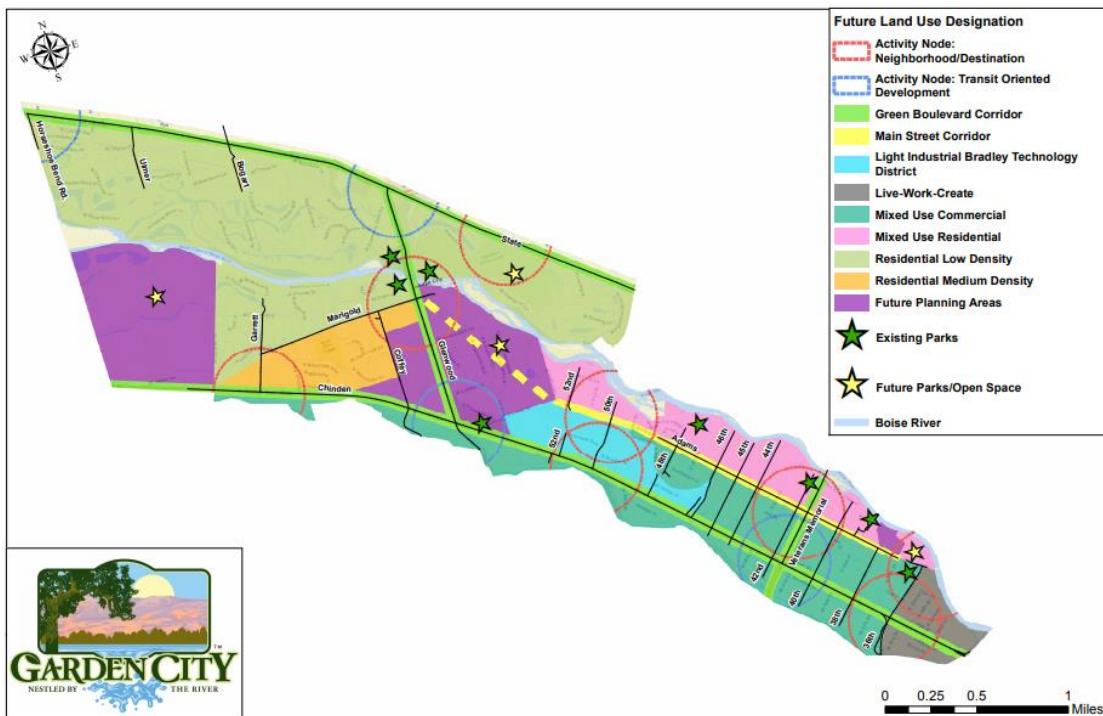


CITY OF GARDEN CITY

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File Number: CPAFY2024-0003
For: Garden City Title 8 Development Code Text Amendment Title 8 Chapter 6
Article A-8: Expiration of Approvals
Applicant: City of Garden City
Report Date: 7/22/2024



Staff Report

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A. Record Documents ([link to all record documents](#))

Record Documents:

1. Noticing Documents
2. Agency Comments: Legal Department
3. Public Comments: n/a
4. Draft Potential Decision Documents:
 - a) Planning and Zoning Commission Recommendation
 - b) City Council
5. Planning and Zoning Commission Recommendation (to be submitted as a late exhibit)
6. Draft Ordinance 1045-24

B. Requested Action

Public Hearing and decision for proposed amendments to Garden City, Title 8, Development Code changing Expiration of Approvals.

C. Recommendation

Due to the timing of the hearings, the formal recommendation will not be in the packet seven days in advance of the hearing. It will be submitted as a late document prior to the hearing.

D. Decision Process

GENERAL PROVISIONS

This application is processed per GCC 8-6A-7 Public Hearing.

REQUIRED DECISIONS: The following decision processes are required for the project as governed by GCC Table 8-6A-1:

Decision	Recommendation Authority	Hearing Date	Decision Authority
Development Code Amendment	Design Review Committee, via consultations Planning and Zoning Commission hearing date: 7/17/2024		City Council hearing date: 7/22/2024

REQUIRED FINDINGS:

For the approval of a Development Code Amendment, the City Council, as the final decision maker must find the application meets the following findings, found in [GCC 8-6B-5](#):

1. The text amendment complies with the applicable provisions of the comprehensive plan;
2. The text amendment shall not be materially detrimental to the public health, safety, and welfare; and

3. The text amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the city.

DECISION:

After hearing the evidence and considering the application, the decision-maker shall make their decision. The decision-maker shall report the facts upon which it based its conclusion, the ordinance, and standards used in evaluating the application, the actions if any, that the applicant could take to obtain a permit, and whether a permit is granted, granted with conditions, or denied. The decision-maker shall make its findings and decision no later than by the next regularly scheduled meeting.

For matters where design is affected by the application, a Design Review consultation is required. The Design Review comments are incorporated into the record for the Planning and Zoning Commission review and consideration.

The Planning and Zoning Commission is a recommending body for this application.

Recommendation:

The Recommending Authority may take one of the following actions:

1. Recommend the City Council grant/ approve the application as applied;
2. Recommend the City Council grant/ approve the application with conditions as drafted or as amended to the City Council;
3. Recommend the City Council deny the application; or
4. Request the applicant return with revised materials for additional review.

The City Council is the final decision maker for this application.

Decision

The City Council may take one of the following actions:

1. Sustain the recommendation as presented to the City Council;
2. Modify the recommendation with conditions;
3. Reject the recommendations; or
4. Remand the application to a recommending body for additional proceedings and findings.

If there is a denial, the state code requires that the decision-maker identify what could be done to obtain approval.

