



STAFF REPORT

SAUSALITO CITY COUNCIL – April 21, 2009

AGENDA TITLE:

Draft Construction Time Limit Ordinance

RECOMMENDED MOTION:

Direct staff to bring the proposed ordinance to the Planning Commission for review and comment and then return to the City Council for consideration

SUMMARY

In the fall of 2008 the City Council directed staff to work with the Council Code Review Committee to develop and refine a proposed Construction Time Limit Ordinance. Attached as Exhibit A is the draft ordinance which has been reviewed by the Committee. The Committee is recommending that the Council refer the draft to the Planning Commission for review and comment and then return to the City Council for consideration.

BACKGROUND

The City Council previously reviewed a draft ordinance establishing time limits on construction projects in Sausalito. On October 21, 2008 the City Council received a report on the status of the projects which were established by the City Council on May 27, 2008 as priorities (“above the line projects”) and which involve modifications to the Sausalito Municipal Code. At that time the Council directed the City Attorney to work with the Council Code Review Committee on a construction time limit ordinance. The Committee met to review the ordinance and referred it back to the Council for policy direction. The Council reviewed a draft ordinance on November 25th and provided further direction. The ordinance was subsequently reviewed and modified by the Committee. Attached as Exhibit A is the revised ordinance being recommended by the Committee.

With the approval of the City Council the proposed ordinance will be presented to the Planning Commission for review and comment. Thereafter the ordinance will be brought back to the City Council for consideration and possible adoption.

FISCAL IMPACT

Drafting the ordinance does not have a financial impact to the City other than the additional staff time required to draft the ordinance and bring the ordinance to the Planning Commission and City Council.

STAFF RECOMMENDATIONS

Direct staff to bring the proposed ordinance to the Planning Commission for review and comment and then return to the City Council for consideration

ATTACHMENTS

Exhibit A – Draft Construction Time Limit Ordinance

PREPARED BY:

Mary Anne Wagner, City Attorney

SUBMITTED BY:

Adam W. Politzer, City Manager

EXHIBIT A

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
AMENDING TITLE 10 OF THE SAUSALITO MUNICIPAL CODE TO ADD A
NEW SECTION 10.54.100 REGARDING CONSTRUCTION TIME LIMITS, AND
TO MODIFY SECTIONS 10.54.040, 10.54.050 AND 10.62 REGARDING
EFFECTIVENESS OF CERTAIN PERMITS; AND AMENDING CHAPTER 1.10
TO ADD NEW SECTIONS 1.10.120, 1.10.130, 1.10.140 AND 1.10.150
REGARDING IMPOSITION OF LIENS**

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

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

10.54.100 Time Limits For Construction.

A. Purposes. The City Council finds that:

1. A 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. The City has seen numerous individual projects designed and built on a very large scale so that construction has often continued for many years, thus prolonging the adverse 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 owner of the project with those of his neighbors and the community generally in the safe and peaceful enjoyment of their properties;
5. The time limits adopted in this Section allow an adequate and reasonable amount of time for the kinds of construction projects undertaken in the City; and
6. Because of the large monetary value of many of the construction projects in the City, substantial penalties should be imposed upon persons who violate the time limits imposed pursuant to this Chapter, so as to encourage compliance with such time limits and achieve the purposes of this Section.

B. Construction Time Limit Required. As part of any application for design review permit, the applicant shall file a reasonable estimate of the cost of the proposed construction, and based thereon, a construction time limit shall be established for the project in accordance with the guidelines set forth in subsection C below.

Compliance with such time limit shall become a condition of design review permit. The time for completion of the construction shall also be indicated on the building permit. For projects exceeding \$500,000 in project valuation, a detailed PERT or GANTT chart, including detailed information on the critical path of the project, shall be required prior to the issuance of any building permit. Once approved, the property owner shall provide the City with written quarterly job progress reports consistent with the approved PERT or GANTT chart. Prior to the commencement of any construction work on the project, the applicant may apply for an extension of the established time limit as provided in subsection D below, provided that no construction activity has yet commenced on the project.

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 building permit, shall not exceed the following:

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

* For landscaping work approved as part of a larger construction project, the applicant shall have an additional ninety (90) days after the date of final inspection approval of the building permit for the main construction project.

