



CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

Short Name/Subject Urgency Ordinance Adding Disaster Recovery Chapter to the Zoning Code	Board Meeting Date October 20, 2015	Agenda Number 2
Dept: County Counsel Contact: Megan Stedtfeld Phone: 209/754-6314	Supervisorial District Number Countywide	
Published Notice Required? No Public Hearing Required? No		Estimated Time: 30 Minutes
Type of Document? Ordinance PowerPoint Presentation Included? No Budget Transfer Included (Must be signed by Auditor)? No Complete Agreement Required? No Position Allocation Change? No		

RECOMMENDATION:

Urgency Ordinance Adding Disaster Recovery Chapter to the Zoning Code (4/5 Vote Required)

DISCUSSION/SUMMARY:

During a local emergency, Government Code §8634 allows a Board of Supervisors to craft orders and regulations necessary to provide for the protection of life and property and the preservation of public order and safety. These orders must be “in writing” and must be “given widespread publicity and notice”.

Government Code §25123(d) further allow ordinances to take effect immediately upon adoption by a 4/5 vote of the Board “for the immediate preservation of the public peace, health, or safety”. This can be done with a declaration of facts describing the urgency, which has been incorporated into the proposed resolution.

The Calaveras County Code currently has no provision allowing residents who have lost their homes in a disaster to live in temporary housing either on-site or off-site for a period of time long enough to allow adequate time for burn site clean-up and rebuilding of homes. As winter approaches, many residents who lost homes would be forced to relocate far away from their land due to the shortage of affordable short- or long-term rentals within the County. This would increase fuel expenses and make it very difficult for these residents to rebuild their homes in a timely fashion.

Staff therefore proposes an urgency ordinance temporarily relaxing the County’s standards for in-County short-term housing both on- and off-site during declared local emergencies in which residents’ homes have been destroyed. Per the terms of the proposed ordinance, the relaxation of standards would only occur in the event of a declared local emergency and would be in place for a maximum of three years after the onset of the disaster. Also, if the terms of an executive order issued by the Governor conflicted with the ordinance, the executive order would prevail.

The proposed ordinance also recognizes the significant public health hazards associated with exposure to fire-generated debris and ash and provides standards for site clean-up.

This urgency ordinance could later be reintroduced as a permanent ordinance by vetting it through normal procedural channels.

FINANCING:

The ordinance itself should have no impact to the General Fund, as it involves a temporary relaxation of standards. Conduct that may have given rise to an enforceable code violation would be temporarily legitimized through adoption of this ordinance.

ALTERNATIVES:

The Board could reject this urgency measure, in which case residents would be held to status quo restrictions related to temporary habitation within the County. The Board could also reject passage of this ordinance as an emergency measure, in which case there would be a significant delay while the ordinance is vetted through normal procedural channels before it takes effect.

OTHER AGENCY INVOLVEMENT:

Planning, Environmental Health

APPROVED BY:


Julie Moss-Lewis, Deputy County Counsel

10/9/2015


Megan Stedfeld, County Counsel

10/9/2015


Shirley Ryan, CAO

10/9/2015

BOARD OF SUPERVISORS, COUNTY OF CALAVERAS
STATE OF CALIFORNIA
October 20, 2015

Ordinance
No. 3060

**URGENCY MEASURE AMENDING TITLE 17: THE
CALAVERAS COUNTY ZONING CODE TO ADD POST-
DISASTER RECOVERY PROVISIONS**

Ordinance as Amended

SECTION I: The Board of Supervisors finds:

1. The proposed regulations, promulgated during a declared state of local, state, and federal emergency as well as a declared local health emergency, are necessary to provide for the protection of life, health, and property and the protection of public order and safety, thereby meeting the requirements for emergency regulations under Government Code §8634.

Evidence: 475 residences were destroyed in Calaveras County as a result of the Butte Fire, and there is currently no provision of the County Code that provides an expedited process for residents whose homes were destroyed in a disaster to lawfully obtain or erect safe temporary shelter within the County while working to rebuild or repair their permanent homes. A local state of emergency, local health emergency, Gubernatorial declaration of emergency, and Presidential declaration of emergency have all been issued for Calaveras County as a result of the destruction caused by the Butte Fire, and all are currently still in effect. The existing supply of rental properties within the County is inadequate to meet the needs of residents rendered homeless by the Butte Fire, and many of those who lost their homes need a safe place to shelter or relocate until hazardous debris is removed from the burn site and until they have rebuilt their homes. The critical need for additional emergency shelter options is heightened by the fact that the winter months are approaching. This ordinance would temporarily relax zoning regulations for temporary structures and shelters on disaster-affected properties and also facilitate the creation of temporary off-site disaster shelters within the County. This ordinance also provides standards for removing hazardous and toxic debris from disaster sites, which are necessary to protect the public health during the clean-up and reconstruction process.

