

Attachment C

Planning Commission
Resolution No. 14-014 with
Draft Ordinance,
February 26, 2014

REF100058

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**Before the Planning Commission in and for the
County of Monterey, State of California**

RESOLUTION NO. 14-014

Resolution by the Monterey County Planning Commission recommending that the Board of Supervisors take the following action:

- 1) Find that the ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Sections 15060 (c)(3) and 15378 (b)(5) because the ordinance is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment; and
- 2) Adopt the ordinance amending Title 19 (Non-coastal subdivision ordinance) and Title 21 (Non-coastal zoning ordinance) of the Monterey County Code to establish notification and hearing procedures to address inactive land use discretionary permit applications.

[REF100058, Ordinance for Inactive Land Use Discretionary Permit Applications, Non-Coastal Ordinance, County-wide]

Attachment

Page 1 of 10 Pages

The proposed ordinance (REF100058) amending Title 19 (Non-coastal subdivision ordinance) and Title 21 (Non-coastal zoning ordinance) of the Monterey County Code to establish notification and hearing procedures to address inactive land use discretionary permit applications, came on for public hearing before the Monterey County Planning Commission on February 26, 2014. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

RECITALS

1. As of July 1, 2013, the Monterey County Resource Management Agency-Planning Department has 2,925 applications for discretionary entitlements for land use projects which had no activity for at least six consecutive months but which applicants had not withdrawn.
2. Indefinite retention of such inactive applications creates several problems, including: creation of a backlog of applications whose status is uncertain; diversion of resources away from processing active applications; technical reports and information becoming outdated prior to the application being heard; inefficiencies in processing the application; and excess costs not covered by the application fee.
3. On February 28, 2012, the Monterey County Board of Supervisors adopted a Resolution of Intention (Resolution No. 12-050) to initiate amendments to text provisions of Title 19 (both coastal and inland subdivision ordinances), Title 20 (coastal zoning), and Title 21 (inland zoning) to put in place procedures for acting on inactive applications.

4. This ordinance is intended to establish consistent and fair procedures to enable the County to make a final disposition of inactive applications while providing notification and opportunity to applicants to take the necessary steps to keep their applications active if they so choose.
5. The establishment of notification and hearing procedures for inactive applications serves the public health, safety, and welfare by addressing the problems associated with indefinite retention of inactive applications while providing notice and opportunity to applicants to be heard.
6. This ordinance is not a project under the California Environmentally Quality Act (CEQA) per CEQA Guidelines Sections 15060(c) (3) and 15378(b)(5) because the ordinance is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.
7. A public hearing on the proposed ordinance was duly noticed for February 26, 2014 in the Monterey County Weekly at least ten days prior to the hearing. Notice was also given to interested parties.

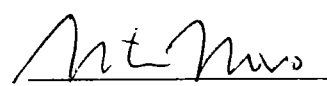
DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors:

- 1) Find that the ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Sections 15060 (c)(3) and 15378 (b)(5) because the ordinance is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment; and
- 2) Adopt the ordinance, attached hereto as Attachment 1 and incorporated herein by reference, amending Title 19 (Non-coastal subdivision ordinance) and Title 21 (Non-coastal zoning ordinance) of the Monterey County Code to establish notification and hearing procedures to address inactive land use discretionary permit applications, with the recommended revisions shown via strikeout and underline.

PASSED AND ADOPTED this 26th day of February, 2014 upon motion of Vandevere, seconded by Commissioner Diehl, by the following vote:

AYES: Brown, Vandevere, Getzelman, Salazar, Mendez, Roberts, Diehl, Padilla, Hert
NOES: None
ABSENT: Rochester
ABSTAIN: None


Mike Novo, Secretary

**Attachment 1 to Exhibit A
Draft Non-Coastal Ordinance**

Attachment C
Page 3 of 10 Pages

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING TITLE 19 (NON-COASTAL SUBDIVISION ORDINANCE) AND TITLE 21 (NON-COASTAL ZONING ORDINANCE) OF THE MONTEREY COUNTY CODE TO ADD REGULATIONS RELATED TO INACTIVE DISCRETIONARY LAND USE PERMIT APPLICATIONS.

County Counsel Summary

This ordinance amends Title 19 (non-coastal subdivision ordinance) and Title 21 (non-coastal zoning ordinance) of the Monterey County Code to establish notification and hearing procedures to address inactive discretionary land use permit applications.

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

SECTION 1. FINDINGS AND DECLARATIONS.

A. ___-Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. ___-As of July 1, 2013, the Monterey County Resource Management Agency-Planning Department has 2,925 applications for discretionary entitlements for land use projects which had no activity for at least six consecutive months but which applicants had not withdrawn.

