

S505
10/30

GRACE C. LOWENBERG
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

DATE: October 26, 2007

TO: Mayor

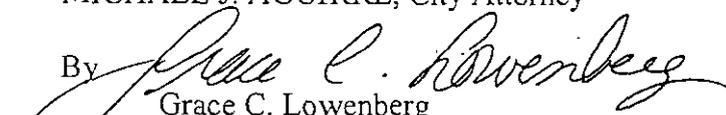
FROM: City Attorney

SUBJECT: 1472 for Waiver of City Fees Associated with City of San Diego 2007
Wildfire Damage

Per your Office's urgent request, we have reviewed the attached 1472 and signed it. However, we have concerns as to whether the proposed actions, as presented, may violate the City Charter. Specifically, as proposed, the actions would involve the expenditure of funds without an identified funding source and without the required Auditor's Certificate. We are confident that these issues can be resolved and have therefore signed off on the 1472 contingent on these matters being resolved. We have provided to you a resolution in draft form only, unsigned by our Office, as we expect that a legal solution that will achieve the desired ends may involve modification of the resolution. We will, of course, immediately sign the final document once the issues are resolved.

We recognize the urgency of providing this important relief to San Diego's fire victims, and look forward to cooperating with you to ensure this is satisfactorily resolved in time for Council action next week.

MICHAEL J. AGUIRRE, City Attorney

By 
Grace C. Lowenberg
Deputy City Attorney

GCL:gcl

cc ~~Jay Goldstone~~, Chief Operating Officer
Elmer Heap, Jr. Director Environmental Services Department
Patti Boekamp, Director Development Services Department



S505
10/30

THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 26, 2007 REPORT NO. 07-175
ATTENTION: Council President and City Council
Docket of October 30, 2007
SUBJECT: Waiver of City Fees Associated with City of San Diego 2007
Wildfire Damage

REQUESTED ACTION:

Should the City Council waive building permit and demolition permit fees and provide vouchers for recycling of source separated concrete slabs and bricks, and for disposal of unrecyclable debris associated with the demolition of fire damaged or destroyed building property within the City of San Diego (City)?

STAFF RECOMMENDATIONS:

1. Adopt the resolution waiving demolition permit and building permit fees and provide vouchers for recycling of source separated concrete slabs and bricks, and for disposal of unrecyclable debris associated with the demolition of fire damaged or destroyed building property within the City.
2. Adopt the resolution designating fire reconstruction permit applications resulting from the 2007 wildfires to be the highest priority for expedited development review of building permits in the City.

SUMMARY:

The recent wildfires resulted in significant property destruction and damage within the City of San Diego. Latest damage assessments indicate that 362 homes were destroyed and another 62 homes sustained fire damage in Rancho Bernardo; property damage was also sustained in the San Pasqual Valley.

Following the Cedar Fire, the City Council adopted Resolution R-298600 which waived demolition permit fees and waste disposal fees at the Miramar Landfill, and reimbursed costs of recycling concrete slabs and bricks, all associated with the demolition of fire damaged or destroyed buildings within the City. The Resolution also waived building permit fees and gave priority to permit applications for reconstruction of such buildings. The General Fund reimbursed the Development Services Department (DSD) and Environmental Services Department (ESD) Enterprise funds for this waiver and reimbursement program. The same permit fee waivers are being recommended for those property owners affected by this year's fire. Similar relief is proposed for recycling mixed construction and demolition waste, concrete slabs

and bricks, and unrecyclable debris generated as a result of the demolition related to the damaged residences, with a new emphasis on recycling.

DISCUSSION:

The attached resolution provides for waiver of demolition permit fees, a voucher program for waste disposal fees at the Miramar Landfill, recycling fees at City approved facilities, and waiver of building permit fees associated with the demolition of fire damaged or destroyed buildings within the City.

Building Permit and Demolition Permit Fees:

Development impact fees, water and sewer connection fees, and capacity fees will not be charged for new structures replacing those destroyed in the fire because there are no new development impacts to the community and reconstructed buildings can use their existing water and sewer connection. Fire reconstruction related demolition permits will be administered as a no-charge administrative process.

Waste Disposal and Recycling Vouchers:

The attached resolution provides for the provision of vouchers for waste disposal fees at the Miramar Landfill, and recycling costs at City approved facilities associated with the demolition of fire damaged or destroyed building property within the City of San Diego. Unless otherwise directed by the City Council, these vouchers will only apply to fire-related debris generated in the City of San Diego during the demolition phase.

