



# CITY OF SANTA BARBARA

## ORDINANCE COMMITTEE AGENDA REPORT

**AGENDA DATE:** September 15, 2009

**TO:** Ordinance Committee

**FROM:** Building & Safety and Planning Divisions,  
Community Development Department

**SUBJECT:** Amendments To Regulations Concerning The Undergrounding Of Utilities And Prescribed Time Limits To Rebuild Nonconforming Properties Damaged Or Destroyed Due To Natural Disasters

**RECOMMENDATION:** That the Ordinance Committee:

- A. Review draft ordinance amendments to Municipal Code Chapter 22.38 (Undergrounding of Utilities) and Chapter 28.87 (Reconstruction of Damaged Nonconforming Structures); and
- B. Provide any suggested changes and forward to Council for introduction and adoption.

### DISCUSSION:

The Tea Fire that occurred in November 2008 destroyed 151 homes within the City's boundaries. The Jesusita Fire that burned in May 2009 damaged or destroyed 5 homes within the city. The City has taken several measures to mitigate the impacts of these disasters on property owners and residents attempting to rebuild their homes. These proposals are based on challenges experienced by home owners affected by the Tea and Jesusita Fires as they have gone through the building process.

### RECONSTRUCTION OF DAMAGED, NONCONFORMING STRUCTURES

Under certain conditions, Municipal Code Section 28.87.038 authorizes the reconstruction of nonconforming buildings or structures that are damaged or destroyed as the result of a natural disaster. One of the ordinance conditions is that the reconstruction must commence within one year.

Property owners affected by the Tea and Jesusita Fires are in various stages of the review process. Most owners are not ready to begin construction. Some applicants began quickly and have been working out issues such as modifications, review by the Single Family Design Board, and new building codes. Other property owners have had to take time to deal with insurance issues, explore possible rebuilding options, or recover emotionally from the loss of their home before starting reconstruction.

While staff has made efforts to make the City process work as quickly and smoothly as possible, for the reasons stated above, a large number of qualifying rebuild projects will not meet the one-year deadline. Of the 168 Tea Fire area fire damaged homes, 74 properties have made application for SFDB review, with 56 approved to date. Based on review of applications received to date, planning staff estimates that approximately one-third of all projects involve the need to use Section 28.87.038 to allow non-conformances to continue.

As of the date of this report, 42 of the properties damaged or destroyed in the Tea Fire have submitted applications for a building permit. Even if all these 42 building permits are issued, the majority of Tea Fire homes would still not have obtained a building permit within the first year after the fire.

Therefore, staff recommends adding an additional year to the time allowed to have a building permit issued to rebuild a destroyed, nonconforming structure. Based on experiences following the Tea Fire, staff believes this additional time is necessary and appropriate to allow property owners a reasonable amount of time to assess the damage, work with their insurance company and other governmental agencies, develop their project, and complete the design review and building permit processes.

In addition, staff recommends deleting the requirement that the construction work be completed within two years. The California Building Code already contains provisions regarding the abandonment or expiration of building permits when construction work is not pursued in a diligent fashion. Therefore, a separate provision in this ordinance is probably not necessary and could lead to confusion.

## **UNDERGROUNDING OF UTILITIES**

A second Staff proposal is to allow a property owner, at the discretion of the Community Development Director, to obtain relief from having to underground utilities to a structure that was destroyed in a natural disaster and that had overhead utilities prior to the event.

The Municipal Code as currently written requires property owners to underground their utilities when construction projects are proposed. The ordinance does provide a hardship waiver, but the waiver requires the payment of a substantial in-lieu fee. The ordinance does not provide for relief from the in-lieu fee in the case of reconstruction following a natural disaster.

Staff recommends an amendment to allow for relief from the in-lieu fee requirement in the case of rebuild projects following natural disasters where the affected utilities determine that undergrounding is infeasible. This amendment would allow this relief only if the residence being rebuilt does not exceed the square footage which existed

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before the disaster. If a property owner elects to increase the size of the residence as part of the rebuild project, the property owner would be required to underground the utilities or to pay the in-lieu fee as provided in the Ordinance.

**ATTACHMENT:** Draft Ordinance

**PREPARED BY:** Chris Hansen, Building Inspector/Plan Check Supervisor

**SUBMITTED BY:** Paul Casey, Community Development Director

**APPROVED BY:** City Administrator's Office

ORDINANCE COMMITTEE DISCUSSION DRAFT 9/15/2009  
SHOWING CHANGES FROM EXISTING CODE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING SECTION 22.38.050 OF THE SANTA BARBARA MUNICIPAL CODE REGARDING UTILITY UNDERGROUNDING REQUIREMENTS IN CONNECTION WITH CONSTRUCTION PROJECTS AND AMENDING SECTION 28.87.038 OF THE MUNICIPAL CODE REGARDING THE RECONSTRUCTION OF NONCONFORMING BUILDINGS DAMAGED OR DESTROYED BY NATURAL DISASTERS

