Dormant Building Permit Applications Time Extensions
Title 8 Code Text Amendments

RECOMMENDATION:

Council introduce for first reading by title only the Draft Ordinance, amending Title 8 to retroactively extend dormant and expired single family residential, multi-family residential, industrial, and commercial building permit applications to June 30, 2010, once all outstanding, unpaid plan check fees have been paid; and to clarify the City’s building permit fee refund policy and Board of Appeals membership.

REPORT-IN-BRIEF:

The City of Atascadero has over 250± permit applications on file for single-family residences, multi-family residences, and commercial projects that have been dormant for longer than six months or 180 days. These are building permit applications that are still in the plan check process or are ready to issue but have not been picked up. Therefore, no construction has occurred related to these permits. These building permit applications do not include permits that have been issued.

Title 8 of the Municipal Code requires that building permit applications must demonstrate progress toward obtaining a permit by filing corrections within 180 days of notification that the corrections are ready to pick up.

On August 12, 2008, the City Council reviewed the issue of dormant building permit applications and outstanding plan check fees. The Council directed staff to prepare an amendment to the Local Building Code, Title 8, to provide a retroactive time extension for dormant building permit applications. The Council stipulated that the extension would run to June 30, 2010, and be contingent on all outstanding plan check fees being paid by February 28, 2009.
DISCUSSION:

Background:

Between the years 2000 and 2005 the City did not require a pre-plan check fee to be paid at the time of project application submittal. During this period, complete plan check fees were collected at the time of permit issuance, along with permit fees. This was due to technical shortcomings with the City’s previous permit system that made it infeasible to collect the plan check fees up front.

This deferred plan check fee process worked well when the construction industry was robust. In cases where a project did not make it completely through plan check, staff required the applicant to pay all fees for “services rendered” prior to cancelling a permit, which was primarily the outstanding plan check fees.

Since the construction economy has taken a downturn, the City has developed a backlog of 250± permit applications that have become dormant. Staff estimates these dormant permits have $370,000± in outstanding plan check fees due to the City.

With the implementation of our new permit tracking system (CDS BuildPerm), staff has completely modified the process for submitting building permits, and now approximately 80% of the plan check fee is required at the time of permit application submittal.

Summary:

A dormant permit is defined as a permit that has not made significant progress within the last 180 days. According to the Atascadero Municipal Code (AMC), a project must make a filing every 180 days. Progress is defined as returning corrected plans within 180 days of picking up plans, or obtaining a permit within 180 days of notification that a permit is ready. The AMC also provides for one one-time-only 180 day extension granted by the Building Official during the plan review process. This would allow an applicant up to a one full year to meet the City’s filing requirement.

Staff has been notifying applicants with dormant permits that the permits will expire and outstanding fees are due. However, many applicants have not responded to City mailings. Those that have responded often request additional time extensions beyond what is allowed by the AMC. These applicants have explained that due to the collapse of the residential housing market, it does not make any economic sense to proceed with construction at this time. However, many applicants plan to build these projects once the market begins to recover.
Analysis:

There are a number of benefits if the City were to grant an additional time extension in exchange for the payment of outstanding permit fees.

**Benefits of Additional Time Extensions**

- City could recover much of the $370,000± in outstanding plan check fees.
- City would avoid forfeiting portions of the plan check fees to a collection agency.
- Housing construction could start immediately once the housing market recovers.
- Developers and staff would avoid a lengthy process of preparing and plan checking plans for a second time on subdivision projects that are partially built-out.
- The local construction industry is one of the key local industries that affect the local economy.
- Would enhance the City’s image as being supportive of business.

The City is sensitive to the economic downturn and the impacts on our construction industry. The City is also concerned with the viability of construction projects that are not making adequate progress. Many of these projects involve planned developments with very specific architectural design and site plan requirements. Once the City expires these permits, it will be very expensive and time consuming to get new plans prepared and approved before development can be restarted on these projects. Some projects that are currently in foreclosure will likely be acquired by new owners with limited knowledge of the project approval requirements. These new owners will be in a more difficult position if the project permits have expired.

