



Planning Commission Report

Meeting Date: March 10, 2011

Subject: **ORDINANCE AMENDMENT**– Clarifying the time during which the recipient of a planned development or subdivision map approval must exercise the approval rights.

Recommendation: That the Planning Commission:
1. Conduct a public hearing and adopt the attached resolution.

REPORT SUMMARY

Attached for the Planning Commission's consideration is a draft resolution (Attachment A) recommending that the City Council adopt the draft ordinance, entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS CLARIFYING TERMS OF VALIDITY FOR PLANNED DEVELOPMENT AND SUBDIVISION MAP APPROVALS," which is included as Attachment 1 to the draft resolution.

The draft ordinance (Attachment 1 of the Resolution) proposes minor changes to the City's Code in order to clarify the time period during which the recipient of a planned development approval must exercise rights under that approval in order to retain such rights. The ordinance would clarify that the time period may be set forth in a development agreement or other approval, in addition to in a resolution approving a development approval.

Attachment B is a summary of the code sections that would be amended, in redlined form to show the suggested changes.

Once the Planning Commission has held a public hearing, considered the draft resolution and ordinance and made a decision, the recommendation of the Planning Commission will be forwarded on to the City Council for consideration.

Attachment(s):

- A. Draft RESOLUTION, including Draft ORDINANCE
- B. Redlined Code Sections

Report Author and Contact Information:

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BACKGROUND

The City Code currently states that a planned development approval shall expire three years after the date of the planned development approval unless the applicant obtains building permits for the planned development within those three (3) years. Under the current Code, the Planning Commission may extend planned development approvals twice, each time for a one-year period, for a total term of five years from initial approval. (BH MC §1844.)

According to the current Code Section 10-3-1847, in order to retain the rights granted by such an approval, the recipient of a planned development approval must commence exercising rights under the planned development approval as set forth in the original resolution or in accordance with the terms of Section 10-3-207.

There are instances in which the City vests rights to develop pursuant to a planned development for different terms through means other than a resolution, such as through a development agreement. Thus, the City Code should be amended to note that expiration periods can be set in this way.

Further, in accordance with revisions to the State Subdivision Map Act, staff recommends revising the City's subdivision map expiration and extension provisions to be consistent with state law, which now allow a 2-year initial period, with the potential for up to 6 one-year extensions.

DESCRIPTION

The draft ordinance proposes to amend the City's municipal code in four sections. The amendment Section 10-2-206 would clarify that a subdivision map approval may be extended for up to six years, instead of five years, in accordance with recently enacted state law.

The amendments to Sections 10-3-207 and 10-3-1847 would clarify that the time period for exercise of a planned development approval may also be set forth in a development agreement or other approval initially approving the planned development.

The last amendment would delete subsections A and B of Section 10-3-1844, because they are duplicative of Section 10-3-207. The deletion is intended to avoid confusion that could come from duplicative sections.

GENERAL PLAN¹ POLICIES –

When amending the zoning code, state law requires the Planning Commission recommendation to include the reasons why it is recommending the zoning amendment, and how those changes would relate to the general, and any specific plans. The General Plan includes policies and programs relevant to the Planning Commission's review of the project, as provided below.

¹ Available online at: http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp

Related General Plan Program

Program 2.1 **Update Zoning Code and Development Regulations.** Review and revise the Zoning Code to reflect the general plan’s policies for permitted uses and development standards.

The zoning code amendments accomplished through the proposed Ordinance would revise the Zoning Code to comply with state law and ensure consistency among the development standards for various planned development approvals. By clarifying the administrative regulations for planned development approvals, the proposed Ordinance adds more certainty as to when approvals would expire.

