



PROJECT SUMMARY

Application Number: 26PLN-0009

Subject: An Ordinance of the City Council of the City of Grass Valley adding section 17.74.060(A.5.) Of chapter 17.74 and section 17.81.130 (C.) of Chapter 17.81, Title 17 of the Grass Valley Municipal Code regarding tolling provisions for development entitlements and tentative maps

Location/APNs: Citywide

Environmental Status: Not a Project under CEQA pursuant to CEQA Guidelines §15378

Prepared by: Amy Wolfson, City Planner

RECOMMENDATION:

1. That the Planning Commission recommend that the City Council adopt Ordinance No. 841 to add a tolling provision for land use entitlements during instances of legal challenge, and includes the following actions:
 - a. Find that the adoption of an ordinance to toll entitlement approvals during instances of legal challenge is not a “project” as defined in the California Environmental Quality Act pursuant to CEQA Guidelines §15378; and
 - b. Adopt the Findings of Fact “1 through 8” for approval of the Zoning Text Amendment as presented in the Staff Report; and,
 - c. Approve the Zoning Text Amendment, Ordinance No. XXX, to allow a tolling provision for development entitlement and tentative map approvals in instances of legal challenge; and

BACKGROUND:

In September 2024, staff brought the Dorsey Marketplace Supplemental Final Environmental Impact Report (SFEIR) to Council to take action on the entirety of the EIR prepared for the project. The SFEIR was required after a legal challenge was filed and the appeals court determined that the City failed to analyze the impact of traffic generated

by the Project and its potential to exacerbate health risks for future Project residents and occupants. The Project and the initial EIR were approved by City Council at their regular meeting held on April 28, 2020. The aforementioned legal challenge of that approval was filed shortly thereafter, and the judge required the additional analysis mentioned above. The time between the initial entitlement approval and the dismissal of the legal challenge was almost three and a half years. Development entitlements have a standard one-year expiration unless conditioned otherwise and tentative maps have a standard three-year expiration timeframe. While the applicant could technically have pulled permits, it is generally ill-advised during instances of pending litigation given the uncertainty of the outcome and the financial burdens that come with exercising an entitlement. Once legal staff determined that the litigation did not automatically toll the entitlements, Planning staff were asked to prepare an ordinance that would toll such entitlement approvals only during instances of legal challenge, for the rare occasions that legal challenges occur on approved projects in the future. The proposed ordinance language does not have any effect on the previously approved Dorsey Marketplace proposal, which is currently being re-processed. If adopted, the ordinance will only impact future projects.

ORDINANCE

The proposed Ordinance seeks to increase the initial time period within which a permit must be exercised, going from twelve months to twenty-four months. It also aims to add tolling language to development entitlements, such as Development Review Permits, Use Permits, and Variances, as well as to Tentative Map entitlements, in Section 17.74.060 and 17.81.130, respectively. Entitlement tolling would automatically occur for the duration of time a project is under legal challenge. Both sections would be revised to include tolling language to an approved entitlement project or tentative subdivision map that “is the subject of a lawsuit pending in a court of competent jurisdiction, during which time [the project] shall be tolled, and not expire.”

Staff is also taking the opportunity to fix a couple typos in these code sections, one of which is an inconsistent section sequencing typo, and one is a misspelled “siz” instead of “six.”

General Plan Consistency: The Grass Valley 2020 General Plan is a plan for growth and development. The added language for tolling provisions is consistent with the General Plan because it preserves approved projects that have already been determined to be consistent with its goals and policies. It also promotes fair and transparent governance, ensuring due process afforded to a citizen’s right to legal challenge of a project, in balance with a developer’s right to preserve entitlements approved by the City during delays that are outside of an applicant’s control.

Development Code Consistency: The proposed zoning text amendment is consistent with the development code, which does not prohibit tolling, and which otherwise acknowledges that certain delays are not in the applicant’s control such as in the granting of time extensions, and are grounds for extending approvals under the Development Code.

ENVIRONMENTAL DETERMINATION

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the city. City Planning Staff has determined that the adoption and implementation of the Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions without any physical project being approved, and not involving a commitment to any specific project that may result in a potentially significant physical impact on the environment, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. Further, adoption of an ordinance to toll approvals during instances of legal challenge is a policy-level administrative action that does not authorize or approve any specific physical development and therefore does not constitute a “project” under CEQA Guidelines §15378. The City Council concurs in these findings and adopts them as its own. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Nevada in accordance with CEQA Guidelines.

FINDINGS

The proposed project meets the required findings of Section 17.94.060 – Findings and Decision, for the proposed Zoning Text Amendment

1. That the proposed amendment to allow tolling of development permits and tentative maps is consistent with the General Plan because it supports orderly development, ensures full compliance with environmental review requirements, protects previously approved projects found to be consistent with the General Plan, and promotes fair and transparent governance without increasing development intensity or undermining adopted land use policies; and
2. That the proposed amendment is consistent with the General Plan by preserving approvals already determined to be consistent with its goals and policies; and
3. That the proposed amendment is not detrimental to the public interest of the City because the amendment promotes fairness and predictability in the City’s land use entitlement process by ensuring that entitlements do not expire due to delays caused by judicial review, which is an essential component of public participation and due process; and
4. That the proposed amendment would not be detrimental to the health of the City because tolling avoids pressure to commence construction before health-related issues raised in litigation are fully resolved and because tolling will prevent construction, occupancy or operation of any project during the tolling period; and
5. That the proposed amendment would not be detrimental to safety of the City because all future development will still be required to comply with applicable fire,

building, seismic, and emergency access requirements in effect at the time permits are issued and prevents development from occurring during unresolved legal challenges that may be safety-related in nature; and

6. That the proposed amendment would not be detrimental to the convenience of the City because it promotes efficient use of City resources and reduces administrative burdens on staff, applicants, and the public; and
7. That the proposed amendment would not be detrimental to the welfare of the City because tolling balances the public's right to seek judicial review with the City's interest in implementing adopted land use decisions; and
8. That the proposed amendment is internally consistent with other applicable provisions of the development code, none of which prohibit tolling, and which otherwise acknowledge that certain delays not in the applicant's control may be grounds for the extension of approvals under the Development Code; and

ATTACHMENTS

1. Ordinance No. 841 - Zoning Text Amendment Ordinance for Entitlement Tolling