to allow the Zoning Administrator (i.e., Community Development Director or designee) to review time extensions requests. This has the advantage of using an established entity for the reviews rather than creating an ad-hoc entity. The Zoning Administrator regularly holds noticed public hearings (e.g., variance, lot line adjustments, and minor use permits), consults with City staff members (e.g., City Engineer, Building Inspector), considers testimony from applicants and interested parties, sets conditions of approval, prepares notices of decision, and makes decisions which can be appealed to the Planning Commission. (Section 10.54.100.D)
- Clarify that the time limit “clock” is not stayed as a result of enforcement actions (e.g., red-tags, citations) for violations of the Municipal Code. (Section 10.54.100.C)
- Revise a separate section of the Zoning Ordinance pertaining to Implementation of Permits (Section 10.50.120). The current wording of this section reads in part:  
“For purposes of this section the following shall be construed to be implementation of permits:  
A. Conditions of approval prerequisite to construction have been satisfied, any required building or grading permits have been issued, and a foundation inspection has been conducted and approved by the Building Official or a designee; or . . .”

The effect of this wording requires applicants to take the following actions to implement a discretionary permit (e.g., a design review permit):

- Submit construction drawings for plan check;
- Make any necessary revisions to construction drawings;
- Obtain building permit;
- Complete grading (if necessary);
- Install foundation forms; and
- Obtain foundation inspection approval by the building inspector.

Due to stormwater regulations and the unstable geologic formations in several areas of the community, the City Engineer severely limits grading in the affected hillside areas between October 15<sup>th</sup> and April 15<sup>th</sup>. Therefore the applicants in the affected hillside areas need to completed their grading, foundation work, and inspections prior to October 15<sup>th</sup>. This can reduce the time available to implement a discretionary permit by to up six months if the foundation inspection cannot be completed prior to October 15<sup>th</sup>.

Therefore, the wording of Section 10.50.120 has been revised to read:

“For purposes of this section the following shall be construed to be implementation of permits:

- A. Conditions of approval prerequisite to construction have been satisfied and any required construction permits have been issued; or . . .”

This modification stipulates that applicants must satisfy the required conditions of approval and pull a construction permit (e.g., grading or building permit) in order to implement the discretionary permit. This modification is consistent with the practice in most jurisdictions for implementation of a discretionary permit.

In addition, the City Council requested staff to research the following matters and report back to the City Council.

- Additional enforcement actions available if applicants have paid the maximum penalties (i.e., \$200,000) and construction has not been completed.
- Time limits for amendments of Design Review Permits for projects which originally received a Design Review Permit prior to the effective date of the construction time limit regulations.

In addition to the above City Council requests, staff has reviewed building permits issued for projects valued over \$500,000 between 2003-2008 to determine the elapsed time between issuance and final inspection (see **Exhibit D** for table and chart).

- \$500,000 to \$1 million Projects. For projects valued between \$500,000 to \$1 million, the time period for completion of construction ranged from 2 months to almost 5 years. The average construction time was approximately 26 months. The proposed regulations would allow projects in this value range 24 months for construction, with the ability to request time extensions of approximately 12 months.
- Over \$1 million Projects. For projects valued over \$1 million, the time period for completion of construction ranged from 16 months to 36 months. The average construction time was approximately 25 months. The proposed regulations would allow projects in this value range 30 months for construction, with the ability to request time extensions of approximately 12 months.

#### **PUBLIC NOTICE AND CORRESPONDENCE**

Notice: At least ten days prior to the hearing date on November 4, 2009, notice of this public hearing was published in the *Marin Independent Journal*. The notice was also posted at City Hall.

Correspondence received since preparation of the October 20<sup>th</sup> City Council staff report is provided as **Exhibits E - H**. Ray Withy in **Exhibits E and H** suggests the finding made by the Planning Commission to grant time extension of Design Review Permits should be amended.

#### **STAFF RECOMMENDATIONS**

Staff recommends the Planning Commission take the following actions regarding the attached draft ordinance which adds a new Zoning Ordinance Section 10.54.100 regarding construction time limits, modifies Section 10.50.120.A regarding implementation of permits, modifies Sections 10.54.040, 10.54.050 and 10.62.070 regarding effectiveness of certain permits, modifies Section 10.80.040.B regarding duties of the Zoning Administrator.