C. ___-Indefinite retention of such inactive applications creates several problems, including: creation of a backlog of applications whose status is uncertain; diversion of resources away from processing active applications; technical reports and information becoming outdated prior to the application being heard; inefficiencies in processing the application; and excess costs not covered by the application fee.

D. ___-On February 28, 2012, the Monterey County Board of Supervisors adopted a Resolution of Intention (Resolution No. 12-050) to initiate amendments to text provisions of Title 19 (both coastal and inland subdivision ordinances), Title 20 (coastal zoning), and Title 21 (inland zoning) to put in place procedures for acting on inactive applications.

E. ___-This ordinance is intended to establish consistent and fair procedures to enable the County to make a final disposition of inactive applications while providing notification and opportunity to applicants to take the necessary steps to keep their applications active if they so choose.

F. ___-The establishment of notification and hearing procedures for inactive applications serves the public health, safety, and welfare by addressing the problems associated with indefinite retention of inactive applications while providing notice and opportunity to applicants to be heard.

G. ___-This ordinance is not a project under the California Environmentally Quality Act (CEQA) per CEQA Guidelines Sections 15060(c) (3) and 15378(b)(5) because the ordinance is

an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

SECTION 2. The Table of Contents of Chapter 19.01 of Title 19 (non-coastal subdivision ordinance) of the Monterey County Code is amended to add section 19.01.100 as follows:

—19.01.100 Inactive applications.

SECTION 3. Section 19.01.100 of Title 19 (non-coastal subdivision ordinance) of the Monterey County Code is added to read as follows:

19.01.100 Inactive applications.

- A. When an applicant for a discretionary land use entitlement under this Title has not submitted information, documents, or associated land use application fees requested by the County for a period of at least six (6) consecutive months, the County in its discretion may follow the process outlined in this section shall be followed to determine if the application is inactive.
- B. Courtesy Notice Prior to Deeming an Application Inactive.
Prior to deeming an application for an entitlement inactive, the Director of Planning shall mail a courtesy notice providing notice that the application will become inactive within thirty (30) calendar days of the date of mailing of the courtesy notice, unless the applicant takes one of the options outlined in the notice. The courtesy notice shall include the description of the proposed project and the outstanding information required and/or application fees required, if applicable. The courtesy notice, as well as further correspondence from the Director of Planning required by this subsection, shall be mailed to all of the following: the property owner as shown in the latest assessment roll; the applicant (if different from the owner); and the applicant's authorized agent, if any. The courtesy notice shall outline the options available to applicant as set forth in subsection C. below.
- C.
 1. The applicant may withdraw his/her/its application in writing.
 2. The application shall remain in active status if the applicant takes one of the following steps:
 - a. The applicant may submit the outstanding information (required information and/or outstanding application fees, as identified by the County in the courtesy notice) within no more than thirty (30) calendar days from the date of mailing of the courtesy notice together with such additional application fees as County may require to reactivate the application.
 - b. The applicant may request in writing within thirty (30) calendar days from the date of mailing of the courtesy notice that his/her/its application be kept active. Such written request shall be made to the Director of Planning with a detailed explanation of the reason(s) for the request and the additional time needed to provide the requested information and/or application fees. Such reasons may

include by way of example and not by limitation, additional time needed to conduct a required seasonal biological survey or to secure a professional consultant to carry out a required analysis. The Director of Planning shall review the written request and provide the applicant a written determination, approving or denying the request. If the Director of Planning grants the applicant's request, the written determination shall specify the additional time granted.

3. If a change of ownership of the property that is the subject of the application has occurred between the submittal of the application and the receipt of the courtesy notice, the new owner may reactivate the application only upon payment of such new application fees and update of the application as the County may require and submittal of such outstanding information as County has identified. Change of ownership means a change of ownership as determined by the County Assessor pursuant to the California Revenue and Taxation Code.

D. Deeming an Application Inactive.

The Director of Planning shall deem an application inactive if the applicant fails to submit the information and/or fees identified in the courtesy letter within the time allotted by that letter, or any extended time granted pursuant to section 19.01.100.C.2, or if the Director of Planning denies a request by applicant pursuant to section 19.01.100.C.2 to keep the application active. An application shall be deemed inactive under any of the following circumstances:

- ~~1. The applicant takes none of the steps outlined in Section 19.01.100 (C) above within thirty (30) calendar days from the date of mailing of the courtesy notice;~~
- ~~2. The applicant within thirty (30) calendar days from the date of mailing of the courtesy notice makes a written request to keep the application active, but the Director of Planning denies applicant's request;~~
- ~~3. The applicant within thirty (30) calendar days from the date of mailing of the courtesy notice makes a written request to keep the application active and the Director of Planning grants the request, but the applicant does not submit the required information, documentation and/or application fees within the time allotted by the Director of Planning;~~
- ~~4. The applicant fails to pay such application fees as County may require to reactivate the application.~~