ENVIRONMENTAL ASSESSMENT

The subject Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines², and the environmental regulations of the City. It can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. The Ordinance merely clarifies certain administrative provisions related to planned development and subdivision map approvals. Thus, the Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Public Review Period

Notice that the Planning Commission was to consider this item at a public hearing on March 10, 2011 was noticed as a public hearing in the Beverly Hills Courier on February 25, 2011, which allows a 13 day advance notice (State requirement is 10 days). In addition a courtesy notice was published in the Beverly Hills Weekly on March 3, 2011.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Notice Period
Posted Notice	n/a			
Newspaper Notice	10 days in advance	2/28/2011	2/25/2011	13 days
Mailed Notice (Owners & Residents - 300' Radius)	n/a			
Property Posting	n/a			
Website	n/a			

² The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

Public Comment

At the time this report was written, no public comments had been received. Public Comments can be received up to the time at which the item is to be heard by the Planning Commission.

NEXT STEPS

The Planning Commission should consider, revise if necessary, and adopt a draft resolution recommending that the City Council adopt an ordinance amending the zoning code to clarify administrative provisions related to planned development approvals. The recommendation from the Planning Commission will then be transmitted to the City Council along with a draft ordinance amending the zoning code to clarify the time period during which planned development approvals shall remain valid.

Report Reviewed By:

Jonathan Lait, AICP
Assistant Director of Community Development / City Planner

ATTACHMENT A

Draft RESOLUTION

RESOLUTION NO. ____

**RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF BEVERLY HILLS RECOMMENDING
THAT THE CITY COUNCIL ADOPT AN ORDINANCE
AMENDING THE MUNICIPAL CODE TO CLARIFY
TERMS OF VALIDITY FOR PLANNED DEVELOPMENT
AND SUBDIVISION MAP APPROVALS**

The Planning Commission of the City of Beverly Hills hereby resolves as follows:

Section 1. The California Legislature has amended state law to provide that tentative subdivision map approvals may be extended for up to six years beyond the initial two-year period of validity, instead of the five years previously allowed by state law. The Beverly Hills Municipal Code Section 10-2-206 should be updated to reflect this change in state law.

Section 2. The Municipal Code presently states that the period to exercise any rights granted under a planned development approval shall commence in accordance with Section 10-3-207, unless otherwise stated in a *resolution* approving the planned development. However, there are instances in which the City may provide for different periods for the exercise of planned development rights by development agreement or other approval. Thus, the City should amend the Municipal Code to clarify that the period in which a party must commence exercising rights granted under a planned development approval may be set forth in a development agreement or other approval, in addition to terms set forth in a resolution. If no other period is specified, the 3-year default period of Section 10-3-207 would apply.

Section 3. The Planning Commission hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. The Ordinance merely clarifies administrative

provisions regarding the expiration date and extension periods for planned development and subdivision map approvals. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 4. On February 25, 2011, notice of the March 10, 2011 public hearing was published in *The Beverly Hills Courier*. On March 3, 2011, a courtesy notice of the public hearing was published in the *Beverly Hills Weekly*.

Section 5. On March 10, 2011, the Planning Commission held a duly noticed public hearing to consider a draft Ordinance entitled as follows, hereinafter referred to as “Ordinance”:

“AN ORDINANCE OF THE CITY OF BEVERLY HILLS
CLARIFYING THE TERMS OF VALIDITY FOR PLANNED
DEVELOPMENT AND SUBDIVISION MAP APPROVALS”

Section 6. The Ordinance, as proposed, is set forth in Exhibit 1, and would amend Section 10-3-207 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding the generally applicable rules regarding the time to exercise rights under city planning and zoning approvals to clarify that terms can be set by development agreements. The Ordinance would also amend Section 10-2-206 of Chapter 2 of Title 10 regarding the period of validity for subdivision map approvals. Finally, the Ordinance would amend Sections 10-3-1844 and 10-3-1847 to clarify and make consistent the various provisions related to the time period during which a party must begin exercising rights under a planned development approval.