- Review the draft attached ordinance and make any appropriate modifications; and
- Recommend City Council adoption of the attached ordinance.

Alternatively, the Planning Commission may:

- Recommend City Council denial of the draft ordinance; or
- Continue the hearing for additional information and/or draft ordinance revisions.

**EXHIBITS**

- A Draft Ordinance, dated 10/30/09 - Clean copy \*
- B Draft Ordinance, dated 10/30/09 - Redline copy \*
- C City Council Staff Report, dated 10/20/09 \*\*
- D Project Completion Timeframes, 2003-2008
- E Letter from Michael Rex, date stamped 10/20/09
- F Email from Ray Withy, date stamped 10/22/09
- G Letter from Perry Biestman, date stamped 10/23/09
- H Correspondence from Ray Withy, date stamped 10/30/09

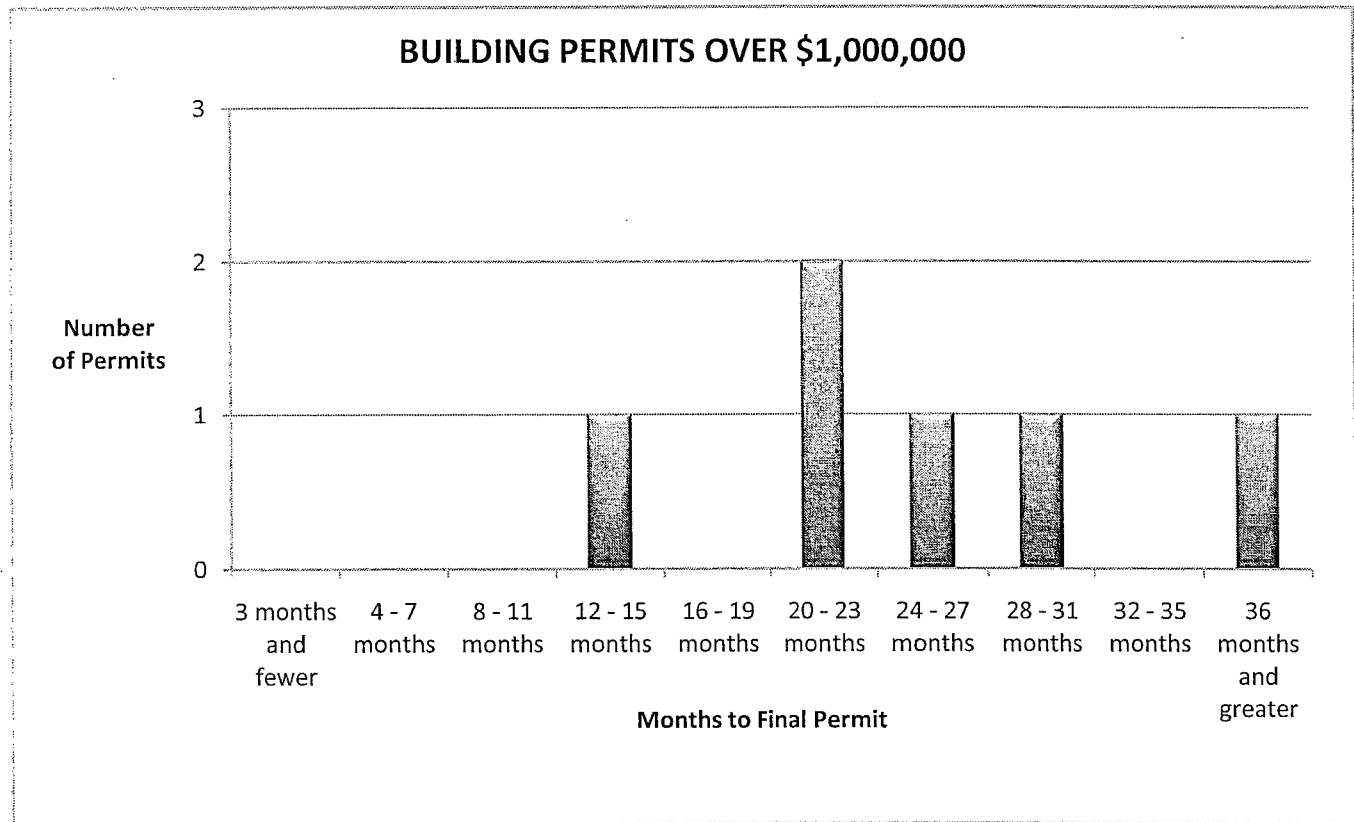
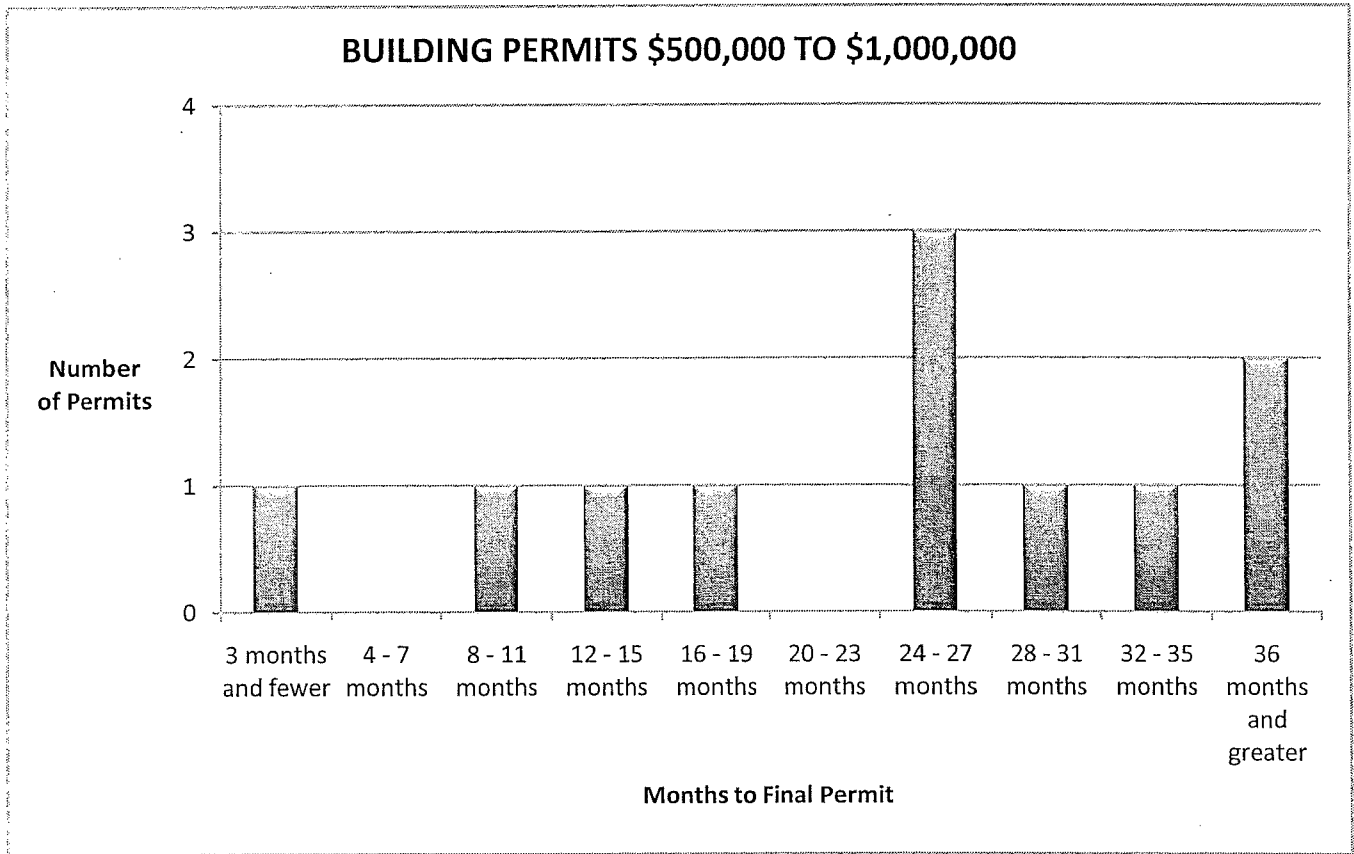
I:\CDD\PROJECTS - NON ADDRESS\ZOA\2009\09-002\ pcsr 11-04-09.doc

Notes for 11/17/09 - City Council Staff Report

\* See Attachments 1 and 2 for current  
revisions of draft ordinance.