E. Notice of Inactive Application.

1. After the Director of Planning has deemed an application inactive, the following steps are required prior to the County denying an application on the basis of inactivity:

- ~~1. The Director of Planning shall provide written notice to the property owner as shown in the latest assessment roll, the applicant (if different from the owner), and the applicant's authorized agent, if any, that the application has been deemed inactive. The notice shall include the description of the proposed project, the outstanding information required and/or application fees required. The notice shall outline the options available to the applicant or as set forth in subsection E.2 below **and inform the applicant that if the applicant does not take one of the steps outlined in E.2 below, the application will be set for hearing with a recommendation of denial.**~~

2. a. The applicant may withdraw his/her/its application in writing within one hundred and eighty (180) calendar days of the date of mailing of the notice of inactive application;
 - b. The applicant within no more than one hundred and eighty (180) calendar days of date of mailing of the notice of inactive application may submit required information and/or outstanding application fees together with such additional application fees as County may require to reactivate the application.
 3. If after more than one hundred and eighty (180) calendar days of the date of mailing of the notice of inactive application the applicant does not withdraw his/her/its application in writing or does not provide the required information and/or application fees, including a reactivation fee, staff will schedule the application for a public hearing by the Appropriate Authority with a recommendation of denial.
- F. Action by Appropriate Authority.
1. The Appropriate Authority to hear inactive applications shall be the person, official, or body designated by Title 19 of the Monterey County Code as the Appropriate Authority to act on the type of permit that is the subject of the inactive application.
 2. Notice of the public hearing on the inactive application shall be given pursuant to Section 19.01.055 of Title 19 (non-coastal) of the Monterey County Code.
 3. The Appropriate Authority may deny the inactive application if the Appropriate Authority finds, based on substantial evidence, that the applicant has failed to provide complete or adequate information or failed to provide application fees required by the County to process the application.
- G. Appeals.
An appeal may be taken from the action of the Appropriate Authority pursuant to Chapter 19.16 of this Title.
- H. Notwithstanding any other provision of this Section 19.01.100, if an inactive application for a subdivision or lot line adjustment is part of a Combined Development Permit, the County shall process the inactive application in accordance with Chapter 21.77 of Title 21 of the Monterey County Code, excepting any application for a Combined Development Permit that includes an application for a subdivision and that was deemed complete prior to the effective date of Ordinance No. XXXX adopting Section 19.01.100.
- I. Exemption.
This Section 19.01.100 shall not apply to any applications for a subdivision, including any application for a Combined Development Permit that includes a subdivision application, which were deemed complete prior to the effective date of Ordinance No. ~~XXXXX~~ adopting Section 19.01.100.

SECTION 4. The Table of Contents of Title 21 of the Monterey County Code is amended to add Chapter 21.77 as follows:

Chapter 21.77- INACTIVE APPLICATIONS

SECTION 5. Chapter 21.77 of the Monterey County Code is added to read as follows:

Chapter 21.77 INACTIVE APPLICATIONS

Sections:

- 21.77.010 Purpose.
- 21.77.020 Applicability.
- 21.77.030 Inactive application.

21.77.010 Purpose.

The purpose of this Chapter is to increase efficiency in the processing of applications for entitlements under this Title by establishing consistent and fair procedures to enable the County to make final disposition of inactive applications while providing notification and opportunity to applicants to take the necessary steps to keep their applications active if they so choose.

21.77.020 Applicability.

The provisions of this Chapter are applicable to all types of land use entitlements under this Title.

21.77.030 Inactive application.

- A. When an applicant for a discretionary land use entitlement under this Title has not submitted information, documents, or associated land use application fees requested by the County for a period of at least six (6) consecutive months, the **County in its discretion may follow the** process outlined in this section ~~shall be followed~~ to determine if the application is inactive.
- B. **Courtesy Notice Prior to Deeming an Application Inactive.**
Prior to deeming an application for an entitlement inactive, the Director of Planning shall mail a courtesy notice providing notice that the application will become inactive within thirty (30) calendar days of the date of mailing of the courtesy notice, unless the applicant takes one of the options outlined in the notice. The courtesy notice shall include the description of the proposed project and the outstanding information required and/or application fees required, if applicable. The courtesy notice, as well as further correspondence from the Director of Planning required by this subsection, shall be mailed to all of the following: the property owner as shown in the latest assessment roll; the applicant (if different from the owner); and the applicant's authorized agent, if any. The courtesy notice shall outline the options available to applicants as set forth in Section 21.77.030.C below.

