



**COUNTY OF PLACER**  
**Community Development/Resource Agency**

**PLANNING**  
**SERVICES DIVISION**

Michael J. Johnson, AICP  
Agency Director

E.J. Ivaldi, Deputy Director

**MEMORANDUM**

**TO:** Placer County Board of Supervisors

**FROM:** Michael J. Johnson, AICP  
Agency Director

**DATE:** July 7, 2015

**SUBJECT:** Zoning Text Amendment – Permit Expiration

**ACTION REQUESTED**

1. Introduce an Ordinance amending Chapter 17, Article 17.58, Section 17.58.160(B) (1) to add subsection (f) for a limited tolling of the permit time limit and find the proposed Ordinance exempt from environmental review pursuant to California Environmental Quality Act Guidelines section 15061(b) (3).

**BACKGROUND**

Section 17.58.160(B)(1) (Permit Expiration) of the Placer County Code outlines the provisions for the term limit and implementation of an approved permit. Approved permits for purposes of this section include administrative review permits, minor use permits, conditional use permits or variances ("Approved Permit"). Section 17.58.160(B) (1) establishes an initial 24-month validity period for implementation of an Approved Permit. This section currently provides five methods for such implementation:

- B. Permit Expiration. An approved administrative review permit, minor use permit, conditional use permit or variance is subject to the following time limits. It shall be the responsibility of the applicant alone to monitor the time limits and make diligent progress on the approved project, so as to avoid permit expiration.
  1. Time Limit for Permit Implementation. An approved permit is valid for twenty-four months from its effective date (Section 17.58.140(D)), or for any other period specified by the granting authority in conditions of approval, or other provision of this chapter. At the end of twenty-four months, the permit shall expire and become void unless by that time:
    - a. The permit has been implemented because 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
    - b. The permit has been implemented because a use not requiring construction permits has been established on the site and is in operation as approved, and all conditions of approval prerequisite to establishment of the use have been satisfied; or

- c. The permit has been implemented for a multiple building or multiple structure project because conditions of approval prerequisite to construction have been satisfied, any required building or grading permits have been issued, and foundation inspections for each and every building or structure have been conducted and approved by the building official or a designee (Note: For multiple phase projects which require a discretionary permit, the conditions of approval for that permit can provide for extended dates of expiration); or
- d. A conditional use permit granted for a planned residential development (Section 17.54.080) has been implemented through the recordation of the final subdivision map pursuant to the approved PD; or
- e. An extension of time has been granted according to subsection C of this section.

In the last 10 years, the County has experienced an increase in third-party litigation challenging the County's final approvals on large projects (for example Placer Vineyards Specific Plan) and also projects involving the issuance of an Approved Permit (for example Timberline at Auburn Conditional Use Permit). In the Development Agreements for the Specific Plans, the County has included a tolling provision that allows the applicant to request a tolling of the term of the approvals while litigation is pending. Tolling means to suspend the running of the period of time set as the term of an agreement or the period of time during which a permit must be implemented. Such a tolling was requested and approved for Placer Vineyards and Homewood. No such provision exists in the Zoning Code to address a tolling request for projects that have an Approved Permit but no accompanying Development Agreement.

## **DISCUSSION OF ISSUES**

Based on staff's research, a tolling provision is commonly included in zoning codes. Jurisdictions such as Napa County, Marin County, the City of San Rafael and the City of West Hollywood include a tolling provision in their respective zoning ordinances.

Litigation challenging the issuance of an Approved Permit could result in a court invalidating the approved project. In the event of litigation challenging an Approved Permit, staff consistently advises an Approved Permit holder that he/she can proceed with implementation at his/her own risk until or unless the court formally enjoins the County from issuing permits. Many developers elect to wait rather than invest a significant amount of money implementing an Approved Permit in light of pending litigation. In the past, litigation would generally conclude within a reasonable period of time. This is no longer the case when the trial court decision on such litigation is appealed to a higher court. In the last five years, the County has experienced delays of anywhere from two to four years before the Third District Court of Appeal schedules the hearing on a land use permit appeal case. This is a significant delay that is out of the control of all parties to the litigation, as it is a function of the court's backlog.