\*\* See City Website for City Council  
Staff Report dated 10/20/09

# PROJECT COMPLETION TIMEFRAMES 2003 - 2008



**EXHIBIT D**  
(2 PAGES)

5B  
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**PROJECT COMPLETION TIMEFRAMES  
2003 - 2008**

<b>BUILDING PERMITS \$500,000 TO \$1,000,000</b>				
Shortest time to final:		2.1	months	
Longest time to final:		59.9	months	
Average time to final:		25.6	months	
<b>Valuation</b>	<b>Address</b>	<b>Date Issued</b>	<b>Date Finaled</b>	<b>Months to Final</b>
500,000	3 Harbor	4/24/2007	6/26/2007	2.1
520,000	214 Richardson	7/26/2007	3/24/2008	8.1
545,087	11 Wolfback Ridge	6/2/2008	6/4/2009	12.3
935,000	40 Cazneau/88 & 90 Cazneau	8/21/2007	3/3/2009	18.7
715,000	10 Wolfback	2/17/2007	2/18/2009	24.4
598,000	50 Monte Mar	1/24/2007	1/26/2009	24.5
603,738	96 Harrison	8/1/2005	8/15/2007	24.9
662,710	26 Currey	8/17/2005	1/30/2008	29.9
673,108	135 Bulkley	12/14/2004	8/3/2007	32.2
781,000	20 Bulkley	9/7/2004	4/23/2008	44.2
800,000	178 Santa Rosa	10/5/2004	9/3/2009	59.9

<b>BUILDING PERMITS OVER \$1,000,000</b>				
Shortest time to final:		15.7	months	
Longest time to final:		36.3	months	
Average time to final:		24.9	months	
<b>Valuation</b>	<b>Address</b>	<b>Date Issued</b>	<b>Date Finaled</b>	<b>Months to Final</b>
1,398,895	156 Harrison	10/25/2007	2/6/2009	15.7
2,727,593	40 Alexander	10/10/2005	6/4/2007	20.1
1,350,502	1050 Bridgeway	10/16/2003	7/7/2005	21.0
1,275,590	309 Bridgeway	8/1/2005	9/20/2007	26.1
1,020,643	94 Cloudview	11/9/2005	4/29/2008	30.1
1,079,615	85 - 89 Crescent	7/7/2004	6/28/2007	36.3

58  
30

MICHAEL REX ASSOCIATES

ARCHITECTURE & DESIGN  
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SAUSALITO  
CALIFORNIA 94965  
T 415 331 1400  
F 415 331 5463

RECEIVED

OCT 20 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

October 20, 2009

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

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

Dear City Council Members,

Having received from Mr. Graves a copy of the revised Draft Ordinance around noon yesterday and following my meeting with him later yesterday afternoon so I'm clear on what is now proposed, I write this late mail to offer a response to the currently proposed changes.

1. *Construction Time Frames*: Extending the time frames for completing construction by one year, from 12 to 24 months for projects between \$500K to \$1M in value, and from 18 months to 30 for projects over \$1M, is an improvement, offering the minimal contingency to normal time frames for most construction projects before a penalty is applied.
2. *Construction Time Frame Extension & Process* : Allowing up to a six month extension for good cause, requiring Staff review and approval, rather than the Planning Commission, is also an improvement over the previous draft, although again, it's the minimum extension necessary. Two six month extensions would be more realistic.
3. *Construction Time Frame Commencement*: The Ordinance should make it clear that the construction time limit period commences when the Building Permit is picked up.
4. *Construction Time Frame Extension Findings*: The "good cause" necessary for an extension to the Construction Time Limit should include project financing beyond the applicant's control. (For example, these days a bank could fold and a new construction loan needed, which is certainly an event beyond one's control).
5. *Building Permit overrides Design Review Approval*: **This is an error.** In Section 10.54.100 D.4. of the draft Ordinance, the second sentence needs to be changed. It states, "Any modification by the committee of the original construction time limit shall not extend the existing expiration date of the design review permit." If construction has commenced,

**EXHIBIT E**  
(2 PAGES)

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extending the construction time must extend the design review permit, because the Project is vested and the design review approval is no longer the controlling permit.

