BACKGROUND:
On June 24, 2009, the City Council introduced Ordinance 407, which would amend section 17.72.110 of the Municipal Code related to the extension of project approvals.

At the December 10, 2008 City Council meeting, members of the City Council directed City Staff to bring forth a proposed amendment to Solana Beach Municipal Code (SBMC) section 17.72.110 to address the procedure under which requests for project approvals are reviewed.

The ordinance was introduced at the City Council meeting of June 24, 2009. At the meeting the Council directed a clarification be made as follows: An additional period of fifteen days could be provided by the Director for the submittal of additional supporting documents if they were needed to complete the application, but only when the application for an extension had been received at least 60 days before the project approval expiration. The City Attorney has provided the appropriate language to reflect the Council direction in the ordinance (Attachment 1).

DISCUSSION:
On June 24, 2009, Ordinance 407 was introduced and is being presented for final adoption.

The proposed amendments to SBMC section 17.72.110 establishes a comprehensive procedure for application and review for extension of project approval requests. The goal of the proposed revisions is to set forth the criteria under which requests for project approval extensions are submitted and reviewed.

The proposed amendment requires that each extension request be made in writing, no later than sixty (60) days prior to the expiration date. Approvals originally granted by the Director of Community Development (the "Director") may be extended by the Director.
Approvals granted by the View Assessment Committee may only be extended by the City Council. Approvals by the City Council may only be extended by the City Council.

Under the current provisions of the SBMC there is no mechanism under which structure development permits (SDP’s) may be extended. The proposed revision to SBMC 17.72.110(A) extends its applicability to SDPs.

An application for an extension shall include the following information and other information reasonably requested by the Director or City Council:

(i) a detailed factual description and explanation of the reasons why a building permit was not issued prior to the expiration of the original approval or preceding extension and the specific reason(s) the extension is necessary;

(ii) the applicant’s request for a specific time period for the extension;

(iii) a detailed description of the actions that will be taken during the specific requested extension period that justify the requested time period of the extension and that will result in the timely issuance of a building permit for the project before the extension expires; and

(iv) a detailed timeline for the actions that will be taken during the requested extension period.

Under the proposed revisions, the Director or City Council may issue an extension of the approval of a project in their discretion if they make all of the following findings:

1. The applicant has presented facts which establish that the applicant has timely and diligently pursued issuance of a building permit during the twenty-four (24) month period following the issuance of the original approval for the project (or the different period set forth as a condition of approval of the project) or during the then current extension period;

2. Circumstances beyond the applicant’s control have intervened and prevented the applicant from obtaining the issuance of a building permit for the project prior to expiration of the twenty-four (24) month period (or the expiration date established as a condition of the approval) or during the then current extension period;

3. The application for the extension sets forth a reasonable and substantial factual basis for issuance of the extension;

4. There is substantial factual basis to determine that the applicant will be able to perform the actions necessary to obtain issuance of a building permit prior to expiration of the requested extension;

5. The duration of the extension requested by the applicant is not longer than is reasonably necessary to perform the actions necessary to obtain the issuance of a building permit;

6. There have not been any significant changes in the General Plan, applicable Specific Plan, if any, zoning, or character of the area within which the project is located that would cause the approved project to become inconsistent, incompatible, or nonconforming therewith; and
(7) The granting of an extension shall not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity. One or more (but not more than a total of four) extensions may be granted not exceeding a cumulative total of twenty-four (24) months after the date the original approval of the project expires. Extensions of project approvals are discretionary in nature and will be evaluated on a case-by-case basis. Extension requests are not granted automatically. Any approval or denial of an extension request is fact-specific and has no binding effect on other applications and/or projects.

As the proposed amendments to SBMC section 17.70.110 relates to administration exclusively, and extensions cannot be granted if there is any applicable significant changes to the General Plan, Specific Plan, zoning, or character of the area within which the project is located, they are consistent with the general plan and would not be detrimental to the public interest, health, safety, convenience, or welfare of the City. Staff recommends adoption of the ordinance.

CEQA COMPLIANCE STATEMENT:
Not a project as defined by CEQA.

FISCAL IMPACT: N/A

WORKPLAN: N/A

OPTIONS:
• Approve staff recommendation.
• Approve staff recommendation with alternative amendments / modifications.
• Provide direction.

DEPARTMENT RECOMMENDATION:
Staff recommends that the City Council:

1. Make a finding that the proposed amendments to SBMC 17.72.110 is consistent with the general plan and would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.