Evidence: The Zoning Code generally prohibits residents from sheltering in temporary structures on their properties for an extended period of time. This ordinance would amend the zoning code to allow residents whose homes were destroyed in a formally declared disaster to erect and reside in temporary housing on their parcels for an extended (albeit temporary) period of time to allow them to rebuild their permanent homes. Failing to allow this would force many residents to seek shelter wherever they could find it and wherever they could afford it, which would in most cases require them to travel great distances to and from the burn site they are trying to rebuild on-which may be unaffordable for affected residents and exacerbate the length of time they would remain homeless. At the same time, failing to impose *any* standards for temporary on-site shelters would exacerbate the declared health risks associated with hazardous debris by increasing the chances of dangerous exposure. For these reasons, regulations allowing for but also regulating temporary on-site housing for disaster-affected residents are necessary to mitigate an immediate threat to the public health, safety, and welfare.

Evidence: The Zoning Code also restricts the locations on which emergency shelters can be built and requires them to comply with numerous non-discretionary standards. This

ordinance would relax the locational and performance standards for temporary shelters so as to incentivize their construction by government agencies and non-profit corporations. These alternative shelter options are critical for those disaster-affected residents for whom residing on-site is infeasible but also have an immediate need to live in relative proximity to the burn site so that they can effectively rebuild their permanent homes.

2. The ordinance is exempt from the California Environmental Quality Act (CEQA) as an emergency project.

Evidence: Section 15269(a) and (b) exempts from the requirements of CEQA projects to maintain, repair, restore, demolish, or replace property of facilities destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor. A state of emergency has been declared for Calaveras County as a result of the Butte Fire and the ordinance facilitates the restoration and replacement of destroyed property. Subsection (c) exempts specific actions necessary to prevent or mitigate an emergency. This ordinance mitigates the emergency caused by the Butte Fire by ensuring proper clean-up of damaged structures and hazardous wastes and debris caused by the fire, and provides for emergency housing for those displaced by the emergency. The provisions for emergency housing are temporary, and are not long-term projects.

3. The proposed Code Amendments are consistent with the General Plan.

Evidence: This ordinance provides for the continued use and reconstruction of legally permitted uses and structures while protecting the public health, safety, and welfare, and assuring that services and facilities are available for persons affected by the Butte who need temporary housing. The following goals and implementation measures specifically address the purpose of this ordinance:

- A. Goal II-22, Policy II-22A, and Implementation Measure II-22A-2 provide for the continued use of legally established uses. The ordinance provides for reconstruction and replacement of non-conforming structures under zoning standards in place at the time the use was established or structure built.
 - B. Goal II-25 requires adequate disposal of sewage to protect water supplies. The ordinance requires connection to public sewer, an adequate septic system, or other means of sewage disposal acceptable to the County.
 - C. Goal VII-5 directs the County to protect life and property from hazardous materials. The ordinance requires certification that the site is free of hazardous wastes resulting from the Butte Fire prior to reconstruction and/or temporary housing being placed on site and that hazardous wastes are properly disposed of.
 - D. Goal VII-8 directs the County to protect the general safety of County residents, property owners and visitors. This ordinance is intended to provide safe and adequate housing for residents who lost homes due to the Butte Fire while protecting them and other residents by ensuring a safe water supply, adequate sewage disposal, and sites free of hazardous wastes.
 - E. Goal I-3 intends to improve the economy of Calaveras County. Allowing residents to return to their property in a timely manner and reconstruct their homes lost due to the Butte Fire will improve the economy of the County by putting people back to work and ensuring those that lost homes can remain in the community.
4. The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or general welfare of the County.

Evidence: The ordinance promotes the health, safety, and general welfare of County residents by providing an expedited process to help County residents whose homes were damaged or destroyed in a disaster obtain or erect safe temporary housing in-county while repairing or rebuilding their homes and clearing hazardous debris.

5. The proposed amendments are internally consistent with other applicable provisions of Title 17.

Evidence: The ordinance amendment has been prepared by County Planning Department staff and reviewed by County Counsel to ensure that internal consistency of the Zoning Ordinance is maintained. By its terms, the ordinance only takes effects in the wake of a declared local state of emergency, at which point it supersedes any conflicting provisions of the zoning code for a limited period of time.

6. This ordinance is declared an urgency measure for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Paragraph 1 above, and it shall take effect immediately upon its adoption by a four-fifths vote of the Board of Supervisors pursuant to Government Code section 25123(d). This ordinance shall continue in effect from the date of its adoption through and including October 13, 2017 and shall thereafter be of no further force and effect. The clerk shall cause this ordinance to be published as required by law.

SECTION II:

Chapter 17.93 of Title 17, the Calaveras County Zoning Code, is hereby added as follows:

Chapter 17.93 Post-Disaster Recovery

17.93.010 Purpose

The purpose of this chapter is to facilitate the establishment of temporary housing for residents who have lost their homes due to a disaster and to establish procedures for rebuilding structures damaged or destroyed as a result of a disaster while protecting the public health and safety of the residents within the declared disaster area.

17.93.020 Declaration of emergency; duration

The provisions of this Chapter are applicable for a period of two years following each disaster for which a local emergency has been declared by the Board and shall take precedence over any conflicting ordinances in the Calaveras County Code that would apply in the absence of the emergency. By resolution of the Board Of Supervisors, the provisions of this Chapter may be extended for an additional year.

17.93.030 Definitions

The following terms as used in this Chapter shall have the following meanings, unless the context in which a term is used plainly requires another meaning:

- A. "Disaster" means a wildfire, flood, earthquake, or other natural or human-caused event that damages or destroys dwellings or other property and displaces people and which forms the basis for a declared local state of emergency.
- B. "Footprint" means the area that falls directly beneath and shares the perimeter of a

structure and any area in which debris from a destroyed building remained after the disaster.

17.93.040 Temporary on-site housing

Temporary replacement housing consisting of a mobile home, manufactured home, modular unit, recreational vehicle, or similar temporary shelter located on a parcel which sustained damage as a result of the disaster shall be authorized by the Building Official or designee subject to the following provisions:

- A. Temporary replacement housing authorized pursuant to this Chapter shall be removed within two years of the date of the Board action declaring the local emergency, unless a one-year extension is granted by the Board of Supervisors pursuant to 17.93.020, in which case it shall be removed within three years.
- B. Temporary replacement housing shall meet the following installation standards:
 1. The land owner shall provide proof of ownership and proof that a permitted residence was destroyed as a result of the disaster. Proof that a residence was destroyed as a result of the disaster may be provided in the form of a prior finalized building permit, assessor's records, aerial photos, or other documentation satisfactory to the Building Official. If the temporary housing is erected prior to certification that it is free of all public hazards and toxic debris, the following provisions shall apply:
 - a. A waiver of liability shall be signed by the land owner;
 - b. The temporary replacement housing shall be located a minimum of 150 feet from the footprint of any damaged structure and in a manner that does not impede the debris removal process.
 - c. The property owner shall implement mitigation measures adequate to prevent exposure of hazardous wastes and safety risks to humans and animals.
 2. The temporary replacement housing shall, absent a waiver of liability signed by the land owner, be located outside of the footprint of any damaged structure and shall not be erected until the site is certified by the County Environmental Health Department or a State-managed debris removal program as being free of all public hazards and all toxic debris or residue caused by the disaster.
 3. The temporary replacement housing shall be located outside the boundaries of any recorded easements but may be located within the setback area of the applicable zone district so that placement of the temporary mobile home or recreational vehicle will allow for unobstructed reconstruction on the site.
 4. The temporary replacement housing shall be connected to an approved source of water meeting one of the following criteria:
 - a. Public water supply;
 - b. Existing well provided that it has been certified by the Environmental

Health Department as safe for domestic consumption;

5. The temporary replacement housing shall be connected to an approved sewage disposal system meeting one of the following criteria:
 - a. Public sewer system;
 - b. Existing on-site sewage disposal system that has been certified by the On-Site Wastewater Department to be intact and functioning following the disaster;
 - c. Temporary holding tank with a contract with a pumping company for regular pumping. A copy of the contract shall be provided to the County.
 - d. Other method of sewage disposal approved by the County Environmental Health Officer.
 6. The temporary replacement housing shall be connected to an approved source of electricity meeting one of the following criteria:
 - a. Permitted electrical service hook-up.
 - b. Permitted solar panels.
 - c. Other power electrical source approved by the County Building Official.
 7. Temporary replacement housing shall not be located in a designated "special flood hazard area" (SFHA) as defined in 15.06.020, other officially designated special hazard area, or in any mapped area established by separate action of the Board or other authorized Federal, State, or local official, as a moratorium area due to hazards to health and safety caused by the disaster and which require in-depth study before allowing rebuilding of any kind.
 8. The temporary replacement housing may be converted to a temporary construction trailer upon issuance of a building permit for a permanent residence, pursuant to Section 17.04.130.
- C. The property owner shall self-certify, on a form provided by the Building Department, that the above criteria have been satisfied for recreational vehicles. The self-certification shall include an agreement to remove the temporary housing in conformance with the provisions of subsections 17.93.040(A) and (B)(8). All other temporary residential units shall be subject to permitting and inspection requirements as set forth by the California Department of Housing and Community Development.

17.93.050 Replacement of damaged or destroyed housing or other structures

Structures damaged or destroyed by a disaster may be replaced pursuant to the following provisions:

- A. Structures illegally constructed or uses illegally established before the disaster shall not be reconstructed or reestablished.
- B. Except as otherwise provided in this section, non-conforming buildings and non-

conforming uses, as those terms are defined in 17.06.1320, shall be subject to the provisions of Chapter 17.92.

- C. Non-conforming buildings damaged or destroyed by a disaster may be replaced subject to the following provisions:
1. Replacement structures shall be located in the same location, with no change to the size, height, or footprint of the destroyed structure, except as provided in paragraph C.4 of this section.
 2. Replacement site-built structures shall comply with the current California Code of Regulations, Title 24 standards.
 3. Prior to the issuance of a building permit, the site of the structure shall be certified by the California Department of Resources, Recycling and Recovery (Cal Recycle) or the County Environmental Health Department to be free of all public hazards and toxic debris or residue caused by the disaster.
 4. Replacement of mobile homes, manufactured homes or recreational vehicles shall comply with the National Manufactured Housing Act (42 U.S.C. §5401 et. seq.), the Special Occupancy Parks Act (Health and Safety Code §18860), the Manufactured Housing Act of 1980 (Health and Safety Code §§18020 et seq.), and current California Code of Regulations, Title 25 standards.
 5. Replacement structures shall not be located in a designated “special flood hazard area” (SFHA) as defined in 15.06.020, or other officially designated special hazard area.
- D. Structures in conformance with current County standards may be reconstructed or replaced subject to the following provisions:
1. Prior to the issuance of a building permit, the site of the structure shall be certified by the California Department of Resources, Recycling and Recovery (Cal Recycle) or the County Environmental Health Department that the site is free of all public hazards and toxic debris or residue caused by the disaster.
 2. Replacement site-built structures shall comply with the current California Code of Regulations, Title 24 standards.
 3. Replacement of mobile homes, manufactured homes or recreational vehicles shall comply with the National Manufactured Housing Act (42 U.S.C. §5401 et. seq.), the Special Occupancy Parks Act (Health and Safety Code §18860), the Manufactured Housing Act of 1980 (Health and Safety Code §§18020 et seq.), and current California Code of Regulations, Title 25 standards.
 4. Replacement structures shall not be located in a designated “special flood hazard area” (SFHA) as defined in 15.06.020, or other officially designated special hazard area.
- E. One garage or storage building may be permitted as an accessory structure prior to the issuance of a permit for a single family dwelling on any parcel on which a residence was destroyed by a disaster.

17.93.060 Repair Criteria

Structures that have been damaged as the result of a disaster shall be repaired in accordance with the following criteria:

- A. When the estimated value of repair is less than fifty percent (50%) of the replacement value of the structure, the damaged elements may be repaired. Any repairs must comply with the current California Code of Regulations, Title 24 standards.
- B. When the estimated value of repair is fifty percent (50%) or more of the replacement value of the structure, the entire structure shall be brought into conformance with the current California Code of Regulations, Title 24 standards.