D. Extension of Construction Time Limit.

1. Provided that no construction activity has yet commenced on the project, the applicant may apply for an extension of the established construction time limit, not to exceed an additional six (6) months. For landscaping work that was approved as part of a larger construction project, following final building inspection approval or issuance of an occupancy permit (whichever occurs later), the applicant may file an application for an extension not to exceed thirty (30) days beyond the 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 to the 90-day landscaping time limit is warranted because of delays caused by inclement weather.
2. 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 City Council resolution.

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3. Within ten (10) working days of receipt of a complete application for extension, said application 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. The committee may recommend to the Planning Commission, and the Planning Commission may approve, an extension if it is determined that any one or more of the following factors presents an unusual obstacle to complying with the standard construction time limit:
 - a. Site topography;
 - b. Site access;
 - c. Geologic issues;
 - d. Neighborhood considerations;
 - e. Other unusual factors.

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

4. The committee's recommendation shall be placed on the next available Planning Commission agenda and noticed as an amendment to the applicant's existing design review approval. Any modification by the Planning Commission of the original construction time limit shall not extend the existing expiration date of the design review approval. The decision of the Planning Commission to grant or deny the requested extension may be appealed in writing to the City Council.

E. Penalties.

1. If a property owner fails to complete construction by the applicable time limit established in this section, 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	\$400.00 per day (i.e., \$24,000.00 maximum penalty applicable to this 60-day period)
61st through 120th day	\$600.00 per day (i.e., \$36,000.00 maximum penalty applicable to this 60-day period)
121st day and every day thereafter	\$800.00 per day (to a maximum of the lesser of 10% of project value or \$200,000.00)

2. Penalties, fees and costs due to the City pursuant to this section are due each day as the penalties accrue.
3. Any violation of this section 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.

F. Deposit.

1. Upon reaching the time limits set out in Sections C and D if construction has not been completed, 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 years) in the amount of Twenty Four Thousand Dollars (\$24,000.00).
2. If no deposit is made as provided in subsection 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, 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 a 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 Thirty Six Thousand Dollars (\$36,000.00).
4. If no deposit is made as provided in subsection 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, 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 a 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 (\$140,000.00).
6. If no deposit is made as provided in subsection 5 above, the building official shall issue a stop work order.
7. If a property owner fails to complete construction by the applicable time limit, the applicable penalties shall accrue daily up to the maximum set out in Section E.
8. If the owner believes that the failure to meet the applicable time limit was caused by circumstances beyond the owner's control, the 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 1, 3 and/or 5 above and provide any documentation substantiating such grounds of appeal and the effect on the

construction. If the 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 building official concurs with the owner's statement as to the cause of the failure to meet the deadline, the building official shall waive the penalty and return the cash deposit or other security instrument to the owner. If the building official does not concur with the owner's statement, it shall be treated as an appeal under Section G below and all the provisions of that section shall apply.

9. If construction is completed after the applicable time limit, and the building official does not concur with the owner's statement, 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 Section G.
10. After construction is completed and all applicable fines received by the City, any remaining cash or security instrument deposit shall be refunded or returned.

G. Appeal.

1. A penalty imposed pursuant to Sections 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 for reasons beyond the control of the property owner and the owner's representatives. 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. The provisions of Chapter 10.84 of the Sausalito Municipal Code shall apply to the appeal process.
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 fully out of the applicant's control and despite diligent and clearly documented efforts to achieve construction completion within the applicable time limit. Penalties shall not be modified or cancelled unless all evidence required by this subsection 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, which requires a building permit. The time limit for completion of any building permit issued after January 1, 2002 shall be extended from the effective date of this ordinance pursuant to the time limits specified in sections C and D.
2. Any penalty due under Section E in excess of the deposit made under Section 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 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. In a civil action brought pursuant to this Section 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 a civil penalty in an amount not to exceed Five Thousand Dollars (\$5,000.00) per violation. The civil penalty is separate and distinct from penalties imposed pursuant to this Section.
3. Upon any guilty plea or judgment or conviction, in any criminal proceeding brought for the violation of this Section, 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 is authorized to order work stopped whenever work is being done contrary to the provisions of this Section.

Section 2. Section 10.54.040 of the Sausalito Municipal Code is hereby amended to added a new Section J. to read as follows:

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

Section 3. 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 one (1) year following the effective date of the permit, provided no extension has been filed prior to the expiration date.

Section 4. 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 one (1) year following the effective date of the permit, unless a different expiration date is stipulated at the time of approval, a building permit has been issued and construction diligently pursued, or the permit is renewed or extended.

Section 5. This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

Section 6. 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

ATTEST:

Deputy City Clerk

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