- C.
1. The applicant may withdraw his/her/its application in writing.
 2. The application shall remain in active status if the applicant takes one of the following steps:
 - a. The applicant may submit the outstanding information (required information and/or outstanding application fees as identified by the County) within no more than thirty (30) calendar days from the date of mailing of the courtesy notice together with such additional application fees as County may require to reactivate the application.
 - b. The applicant may request in writing within thirty (30) calendar days from the date of mailing of the courtesy notice that his/her/its application be kept active. Such written request shall be made to the Director of Planning with a detailed explanation of the reason(s) for the request and the additional time needed to provide the requested information and/or application fees. Such reasons may include by way of example and not by limitation, additional time needed to conduct a required seasonal biological survey or to secure a professional consultant to carry out a required analysis. The Director of Planning shall review the written request and provide the applicant a written determination, approving or denying the request. If the Director of Planning grants the applicant's request, the written determination shall specify the additional time granted.
 3. If a change of ownership of the property that is the subject of the application has occurred between the submittal of the application and the receipt of the courtesy notice, the new owner may reactivate the application only upon payment of such new application fees and update of the application as the County may require and submittal of such outstanding information as County has identified. Change of ownership means a change of ownership as determined by the County Assessor pursuant to the California Revenue and Taxation Code.

D. Deeming an Application Inactive.

The Director or Planning shall deem an application inactive if the applicant fails to submit the information and/or fees identified in the courtesy letter within the time allotted by that letter, or any extended time granted pursuant to section 21.77.030.C.2, or if the Director of Planning denies a request by applicant pursuant to section 21.77.030.C.2 to keep the application active. An application shall be deemed inactive under any of the following circumstances:

- ~~1. The applicant takes none of the steps outlined in subsection (C) above within thirty (30) calendar days from the date of mailing of the courtesy notice;~~
- ~~2. The applicant within thirty (30) calendar days from the date of mailing of the courtesy notice makes a written request to keep the application active, but the Director of Planning denies applicant's request;~~
- ~~3. The applicant within thirty (30) calendar days from the date of mailing of the courtesy notice makes a written request to keep the application active and the Director of Planning grants the request, but the applicant does not submit the required information, documentation and/or application fees within the time allotted by the Director of Planning;~~
- ~~4. The applicant fails to pay such application fees as County may require to reactivate the application.~~

E. Notice of Inactive Application.

After the Director of Planning has deemed an application inactive, the **following steps are required prior to the County denying an application on the basis of inactivity:**

1. The Director of Planning shall provide written notice to the property owner as shown in the latest assessment roll, the applicant (if different from the owner), and the applicant's authorized agent, if any, that the application has been deemed inactive. The notice shall include the description of the proposed project, the outstanding information required and/or application fees required. The notice shall outline the options available to the applicant or as set forth in subsection E.2 below **and inform the applicant that if the applicant does not take one of the steps outlined in E.2 below, the application will be set for hearing with a recommendation of denial.**

2. a. The applicant may withdraw his/her/its application in writing within one hundred and eighty (180) calendar days of the date of mailing of the notice of inactive application;
- b. The applicant within no more than one hundred and eighty (180) calendar days of date of mailing of the notice of inactive application may submit required information and/or outstanding application fees together with such additional application fees as County may require to reactivate the application.
3. If after more than one hundred and eighty (180) calendar days of the date of mailing of the notice of inactive application the applicant does not withdraw his/her/its application in writing or does not provide the required information and/or application fees, including a reactivation fee, staff will schedule the application for a public hearing by the Appropriate Authority with a recommendation of denial.

F. Action by Appropriate Authority.

1. The Appropriate Authority to hear inactive applications shall be the person, official, or body designated by Title 21 of the Monterey County Code to act on the type of permit that is the subject of the application.
2. Notice of the public hearing on the inactive application shall be given pursuant to the notice requirements applicable to the specific type of land use application (i.e., Chapter 21.70 (Administrative Permits) or Chapter 21.78 (other permit types).
3. The Appropriate Authority may deny the inactive application if the Appropriate Authority finds, based on substantial evidence, that the applicant has failed to provide complete or adequate information or failed to provide application fees to process the application.

G. Appeals.

An appeal may be taken from the action of the Appropriate Authority pursuant to Chapter 21.80.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it

would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ___ day of _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

LOUIS R. CALCAGNO, CHAIR
Monterey County Board of Supervisors

ATTEST:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel

By _____
Deputy