CITY MANAGER'S RECOMMENDATION:
Approve Department Recommendation

David Ott, City Manager

Attachments:
1. Ordinance 407
2. SBMC 17.70110 (red-lined, strike out version)
ORDINANCE 407

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, AMENDING SECTION 17.72.110 OF THE SOLANA BEACH MUNICIPAL CODE, ALL RELATED TO EXTENSIONS OF PROJECT APPROVALS

WHEREAS, the City Council desires to update the City's regulations governing extension of project approvals; and

WHEREAS, the City Council desires to set forth the criteria under which requests for project approval extensions are submitted, reviewed, and granted.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH DOES ORDAIN AS FOLLOWS:

Section 1. This Ordinance is consistent with the General Plan and will not be detrimental to the public interest, health, safety, convenience or welfare of the City.

Section 2. Section 17.72.110 of the Solana Beach Municipal Code is hereby amended as follows:

17.72.110 Lapse of approval and extensions.

A. Lapse of Approvals. Unless otherwise specified in this title, approvals for development review permits, structure development permits, conditional use permits, variances, and minor exceptions shall lapse (i.e., expire) and become void twenty-four (24) months after the date of the approval, unless a different expiration date is specifically established as a condition of the approval or unless the following action occurs:

1. A building permit is issued in accordance with the approval.

B. Extensions. An extension may be issued prior to the lapse (i.e., expiration) of any approval described in subsection A of this section. There is not an absolute right to receive an extension. Approvals originally granted by the Director of Community Development (the “Director”) may be extended by the Director. Approvals granted by the View Assessment Committee may only be extended by the City Council. Approvals by the City Council may only be extended by the City Council.

1. One or more (but not more than a total of four) extensions may be granted not exceeding a cumulative total of twenty-four (24) months after the date the original approval of the project expires. The duration of an extension shall be in an increment of thirty (30) days. The minimum duration of an extension shall be six (6) months. The maximum duration of an extension shall not be
more than twelve (12) months. The duration of an extension shall be determined at the discretion of the issuing authority.

2. All applications for extensions shall be filed with the Director at least sixty (60) days prior to the expiration date of the approval. Concurrent with the filing of an application for an extension, the applicant shall submit payment of applicable fees and deliver to the Director the documents and information required from time-to-time by the City to provide notice of the application to the owners of all properties within a three hundred (300) foot radius from the project. An additional fifteen (15) days may be provided by the Director for supporting documents and information as needed to deem the application complete.

3. An application for an extension shall include the following information and other information reasonably requested by the Director or City Council:

a. A detailed factual description and explanation of the reasons why a building permit was not issued prior to the expiration of the original approval or preceding extension and the specific reason(s) the extension is necessary; the applicant’s request for a specific time period for the extension;

b. A detailed description of the actions that will be taken during the specific requested extension period that justify the requested time period of the extension and that will result in the timely issuance of a building permit for the project before the extension expires; and

c. A detailed timeline for the actions that will be taken during the requested extension period.

C. The Director or City Council may issue an extension of the approval of a project in their discretion if they make all of the following findings:

1. The applicant has presented facts which establish that the applicant has timely and diligently pursued issuance of a building permit during the twenty-four (24) month period following the issuance of the original approval for the project (or the different period set forth as a condition of approval of the project) or during the then current extension period;

2. Circumstances beyond the applicant’s control have intervened and prevented the applicant from obtaining the issuance of a building permit for the project prior to expiration of the twenty-four (24) month period (or the expiration date established as a condition of the approval) or during the then current extension period;
3. The application for the extension sets forth a reasonable and substantial factual basis for issuance of the extension;

4. There is a substantial factual basis to determine that the applicant will be able to perform the actions necessary to obtain issuance of a building permit prior to expiration of the requested extension;

5. The duration of the extension requested by the applicant is not longer than is reasonably necessary to perform the actions necessary to obtain the issuance of a building permit;

6. There have not been any significant changes in the General Plan, applicable Specific Plan, if any, zoning, or character of the area within which the project is located that would cause the approved project to become inconsistent, incompatible, or nonconforming therewith; and

7. The granting of an extension shall not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

D. If a completed application for an extension is properly filed with the Director prior to the date the approval will lapse (i.e. expire) and legal advertising/scheduling constraints preclude the City from acting on the request prior to the expiration date, the City will take action on the extension request as expeditiously as possible. The applicant’s filing of an application for the extension will toll the expiration of the approval as of the date the application is filed with the City. The application for the extension will remain in effect while pending action by the City on the request, and the issuance of an extension will relate back to the date the application for the extension was filed. While the application for an extension is pending the City will not process any related building or grading plans for the project that is the subject of the approval for which an application for extension has been submitted.
Section 3. The provisions of this ordinance are declared to be severable and if any provision, sentence, clause, section or part of this ordinance is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance or their application to persons and circumstances.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code §36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 24th day of June 2009; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the _____ day of _____, 2009, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

MIKE NICHOLS, Mayor

APPROVED AS TO FORM: ATTEST:

JOHANNA N. CANLAS, City Attorney ANGELA IVEY, City Clerk
17.72.110 Lapse of approval and extensions.