17.93.070 Temporary emergency shelter and off-site temporary housing

Construction or installation of one or more off-site dwelling units as a temporary shelter or temporary emergency housing for persons displaced by the disaster may be authorized, subject to the following provisions:

- A. With the exception of temporary placement of a single mobile home, manufactured home, or recreational vehicle on a privately owned parcel, temporary housing for displaced persons shall be located only in the following zones: REC, RC, R2, R3, CP, C1, C2, and M4;
- B. Temporary replacement housing authorized pursuant to this Chapter shall be removed or lawfully converted into permanent housing within two years of the date of the Board action declaring the local emergency, unless a one-year extension is granted by the Board of Supervisors pursuant to 17.93.020, in which case it shall be removed or converted within three years.
- C. Temporary shelters or emergency housing consisting of more than one unit shall be connected to water and sewer service and power source approved by the County Building Official. A single off-site unit shall be connected to water and sewer as provided in Section 17.93.040.B.4 and B.5.
- D. With the exception of temporary placement of a single mobile home, manufactured home, or recreational vehicle on a privately owned parcel, off-site temporary housing and emergency shelters authorized under this Chapter may only be established and operated by a Federal, State, or County agency or a 501(C)(3) not-for-profit organization.
- E. The entity providing emergency shelter or housing shall enter into an agreement with the County to remove all housing units and other facilities upon expiration of the temporary use permit or when the need for the temporary housing ceases, whichever occurs first.

17.93.080 Fees; Replacement of damaged or destroyed housing or other structures

All current permit fees apply, including demolition permit fees, unless otherwise modified or waived by the Board of Supervisors as part of a specific emergency proclamation.

- A. During the time period when this Chapter is applicable per 17.93.020, application filing fees that are normally paid at the time the application is submitted may be deferred at the applicant's request and paid at the time the permit is issued.

- B. During the time period when this Chapter is applicable per 17.93.020, the RIM Fee, benefit basin fees, and school impact fees will be not be charged for replacement of lawful pre-existing improvements that were already subject to such fees or that were lawfully constructed prior to such impact fees. These fees will be charged for new or expanded improvements.

17.93.090 Debris removal; site certification required

All hazardous materials and debris, including but not limited to household hazardous wastes, asbestos, ash from burned structures, metals, damaged or destroyed vehicles, and all public hazards shall be removed prior to reconstruction or reuse of property damaged by the disaster and shall, in all cases, be removed and disposed of within one hundred eighty (180) days of the disaster for which the local state of emergency was declared unless the county Environmental Health Director grants a discretionary ninety (90) day extension upon a showing of good cause. Debris removal and disposal shall comply with all laws and regulations, and the site shall be certified within the time period described herein by the California Department of Resources, Recycling and Recovery or the County Environmental Health Department that it is free of all toxic debris or residue caused by the disaster.

17.93.100 Debris disposal

All burned building debris and other hazardous debris created by the disaster that is removed from the site shall be disposed of in accordance with State Law and policies and procedures developed and published by County Environmental Health Department.

17.93.110 Temporary facilities for post-disaster recovery

Temporary facilities necessary for the timely removal of debris, stabilization of soils, erosion control, and other needs as determined by the agency or agencies directing post-disaster recovery and clean-up operations may be established as needed subject to the following provisions:

- A. Staging areas for equipment, vehicles, and storage on private property shall be subject to issuance of a temporary use permit, pursuant to Chapter 17.84. The temporary use permit shall identify the expiration date and shall specify clean-up and restoration provisions for the site upon termination of the use.
- B. Staging areas on public land shall be subject to the authorization of the agency managing said land.
- C. Off-site processing and storage, recycling, or other handling of disaster-generated debris shall be subject to the following provisions:
 - 1. The site is properly zoned for the activity and all required permits have been previously issued and validated, or
 - 2. A temporary use permit, Pursuant to Chapter 17.84, has been issued. The temporary use permit shall specify the duration of the use, an expiration date, and clean-up and restoration provisions for the site upon termination of the use.

17.93.120 Severability & Pre-Emption

- A. If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.
- B. To the extent that any part of this Chapter conflicts with any portion of an Executive Order signed by the Governor of the State of California related to a disaster for which this Chapter is invoked, the Executive Order shall control.

SECTION III: SEVERABILITY.

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION IV: URGENCY ORDINANCE

This Ordinance shall take effect immediately upon its adoption by a four-fifths vote of the Board of Supervisors pursuant to Government Code section 25123(d). This ordinance shall continue in effect from the date of its adoption through and including October 13, 2017 and shall thereafter be of no further force and effect. The clerk shall cause this ordinance to be published as required by law.

ON A MOTION by Supervisor Wright seconded by Supervisor Kearney, the foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Calaveras, State of California this 20th day of October, 2015, by the following vote:

AYES:	Edson, Wright, Oliveira, Kearney
NAYS:	Ponte


Cliff Edson, Chair 10/20/2015

ATTEST


Karen Osborn 10/20/2015