As a result, it is staff's opinion that a limited tolling of an Approved Permit term is beneficial to both the County and the Approved Permit holder. This would not eliminate the need for extensions of the term nor would it be a tolling with no end date. As currently proposed, the proposed addition to the term section would allow a limited one-time tolling of the permit term for a maximum of five years upon request of the Approved Permit holder. The tolling provision would not be available if it is the Permit Holder who has filed suit challenging the County's grant of the same. The tolling provision would only be permitted if the Planning Director can establish to his satisfaction that the subject litigation is challenging the validity of the Approved Permit. The proposed addition to the zoning text is proposed as follows:

- f. The holder of the permit requests tolling of the term due to litigation challenging the County's issuance of said permit. The tolling request must be submitted in writing to the Planning Division prior to the expiration of the term of the permit. The request must establish to the satisfaction of the Planning Director that the subject litigation challenges the County's grant of the underlying permit and has been filed by a plaintiff/petitioner other than the permit holder. In response to this request, the Planning Director may grant a one-time litigation tolling period not to exceed five (5) years. The tolling period shall be calculated from the date the action is filed with a court of competent jurisdiction until the court of final jurisdiction enters its final disposition of the case, such as entry of an order, judgment or final decision or the expiration of five (5) years, whichever is sooner.

Government Code section 65853 permits staff to bring this ordinance directly to the Board because it does not propose a change in the zoning designation of any real property and does not impose a new or revised regulation.

### **ENVIRONMENTAL IMPACT**

The proposed Ordinance would toll the term limit of an Approved Permit. It would not permit additional entitlements beyond those already granted in the Approved Permit. Any such Approved Permit would have already undergone environmental review prior to final action on the same. Therefore staff has concluded that an exemption for the proposed Ordinance is appropriate under CEQA Guidelines section 15061(b) (3) (Review for Exception) as it can be "seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

### **FISCAL IMPACT**

There is no direct fiscal impact to the County that will result from the adoption of the proposed Ordinance. While development of projects resulting from an Approved Permit may be delayed through exercise of the tolling provision, the tolling provision will preserve, for a limited period of time, the Approved Permit holder's option to proceed with the project post-litigation.

### **RECOMMENDATION**

Staff recommends the Board of Supervisors take the following actions:

1. Find the proposed Ordinance exempt from environmental review pursuant to California Environmental Quality Act Guidelines section 15061(b) (3) (Review for Exception) based on the following finding:
  - a. The proposed Ordinance is exempt from environmental review pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
2. Adopt an Ordinance amending Chapter 17, Article 17.58, Section 17.58.160(B) (1), to add subsection (f) for a limited tolling of the permit time limit based on the following finding:
  - a. The proposed Ordinance is consistent with the County General Plan and consistent with the Chapter 17.

Attachment 1 - Ordinance

**Before the Board of Supervisors  
County of Placer, State of California**

In the matter of:  
AMENDMENT TO PLACER COUNTY CODE  
CHAPTER 17, ARTICLE 15.58, SECTION 17.58.160  
PERTAINING TO PERMIT EXPIRATION

Ord. No: \_\_\_\_\_

First Reading: \_\_\_\_\_

The following Ordinance was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held \_\_\_\_\_ by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

\_\_\_\_\_  
Chair, Board of Supervisors

Attest:

\_\_\_\_\_  
Clerk of said Board

The Board of Supervisors of the County of Placer, State of California, does hereby ordain as follows:

**SECTION 1:** Placer County Code Chapter 17, Article 17.58, Section 17.58.160(B)(1) is hereby amended to add subsection (f) as follows:

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- f. The holder of the permit requests tolling of the term due to litigation challenging the County's issuance of said permit. The tolling request must be submitted in writing to the Planning Division prior to the expiration of the term of the permit. The request must establish to the satisfaction of the Planning Director that the subject litigation challenges the County's grant of the underlying permit and has been filed by a plaintiff/petitioner other than the permit holder. In response to this request, the Planning Director may grant a one-time litigation tolling period not to exceed five (5) years. The tolling period shall be calculated from the date the action is filed with a court of competent jurisdiction until the court of final jurisdiction enters its final disposition of the case, such as entry of an order, judgment or final decision or the expiration of five (5) years, whichever is sooner.**

**SECTION 2:** This ordinance shall take effect and be in full force thirty (30) days after the date of its passage. The Clerk is directed to publish this ordinance, or a summary thereof, within fifteen (15) days in accordance with government code section 25124.