Given the expected volume of concrete slab and brick debris which can be recycled at several facilities around the region; and soft, above slab debris which can be recycled at a recently opened mixed C & D recycling facility; recycling of these materials should be implemented in conjunction with any disposal fee voucher for Miramar Landfill. Currently, it is common practice in the industry to recycle these materials at privately operated facilities. Providing only disposal fee waivers for C & D waste disposed to Miramar Landfill will reduce the incentive for haulers to recycle these materials at local recycling facilities. In order to demonstrate good faith efforts to comply with State waste diversion mandates and to comply with its own C & D policy, the City will provide vouchers to offset the cost paid at approved facilities to recycle these materials and not allow the material to be disposed of in the City's landfill. The ESD is coordinating with private concrete recyclers to determine if they will provide free recycling for concrete slabs and chimney, garden, and wall paver materials delivered to their facilities.

A process will be developed and implemented by ESD in cooperation with DSD to ensure that vouchers are distributed at the time demolition permits are issued. Recycling of these materials must occur in order for the City to continue to demonstrate a good faith effort to achieve state waste diversion mandates and avoid penalties for non-compliance. State mandates require the City to divert 50 percent of the waste generated in the City from disposal. Currently, the City's diversion rate is 52 percent. If the 50 percent diversion is not maintained, the City faces fines of up to \$10,000 per day. Consequently, the City should encourage the diversion of recyclable wastes to the maximum extent possible. It is recommended that the City provide recycling vouchers as the most cost effective way to accomplish this portion of the fee waiver proposal.

Estimated Costs:

Building Permit and Demolition Permit Fees:

Based on the results of the Cedar fire, the estimated cost to waive all fire reconstruction building permits and building demolition permits for 362 destroyed homes and 62 damaged homes is estimated to be \$500,000 in Fiscal Year (FY) 2008 and \$200,000 in FY 2009 for a total of \$700,000.

The replacement of destroyed homes with an equivalent structure will not require any discretionary permits. New homes that exceed the equivalency of the previous structure (e.g. substantial increase in floor area, replacement of previous single story structure with a multistory structure) could trigger the need for a discretionary permit. Any new discretionary permit costs associated with proposed construction that is not in substantial conformance with prior discretionary permits are not included in the fee waiver.

Waste Disposal and Recycling Vouchers:

Based on the results of the demolition of homes damaged and destroyed by the Cedar fires of 2003, it is estimated that from each destroyed and damaged home there will be approximately 90 tons of concrete and brick (including slabs, chimneys, garden walls and pavers), which will generate 38,160 tons of concrete; 41 tons per home of above slab debris, which will generate approximately 17,380 tons of recyclable mixed C&D; and 5 tons of un-recyclable waste, which will generate 2,120 tons of waste disposed. Using a mixed C & D recycling fee of \$65/ton, a concrete recycling fee of \$9.26/ton, and a disposal fee of \$43.00/ton this equates to approximately \$1.3 million to \$1.6 million total impact for FY 2008-09. The range is predicated on finalizing the extent of the participation of the private sector in providing recycling discounts.

Funding Sources:

The Development Services building permit fee and Environmental Services refuse disposal fees are Enterprise Fund fees. Development Services Department is financed and operated by development fees in accordance with Government Code sections 66000 through 66025. The Refuse Disposal and Recycling Enterprise Funds have been established to provide for specific services funded directly by fees to users limited by San Diego Municipal Code section 66.0127(c)(4) and Government Code section 66016. Payment of fees by some users cannot be used to subsidize services provided to other users. Waiving the building and waste disposal fees requires reimbursement by the General Fund or other sources. Staff will return to City Council to request that funds be appropriated from General Fund reserves or other sources to reimburse the Development Services and Environmental Services funds for revenue not realized due to the waiver of fees. The Mayor will work with the Auditor and Comptroller and other government agencies to explore additional funding sources.

Additionally, the proposed waiver of fees for property owners affected by wildfires has raised a similar question about assistance to those property owners recently impacted by the Mount Soledad landslides. Staff will revisit this issue once additional technical information is received and will report back to City Council.

