



Inter Office Memo

**ATTENTION: FOR FINAL ACTION OR
MODIFICATION TO OR ADDITION OF
CONDITIONS, SEE FINAL BOARD OF
SUPERVISORS' ACTION SUMMARY
MINUTES.**

DATE: June 16, 2016

TO: Board of Supervisors

FROM: Planning Commission

SUBJECT: RESOLUTION NO. 12576 – AMENDMENT TO TEXT APPLICATION
NO. 374

APPLICANT: County of Fresno

REQUEST: Amend Sections 873-I and 877-D of the Fresno County
Zoning Ordinance by revising the additional time
extension opportunities language for land use permit
applications (Conditional Use Permit and Variance) in the
unincorporated areas of Fresno County

PLANNING COMMISSION ACTION:

At its hearing of June 16, 2016, the Commission considered the Staff Report and testimony (summarized in Exhibit "A").

A motion was made by Commissioner Abrahamian and seconded by Commissioner Woolf to recommend approval of Amendment to Text No. 374 (amended text attached as Exhibit "B") to the Board of Supervisors with a suggestion for the Board to consider waiving the fees associated with time extension applications.

RESOLUTION # 12576

This motion passed on the following vote:

VOTING: Yes: Commissioners Abrahamian, Woolf, Borba, Chatha, Egan, Eubanks, Mendes, Pagel

No: None

Absent: Commissioner Lawson

Abstain: None

STEVEN E. WHITE, DIRECTOR
Department of Public Works and Planning
Secretary-Fresno County Planning Commission

By:

William M. Kettler, Manager
Development Services Division

CMM:ksn

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Attachment

EXHIBIT "A"

Amendment to Text Application No. 374
County of Fresno

- County Staff: The Fresno County Planning Commission considered the Staff Report dated June 16, 2016, and heard a summary presentation by staff.
- This action would apply retroactively to qualifying projects.
 - The Commission's action is limited to a recommendation to the Board of Supervisors.
 - The cost of a time extension application is 25% of the fee for the initial application and this fee is necessary because staff must route the project, prepare a staff report, prepare an agenda, and present the project before the Planning Commission.
 - In order to reduce costs to applicants, the cost is limited only to the base project fee and does not require repayment of department-specific review fees.
 - This application was modeled after a similar Amendment to Text that was approved by the Board of Supervisors in 2011 which included a sunset clause that removed the additional time extension opportunities offered for Conditional Use Permit and Variance applicants.
 - The current Amendment as presented by staff returns this language to the Ordinance without any sunset clause.
 - Only the Board of Supervisors can waive fees for time extensions by amending the text of their Master Fee Schedule.
 - Staff estimates that roughly one in twenty time extension projects are pulled from the consent agenda in response to comments from the public requiring a full hearing before the Planning Commission and in many instances, those projects are pulled because of concerns with the project in general rather than concerns with the granting of a time extension.
- Others: No other speakers presented for or against the Amendment to Text.
- Correspondence: No letters were presenting to the Planning Commission in support of or in opposition to the application.

EXHIBIT "B"

SECTION 873

USES PERMITTED SUBJECT TO CONDITIONAL USE PERMIT

I. TIME LIMIT FOR DEVELOPMENT

Each Conditional Use Permit approved either before or after the effective date of this amendment shall become void when:

1. There has not been substantial development within two years after the approval of said Conditional Use Permit or the effective date of this amendment, whichever date is later. However, in the case of a Conditional Use Permit authorizing a tentative map, expiration of said permit shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map; or

(Amended by Ord. T-241 adopted 7-28-80; Ord. T-026-287 adopted 11-12-85)

2. There is a cessation in the occupancy or use of land or structures authorized by said Conditional Use Permit for a period in excess of two years; except where the structure or land is limited to a single purpose use.
3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 873-I.1, the Commission may grant a maximum of ~~two~~, **four** one (1)-year extensions. Application for such time extension must ~~be~~ set forth in writing, including the reasons for the extension, and be filed with the Public Works ~~& Development Services~~ **and Planning** Department before the expiration of the Conditional Use Permit. Such request shall be acted upon by the Commission at a public hearing. The Commission's decision shall be appealable to the Board of Supervisors. The required public hearing(s) shall be subject to the public notice requirements and procedures set forth in Section 873-D, E, G, and H.

(Amended by Ord. T-055-325 _____ adopted 4-18-95 **-16**)

- ~~4. For any Conditional Use Permit Application that is valid on or approved one year from the effective date of this provision (January 5, 2012), the Commission may grant a maximum of two, one (1) year extensions in addition to the extensions identified in 873-I.3.~~

SECTION 877

VARIANCES

D. VOIDING OF VARIANCES

1. The Commission may revoke any Variance for noncompliance with the conditions set forth in granting said Variance after notice and hearing. Upon instruction from the Commission, the Public Works & ~~Development Services~~ **and Planning** Department shall cause ten (10) days notice of hearing to be given to the holder of the Variance which is being considered for revocation together with such other persons set forth in Section 877-B.5.b and c. The action of the Commission in revoking any Variance may be appealed to the Board in the same manner and by the same person as an appeal from a decision of the Commission in granting or denying a Variance.

(Amended by Ord. T-252 _____ adopted 12-9-80 _____ -16)

2. Each Variance granted under the provisions of this Section shall become void when:
 - a. The construction authorized by said Variance is not commenced within one (1) year after the granting of said Variance or is not pursued diligently to completion, or
 - b. There is a cessation in the occupancy or use of land or buildings authorized by such Variance for a period in excess of one (1) year.
 - c. The parcels authorized by said Variance are not created within one (1) year after the granting of said Variance or an application for tentative map is not filed within said one (1) year. However, in the case of a Variance for which a tentative or vesting map has been timely filed, expiration of said Variance shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map.

(Added by Ord. T-026-287 adopted 11-12-85)

3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 877-D.2, the Commission may grant **a maximum of two one (1)-year extensions** ~~an extension of time without a public hearing for a period not to exceed an additional one (1) year period.~~ Application for such extension of time must set forth in writing the reasons for the extension and must be filed with the Public Works and Planning Department before the expiration of the Variance.

(Amended by Ord. T-252 _____ adopted 12-9-80 _____ -16)

- ~~4. For any Variance Application that is valid on or approved one year after the effective date of this provision (January 5, 2012), the Commission may grant a maximum of one, one-year time extension in addition to the extension identified in Section 877-D.3.~~

~~(Added by Ord. T-087-366 adopted 12-6-11)~~



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

Planning Commission Staff Report Agenda Item No. 3 June 16, 2016

SUBJECT: Amendment to Text Application No. 374

Amend Sections 873-I and 877-D of the Fresno County Zoning Ordinance by revising the additional time extension opportunities language for land use permit applications (Conditional Use Permit and Variance) in the unincorporated areas of Fresno County. Staff has determined that the subject proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15061(b)(3) - *Actions that will not have a significant effect on the Environment.*

APPLICANT: County of Fresno

STAFF CONTACT: Christina Monfette, Planner
(559) 600-4245

Chris Motta, Principal Planner
(559) 600-4227

RECOMMENDATION:

- Consider and recommend approval of Amendment to Text Application No. 374; and
- Direct the Secretary to prepare a Resolution forwarding the Commission's recommendation for approval to the Board of Supervisors.

EXHIBITS:

1. Proposed Section 873-I – TIME LIMIT FOR DEVELOPMENT
2. Proposed Section 877-D – TIME LIMIT FOR DEVELOPMENT
3. Proposed Ordinance Amending the Zoning Provisions of the Ordinance Code

ENVIRONMENTAL ANALYSIS:

It has been determined, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines that the proposed Amendment to Text will not have a significant effect on the environment and is not subject to CEQA.

PUBLIC NOTICE:

Notification of today's hearing was published in the Fresno Business Journal on June 6, 2016, and input on the proposed Amendment was requested of the 15 cities located in Fresno County.

PROCEDURAL CONSIDERATIONS:

Adoption of a Zoning Ordinance Amendment is a legislative act requiring action by the Board of Supervisors. The Planning Commission's action is advisory to the Board. The Board is scheduled to hear this matter in the near future, with the earliest anticipated Board of Supervisors hearing date being August 9, 2016. Once scheduled, a separate publication providing notice of the Board hearing will occur. The Amendment, if adopted, will become effective 30 days later.

BACKGROUND INFORMATION:

On December 6, 2011, the Board of Supervisors adopted Ordinance No. T-087-366, to amend the zoning provisions of the Ordinance Code of the County of Fresno by amending text to Sections 872-F, 873-I, 874-A, and 877-D addressing additional time extension opportunities for land use permit applications in the unincorporated areas of Fresno County. This Ordinance permanently increased the potential life of Site Plan Review and Director Review and Approvals from two years to four years by permitting applicants to apply for additional discretionary time extensions. The Ordinance similarly increased the potential life of Conditional Use Permits (from four years to six years) and increased the potential life of Variances (from two years to three years) which were valid on or approved one year after the effective date of that amendment to the Zoning Ordinance (January 5, 2012). Conditional Use Permits which became valid after January 5, 2013 will expire after two years with a provision for up to two one-year time extensions. Variances approved which became valid after January 5, 2013 will expire after one year, with a provision for a single one-year time extension.

Analysis:

The San Joaquin Valley continues to incur high unemployment rates and unfavorable economic conditions. Further, the local building and development industry is still recovering from a significant downturn in construction activity that occurred recently. Conditional Use Permits (CUPs) and Variances are required to be implemented within a specific period of time as prescribed by the Fresno County Zoning Ordinance. A CUP application has an initial life of two years and a Variance has an initial life of one year. If development does not occur within the initial life or extension (two one-year extensions for CUPs and a single one-year extension for Variances), applicants lose their entitlements and must apply for a new permit.

Staff is proposing to revise the existing language to increase the potential total life of CUP applications by two years and Variance applications by one year, consistent with the January 2011 to January 2013 time period. Additionally, Staff has proposed the removal of language to allow a time extension on a Variance without a public hearing, since any action taken by the Planning Commission (including actions on consent items) are made at a public hearing. This

proposal would be a permanent addition to the Zoning Ordinance, unless removed by subsequent revisions.

Staff estimates that approximately 105 applications have the potential to be affected by this revision, excepting from that number the projects for which development has already occurred.

State law requires that the General Plan and the Zoning Ordinance remain consistent with each other. The Economic Development goals and policies of the General Plan seek to promote job growth and reduce unemployment through the enhancement and expansion of its traditional agricultural economic base. Specifically, Goal ED-A seeks to increase job creation through regional leadership, agricultural productivity, and development of high value-added processing firms. The proposed Zoning Ordinance Amendment to Text is consistent with the General Plan, given that the additional time extension provisions preserve job creation opportunities for Fresno County.

CONCLUSION:

Based on the factors cited in the analysis, Staff recommends approval of the Amendments to Section 873-I and 877-D of the Zoning Ordinance addressing time extension opportunities for Conditional Use Permit Applications and Variance Applications. Note: **Bold and underlined sections** are proposed additions to the Ordinance and ~~strike through~~ sections are to be deleted.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Approval Action)

- Move to recommend approval of Amendment to Text No. 374 to the Fresno County Board of Supervisors; and
- Direct the Secretary to prepare a Resolution forwarding the Commission's recommendation for approval to the Board of Supervisors.

Alternative Motion (Denial Action)

- Move to recommend denial of Amendment to Text No. 374 to the Fresno County Board of Supervisors (state reasons for denial); and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

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EXHIBIT 1

SECTION 873

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(Amended by Ord. T-241 adopted 7-28-80; Ord. T-026-287 adopted 11-12-85)

2. There is a cessation in the occupancy or use of land or structures authorized by said Conditional Use Permit for a period in excess of two years; except where the structure or land is limited to a single purpose use.
3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 873-I.1, the Commission may grant a maximum of ~~two~~, **four** one (1)-year extensions. Application for such time extension must ~~be~~ set forth in writing, including the reasons for the extension, and be filed with the ~~Public Works & Development Services~~ **and Planning** Department before the expiration of the Conditional Use Permit. Such request shall be acted upon by the Commission at a public hearing. The Commission's decision shall be appealable to the Board of Supervisors. The required public hearing(s) shall be subject to the public notice requirements and procedures set forth in Section 873-D, E, G, and H.

