

REGULAR

NUMBER: 65.139

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE BUILDING ADMINISTRATION CODE BY PROVIDING FOR ADDITIONAL BUILDING PERMIT AND PLAN REVIEW EXTENSION PERIODS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of August 4, 2009, upon motion by Vice Mayor Pete McHugh and was adopted (second reading) by the City Council at its meeting of _____ upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, it is the desire and intent of the City Council of the City of Milpitas to provide the greatest practical degree of structural, fire and life safety in buildings within Milpitas through the administration of the body of regulations known as the Milpitas Building Administration Code, set forth in Title II of the Milpitas Municipal Code; and

WHEREAS, in conformity with California Health and Safety Code Sections 18938 and 17958, the City Council adopted the Milpitas Building Administration Code on December 11, 2007, which establishes building standards for all occupancies throughout Milpitas; and

WHEREAS, Health and Safety Code Section 17958.5 provides that a city may make changes or modifications to building standards if they are reasonably necessary due to local climatic, geological or topographical conditions; and

WHEREAS, to the extent that the amendments to the building permit and plan check processing requirements of the Milpitas Building Administration Code constitute changes to building standards, for purposes of Health and Safety Code Section 17958.5, the City Council finds the provisions herein to be reasonably necessary due to local climatic, geologic and topographic conditions, specifically:

- a. The City is located in a climatic zone with precipitation averaging approximately 15 inches per year. Most precipitation falls during the months of November through April, leaving a relatively dry period of approximately six months each year. Local prevailing winds come from the northwest with a mean speed of 6.5 miles per hour. The City is also located in an active seismic fault area. The adoption of the building permit and plan check processing amendments provided for herein would provide City staff and applicants with the opportunity to address, as necessary, such varied precipitation and seismic conditions.
- b. The City is also topographically diverse, with elevations ranging from sea level to about 2,600 feet. The area also has numerous small waterways, including Berryessa Creek, Calera Creek, Coyote Creek, and Lower Pentencia Creek. The protection of water quality, the prevention of pollutant infiltration, and the reduction of construction area runoff are important concerns due to the topography of the City, which could be addressed by additional plan check and building permit extension periods, as requested by the applicant or builder and approved by the Chief Building Official; and

WHEREAS, to the extent the proposed plan check and building permit extension amendments set forth herein do not constitute changes to technical building standards, the City Council nevertheless finds them necessary for the implementation of the Milpitas Building Administration Code and the protection of human health, property, and public welfare and in order to address the challenges to building construction and development timelines posed by a distressed economy; and

WHEREAS, the City Council finds that adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the amendments herein will have a significant effect on the environment. All individual construction or building projects shall be considered separately under CEQA; and

WHEREAS, the proposed amendments are internally consistent with the remainder of the Municipal Code and the Milpitas Building Administration Code.

NOW THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II

Title II, Chapter 1, Section 19.04 (“Expiration”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

II-1-19.04 Expiration

Every permit issued by the Chief Building Official under the provisions of this Title and the technical codes shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced or an inspection made within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced a new permit shall be first obtained so to do, and the fee therefore shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded 360 days. If the suspension or abandonment exceeds 360 days, the permittee shall pay a new full permit fee for the issuance of a permit.

Any permittee holding an unexpired permit may apply for an extension of the time within which the permittee may commence work under that permit. Requests must be in writing and demonstrate that an extension is warranted because of circumstances beyond the control of the permittee. The Chief Building Official may grant one or more extensions of time for periods not exceeding 180 days each. No permit shall be extended more than three times.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II

Title II, Chapter 1, Section 20.03 (“Expiration of Plan Review”) of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

II-1-20.03 Expiration of Plan Review

Applications for which no permit is issued within 180 days following the date of application shall expire by limitation and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Chief Building Official. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

For active applications, the Chief Building Official may grant one or more extensions of time upon submission of a written request by the applicant that demonstrates that circumstances beyond the control of the applicant warrant the issuance of an extension. Each extension shall not exceed 180 days and an application shall not be extended more than three times. In the event that

a second or third extension is requested, the Chief Building Official shall require the resubmission of plans and other data and the payment of additional fees if this Title or any other pertinent laws or ordinances have been amended subsequent to the date of the application's submission. In such case, the applicant shall be required to pay additional fees for reprocessing of the submission.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.