



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Waive further reading and adopt Ordinance No. 1200, an ordinance 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 10.80.040B regarding duties of the Zoning Administrator

RECOMMENDED MOTION:

Waive further reading and adopt Ordinance No. 1200, an ordinance 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 10.80.040B regarding duties of the Zoning Administrator

DISCUSSION

Both the City Council and the Planning Commission have held several hearings prior to the November 17 introduction. Several revisions have been recommended and made since it originally came before Council earlier this year. Finally, on November 17, 2009, the City Council introduced and gave first reading to an ordinance 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 10.80.040B regarding duties of the Zoning Administrator. Following its introduction, Council discussions and public input, no revisions were made.

Attached you will find a full copy of the ordinance as it was introduced on November 17. Ordinance No. 1200 will be published, in its entirety, within fifteen days after the adoption and go into effect thirty (30) days after the second reading.

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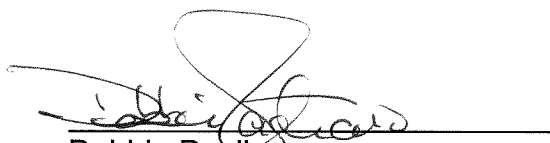
STAFF RECOMMENDATIONS

Waive further reading and adopt Ordinance No. 1200, 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 10.80.040B regarding duties of the Zoning Administrator

ATTACHMENTS

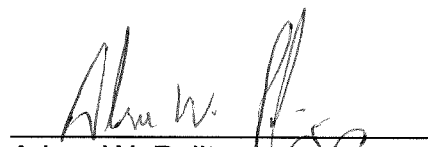
Ordinance No. 1200

PREPARED BY:



Debbie Pagliaro
Assistant to the City Manager/City Clerk

SUBMITTED BY:



Adam W. Politzer
City Manager

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ORDINANCE NO. 1200

**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**

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;

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

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

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

<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. 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:

<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>

- 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 the Building Inspector and the City Engineer.
 - 4. Findings. The Zoning Administrator may grant an extension if the following findings can be made:
 - a. Such extension will not have a material deleterious effect on the neighborhood in which the project is located; and
 - b. Any one or more of the following factors is present and presents an unusual and substantial obstacle to complying with the standard construction time limit:
 - i. Site topography;
 - ii. Site access;
 - iii. Geologic issues;
 - iv. Neighborhood considerations;
 - v. Weather-related grading restrictions; or

- vi. Other unusual factors (except lack of financing).
- 5. Conditions of Approval. The Zoning Administrator may apply reasonable conditions of approval deemed necessary to fulfill the purposes of this Section 10.54.100.
- 5. Notice of Decision. The decision of the Zoning Administrator shall be in the form of a written resolution and shall include the findings upon which the decision is based, applicable conditions of approval, and a summary of the appeal process. A written decision shall be mailed to the applicant and all parties who participated in the process via oral or written comments.
- 6. Appeals. The decision of the Zoning Administrator may be appealed to the Planning Commission in accordance with the procedures of Chapter 10.84.

E. Penalties.

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

Period of Time That Project Remains Incomplete Beyond Applicable Time Limit	Penalty
First 60 days	\$400 per day (i.e., \$24,000 maximum penalty applicable to this 60-day period)
61st through 120th day	\$600 per day (i.e., \$36,000 maximum penalty applicable to this 60-day period)
121st day and every day thereafter	\$800 per day (to a maximum of the lesser of 20% of project value or \$200,000)

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

F. Deposits.

- 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 (60th) 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 (120th) 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 years) in the amount of One Hundred Forty Thousand Dollars (\$140,000), plus a non-refundable administrative fee as established by resolution of the City Council.
6. If no deposit is made as provided in subsection F.5 above, the building official shall issue a stop work order.
7. If the property owner fails to complete construction by the applicable time limit, the applicable penalties shall accrue daily up to the maximum set out in subsection E.
8. If the 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 to that effect with the Community Development Director at the time of making the deposit as described in subsections F.1, 3 and/or 5 above and provide any documentation substantiating such grounds of appeal and the effect on the construction. If the property owner makes such filing, no part of the deposit cash or other security instrument shall be forfeited to the City if construction is completed within thirty (30) days of the deposit. If construction is completed after the thirty (30) days and the Community Development Director concurs with the property owner's statement as to the cause of the failure to meet the deadline, the Community Development Director shall waive the penalty and return the cash deposit or other security instrument to the property owner. If the Community Development Director does not concur with the property owner's statement, such statement shall be treated as an appeal under subsection G below and all the provisions of that subsection shall apply. As used in this Section 10.54.100, the term "circumstances beyond the property owner's control" shall mean events outside the property owner's reasonable control that are not caused by the property owner's willful or unlawful misconduct or gross negligence (or that of the property owner's contractor or subcontractors), such as acts of God, earthquake, labor disputes that are not

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

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

G. Appeals.

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

H. Enforcement.

1. This Section 10.54.100 shall apply to all construction, including all additions, alterations, modifications, repairs, and improvements, that requires a design review permit, including a design review permit for such construction undertaken before the application for the design review permit or an amended design review permit with respect to such

construction previously undertaken without a design review permit or outside a previously-issued design review permit. The time limit for completion of any design review permit issued after January 1, 2009 shall be extended from the effective date of this ordinance pursuant to the time limits specified in subsections C and D.

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

I. Violations.

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

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

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

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

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

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

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

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

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

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

“K. Expiration of Permit. Nonconforming Permits shall expire two (2) years following the effective date of the permit, 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.”

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

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

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

Section 9. This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the

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fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

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

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

THE FOREGOING ORDINANCE was read at a regular meeting of the Sausalito City Council on the _____ day of _____ 2009, and was adopted at a regular meeting of the City Council on the _____ day of _____, 2009 by the following vote:

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

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK