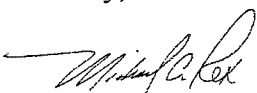
6. *Design Review Approval Duration:* Regarding the duration a Design Review approval is valid, reducing the period from the current 5 years with a possible one 2-year extension for a total of 7 years, to the proposed 2 years with one a possible 1 year extension for a total of 3 years, or a 57% reduction in entitlement, is still too restrictive and punitive. A limit of 2 years, plus two 1-year possible extensions for good cause, for a total of 4 years, is a reasonable compromise and a significant change from 7 to 4 years, or a 43% reduction.
7. *Design Review Approval Duration Extension:* **This is the paramount concern with the second draft:** The extension of a Design Review approval still requires going back to the Planning Commission. As defined in the current Zoning Ordinance, returning to the Commission results in opening up the entire application to scrutiny and possible revision as if it was an entirely new project. This was OK when projects had a five year term, but is not OK with they have only a 2-year term. The uncertainty and risks are too great. Plus, there is no good reason to require a return to the Commission, because unlike the current five year term, it is unlikely that neighborhood circumstances or public policy will have shifted significantly in just a two year period. The extensions should be reviewed and approved administratively.
8. *Design Review Approval Extension Findings:* The findings necessary to approve a request for an extension in the current Zoning Code, Section 10.50.140 D. 1 through 3 are fine.

Please consider the following revisions:

1. Add a second 6-month possible extension for good cause for construction time, allowing up to a full year extension.
2. Define that the Construction Time Limit commences when the Building Permit is picked up.
3. Add financial events beyond the applicant's control to the findings to grant an extension to the Construction Time Limit.
4. Delete the second sentence to Section 10.54.100 D.4. If construction has commenced then the Construction Time Limit can exceed the term of the Design Review Permit.
5. Add a second 1 year possible extension to Design Review Permits, allowing up to 4 years for such Permits to remain valid, if the findings can be made.
6. Delete the need to return to the Planning Commission for extensions to the 2-year Design Review Permit and allow Administrative review and approval instead. **(This is a big one!)**

Thank you for continuing the review of this Draft Ordinance to allow more time to obtain public input and make necessary revisions so the Ordinance will work better for all concerned.

Sincerely,



Michael Rex, Architect

Jeremy Graves

From: Ray Withy [Ray@TWGAdvisors.com]  
Sent: Thursday, October 22, 2009 8:14 AM  
To: Jeremy Graves  
Cc: Flynn McDonald  
Subject: Design Review Permits

RECEIVED

OCT 22 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Dear Jeremy:

It was a helpful discussion yesterday by phone. As I promised, I am enclosing some of the suggested language changes to the ordinance that deal with the consequences of lowering the term for the Design Review Permit from 5 years to 2 years. The first relates to the Implementation of permits and the second to their extension.

Section 10.50.120 (A) should be modified to read:

"Conditions of approval prerequisite to construction have been satisfied and any required building or grading permits have been issued, ~~and a foundation inspection has been conducted and approved by the Building Official or a designee;~~  
or"

We also believe that language should be inserted giving the Community Development Director the discretionary authority to stop the clock on the expiration of a Design Review Approval Period on a submitted building permit application, if the application is deemed good by the Director and if a delay has not been caused by the applicant.

Section 10.50.140 (D) should be modified to remove the words "Design Review Permit" and a new Section 10.50.140 (E) should be added to read in its entirety as follows:

"E. Findings. Subject to subsection C (Public Hearing) above, the Planning Commission may extend the expiration date of the approved Design Review Permit by one year on the same conditions as the original approved permit for any good cause, if the applicant has been diligent in pursuing the permit."

Regarding the latter, Flynn and I still believe that it would be better to take this decision away from the Planning Commission and leave it to staff. However, if it is to remain with the Planning Commission, then 10.50.140 (D) in its current form does not provide the Commission with the necessary discretionary authority. It also opens the door to an extensive re-review of the whole application, something the staff surely does not want to have to deal with. This will cause chaos!

We will be sending our letter in the next few days.

Cheers

Ray

EXHIBIT F  
(1 page)

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Perry Biestman

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Sausalito, California 94965  
Office (415) 332-0634  
Fax (415) 332-5588  
perry@biestman.com

Post Office Box 340  
Vineburg, California 95487  
Sonoma County  
Office/Fax (707) 938-3940

**COPY** RECEIVED

OCTOBER 20, 2009

OCT 23 2009 T 9 2 2009

SAUSALITO CITY COUNCIL  
SAUSALITO, CA. 94965

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

RE; PROPOSED ORDINANCE BEFORE THE CITY COUNCIL TO REDUCE THE DURATION OF DESIGN REVIEW APPROVALS FROM FIVE YEARS TO ONE YEAR.

WE SUPPORT A TIME LIMIT ORDINANCE. WE, AS OTHER SAUSALITO RESIDENTS, HAVE BEEN A VICTIM OF THE OPEN ENDED BUILDING PERMIT.

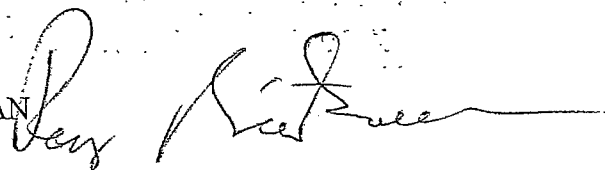
OUR HOUSE IS 105 YEARS OLD LOCATED AT 19 PROSPECT AVE. WE HAVE LIVED HERE OVER FIFTY YEARS. THE HOUSE NEXT TO US, 8 SPENCER COURT, IS A "REMODEL". IT HAS FINALLY BEEN COMPLETED AFTER FOUR YEARS OF CONSTRUCTION.

WE ARE LOCATED NEXT TO AN EASEMENT WHICH WAS NOT CREATED FOR HEAVY TRAFFIC, HOWEVER, OVER THE PAST FOUR YEARS, THE EASEMENT WAS USED FOR HEAVY EQUIPMENT TRANSPORT, ENTRANCE AND EXIT OF CONSTRUCTION WORKERS, PORTA POTTIES ALL THE NECESSARY MATERIALS. OUR HEDGES, SPRINKLERS AT THE PROSPECT ENTRANCE TO OUR PROPERTY, WERE DAMAGED. THE SOUNDS OF CONSTRUCTION WERE MORE THAN NOISE-POLLUTION OVER THE PAST FOUR YEARS.

I WOULD VISIT THE "WINDOW" AT CITY HALL TO ASK WHEN WILL THE CONSTRUCTION BE COMPLETED. THE FILE WAS PULLED, THE BUILDING INSPECTOR SAID THEY WOULD TALK TO THE OWNER. NO ONE EVER CONTACTED ME WITH AN ANSWER. THE CONSTRUCTION CONTINUED, WITH NO INFORMATION ON A COMPLETION DATE. THE OWNER NEVER CONTACTED ME, BUT I CALLED HIM. HE REPLIED "WE ARE WORKING ON IT". IT STILL DRAGGED ON FOR FOUR YEARS.

WE ASK THE COUNCIL TO PASS A TIME LIMIT ORDINANCE FOR CONSTRUCTION.

SINCERELY,  
PERRY BIESTMAN



**EXHIBIT G**  
(1 page)

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**Raymond M. Withy, Ph.D.**  
**99 Miller Lane**  
**Sausalito, CA 94965**  
**1-650-799-3633**  
**ray@twgadvisors.com**

October 30, 2009

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

**RECEIVED**  
OCT 30 2009  
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 and Planning Commission Members:

On behalf of Flynn McDonald and myself, I would like to thank the Mayor, the City Council Members, Jeremy Graves, Mary Wagner, and Adam Politzer for the diligent efforts each of you has made to improve the above referenced ordinance. I would like to reiterate my comments at last week's city council meeting by commending you for having listened to the concerns of residents and then incorporated modifications to the draft ordinance that now provide for moderate, yet meaningful, time limits for construction.

The proposed new Section 10.50.100 has achieved a reasonable balance between the need for an enforcement mechanism, while reasonable enough so that construction can proceed in a timely yet cost-effective manner. It is necessary to build in the flexibility to deal with unexpected delays. I think that councilmember Kelly's suggestion to incorporate a second extension period is a wise modification that will help avoid unnecessary financial harm to well intentioned residents, trying to play by the rules, but who encounter unexpected difficulties.

As was clear at last week's city council meeting, one point of view is to "clamp down" on people while another is to give a little breathing room for the inevitable problems. I urge the Council to keep in mind that the primary goal of the ordinance is to get projects done well and on time with the secondary goal being to punish bad apples (who are blameworthy) if they fail to do so—not the reverse order. The "bell shaped curve" approach articulated at the legislative subcommittee session on the matter should enable good citizens to get their projects done. As was recognized last week at the City Council Meeting, this ordinance is a very important one and will have far-ranging impacts on the residents of Sausalito for years to come. The Mayor and the City Council are wise to take the time and have the discussions necessary to get it right.

**EXHIBIT H**  
(4 pages) 5B  
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However, there remain serious problems with the changes to the duration and extension of the Design Review Permit. The proposed ordinance as currently drafted retains two provisions that become operationally problematic, I believe, once the time limit for the Design Review Permit is changed from 5 years to 2. These problems are a) the event that must be completed within the two year period to satisfy the Design Review Permit and b) the criteria that must be met to receive a one year extension of the Design Review Permit.

**When is the Design Review Permit satisfied—upon filing for a building permit, the issuance of a building permit, or a foundation inspection?**

After the discussion at last week's city council meeting on this topic, I feel confident that the council recognizes that the requirement of a foundation inspection having been completed is too onerous once the duration of a design review permit is shortened to 2 years.

But should the filing of a building permit or its issuance be used instead? On one hand, if the filing date is used, a bad apple can game the system by filing a poor application and stringing the process along for weeks. On the other hand, a good citizen can run afoul of the timeline when he/she submits a good application and the delay is not his/her fault. (Jeremy gave the example of the "Gotcha" game that the plan checkers have played in the past by not identifying every issue upfront and stringing applicants along for weeks.)

One solution is to require that a building permit actually be obtained to satisfy the Design Review Approval Period, but the Community Development Director has the discretionary authority to stop the clock on the expiration of a Design Review Approval Period on a submitted building permit application, if the application is deemed good by the Director and if the delay has not been caused by the applicant. I urge the Planning Commission and the City Council to consider this solution as a reasonable approach.

**On what basis must the Planning Commission grant a Design Review Approval Period extension?**

This is a very important issue in this ordinance, and the Council recognized that it needs careful thought.

The Staff report is advertising the new ordinance as 2 years with a 1-year extension---but upon closer look, that is not what it is. First, it appears to be a 2-year initial period after which the applicant is forced back to the Planning Commission for a new full blown review for the additional 1 year. It appears that the request for the extension is to be contested and not automatic for "good cause." This makes no sense. Why would anyone invest the time and expense for another full blown review and not simply start over and go for a full 2 year approval? This makes the ordinance's provision for a 1-year extension meaningless. Why would the City implement legislation that is meaningless?

Second, an extension means to the ordinary Sausalito citizen the grant of an additional year on the same terms. But that is not what the ordinance says. As currently constructed, the ordinance refers back to Section 10.50.140 D as the process at the Planning Commission to approve Design Review Approval Period extensions. According to that section, all three of these conditions must be met to receive an extension:

1. No change of conditions of circumstance has occurred that would have been grounds for denying the original application;
2. The applicant has been diligent in pursuing implementation of the permit; and
3. Modified conditions have been imposed which update the permit to reflect current adopted standards and ordinance requirements.

These requirements made sense when the initial Design Review Approval Period lasted for 5 years, but with the reduction to 2 years, they are too burdensome for a good citizen applicant.

Requirements 1 and 3 open the good citizen up to a new, full blown contested approval process just 2 years after the expense of the first one and impose all sorts of new conditions. This is not an extension!

