CITY OF PALM SPRINGS

DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

Date: 8 March 2017

To: Planning Commission

From: Flinn Fagg, AICP
Director of Planning Services

Subject: Proposed Revisions – Extension of Time Applications (Case 5.1405 ZTA)

At the meeting of February 22, 2017, the Planning Commission voted to recommend approval of the proposed ordinance for Extension of Time (EOT) applications, subject to the following conditions:

- Add language requiring "clear and convincing evidence" for the application, and that the burden of proof shall be upon the applicant;
- Replace the criteria suggested by staff with criterion (a) through (g) as suggested by Commissioner Donenfeld;
- Modify criterion (c) with the addition of "...that negates the appropriateness of the project...";
- Add language referencing the process for the extension of map applications;
- Eliminate Section F(2) as proposed by staff; and
- The maximum extension shall be for two years (over and above the original two-year approval).

The language and conditions included in the motion have been incorporated into the draft ordinance, which is included as an attachment to this memo.

The following documents are provided as attachments to this memo:

1. Draft Revised Ordinance
2. Planning Commission Staff Report – January 11, 2017
3. Comparison chart of EOT requirements for Coachella Valley cities

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, RECOMMENDING APPROVAL OF AMENDMENTS TO CHAPTER 94.00 OF THE PALM SPRINGS ZONING CODE (PSZC) RELATING TO THE CRITERIA AND PROCEDURES FOR THE REVIEW OF EXTENSION OF TIME (EOT) APPLICATIONS.

THE PLANNING COMMISSION FINDS AND DETERMINES AS FOLLOWS:

A. In July 2015, the Planning Commission established a subcommittee to study the process and criteria for the evaluation of Extension of Time (EOT) applications.

B. The Planning Commission subcommittee met and developed recommendations to be considered by the Planning Commission.

C. In November 2016, the City Council directed staff to proceed with amendments to the procedures and criteria for the consideration of EOT applications, and requested that the amendments be forwarded to the Planning Commission for recommendation.

D. Notice of public hearing of the Planning Commission of the City of Palm Springs to consider Case 5.1405 ZTA was given in accordance with applicable law.

E. On March 8, 2017, a public hearing on the proposed Zone Text Amendment was held by the Planning Commission in accordance with applicable law.

F. The proposed Zone Text Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines because the proposed amendments to the Palm Springs Zoning Code will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

G. The Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the Zone Text Amendment, including, but not limited to, the staff report, and all written and oral testimony presented.

H. The Planning Commission hereby finds that approval of the proposed Zone Text Amendment would:

1. Clearly establish and standardize the procedural requirements for the processing of Extension of Time applications; and

2. Provide consistent and detailed criteria for the evaluation of Extension of Time applications.

THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS RESOLVES:

The Planning Commission recommends that City Council approve Zone Text Amendment (Case 5.1405), to include the following additions and revisions to the Palm Springs Zone Code (additions shown in underline, deletions shown in ~~strikethrough~~):

Section 94.12.00 is added to the Palm Springs Zoning Code (PSZC) to read:

94.12.00 Extension of Time.

A. Purpose.

The purpose of this section is to provide a mechanism for extending the term of an entitlement previously granted under this chapter. This section shall not apply to tentative subdivision maps, which may be extended in accordance with Section 9.63.110. The provisions of this section are not intended to limit the authority or the discretion of the planning commission to determine whether good cause exists for an extension of time.

B. Application.

An application for an extension of time shall be filed with, and on a form provided by, the Department of Planning Services. Such application must be filed at least sixty (60) days before the entitlement is due to expire. The application shall be signed and acknowledged by the owner of record of the property for which the extension of time is sought, and shall be notarized as to the owner's signature.

C. Hearing and Notification.

An application for an extension of time shall be heard by the planning commission. The planning commission shall provide for a public hearing to be held in the manner provided for in Section 94.09.00.

D. Criteria.

The burden of proof shall be on the applicant to establish by clear and convincing evidence that the applicant has proceeded in good faith and has exercised due diligence in complying with the conditions of approval imposed on

the entitlement in a timely manner. In determining that good cause exists for an extension of time, the planning commission must make the following findings:

1. The requested extension of time is consistent with the General Plan and any applicable specific plan, and the proposed project remains consistent with those plans as the exist at the time the extension request is being considered;

2. The findings made in support of the original approval remain valid and are still appropriate;

3. There have been no significant changes to the proposed project, or to areas within the geographic proximity of the proposed project that negates the appropriateness of the project, or new information concerning new or substantially more severe environmental effects which would require a reevaluation of the project under the California Environmental Quality Act (CEQA);

4. The subject site has been properly maintained in accordance with the Property Maintenance Standards of this Title;

5. The applicant has demonstrated convincingly and clearly that the project will be substantially underway within the extended period.

6. The applicant has made reasonable, substantial and timely efforts to exercise the entitlement and advance the project, such as, but not limited to, the pre-payment of impact fees or submittal of permit applications; and

7. Extenuating circumstances, not within the applicant's control, (financial inability and market conditions excepted), have prevented the applicant from exercising the entitlement within the initial time period granted, but that such circumstances are more likely than not to be removed in time for the applicant to substantially begin the project within the extended period.

E. Decision.

The planning commission may take such action as it deems appropriate regarding the extension of time application, including without limitation:

1. Grant the extension of the previously approved entitlement;

2. Modify the previously imposed conditions of approval and/or add new conditions of approval in connection with a grant of extension; or

3. Deny the requested extension.

The decision of the planning commission is final unless appealed to the city council in the manner provided by Chapter 2.05 of the Palm Springs Municipal Code.

F. Extension of Time – Term.

The planning commission may grant no more than one (1) extension of time for a period of up to twenty-four (24) months beyond the original expiration date of the entitlement.

PSZC Subsection 93.23.05(C), "Shopping Centers," is hereby amended to read:

C. Time Limits.

Requests for extensions of time shall be made pursuant to the requirements of Section 94.12.00. ~~to the planning commission. The applicant shall state the reasons for failure to comply with the timing conditions set forth in this section, and shall demonstrate his ability to proceed with the development if the extension is granted. Upon recommendations by the planning commission, the city council may grant an extension of time.~~

PSZC Subsection 93.23.07(F)(1), "Use of Permit," is hereby amended to read:

1. Any conditional use permit that is granted shall be used within two (2) years from the effective date thereof or within such additional time as may be set in the conditions or approval, which shall not exceed a total of five (5) years; otherwise, the permit shall be null and void. Notwithstanding the foregoing, if a permit is required to be used within less than five (5) years, the permittee may, prior to its expiration, request an extension of time pursuant to Section 94.12.00 in which to use the permit. An extension of time may be granted by the commission upon a determination that valid reason exists for permittee not using the permit within the required period of time. If an extension is granted, the total time period allowed for use of the permit shall not exceed a period of five (5) years, calculated from the effective date of the issuance of the permit. The term "use" shall mean the beginning of substantial construction of the use that is authorized, which construction must thereafter be pursued diligently to completion.

PSZC Subsection 93.23.07(G)(4), "Revocation or Voiding of Conditional Use Permit," is hereby amended to read:

4. If the time limit for development expires and development has not commended, or the use permitted by the conditional use permit does not exist, the conditional use permit shall be considered void. No notice need be given nor hearing held. An extension ~~of the time limit may be recommended by the commission and granted by the council upon written request by the applicant and a showing of good cause~~ of time may be approved pursuant to the requirements of Section 94.12.00.

PSZC Subsection 94.02.00(F), "Time Limit for Development," is hereby amended to read:

F. Time Limit for Development.

Unless otherwise stated by the commission or council, the time limit for commencement of use or construction under a conditional use permit shall be two (2) years from the effective date of approval. Extensions of time may be approved ~~by the commission upon demonstration of good cause by the applicant~~ pursuant to the requirements of Section 94.12.00.

SECTION 6. PSZC Subsections 94.02.00(I)(4) and 94.02.00(I)(5), "Revocation or Voiding of Conditional Use Permit," is hereby amended to read:

4. If the time limit for development expires and development has not commenced, or the use permitted by the conditional use permit does not exist, the conditional use permit shall be considered void. No notice need be given nor hearing held. An extension ~~of the time limit may be recommended by the commission and granted by the council upon written request by the applicant and a showing of good cause~~ of time may be approved pursuant to the requirements of Section 94.12.00.

5. Termination of a use granted herein for a period of one (1) calendar year shall terminate the use rights granted without further notice or public hearing. An extension of time ~~limit~~ may be approved pursuant to the requirements of Section 94.12.00 ~~by the planning commission, or the city council, upon written request by the applicant and a showing of good cause~~.

PSZC Subsection 94.03.00(H), "Termination of Proceedings," is hereby amended to read:

H. Termination of Proceedings.

If, within two (2) years after the date of approval by the city council of the preliminary development plan, the final development plan, as indicated in Section 94.03.00(I), has not been approved by the planning commission, the procedures and actions which have taken place up to that time shall be null and void and the

planned development district shall expire. Extensions of time may be allowed ~~for good cause~~ pursuant to the requirements of Section 94.12.00.

PSZC Subsection 94.04.00(H), "Extensions of Time," is hereby amended to read:

H. Extensions of Time.

Extensions of time may be granted pursuant to the requirements of Section 94.12.00 ~~by the planning commission upon demonstration of good cause. Such extensions shall be requested in writing and received prior to expiration of original approval. Retroactive time extensions submitted within six months of the original expiration date may be granted for good cause. Extension of time granted for companion cases such as conditional use permits, tentative maps or planned development district will also extend the architectural approval unless otherwise provided. Fees may be charged to process an extension request~~.

PSZC Subsection 94.06.00(1)(a), "Revocation or Voiding of Variance/Time Limits," is hereby amended to read:

(1)(a) Extensions of time may be granted pursuant to the requirements of Section 94.12.00 ~~by the planning commission upon demonstration of good cause. Such extensions shall be requested in writing and received prior to expiration of original approval. Fees may be charged to process an extension request~~.

ADOPTED this 8th day of March 2017.

ATTEST:

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Flinn Fagg, AICP
Director of Planning Services

PLANNING COMMISSION STAFF REPORT

DATE: January 11, 2017 PUBLIC HEARING

SUBJECT: CITY OF PALM SPRINGS FOR A ZONE TEXT AMENDMENT RELATING TO THE CRITERIA AND PROCEDURES FOR THE REVIEW OF EXTENSION OF TIME APPLICATIONS (CASE 5.1405 ZTA).

FROM: Department of Planning Services

SUMMARY:

This is a request to amend the Palm Springs Zoning Code (PSZC) to add Section 94.12.00, "Extension of Time," which would establish procedures and criteria for the consideration of Extension of Time (EOT) applications. The proposed amendment has been developed at the direction of both the Planning Commission and City Council.

RECOMMENDATION:

Open the public hearing, take testimony, and recommend approval to the City Council.

BACKGROUND INFORMATION:

Related Relevant City Actions	
07/22/15	The Planning Commission appointed a subcommittee (Calerdine, Lowe) to discuss guidelines for the review of EOT applications.
Aug./Sep. 2015	The Planning Commission subcommittee met on two occasions (08/19/15 and 09/30/15) to discuss criteria and procedures for EOT applications.
11/02/16	City Council directed staff to proceed with a Zone Text Amendment to address criteria for the consideration of EOT applications.
11/14/16	The Planning Commission subcommittee met to finalize their recommendations regarding procedures for EOT applications.

ANALYSIS:

Currently, procedural requirements and standards for the processing of Extension of

Time (EOT) applications are found in multiple sections in the zoning code. The identified criterion for approval of an EOT application is generally limited to a finding of "good cause." The proposed amendment is intended to standardize the procedures for EOT applications and provide substantive criteria for the Planning Commission to utilize in reviewing requests for extensions.

The Planning Commission appointed a subcommittee (Calerdine, Lowe) in July 2015 to study the process and criteria for EOT applications. The subcommittee met in August and September of 2015, and then again in November 2016 to finalize their recommendations. The draft ordinance included as an attachment to this staff report reflects the recommendations of the Planning Commission subcommittee.

The draft ordinance addresses two areas relative to EOT applications: procedural requirements for processing applications and criteria for the evaluation of applications. The following procedural requirements are proposed for all EOT applications:

- Application: An application for an EOT shall be filed 60 days prior to the expiration of the entitlement.
- Hearing: EOT applications shall be treated as a public hearing, which requires publication of the hearing in the newspaper, a mailed notice of the hearing to property owners within 500 feet of the subject site, and an electronic notice to the neighborhood organizations within one-half mile of the subject site. The public hearing requirements are detailed in PSZC Section 94.09.00.
- Approval Process: EOT applications shall be forwarded to the Planning Commission for action. The action of the Planning Commission is final, unless appealed to the City Council. The Planning Commission may approve the extension, approve the extension with modifications to the conditions of approval, or deny the extension request.
- Term: As proposed, extensions may be approved for a period of up to two years. The ordinance gives the Planning Commission flexibility in setting the extension period, as a shorter period of time may be warranted for certain applications. The Planning Commission subcommittee debated the issue of the number of extensions that could be requested; ultimately, it was decided that no limit should be imposed in the code, as it would give the Planning Commission maximum flexibility in determining whether or not extensions should be granted. In addition, the adoption of a criterion which specifically addresses efforts to advance the project will assist the Planning Commission in making findings as to whether additional extensions are justified.

The Planning Commission subcommittee has proposed the following criteria for consideration in evaluating EOT applications:

1. *That the proposed project remains consistent with the General Plan designation and zoning for the site;*

2. *There have been no significant changes to the proposed project, or new information concerning new or substantially more severe environmental impacts*

which would require a reevaluation of the project under the California Environmental Quality Act (CEQA);

3. *That the subject site has been properly maintained in accordance with the Property Maintenance Standards of this Title;*

4. *Any efforts made by the applicant to exercise the entitlement and advance the project, such as, but not limited to, the pre-payment of impact fees or submittal of permit applications; and*

5. *Any extenuating circumstances that have prevented the applicant from exercising the entitlement within the time period granted.*

The criteria listed above substantially expand upon the concept of "good cause" in the granting of EOT requests. Planning staff will provide an evaluation of the criteria in the report that is drafted for review by the Planning Commission; the Planning Commission will review the evaluation as a basis for making findings in support (or denial) of the application request. Consideration would be given to the following issues:

- Changes to the General Plan land use designation or zoning designation in the intervening period since the project approval;
- Changes to the project which would warrant a reevaluation of the adopted environmental study;
- Proper and continuing maintenance of the subject site and any buildings or landscaping on the site;
- Efforts made by the applicant in preparing for construction, such as completion of construction documents, submittal of building permits, installation of infrastructure, pre-payment of impact fees, or other similar actions; and
- Extenuating circumstances, such as the lack of infrastructure necessary to service the site, delays in the issuance of required permits by regional or State agencies, or other similar delays that are beyond the control of the applicant. Inability to obtain financing for the project or market conditions would not be considered extenuating circumstances for the purpose of the extension request.

It is important to note that the proposed ordinance will not revise the extension process for Tentative Map applications. Requirements for the extension of Tentative Map approvals are listed in Chapter 9.63 of the Municipal Code, and are governed by the requirements of State law. Extensions for map applications are limited to a period of one year; in cases where a project requires the extension of both a subdivision map and a zoning entitlement application, the Planning Commission may choose to limit the extension of the entitlement to a period of one year to be coterminous with the extension of the map.

ENVIRONMENTAL ANALYSIS:

The proposed Zone Text Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines because the proposed amendments to the Palm Springs Zoning Code will not result in a direct or reasonably foreseeable indirect physical change in the environment; and 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTIFICATION:

A public hearing notice was published in accordance with the requirements of State law and local ordinance. As of the writing of this report, staff has not received any comment letters regarding the proposed ordinance.

Flinn Fagg, AICP
Director of Planning Services

ATTACHMENTS:

1. Draft Resolution (strikeout/underline version)
2. Comparison chart of EOT requirements for Coachella Valley cities

Entitlement Extension Comparison – Coachella Valley Cities

City	Entitlement	Length of Extension	Limit on Number of Extensions	Criteria for Granting Extension
Palm Springs	Planned Development District (PD)	None Specified; however, past practice has been to grant 1-year extensions.	None Specified	Extensions may be allowed for good cause. (94.03.00(H) and (I))
Coachella	Architectural Review	1-year (17.72.010(J)(2))	No more than 3 (17.72.010(J)(2))	a) No significant change has occurred in the surrounding neighborhood; b) The project conforms to existing and any new building and zone requirements; c) A request for the extension is properly filed with the planning director ten (10) days or more prior to expiration; and d) The applicant states upon affidavit the reasons requiring an extension and such other criteria as the planning department shall set forth in the application. (17.72.010(J)(3)(a)-(d)) • Planning commission shall grant the extension if good cause is set forth in the application. (17.72.010(J)(4)) • Planning commission may impose any additional conditions on the architectural approval as a condition of its renewal. (17.72.010(J)(2))

Entitlement Extension Comparison – Coachella Valley Cities

City	Entitlement	Length of Extension	Limit on Number of Extensions	Criteria for Granting Extension
Desert Hot Springs	Planned Development District (PDD)	• Extension shall not exceed the length of time granted with the original development plan approval. (17.36.090(A)) • Development plan shall lapse 5 years from the date of original approval, or within the time otherwise set by the City Council or Planning Commission. (17.36.100(A))	None Specified	• Requires finding that such extension is justified and not detrimental to the public health safety and welfare. (17.36.090(A)) • City Council may approve, approve with conditions, or deny. (17.36.090(B))
Indian Wells	Master Development Plan	1-year (21.06.030)(e))	None Specified	• Requires finding that such extension is justified and not detrimental to the public health safety and welfare. (21.06.030)(e)(2)(i)) • City Council may approve, approve with conditions, or deny. (21.06.030)(e)(2)(ii))
Indio	Site Development Plan	1-year (159.958(B))	No more than 3 (159.958(B))	Applicant must clearly show that extenuating circumstances warrant extension. (159.958(B))
La Quinta	Development Review Permit	2-years (9.200.080(D)(1))	None Specified	Requires finding that such an extension is justified by the circumstances of the project. (9.200.080(D)(1))

Entitlement Extension Comparison – Coachella Valley Cities

City	Entitlement	Length of Extension	Limit on Number of Extensions	Criteria for Granting Extension
Palm Desert	Precise Plan	1-year (25.72.030(K)(2))	No more than 3 (25.72.030(K)(3))	• Applicant must clearly show extenuating circumstances and must clearly state the reasons why construction has not commenced. (25.72.030(K)(2)) • Planning commission may grant additional time extensions…provided that there has not been adopted any changes to zoning regulations that would impact said precise plan. (25.72.030(K)(3))
Rancho Mirage	Preliminary Development Plan (PDP)	1 year (17.42.130)	No more than one, subject to following: If a PDP is processed concurrently with a tentative map…the PDP shall be eligible for extensions in twelve month increments commensurate with any city-approved or state-mandated mandated extension of the tentative map. (17.42.130)	• Requires finding that there have been no changes in circumstances or law which would preclude the reviewing authority from making the findings upon which the original approval was based. (17.68.070(E)) • The extension may be approved, approved with modifications, or disapproved. (17.68.070(E))