



LETTER OF DETERMINATION

March 16, 2021

Record No.: **2021-0013200TH**
Subject: **Extensions of Planning Commission and Zoning Administrator Approvals During the COVID-19 Emergency**

To All Interested Parties:

This letter addresses certain approvals by the Planning Commission and Zoning Administrator that include required performance periods that overlap with San Francisco's response to the COVID-19 emergency. It is intended to provide clarity, especially for projects with performance periods that have expired during this emergency period. Additional letters may be warranted and issued in the future should delays continue due to the COVID-19 emergency.

COVID-19 BACKGROUND

On February 25, 2020 Mayor London Breed ("Mayor") declared a state of emergency ("Emergency Order") in San Francisco due to COVID-19.

On March 4, 2020 Governor Gavin Newsom ("Governor") issued a proclamation of a state of emergency throughout California due to COVID-19.

On March 13, 2020 the Mayor issued a supplement to the Emergency Order. In part, this supplement ordered the following:

(2) Deadlines set by local law requiring City policy bodies, including the Board of Supervisors and City boards and commissions, to take action within a certain time period are suspended during the emergency and for 14 days following termination of the local emergency, if such policy bodies are unable to meet and comply with such deadlines due to the emergency;

On March 16, 2020 the Mayor issued the Third Supplement to the Emergency Order. In part, the Third Supplement ordered the following:

(5) From March 18, 2020 through April 7, 2020, City policy and advisory bodies shall not hold public meetings, unless the Board of Supervisors, acting by written motion, or the Mayor or the Mayor's designee directs otherwise, based on a determination that a policy body has an urgent need to take action to ensure

the public health, safety, or essential government operations. This order applies to all City commissions, boards, and advisory bodies other than the Board of Supervisors and its committees.

On March 16, 2020 the San Francisco Health Officer issued *Order of the Health Officer No. C-19-07* (“Shelter-In-Place Order”), which took effect on March 17, 2020 and required many businesses and government offices to close or operate at limited capacities. Five other Bay Area counties also issued Shelter-In-Place orders on the same day. This order had numerous impacts on the ability to conduct normal operations towards advancing development approvals, including:

1. The Shelter-In-Place order advised all residents to limit trips outside the home to only those that are essential;
2. All City offices, including the Planning Department and the Department of Building Inspection (DBI) were required to work remotely, if possible, with the exception of certain employees serving essential functions;
3. The City began to place employees in Disaster Service Worker (DSW) assignments to aid the City’s response to the emergency;
4. All school systems in the Bay Area were open for remote learning only; and
5. All child care businesses in the Bay Area were open on a limited basis for essential workers only.

On March 19, 2020 the Governor issued an executive order and the State Health Officer issued an order requiring all 40 million individuals in California to stay home except as needed for essential functions.

On March 31, 2020 the San Francisco Health Officer updated the Shelter-in-Place order to close most commercial and residential construction projects. There were limited exceptions for projects immediately necessary to maintain essential infrastructure, healthcare operations, affordable housing projects, and mixed-use projects with 10% on-site affordable housing, shelters and temporary housing, and essential public works projects. These restrictions were largely relaxed on May 3, 2020.

While numerous supplements to the Mayor’s Emergency Order and the Health Officer’s Shelter-In-Place order were issued since March 16, 2020, those orders and similar state orders are still in effect today. The nature of the emergency over this time period caused many businesses to remain closed or conduct limited or periodic operations. City Departments have remained primarily closed to the public and City employees continue to primarily work remotely. This has limited the public’s ability to submit permit applications for review and receive prompt permit review and issuance services, impeding project sponsors’ ability to satisfy applicable performance conditions.

Additionally, Bay Area citizens have been required to limit their activities and movement, accommodate remote schooling and a lack of child care, care for vulnerable and ill family members, and take other actions necessary to respond to the emergency. These limitations and obligations created additional challenges and delays in project sponsors’ ability to satisfy applicable performance conditions.

EXTENSIONS TO DEVELOPMENT PROJECT APPROVALS

Most, if not all recent Planning Commission and Zoning Administrator approvals (e.g. Conditional Use Authorizations, Variances, etc.) include a performance condition that a certain action must be taken (e.g. site or building permit issued or tentative map approved) within a period of time (typically 3 years) or the approval will expire or require an extension of time from the authorizing body.

These approvals may also include a condition permitting the Zoning Administrator to grant an extension to the required performance period if the project is delayed by a public agency, appeal, or litigation. Approvals from the Historic Preservation Commission typically have not included this option for the Zoning Administrator extension. While the language for this extension condition may slightly vary, the following represents the typical language:

Extension. All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

On September 28, 2020 Assembly Bill No. 1561 took effect. Among other provisions, this bill granted an 18-month extension for certain housing developments that are subject to a performance period condition. The specific provisions of this law are in Section 65914.5 of the California Government Code, which includes the following:

(b) Except as provided in subdivision (c), notwithstanding any law, including any inconsistent provision of a local agency's general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 months. For the purposes of this section, housing entitlements that are extended are entitlements where both of the following apply:

- (1) It was issued prior to and was in effect on March 4, 2020; and*
- (2) It will expire prior to December 31, 2021.*

The otherwise applicable time for the utilization of a housing entitlement provided by this section includes any requirement to request the issuance of a building permit within a specified period of time.

(c) If the state or a local agency extends, on or after March 4, 2020, but before the effective date of the act adding this section, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and pursuant to the same conditions provided in subdivision (b), that housing entitlement shall not be extended for an additional 18 months by operation of subdivision (b).

DETERMINATION

Based on the above, it is my determination that the specific actions taken by State and local governments in response to the COVID-19 emergency have created numerous delays to the implementation of development projects in San Francisco. As such, **the required performance period of any applicable approval that 1) includes a version of the condition cited above allowing the Zoning Administrator to grant an extension, and 2) falls within the timeframe of March 17, 2020 to March 16, 2021, is hereby extended by the number of days of overlap.**

For example, if a project's required performance period is July 17, 2017 to July 17, 2020, this determination extends that performance period for a period of 4 months (the period of overlap), and the remaining 4 months of the performance period will begin on March 17, 2021. If a project was approved on or after March 17, 2020, then this determination extends that performance period for the number of days equal to the number of days from the date of the approval to March 16, 2021. The date of "approval" for purposes of this Determination means the date that a Motion or letter was issued by a Commission or the Zoning Administrator, respectively.

Please note that the typical condition of approval relating to extensions only permits the Zoning Administrator to grant such extension for the length of time for which such public agency has caused delay. As such, the extension granted in this letter only addresses the period of time up to the date of this letter's issuance. However, the Zoning Administrator may issue additional letters in the future to accommodate a further extension of performance periods extensions on the same basis if the delay persists.

Finally, please note that any extension granted by this letter shall not be additive to any extension granted to a qualifying housing development pursuant to California Government Code Section 65914.5. Instead, any overlap between these extensions shall run concurrently. For example, if a qualifying project is eligible for both an extension granted by this letter for a period of 1 year, and an extension granted by California Government Code Section 65914.5 for a period of 18 months, the 18-month extension shall supersede and represent the total time period of extension.

APPEAL: An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit www.sfgov.org/bdappeal.

Sincerely,



Corey A. Teague, AICP
Zoning Administrator

cc: Planning Commissioners
Historic Preservation Commissioners
Rich Hillis, Planning Director
Elizabeth Watty, Director of Current Planning
Scott Sanchez, Deputy Zoning Administrator
Citywide Neighborhood Groups