Staff is also very concerned about collecting the $370,000± outstanding plan check fees due to the City. Once the City expires a permit, the outstanding fees are turned over to a collection agency that would keep a portion of the recovered fees. The City does not expect to recover a significant portion of the outstanding fees once the permits are expired and turned over to collections.

**Proposed Code Text Amendments:**

The proposed code text amendment would provide a one-time-only permit extension to retroactively extend dormant and expired single family residential, multi-family residential, industrial, and commercial building permit applications to June 30, 2010, once all outstanding, unpaid plan check fees have been paid. Applicants with dormant permits would have until February 29, 2009, to file for an extension and pay the outstanding fees.
3. Dormant building permit application one-time-only blanket extension. In addition to the time extension allowed in section 105.3.2.1., any building permit application for new single-family-residence, new multi-family-residence, new commercial or industrial building, or a commercial or industrial addition, submitted to the City of Atascadero on or before September 9, 2008, may opt into a one-time-only application extension. In order to be considered for this program, all outstanding plan check fees must be paid in full on or before February 28, 2009, and any subsequent building permit regulated by this program must be paid for in full and issued on or before June 30, 2010. Any building permit application or subsequent building permit regulated by this program that does not meet all timeframes indicated in this section will be cancelled and become null and void, and any subsequent work will require a new permit application, new plans, and new plan check and permit fees.

Staff has also included the following new language to clarify the City’s refund policy for building permit application fees. City staff has been following this policy for a number of years and felt it should be codified to ensure consistency.

2. Fee refund. Application fees and permit fees are assessed to cover the cost of providing permit issuance services and therefore are not refundable once service has been obtained. A full refund (100%) can only be given when a cancelled application was submitted and/or reviewed due to staff error. Refunds for cancelled applications will not include submittal fees, document imaging fees, and plan review fees (once a plan review has been completed). Refunds must be requested in writing and within one (1) year of application submittal date. Refunds for cancelled permits will include up to 80% of the permit fee, provided no work has commenced and the request for refund is within one (1) year from permit issuance. Refunds must be requested in writing and within one (1) year of permit issuance. Refunds will not be processed for applications and/or permits that have been suspended or revoked, or that have expired due to limitation.

Staff is also recommending that a code inconsistency regarding the Board of Appeals be corrected. The membership and operation of the Board of Appeals is described in both Title 2 and Title 8 of the Municipal Code. The Title 8 section defines the Board of Appeals as the City Council which is not permitted by the 2007 California Building Code. Title 2 correctly describes the Board of Appeals as construction industry professionals whose decisions are appealable to the City Council. Staff is recommending that Title 8 be amended to refer to Title 2 for the membership and operation of the Board of Appeals. The last time the Board of Appeals was convened was in 2000.

112.1 Appeals Board. The Board of Building Appeals shall be as described in Section 2-12.01 of the Atascadero Municipal Code.
Conclusion:

Staff is recommending the Council adopt the proposed text amendments that would allow dormant single family residential, multi-family residential, industrial, and commercial building permit applications to remain active during our economic downturn. This would provide the City an opportunity to collect outstanding plan check fees while providing a benefit to the local construction industry. This action would provide builders and investors additional permit application processing time until the construction economy recovers.

FISCAL IMPACT:

Collection of unpaid plan check fees is estimated to provide a financial benefit to the City of approximately $150,000±. Staff is estimating that less than 50% of the permit applications that are eligible for the extension will take advantage of the program. Staff assumed that 40% of the outstanding plan check fees would be captured under extension program which would recover approximately $150,000 ($370,000 x 40% = $150,000). This amount should be considered a very rough estimate.

ALTERNATIVES:

1. The Council could deny the proposed code text amendments.
2. The Council could approve selected portions of the proposed code text amendments.
3. The Council could refer this item back to staff for additional analysis.

ATTACHMENTS:

1. Draft Ordinance
DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING THE ATASCADERO MUNICIPAL CODE BY REPLACING SECTIONS 8-2.102(C) AND 8-2.102(E) OF THE LOCAL BUILDING CODE

The City Council hereby finds and declares as follows:

WHEREAS, the National, State and local economy have experienced a significant economic downturn in 2007 and 2008; and,

WHEREAS, this economic downturn has had a considerable negative effect on the construction industry, especially the residential construction sector; and,

WHEREAS, the City of Atascadero now has a backlog of over 250 building permit applications for new residential and commercial projects with outstanding plan check fees of $370,000±, and,

WHEREAS, the building code requires building permit applications to be deemed abandoned after 180 days of inactivity; and,

WHEREAS, the City Council reviewed this issue on August 12, 2008, and determined that it was in the economic interests of the City of Atascadero to provide relief to the construction industry by extending the permit extension deadlines; and,

WHEREAS, the City Council directed staff to prepare a code text amendment that would provide an addition time extension to inactive building permit application.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO HEREBY ORDAINS AS FOLLOWS:

SECTION 1:

Section 8-2.102(c) of the Atascadero Municipal Code is amended to read as follows:

105.3.2. Time limitations of application.

1. **Expiration of Plan Review.** Applications for which no permit is issued within 180 days following date of notification of approval/ready for issuance by the Building Division, or applications within 180 days following date of notification of permit corrections to be picked up or returned, shall
expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee. No extension is allowed except by written appeal to the Building Official. The Building Official is authorized to grant one extension of time for an additional period not exceeding 180 days. No application shall be extended more than once.

2. **Fee refund.** Application fees and permit fees are assessed to cover the cost of providing permit issuance services and therefore are not refundable once service has been obtained. A full refund (100%) can only be given when a cancelled application was submitted and/or reviewed due to staff error. Refunds for cancelled applications will not include submittal fees, document imaging fees, and plan review fees (once a plan review has been completed). Refunds must be requested in writing and within one (1) year of application submittal date. Refunds for cancelled permits will include up to 80% of the permit fee, provided no work has commenced and the request for refund is within one (1) year from permit issuance. Refunds must be requested in writing and within one (1) year of permit issuance. Refunds will not be processed for applications and/or permits that have been suspended or revoked, or that have expired due to limitation.

3. **Dormant building permit application one-time-only blanket extension.** In addition to the time extension allowed in section 105.3.2.1., any building permit application for new single-family-residence, new multi-family-residence, new commercial or industrial building, or a commercial or industrial addition, submitted to the City of Atascadero on or before September 9, 2008, may opt into a one-time-only application extension. In order to be considered for this program, all outstanding plan check fees must be paid in full on or before February 28, 2009, and any subsequent building permit regulated by this program must be paid for in full and issued on or before June 30, 2010. Any building permit application or subsequent building permit regulated by this program that does not meet all timeframes indicated in this section will be cancelled and become null and void, and any subsequent work will require a new permit application, new plans, and new plan check and permit fees.
SECTION 2

Section 8-2.102(e) of the Atascadero Municipal Code is amended to read as follows:

112.1 Appeals Board. The Board of Building Appeals shall be as described in Section 2-12.01 of the Atascadero Municipal Code.

SECTION 3:
A summary of this ordinance, approved by the City Attorney, together with the ayes and noes, shall be published twice: at least five days prior to its final passage in the Atascadero News, a newspaper published and circulated in the City of Atascadero, and; before the expiration of fifteen (15) days after its final passage, in the Atascadero News, a newspaper published and circulated in the City of Atascadero. A copy of the full text of this ordinance shall be on file in the City Clerk’s Office on and after the date following introduction and passage and shall be available to any interested member of the public.

INTRODUCED at a regular meeting of the City Council held on _____________, and PASSED and ADOPTED by the City Council of the City of Atascadero, State of California, on _____________, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:  CITY OF ATASCADERO

Marcia McClure Torgerson, C.M.C., Mayor
City Clerk

APPROVED AS TO FORM:

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Brian Pierik, City Attorney