(Amended by Ord. T-055-325 _____ adopted 4-18-95 ~~_____~~ **-16**)

- ~~4. For any Conditional Use Permit Application that is valid on or approved one year from the effective date of this provision (January 5, 2012), the Commission may grant a maximum of two, one (1) year extensions in addition to the extensions identified in 873-I.3.~~

EXHIBIT 2

SECTION 877

VARIANCES

D. VOIDING OF VARIANCES

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(Amended by Ord. T-252_____ adopted 12-9-80_____ **-16**)

2. Each Variance granted under the provisions of this Section shall become void when:
 - a. The construction authorized by said Variance is not commenced within one (1) year after the granting of said Variance or is not pursued diligently to completion, or
 - b. There is a cessation in the occupancy or use of land or buildings authorized by such Variance for a period in excess of one (1) year.
 - c. The parcels authorized by said Variance are not created within one (1) year after the granting of said Variance or an application for tentative map is not filed within said one (1) year. However, in the case of a Variance for which a tentative or vesting map has been timely filed, expiration of said Variance shall be concurrent with the expiration date of the tentative or vesting map and may be extended in the same manner as said map.

(Added by Ord. T-026-287 adopted 11-12-85)

3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 877-D.2, the Commission may grant **a maximum of two one (1)-year extensions** ~~an extension of time without a public hearing for a period not to exceed an additional one (1) year period.~~ Application for such extension of time must set forth in writing the reasons for the extension and must be filed with the Public Works and Planning Department before the expiration of the Variance.

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~~(Added by Ord. T-087-366 adopted 12-6-11)~~

EXHIBIT 3

BEFORE THE BOARD OF SUPERVISORS

OF THE COUNTY OF FRESNO

STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING PROVISIONS OF THE
ORDINANCE CODE OF THE COUNTY OF FRESNO RELATED TO TIME
EXTENSIONS OF CONDITIONAL USE PERMITS AND VARIANCES BY AMENDING
THE TEXT OF SECTIONS 873 AND 877.

The Board of Supervisors of the County of Fresno ordains as follows:

SECTION 1. This Ordinance is adopted pursuant to California Constitution, Article XI, Section 7, Government Code Sections 65800, 65850, 65854-65857, and Section 878 of the Ordinance Code of the County of Fresno.

SECTION 2. The Ordinance Code of the County of Fresno is hereby amended by amending the provisions of Sections 873 and 877 thereof, such that they read in full as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

SECTION 3. Pursuant to Government Code Section 25124, Subdivision (a), prior to the expiration of fifteen (15) days from the adoption of this Ordinance, it shall be published at least one time in the Business Journal, a newspaper of general circulation in Fresno County.

SECTION 4. Pursuant to Government Code Sections 25131, and 65854-65857, this Ordinance shall take effect thirty days after adoption.

SECTION 5. The Board of Supervisors determines that this Interim Urgency Ordinance is exempt from environmental review pursuant to CEQA Guidelines Section 15061, Subdivision (b)(3).

///

1 THE FOREGOING WAS PASSED AND ADOPTED BY THE FOLLOWING
2 VOTE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO THIS
3 _____ DAY OF _____ 2016, TO-WIT:

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5 AYES:

6 NOES:

7 ABSENT:

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9 _____
ERNEST BUDDY MENDES, CHAIRMAN
BOARD OF SUPERVISORS

10 ATTEST:

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12 _____
BERNICE SEIDEL, CLERK
13 BOARD OF SUPERVISORS
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Exhibit "A"

SECTION 873

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3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 873-I.1, the Commission may grant a maximum of four one (1)-year extensions. Application for such time extension must be set forth in writing, including the reasons for the extension, and be filed with the Public Works and Planning Department before the expiration of the Conditional Use Permit. Such request shall be acted upon by the Commission at a public hearing. The Commission's decision shall be appealable to the Board of Supervisors. The required public hearing(s) shall be subject to the public notice requirements and procedures set forth in Section 873-D, E, G, and H.

(Amended by Ord. adopted -16)

SECTION 877

VARIANCES

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(Amended by Ord. adopted -16)

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(Added by Ord. T-026-287 adopted 11-12-85)

3. Where circumstances beyond the control of the applicant cause delays which do not permit compliance with the time limitation established in Section 877-D.2, the Commission may grant a maximum of two one (1)-year extensions of time. Application for such extension of time must set forth in writing the reasons for the extension and must be filed with the Public Works and Planning Department before the expiration of the Variance.

(Amended by Ord. adopted -16)