The Appeal of a Decision:

Pursuant to Garden City Code [Table 8-6A-1 Authorities and Processes](#), the Planning and Zoning is a recommending authority. The City Council is the final decision maker for the requested application. The recommendation of the Planning and Zoning Commission does not constitute a final decision on the application.

Every final decision rendered shall be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis under section [67-8003](#), Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section [67-6521](#)(1)(a), Idaho Code, may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by [chapter 52, title 67](#), Idaho Code. Per Idaho Code 67-6511 (2)(a) this provision extends to an amendment of zoning ordinances applicable to an owner's lands.

E. Objective

To amend the Garden City Code, Title 8 Development Code, Expiration of Approvals to: (1) alter the length of the period before application approvals' expire; (2) more cogently stipulate the contingencies under which application approvals expire and those under which application approvals may be extended; (3) make the period before application approvals expire and the availability of an extension of such period based on project type; (4) explicitly address the status of approvals that do not expire as "otherwise specified by this code" or the contingencies under 8-6A-8A.1-4; and (5) pointedly specify the decision-making process expiration decisions undergo.

F. Current Deficiencies

The City has identified the following deficiencies in Garden City Code, Title 8:

The current apparatus governing when approvals expire and which approvals may be extended applies to all approvals equally. This structure affords very little deference to the City to allow the subject projects to continue at their discretion. There also exists no exceptions for conditional use applications, which ought to be subject to more limited timeframes of approval/expiration and not given the opportunity for extension. Further, non-conditional use permit projects in compliance with 8-6A-8B.2-4 should be granted the option to tack on an additional year to their approval's expiration date, so long as they are in compliance with 8-6A-8B.2 and submit a request within a reasonable period of their approval's expiration date.

8-6A-8B in its current form does not specify whether extensions are available after the approval has expired under 8-6A-8A, leaving open the possibility for retroactive extensions. This language combined with instances of granting retroactive extensions has made them an established practice. The ambiguity should be cured to explicitly prohibit the availability of retroactive extensions.

8-6A-8B also, currently, does not address whether the decision to grant an extension is a land use or administrative decision. Were the granting of an extension interpreted to be the former type of decision, it would invoke ancillary requirements for the extension itself from the provisions of the Local Land Use Planning Act (LLUPA).

8-6A-8B.2 states that the minimum requirement to prevent an approval extension is that either "the application [or] the applicable city regulations have . . . changed." However unlikely subsequent changes to the application may be, it was the original intent to simply require that applications in their current forms be compliant with the current city regulations applicable to the application.

The status of approvals is, when the language in 8-6A-8A stating that expiration happens “unless otherwise specified by this code or [any of the 8-6A-8A.1–4 are met]” applies, is ambiguous. If one of the four subsections are met by the subject approval, it does not explicitly state what happens to the approval—whether it is to expire, be extended, etc. The source of this ambiguity likely comes from the lack of a comma after the term “code”. With this comma, it is clearer that 8-6A-8A.1–4 are contingencies that automatically expire an approval.

G. Proposed Changes

The proposed changes are summarized below:

1. Amend 8-6A-8A to have all approvals expire after two years, with a list of exceptions to this general rule. Specifically, that:
 - a. conditional use permit approvals will expire after only one year and not be entitled to an additional tacked-on year for compliance with the existing 8-6A-8B.2–4 language, nor an extension under the current 8-6A-8B;
 - b. all *other* approvals can have an additional year tacked onto their expiration date, so long as they submit a timely request to the appropriate body and the request comes within a certain amount of days before their original expiration date; and
 - c. all non-conditional use permit approvals may be afforded further extensions for terms \leq 1 year at the development service department’s discretion.
2. Either define the terms “expire” and “expiration” in 8-7A-2 to explicitly forego any subsequent action related to an expired item, thereby eliminating any possibility of a retroactive extension;
3. Designate that all grants of any extension are purely administrative;
4. Separate, into a distinct subsection, contingencies that trigger expiration
5. Conflicting sections are repealed.

H. Agency Comments

The Garden City legal department has reviewed this proposal and does not have concerns with the proposal.

I. Public Comment

No public comments were provided as of the drafting of this document.

J. Evaluation of Proposed Changes

There is no identified conflict with any other regulation, adopted policy, the Garden City Comprehensive Plan, or other adopted plan of the city.

K. Code/Policy Review

The below serves as an analysis of applicable provisions of Garden City Code, Title 8, Development Code, and identified applicable policies, plans, and previous approvals.

Code Section	Review Authority	Compliance Issues	Analysis/ Discussion
Title 8, Chapter 1: General Regulations			
Title 8, Chapter 6, Article A: Administration			
<u>8-6A-3 General Application Process</u>	PZ/ CC	Not Determined	The application was reviewed and considered complete within 30 days of submittal, a notice of application acceptance was issued to the applicant, and staff started processing the application.
<u>8-6A-4 Required Application Information</u>	PZ/ CC	Not Determined	A Compliance Statement was received as required.
<u>8-6A-7 Public Hearing Process</u>	PZ/DRC/CC	Not Determined	The applicant provided a neighborhood meeting more than one month and less than three months prior to application submittal. The City provided notifications to agencies with jurisdiction, and ran a 2"X 4" legal notice in the Idaho Statesman, at least 15 days prior to the first hearing, conspicuously posted notice at the Garden City Library, Garden City Hall, online, and Garden City Police Department, and provided notice to radio, newspaper, and television.

Other Items Reviewed	
Plan/Policy	Discussion/ Analysis
<u>Idaho Code 67-6511</u>	The Local Land Use Planning Act requires that code amendments be compliant with the Comprehensive Plan.
<u>Idaho Code 67-6519</u>	Garden City Code and procedures are consistent with The Local Land Use Planning Act Application Granting Process.
<u>Garden City Comprehensive Plan</u>	This proposal applies to all land use designations in the Comprehensive Plan.