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

**Section One.** Section 22.38.050 of the Santa Barbara Municipal Code is amended to read as follows:

**22.38.050 Hardship Waiver; In-Lieu Fees.**

A. PROCEDURE. Whenever the cost of placing utility services underground is so great as to constitute an unreason-able hardship, the applicant for a City building permit or other permit or the owner of an interest in the real property may apply in writing to the Chief of Building and Safety for relief from the provisions of this Chapter. The request shall contain (i) a detailed description of the overhead utility services proposed to be placed underground; (ii) separate itemized cost estimates for construction of the project if the utilities were placed or relocated (a) underground or (b) above ground; and (iii) such other information as needed to determine hardship.

B. INVESTIGATION AND HEARING. The Chief of Building and Safety shall investigate the costs of the project if the utilities were placed underground or relocated above ground and obtain any other necessary information to make a determination on the application. Within twenty (20) days after the filing of the application, the Chief of Building and Safety shall hold a hearing on the matter at a scheduled time and place.

C. UNREASONABLE HARDSHIP; FINDINGS. After considering the request for relief, the Chief of Building and Safety shall determine whether any relief is proper under the circumstances, including, but not limited to, indefinite deferral of the undergrounding requirement. The Chief of Building and Safety shall grant relief only upon the following findings, as applicable:

1. The cost of placing existing utility services underground is either so (i) exorbitant or (ii) disproportionate to the total cost of construction as to constitute an unreasonable hardship;

2. No new utility poles are to be erected;

3. There are other overhead utility lines in the immediate vicinity which would remain even if no waiver were granted;

4. The costs of undergrounding exceeds ten percent (10%) of the project valuation if the project is a subdivision, or five percent (5%) of the project valuation for a project other than a

subdivision, as determined by the currently adopted valuation tables of the Chief of Building and Safety or through use of an estimate provided by the architect, engineer or contractor for the project, whichever is higher;

5. The grant of approval would not be inconsistent with the intent and purposes of this Chapter; ~~and~~

6. Where the project is or includes, as a substantial portion of the work, the installation or replacement of utilities distribution facilities and there are unusual conflicts or other conditions or circumstances which preclude reasonable measures to install utilities underground, the Chief of Building and Safety shall provide such relief as is consistent with the intent and purposes of this Chapter; ~~or~~

7. Where the project involves the reconstruction, restoration or rebuilding of a single family residence which was damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy; provided, however, this finding is only available if the effected utility has determined that the required undergrounding is infeasible or not advisable for technical or maintenance reasons. For purposes of this finding only, the payment of in-lieu fees, as provided in paragraph 3 of Subsection 22.38.050.D below, may be waived by the Community Development Director if the reconstructed single family residence does not exceed the net square footage of the

residence that was legally permitted prior to the damage or destruction.

D. REQUIRED CONDITIONS. If relief is granted by the Chief of Building and Safety, the following conditions shall be imposed, as applicable:

1. The owner must execute and cause to be recorded, on forms to be provided by the City, a waiver of the right of protest to the formation of an assessment district proposed for the purpose of undergrounding utilities; and

2. An electric meter enclosure or other enclosure suitable for both overhead and underground utilities is to be installed; and

3. The owner shall pay the City an in-lieu fee of ten percent (10%) of the project valuation if the project is a subdivision and (i) the subdivision will contain more than two (2) new lots, or (ii) more than two (2) dwellings exist or may legally be constructed within the subdivision or (iii) the property is not zoned solely for residential uses.

TheAlternatively, the owner shall pay the City an in-lieu fee of five percent (5%) of the project valuation for other subdivisions or a project other than a subdivision. Project valuation shall be determined utilizing valuation tables or through use of an estimate provided by the architect, engineer or contractor for the project, whichever is higher. The fees

shall be deposited in a fund to be used only for undergrounding of utilities in the City and purposes directly related thereto. For subdivisions, the in-lieu fees shall be paid to the City prior to approval of a Final Map or Parcel Map. For other projects, the in-lieu fee shall be paid to the City prior to the issuance of the building permit for the project, unless a building permit is not required for the project, in which event the fee shall be paid to the City within thirty (30) days after the granting of the relief is final.

4. As to each subdivision for which a five percent (5%) in-lieu fee will be paid, an agreement approved by the City Attorney shall be recorded which (i) prohibits more than two lots within the property being subdivided, (ii) restricts the use of the subdivided property to residential uses, and (iii) prohibits the construction, maintenance or use of more than two dwellings on the subdivided property. The agreement shall require that if there is not compliance with the above conditions and restrictions, the Owner, at its sole cost, shall cause all utilities within the property that is subdivided to be placed underground.

5. Where the project is or includes, as a substantial portion of the work, the installation or replacement of utilities distribution facilities and there are unusual conflicts or other conditions or circumstances which preclude

reasonable measures to install utilities underground, the Chief of Building and Safety shall provide, as a condition of any relief from requirements of this Chapter, an in lieu payment or other commitment sufficient to insure placement of overhead conduit underground to an extent which is equivalent to the extent of the conduit for which relief is granted.

E. INAPPLICABILITY TO SUBDIVISION APPROVALS. This Section does not authorize the waiver of any subdivision map condition related to undergrounding of utilities except as authorized by Sections 22.38.050 D and 27.08.025 of the Code.

F. TERMINATION OF AUTHORITY. The authority to grant relief pursuant to this Section or Section 22.38.060 shall terminate should a court of competent jurisdiction determine that the City may not lawfully impose or collect the in-lieu fee specified in Subsection D.

**Section Two.** Section 28.87.038 of the Santa Barbara Municipal Code is amended to read as follows:

**28.87.038 Reconstruction of Damaged Nonconforming Structures.**

A. Nonresidential Structures. A nonconforming building or structure used for nonresidential purposes, which is damaged or partially destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy to the extent of not more than seventy-five percent (75%) of its market value

immediately prior to the damage, as determined by the Community Development Director or designee, may be restored and the occupancy or use of such building, structure or part thereof which existed at the time of such partial destruction may be continued or resumed, provided that reconstruction, restoration or rebuilding shall commence within a period of one (1) year of the occurrence of the damage or destruction. The applicant shall demonstrate due diligence to complete the proposed reconstruction as determined by the Community Development Director. In the event such damage or destruction exceeds seventy-five percent (75%) of the market value of such nonconforming building or structure immediately prior to the damage, as determined by the Community Development Director or designee, no repairs or reconstruction shall be made unless every portion of such building is made to conform to all the regulations for new buildings in the zone in which it is located. The Community Development Director or designee may require the applicant to have the property appraised by a licensed real estate appraiser in order to determine the market value of such nonconforming building or structure immediately prior to the damage.

B. Residential Structures. Any nonconforming building or structure used for residential purposes, which is damaged or destroyed by fire, flood, wind, earthquake or other calamity or

act of God or the public enemy may be restored or rebuilt and the occupancy and use may be continued or resumed provided the following conditions are met:

1. The ~~amount of inside space (square footage)~~ net square footage of the replacement building or structure shall not ~~be greater than the amount which existed in the damaged or destroyed buildings~~ exceed the net square footage of the building or structure that was legally permitted prior to the damage or destruction;

2. The number of dwelling units shall be not greater than the number existing prior to the damage or destruction;

3. In R-3, R-4, R-O, C-1, C-2, and C-M zones, the number of bedrooms per dwelling unit shall not be greater than the number existing prior to the damage or destruction;

4. The building setbacks shall not be less than those which existed prior to the damage or destruction;

5. The number of parking spaces shall be no less than the number of parking spaces in existence prior to the damage or destruction;

6. The building, plot and landscaping plans shall be reviewed and approved by the Architectural Board of Review, or the Historic Landmarks Commission if the property is located within El Pueblo Viejo Landmark District or another landmark district or if the structure is a designated City Landmark, or

the City Council on appeal, if such review would normally be required, except as allowed in this Section;

7. Any such reconstruction, restoration or rebuilding shall conform to all applicable adopted Uniform Codes in effect at the time of reconstruction, unless otherwise excused from compliance as a historic structure, pursuant to the Uniform Code for Building Conservation;

8. All permits required under the California Building Code as adopted and amended by the City shall be obtained. The Community Development Director or designee shall review and determine prior to issuance of said permits that the plans conform to the above;

9. Plans existing in the City's archives shall be used to determine the size, location, use, and configuration of nonconforming buildings and structures. Notwithstanding anything to the contrary above, if a property owner proposes to rebuild the building or structure in accordance with the City's archive plans, a building permit shall be the only required permit or approval. However, any exterior alterations shall be subject to design review, if such review would normally be required by the Santa Barbara Municipal Code. If plans do not exist in the City's archives, the City shall send a notice to all owners of property within 100 feet of the subject property, advising them of the details of the applicant's request to

rebuild, and requesting confirmation of the size, location, use, and configuration of the nonconforming building that is proposed to be rebuilt. The public comment period shall be not less than 10 calendar days as calculated from the date that the notice was mailed.

10. The building permit for the reconstruction, restoration or rebuilding ~~shall commence~~ must be issued within ~~a period of one (1) year, and completed within two (2) years. The applicant shall demonstrate due diligence to complete the proposed reconstruction as determined by the Community Development Director~~ two (2) years of the occurrence of the damage or destruction.

**Section Three.** The provisions of this ordinance are intended to apply to the reconstruction, restoration, or rebuilding of any building or structure which was damaged or destroyed in the November 2008 Tea Fire or the May 2009 Jesusita Fire.