FISCAL CONSIDERATIONS:

Based on the results of the Cedar fire, it is estimated that the combined cost of waiving building and demolition permit fees and the voucher program for waste disposal fees and recycling costs totals \$ 2.3 million. The estimated impact by fiscal year is \$1.7 million in FY 2008 and \$580,000 in FY 2009.

Plan check and building inspection services due to the reconstruction of fire destroyed buildings will be provided by current staff.

PREVIOUS COUNCIL/COMMITTEE ACTION:

None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH:

None.

ENVIRONMENTAL IMPACT:

The proposed waiver of permit and waste disposal fees are exempt from CEQA Pursuant to Section §15061 (b) (3).

CONCLUSION:

The passage of the attached resolution will provide all building owners who were affected by the 2007 wildfires relief from building and demolition permit costs needed to rebuild or repair buildings. It will also establish a voucher program for waste disposal and recycling costs for the demolition of buildings that were destroyed or damaged within the City.

Based on City Council approval, staff will work closely with affected property owners and any homeowners associations in each affected community to assist in the rebuilding process.

ALTERNATIVE:

Do not waive fees and provide recycling vouchers for all owners of fire destroyed or damaged structures but instead waive fees only for homeowners who are uninsured or underinsured. This will require an amendment to the attached resolution.

Respectfully submitted,

Patti Boekeamp
Development Services Director

Elmer Heap
Environmental Services Director

Approved: William Anderson, FAICP
Deputy Chief Operating Officer

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): DEVELOPMENT SERVICES/ENVIRONMENTAL SERVICES DEPARTMENTS	3. DATE: 10/25/2007
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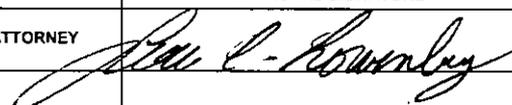
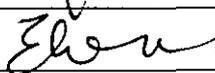
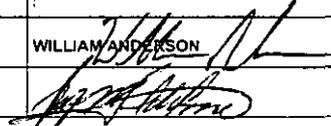
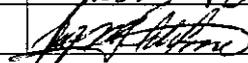
4. SUBJECT:
WAIVER OF CITY FEES ASSOCIATED WITH CITY OF SAN DIEGO 2007 WILDFIRE DAMAGE

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.): Kelly Broughton (619) 557-7983, MS 401	6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.): Patti Boekamp, (619) 236-6274	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>
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8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST: Estimated General Fund impact for Fiscal Year 2008 is \$1.7 million for waiver of demolition permit, building permit, and voucher program for waste disposal and recycling. Estimated Impact for Fiscal Year 2009 is \$580,000.
DEPT.	1300				
ORGANIZATION	1111				
OBJECT ACCOUNT					
JOB ORDER	671100				
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	PATTI BOEKAMP 	10/24/07	8	CITY ATTORNEY		10/24/07
2	DEPARTMENT DIRECTOR	ELMER HEAP 	10/24/07	9			
3				10			
4				11	ORIG. DEPT		
5					DOCKET COORD: _____ COUNCIL LIAISON _____		
6	DEPUTY CHIEF	WILLIAM ANDERSON 	10-26-07	<input checked="" type="checkbox"/>	COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7	COO		10/25/07			<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____	

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

Resolution

11A. STAFF RECOMMENDATIONS:

1. Adopt the resolution waiving demolition permit and building permit fees and provide vouchers for recycling of source separated concrete slabs and bricks, and for disposal of un-recyclable debris associated with the demolition of fire damaged or destroyed building property within the City of San Diego.
2. Adopt the resolution designating fire reconstruction permit applications resulting from the 2007 wildfires to be the highest priority for expedited development review of building permits in the City of San Diego.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 5.

COMMUNITY AREA(S): RANCHO BERNARDO.

ENVIRONMENTAL IMPACT: This activity is exempt from CEQA pursuant to Section 15061 (b) (3).

FISCAL CONSIDERATIONS: It is estimated that the combined cost of waiving building and demolition permit fees, and voucher program for waste disposal and recycling costs totals \$2.3 million. The estimated impact by fiscal year is \$1.7 million in FY 2008 and \$580,00 in FY 2009.

Some state and county fees which are charged on a per ton basis will still be incurred and will have to be paid from the Refuse Disposal Fund.

Plan check and building inspection services due to the reconstruction of fire destroyed buildings will be provided by current staff.