More problematic, what evidence must the applicant present with respect to requirement 1 “no change of circumstance” to satisfy this requirement? Does this give the neighbors or the Planning Commission (whose members may have changed) another bite at the apple to demand more changes from the applicant that were not required the first time around? If so, this is not an extension on the same terms.

How about requirement 3 “modified conditions”? Must the applicant go back and change all his/her plans for any intervening standards or ordinances that have been adopted since the original Design Review Board approval was given? If so, that is not an extension on the same terms.

The new ordinance is being touted as providing a 2-year Design Review Approval Period with a 1-year extension. But if the extension is to be a real extension, it must be one that can be obtained by a good citizen with little risk or expense for any good cause and on the same terms.

I was not surprised to learn from Jeremy that there were very few requests for extensions in the past. But with the period shortened to only 2 years, I expect there will be many more such requests. One of the previous extensions was granted based on a death in the family. Where is that provided for in the ordinance? Can every Sausalito resident feel confident that they too can get an extension of the Design Review Permit for such a reason or was that just a special one-off only for that one applicant?

If the Planning Commission has a track record of granting Design Review Permit extensions for a death in the family of the applicant mentioned above, how about the following reasons for other ordinary Sausalito applicants:

- Death or sickness in the family;
- Inability to get financing;
- Loss of a job;
- Inability to find a contractor to do the job in the timeframe at an affordable price;
- Unavailability of materials;
- Rainy season hillside building moratorium;
- Value engineering of the project because it is too expensive;
- Etc.

An extension of the Design Review Approval Period must be just that—an extension under the exact same terms as the original 2 year period and with clear authority given to the Planning Commission to grant the extension “for any good cause.”

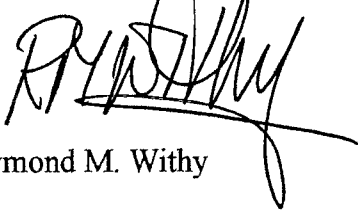
To accomplish this, I suggest that the words “Design Review Permit” be removed from Section D and a new Section E be created to address the extension of a Design Review Permit. Suggested language is as follows:

E. Findings. Subject to subsection C (Public Hearing) above, the Planning Commission may extend the expiration date of the approved Design Review Permit by one year on the same conditions as the original approved permit for any good cause, if the applicant has been diligent in pursuing the permit.

This language gives a resident the certainty that he/she can get an actual extension of his/her Design Review Permit on the same terms for good cause so long as he/she has been diligent without the fear of a repeat of a full blown design Review Board hearing--with its attendant costs, risks, uncertainties, new ordinances, and new standards. This would also ensure that all Sausalito residents are treated the same, so that a death in one family is treated the same as a death in another family—and not made a political football.

Thank you for your consideration. I look forward to continuing a fruitful and constructive working relationship. Flynn and I love Sausalito, and we look forward to living in our home here for many years to come.

Respectfully submitted,



Raymond M. Withy

DISTRIBUTED  
@ 11/4/09  
PIC MTG

Jeremy Graves

RECEIVED

From: Ray Withy [ray@twgadvisors.com]  
Sent: Wednesday, November 04, 2009 11:24 AM  
To: Jeremy Graves  
Cc: 'Flynn McDonald'  
Subject: Construction Time Limits Ordinance

NOV - 4 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Jeremy:

I have gone through the package published for tonight's Planning Commission meeting regarding the Construction Time Limits Ordinance. I have just noticed what I believe is a clerical error in the wording of one of the entries in the Table under Section E.1. starting at line 25 on page 4 of the draft Ordinance presented as Exhibit A of tonight's package. The Penalty, as currently drafted in the Ordinance, in the circumstance that the project remains incomplete 121 days or more from the Applicable Time Limit is

"\$800 per day (to a maximum of the greater of 10% of the project value or \$200,000)" – my underline added!

Surely this should read .... (to a maximum of **the lesser of** 10% of the project value or \$200,000)

I note that this was the language you used in the table on page 3 of your staff report of 10-20-09 and has been the general understanding throughout the discussion over the last several months.

Please would you clarify prior to tonight's meeting that this is simply a clerical error in the draft Ordinance.

Thanks

Ray

ATTACHMENT 4  
5B  
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