A. Lapse of Approvals. Unless otherwise specified in this title, approvals for development review permits, structure development permits, conditional use permits, variances, and minor exceptions shall lapse (i.e., expire) and become void twenty-four (24) months from after the date of the approval date, unless a different expiration date is specifically established as a condition of the approval and/or unless one of the following actions occurs:

1. A building permit is issued in accordance with the approved entitlement and construction is commenced and diligently pursued toward completion; or

2. A certificate of occupancy is issued.

B. Extensions—approval.

B. Extensions. An extension may be issued prior to the lapse (i.e., expiration) of any approval for projects described in subsection A of this section. There is not an absolute right to receive an extension. Approvals originally granted by the Director of eCommunity Development (the “Director”) may be extended by the Director. Approvals granted by the View Assessment Committee may only be extended by the City Council. Approvals by the City Council may only be extended by the City Council. An

1. One or more (but not more than a total of four) extensions may be granted not exceeding a total of two additional years from cumulative total of twenty-four (24) months after the date the original approval of the project expiration date. All requests expires. The duration of an extension shall be in an increment of thirty (30) days. The minimum duration of an extension shall be six (6) months. The maximum duration of an extension shall not be more than twelve (12) months. The duration of an extension shall be determined at the discretion of the issuing authority.

2. All applications for extensions shall be filed with the Director at least sixty (60) days prior to the expiration date. The Director or city council may extend the approval. Concurrent with the filing of an application for an extension, the applicant shall submit payment of applicable fees and deliver to the Director the documents and information required from time-to-time by the City to provide notice of the application to the owners of all properties within a three hundred (300) foot radius from the project. An additional fifteen (15) days may be provided by the Director for supporting documents and information as needed to deem the application complete.

3. An application for an extension shall include the following information and other information reasonably requested by the Director or City Council:
a. a detailed factual description and explanation of the reasons why a building permit was not issued prior to the expiration of the original approval or preceding extension and the specific reason(s) the extension is necessary;

b. the applicant’s request for a specific time period for the extension;

c. a detailed description of the actions that will be taken during the specific requested extension period that justify the requested time period of the extension and that will result in the timely issuance of a building permit for the project before the extension expires; and

d. a detailed timeline for the actions that will be taken during the requested extension period.

C. The Director or City Council may issue an extension of the approval of a project if they find that there have been no in their discretion if they make all of the following findings:

1. The applicant has presented facts which establish that the applicant has timely and diligently pursued issuance of a building permit during the twenty-four (24) month period following the issuance of the original approval for the project (or the different period set forth as a condition of approval of the project) or during the then current extension period;

2. Circumstances beyond the applicant’s control have intervened and prevented the applicant from obtaining the issuance of a building permit for the project prior to expiration of the twenty-four (24) month period (or the expiration date established as a condition of the approval) or during the then current extension period;

3. The application for the extension sets forth a reasonable and substantial factual basis for issuance of the extension;

4. There is a substantial factual basis to determine that the applicant will be able to perform the actions necessary to obtain issuance of a building permit prior to expiration of the requested extension;

5. The duration of the extension requested by the applicant is not longer than is reasonably necessary to perform the actions necessary to obtain the issuance of a building permit;

6. There have not been any significant changes in the General Plan, applicable Specific Plan, if any, zoning ordinance, or character of the area.
within which the project is located, that would cause the approved project to become inconsistent, incompatible, or nonconforming. Also, the therewith; and

7. The granting of an extension shall not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

D. If a completed application for an extension is properly filed prior to the expiration date and with the Director prior to the date the approval will lapse (i.e. expire) and legal advertising/scheduling constraints preclude the eCity from acting on the request prior to the expiration date, the eCity will take action on the extension request as expeditiously as possible. The project will be considered on hold pending the city action on the request and the city applicant's filing of an application for the extension will toll the expiration of the approval as of the date the application is filed with the City. The application for the extension will remain in effect while pending action by the City on the request, and the issuance of an extension will relate back to the date the application for the extension was filed. While the application for an extension is pending the City will not process any related building or grading plans during this period for the project that is the subject of the approval for which an application for extension has been submitted.

(Ord. 185 § 2, 1993)