Section 7. Based on the evidence presented in the record on this matter including the staff report and oral and written testimony, the Planning Commission hereby finds that clarifying

these administrative provisions regarding planned development and subdivision map approvals serves the public interest, health, comfort, convenience, and general welfare.

Section 8. Based on the evidence presented in the record on this matter including the staff report and oral and written testimony, the Planning Commission hereby finds that the Ordinance is consistent with policies and programs in the General Plan. The Ordinance complies with Program 2.1, which states that the City will “[r]eview and revise the Zoning Code to reflect the general plan’s policies for permitted uses and development standards.” Therefore, the proposed Ordinance is consistent with the General Plan.

Section 9. The Planning Commission hereby recommends that the City Council adopt an Ordinance with provisions substantially in the form as set forth in Exhibit 1 attached hereto.

Section 10. The Secretary shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted:

Daniel Yukelson
Chair of the Planning Commission of the
City of Beverly Hills, California

ATTEST:

Secretary

Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Jonathan Lait, AICP
City Planner

EXHIBIT 1

[DRAFT] ORDINANCE NO. 11-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
CLARIFYING TERMS OF VALIDITY FOR PLANNED
DEVELOPMENT AND SUBDIVISION MAP APPROVALS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY
ORDAINS AS FOLLOWS:

Section 1. The City Council hereby amends Subsection (C) of Section 10-2-206 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“C. Time Limits On Extensions: Extensions of a tentative map approval or conditional approval shall not exceed an aggregate of six (6) years.”

Section 2. The City Council hereby amends Section 10-3-207 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-207: TIME OF EXERCISE OF RIGHTS:

Unless otherwise provided in this chapter or the resolution, development agreement or other action granting any discretionary permit or approval authorized by this Chapter, the exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution, development agreement or other approval.

The reviewing authority may grant up to two (2) 1-year extensions of the time limit contained in this section, or in any resolution or other action granting a discretionary approval, if an application therefor is made at least thirty (30) days prior to the expiration of the time limit, or any extension thereof. Such extension may be granted after a duly noticed public hearing held pursuant to the same procedures applicable to the approval of the original

application, if the reviewing authority determines that conditions and regulations affecting development in the city have not changed in a manner that would warrant reconsideration of the findings and decision made at the time of original approval and the extension of the approval will not unreasonably delay efforts to advance the objectives of the zone.

The reviewing authority may impose conditions on an extension to ensure that the extension will not be contrary to the findings made at the time of original approval.

Except as otherwise provided in this chapter, no time limit imposed pursuant to this section may be extended beyond five (5) years after the initial action granting the original approval. Any decision regarding an extension pursuant to this section may be appealed in the same manner and to the same appellate body as an appeal of the approval of the original application or, if no appeal procedures are specified, to the city council in the manner provided by Title 1, Chapter 4, Article 1 of this Code.

For those projects that include a tentative map subject to the provisions of Chapter 2 of this Title, the reviewing authority may grant additional 1-year extensions of the time limit contained in this section or in any resolution or other action granting a discretionary approval, such that the time in which to exercise the discretionary approval rights is the same as the time in which to exercise the rights of the tentative map approval.

The failure to exercise any right granted by the original approval within the time limit provided, or any extension thereof, shall constitute an abandonment of the original approval and all rights conveyed by the approval shall lapse and expire.

The procurement of a building permit for or the commencement of any use authorized by a discretionary permit or approval shall constitute the exercise of the rights granted by such approval. However, all rights conveyed by the approval shall lapse and expire upon

expiration of such building permit unless such building permit is extended pursuant to Title 9 of this code.”

Section 3. The City Council hereby amends Section 10-3-1844 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to delete existing Subsections A and B, and re-letter the remaining Subsections to read as follows:

“10-3-1844: APPROVALS:

The planning commission may approve a planned development if the commission finds that the proposal will meet the requirements of this code and will advance objectives of the zone in which it is located. The planning commission may impose such conditions and restrictions on the approval as are necessary to ensure that the planned development will advance objectives of the zone.

A. Vested Rights: The approval of a planned development shall not create any right to an extension of such approval or any vested right to develop the subject property in a manner that does not comply with the laws and regulations in effect at the time that the applicant obtains a building permit.

B. Notice Of Decision: Notice of the decision of the planning commission shall be provided to the applicant in the manner specified for notice of a hearing pursuant to section 10-3-1843 of this article.

C. Traffic Monitoring After Development Approval: The planning commission shall require as a condition of a planned development approval that the traffic generated by the development be periodically monitored, at the expense of the applicant, to ensure that the actual levels of traffic do not significantly exceed the levels of traffic anticipated by the environmental review of the development when it was approved. In the event that such monitoring shows there

has been a significant increase in the anticipated traffic generation, the planning commission may impose additional traffic mitigation measures on the development that are reasonably necessary to mitigate the traffic to the anticipated levels.”

Section 4. The City Council hereby amends Section 10-3-1847 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“10-3-1847: TIME FOR EXERCISE OF RIGHTS;

Unless otherwise provided in the resolution, development agreement, or other City approval granting a planned development approval, the exercise of rights granted in such approval shall be commenced in accordance with the time limits imposed by section 10-3-207 of this chapter.”

Section 5. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of the proposed Ordinance may have a significant effect on the environment. The Ordinance merely clarifies the Municipal Code to set the expiration date of subdivision map approvals and of planned development approvals. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 6. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid

or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 7. Publication.

The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 8. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

ADOPTED:

[Mayor's Name]
Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE, AICP
Director of Community Development

ATTACHMENT B

Redlined Code Sections

Exhibit B

Redlined Code Sections Showing Suggested Amendments Regarding Planned Development and Subdivision Map Term

10-2-206: EXPIRATION OF TENTATIVE MAP APPROVAL:

A. Expiration: The approval or conditional approval of a tentative tract map shall expire twenty four (24) months after the date the map was approved or conditionally approved or such other period as may be set by section 66452.6 of the Government Code of the state.

B. Extensions: The person filing the tentative map may request an extension of the tentative map approval or conditional approval by a written application to the planning commission, such application to be filed at least thirty (30) days before the approval or conditional approval is due to expire. The application shall state the reasons for requesting the extension. In granting an extension, new conditions may be imposed, and existing conditions may be revised.

C. Time Limits On Extensions: ~~An extension or extensions~~Extensions of a tentative map approval or conditional approval shall not exceed an aggregate of ~~threesix~~ (36) years.”

D. Effect Of Map Modifications On Extensions: The modification of a tentative map after approval or conditional approval shall not extend the time limits imposed by this section.

E. Failure To File Final Maps: Failure to file the final map within the time periods set forth in this section shall automatically terminate and void the tentative map. (Ord. 75-O-1561, eff. 3-4-1975; amd. Ord. 82-O-1846, eff. 4-15-1982; Ord. 88-O-2034, eff. 8-4-1988)

10-3-207: TIME OF EXERCISE OF RIGHTS:

Unless otherwise provided in this chapter or the resolution, development agreement or other action granting any discretionary permit or approval authorized by this ~~chapter~~Chapter, the exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution, development agreement or other approval.

The reviewing authority may grant up to two (2) 1-year extensions of the time limit contained in this section, or in any resolution or other action granting a discretionary approval, if an application therefor is made at least thirty (30) days prior to the expiration of the time limit, or any extension thereof. Such extension may be granted after a duly noticed public hearing held pursuant to the same procedures applicable to the approval of the original application, if the reviewing authority determines that conditions and regulations affecting development in the city have not changed in a manner that would warrant reconsideration of the findings and decision made at the time of original approval and the extension of the approval will not unreasonably delay efforts to advance the objectives of the zone.

The reviewing authority may impose conditions on an extension to ensure that the extension will not be contrary to the findings made at the time of original approval.

Except as otherwise provided in this chapter, no time limit imposed pursuant to this section may be extended beyond five (5) years after the adoption of the initial final resolution action granting the original approval. Any decision regarding an extension pursuant to this section may be appealed to the appropriate review authority in the same manner provided by and to the same procedures applicable to appellate body as an appeal of the approval of the original application or, if no appeal procedures are specified, to the city council in the manner provided by ~~title~~ Title 1, ~~chapter~~ Chapter 4, ~~article~~ Article 1 of this ~~code~~ Code.

For those projects that include a tentative map subject to the provisions of ~~chapter~~ Chapter 2 of this ~~title~~ Title, the reviewing authority may grant additional 1-year extensions of the time limit imposed pursuant to ~~contained in~~ this section may be extended up to seven (7) years after the adoption of the initial final or in any resolution or other action granting the original approval in accordance with applicable state law: a discretionary approval, such that the time in which to exercise the discretionary approval rights is the same as the time in which to exercise the rights of the tentative map approval.

The failure to exercise any right granted by the original approval within the time limit provided, or any extension thereof, shall constitute an abandonment of the original approval and all rights conveyed by the approval shall lapse and expire.

The procurement of a building permit for or the commencement of any use authorized by a discretionary permit or approval shall constitute the exercise of the rights granted by such approval. However, all rights conveyed by the approval shall lapse and expire upon expiration of such building permit unless such building permit is extended pursuant to ~~title~~ Title 9 of this code. (Ord. 02-O-2411, eff. 11-22-2002)

10-3-1844: APPROVALS:

The planning commission may approve a planned development if the commission finds that the proposal will meet the requirements of this code and will advance objectives of the zone in which it is located. The planning commission may impose such conditions and restrictions on the approval as are necessary to ensure that the planned development will advance objectives of the zone.

~~A. Expiration: The planning commission's approval of a planned development shall expire unless the applicant obtains building permits for the planned development within three (3) years after the date of the planned development approval. Furthermore, the planned development approval will also expire if the building permits for such development expire.~~

~~B. Extensions: The planned development approval may be extended a maximum of two (2) times. Each extension shall be for a period of no more than one year. The planning commission may grant an extension if, after a public hearing, pursuant to the procedures set forth in section 10-3-1843 of this article, the planning commission determines that: 1) conditions and regulations affecting development in the city have not changed in a manner that would warrant reconsideration of the findings and the decision made at the time of the original planned development approval, and 2) the extension of the planned development approval will not~~

~~unreasonably delay efforts to advance the objectives of the zone.~~
~~C. Vested Rights: The approval of a planned development shall not create any right to an extension of such approval or any vested right to develop the subject property in a manner that does not comply with the laws and regulations in effect at the time that the applicant obtains a building permit.~~

~~D. Notice Of Decision: Notice of the decision of the planning commission shall be provided to the applicant in the manner specified for notice of a hearing pursuant to section 10-3-1843 of this article.~~

~~E. Traffic Monitoring After Development Approval: The planning commission shall require as a condition of a planned development approval that the traffic generated by the development be periodically monitored, at the expense of the applicant, to ensure that the actual levels of traffic do not significantly exceed the levels of traffic anticipated by the environmental review of the development when it was approved. In the event that such monitoring shows there has been a significant increase in the anticipated traffic generation, the planning commission may impose additional traffic mitigation measures on the development that are reasonably necessary to mitigate the traffic to the anticipated levels. (Ord. 91-O-2127, eff. 11-8-1991)~~

10-3-1847: TIME FOR EXERCISE OF RIGHTS:

Unless otherwise provided in the resolution, development agreement, or other City approval granting a planned development approval, the exercise of rights granted in such approval shall be commenced in accordance with the time limits imposed by section 10-3-207 of this chapter. ~~(Ord. 02-O-2411, eff. 11-22-2002)~~