CITY CLERK INSTRUCTIONS: None.

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE CITY OF SAN DIEGO WAIVING DEMOLITION PERMIT AND BUILDING PERMIT FEES FOR STRUCTURES AFFECTED BY THE WILDFIRES OF OCTOBER 2007; ESTABLISHING A VOUCHER PROGRAM FOR DISPOSAL AND RECYCLING OF FIRE-RELATED DEBRIS; AND REQUIRING THE IDENTIFICATION OF FUNDS TO REIMBURSE FOR WAIVED FEES AND VOUCHER PROGRAM.

WHEREAS, on October 22-24, 2007, the Witch Creek fire burned the community of Rancho Bernardo; and

WHEREAS, City of San Diego residents and property owners had their homes destroyed or damaged by these wildfires; and

WHEREAS, at least 424 single family homes were destroyed or damaged by these wildfires; and

WHEREAS, many of the persons suffering property losses from the wildfires will not be compensated or will be under compensated for the reconstruction of their homes; and

WHEREAS, there are few, if any, state or federal programs that provide grant assistance to individuals for building permits, demolition permits or waste disposal fees associated with reconstruction due to wildfires; and

WHEREAS, granting a fee waiver to permit applicants for building permits and demolition permits will allow victims of the wildfires to expeditiously obtain building permits and begin the rebuilding of their homes or businesses; and

WHEREAS, waiving demolition permit fees and providing vouchers for waste disposal and recycling will facilitate and encourage the expeditious removal of debris and other fire-related waste that could otherwise remain on site; and

WHEREAS, the expeditious removal of debris and other fire related waste will prevent the washing away of the waste into the City's storm drain system; and

WHEREAS, the expeditious rebuilding of homes and businesses in the City of San Diego will restore a sense of community and well-being within the neighborhoods destroyed by the wildfires; and

WHEREAS, concrete slabs and bricks are recyclable at a relatively low cost per ton at private facilities located near fire-damaged areas within the City, and recycling of these materials should be encouraged in order to demonstrate good faith efforts to comply with State of California waste diversion mandates; and

WHEREAS, a facility that accepts mixed construction and demolition debris is open and operating in Lemon Grove just outside City limits; and

WHEREAS, in accordance with the People's Ordinance, codified at San Diego Municipal Code section 66.0127(c)(4) and Government Code section 66016, this one time fee waiver and voucher program will not require an increase in disposal fees for other Miramar Landfill users, if the Environmental Services Department is fully reimbursed from the General Fund or other source; and

WHEREAS, in accordance with Government Code section 66005, this one time fee waiver to permit applicants and users will not require an increase of fees for other permits or users, if the Development Services Department is fully reimbursed from the General Fund or other source; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Council hereby waives demolition fees for applicants who are demolishing structures damaged in the October 2007 wildfires.

2. That the Council hereby waives building permit fees for applicants who are seeking to reconstruct the same or substantially the same structure destroyed or damaged in the October 2007 wildfires.

3. That the Mayor is hereby authorized to establish and implement a voucher program to provide vouchers for (a) recycling mixed C&D waste and concrete slabs and bricks at recycling facilities approved by the City and (b) disposal of unrecyclable debris to the Miramar Landfill (i.e., Tipping Fee, AB939 fee, and Refuse Collector Business Tax or Franchise Fee), for waste generated within the City of San Diego from properties destroyed or damaged in the October 2007 wildfires.

4. That the Council hereby authorizes the Mayor, consistent with the provisions of this resolution, to refund persons who have paid demolition permit fees, building permit fees, waste disposal fees at the Miramar Landfill or recycling fees at City-approved recycling facilities prior to this action of the City Council waiving said fees and establishing the voucher program.

5. That the Mayor is required to return to Council within thirty days with an action to identify and to appropriate funds to reimburse the Development Services Enterprise Fund, Number 1300; the Environmental Services Refuse Disposal Fund, Number 41200, and the Recycling Enterprise Fund, Number 41210, for waiver of demolition and building permit fees and for providing waste disposal and recycling vouchers, as authorized herein.

6. That the above activity is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility this activity will cause a significant impact on the environment.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
10/26/07
Aud.Cert:
Or.Dept:DSD/ESD
R-2008-373

I hereby certify that the foregoing resolution was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor