



## MEMORANDUM

**TO:** City Council

**FROM:** Brian Pedrotti, Community Development Director

**BY:** Patrick Holub, Associate Planner

**SUBJECT:** Discussion to Consider Waiving or Reimbursing Certain Building Permit Fees Related to Repair or Reconstruction of Homes Damaged by Flooding in 2023 Declared Local Emergencies

**DATE:** December 12, 2023

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### **SUMMARY OF ACTION:**

The purpose of this discussion is for the City Council to consider authorizing the Community Development Director to grant targeted fee reductions or related reimbursements for specific building fees, related to the repair or reconstruction of homes damaged by flooding in 2023 during the City's declared local emergencies, and to make findings articulating the public purpose associated with that action. If Council concurs with staff's recommendation, a resolution effectuating that intent would come back on consent at a future meeting.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

Staff time and resources for review of the discussion item are funded from the General Fund. This item is brought to Council based on a request for a waiver of building permit fees from homeowners on 262 Tally Ho Road. Fees associated with staff's review of the subject building permit application at 262 Tally Ho Road, and inspection of that specific building during construction, total \$13,551.24. Depending on the direction from City Council, fee waivers associated with other flood-damaged residences would also be funded from the General Fund. Initially, staff estimates that there is the potential for 1-2 additional residences that could need significant reconstruction resulting from the January 2023 storm event. The potential building permit fees for reconstruction of these homes would be approximately \$14,000 depending on square footage and design. The City contracts with a building plan-check and inspection firm. The fees for these services are offset by individuals who apply for building permits and pay the associated fees.

### **RECOMMENDATION:**

1) Authorize the City Manager to take all actions necessary to approve waivers for 50% of the total amount of demolition, building permit, and inspection fees, for homes that were red or yellow tagged and thus damaged due to flooding occurring in 2023 during the City's

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locally declared emergencies; 2) Find the public purpose contained within this Staff Report supports the contemplated waivers; and 3) Determine that the discussion item is not a project subject to the California Environmental Quality Act ("CEQA") because it has not potential to result in either a direct, or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378.)

#### **BACKGROUND:**

On January 4, Governor Newsom issued a [Proclamation of a State of Emergency](#) relating to severe winter storms and a series of atmospheric river systems that struck California beginning December 27, 2022, bringing high winds, substantial precipitation, and river, stream, and urban flooding. Storm events starting in December, 2022 resulted in two City Council-ratified local emergencies in winter and spring 2023.

On January 8, 2023, the President of the United State declared that an emergency existed in the State of California relating to severe winter storms, flooding, landslides, and mudslides. The [Presidential Emergency Declaration](#) makes residents in impacted counties who had damage or losses from the storms eligible to apply for federal disaster assistance. On January 17, 2023, San Luis Obispo County was added as an affected county, meaning San Luis Obispo County residents who had damage or losses from the storms became eligible to apply for Federal Emergency Management Agency (FEMA) disaster assistance.

On January 9, 2023, the County Administrative Officer of San Luis Obispo issued a [Proclamation of Local Emergency](#) relating to severe winter storms.

In the City of Arroyo Grande, due to the recent flooding events, seven (7) properties were "red-tagged," meaning that the City's Building Official deemed the residences as unsafe to occupy due to flooding and/or structural damage to the homes. Additionally, one (1) property was "yellow-tagged" meaning that the City's Building Official identified damage but did not deem it unsafe to occupy. A few weeks following the storm event on January 24, 2023, the City Council passed Resolution 5259 (Attachment 4), which proclaimed and confirmed the existence of a local emergency, as issued by the Emergency Services Director/City Manager on January 18, 2023, and waived demolition permit and inspection fees for residents that experienced flooding resulting from the emergency. A demolition permit fee is \$377.12, and this fee was waived for those Tally Ho properties that pulled demolition permits. On March 14, 2023, the City adopted a resolution declaring a continued local emergency related to the January 2023 storm events.

On January 23, 2023, the City received and approved an application to demolish one (1) of the damaged homes at 262 Tally Ho Road. On August 4, 2023, the City received an application to reconstruct a single-family home of the approximate same size as the one that was demolished. The property owner requested a fee waiver on October 10, 2023 via e-mail, attached to this item. City staff let the applicant know that fees would need to

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be paid upfront to issue the permit, but that staff would consider bringing the fee waiver request to the City Council for direction and that at that time, there was no indication that the City Council would support such a fee waiver. Subsequently, the discussion evolved after hearing from community stakeholders and after further research on other local communities' response to fee waiver requests, and staff determined that a discussion at the City Council was warranted.

#### **ANALYSIS OF ISSUES:**

##### Fee Waiver Request

In an e-mail to the City Manager on October 10, 2023, Jen Kaplan requested that the City consider a reduction in their building permit fees due to financial hardship as a result of the January 2023 storm event (Attachment 1). The Kaplan residence had to be demolished due to flood damage, and they had to move out of their home. 1-2 other residences suffered significant damage that could have similar rebuilt costs associated with the storm event. The Kaplans noted that the rebuild will take 12-18 months, during which time they remain responsible for related costs. The homeowners submitted a building permit application for the reconstruction and paid all building permit fees. The City's permit fees include plan review and inspection, and based on the square footage of the structure totaled \$13,551.24. On November 16, 2023, the property owners paid fees totaling \$13,551.24 for the review of the building plans and inspections associated with reconstruction of the flood damaged home.

##### City Ordinances regarding Fee Waivers

After evaluating all available options, staff determined that they are unable to reduce or waive the fees for the Kaplan building permit, as the Arroyo Grande Municipal Code does not specifically authorize any City staff to grant an administrative fee waiver for building permits (Attachment 2 – Staff Response to Request). Staff also investigated whether a portion of the City's FEMA funding could be used to offset building permit fees, but federal regulations prohibit the City from using that funding for projects located on private property.

Staff determined that the City Council has the authority to grant fee waivers for building permits. As stated above, the City Council previously approved Resolution 5259 to waive demolition permit and inspection fees for residents and businesses who experienced flooding resulting from the January 9<sup>th</sup> storm event. The City Council has the authority to similarly waive the fees for other building permit fees by resolution.

In terms of potential City costs associated with waiving building permit fees, staff found that there is at least 1-2 additional residences (268 and 300 Tally Ho) with significant flood damage that could potentially require a complete rebuild similar to 262 Tally Ho (Kaplan residence). The total permit cost for each residence would likely be in the range of the Kaplan's permit cost of \$13,551.24. Several other homes on Tally Ho sustained more

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minor flood damage and obtained demolition permits to remove drywall and insulation. These demolition permit fees were waived by the City in accordance with Resolution 5259.

#### Other Local Jurisdiction Fee Waivers

There has been a mix of responses in the approach other local jurisdictions have taken when evaluating fee waiver requests for reconstruction permits related to the 2023 flooding/storm events. On August 22, 2023, the City of Morro Bay approved a resolution temporarily reducing building and planning permit fees by fifty percent for properties damaged by the 2023 winter storms (Attachment 3). That 50% reduction is what City staff used in crafting its own recommendation for this item. Morro Bay's fee reduction was approved to run through the end of 2023 and be available to those who could demonstrate that other sources of recovery dollars such as FEMA and homeowners' insurance were insufficient to cover costs of repair and permitting. The San Luis Obispo County Department of Planning and Building staff used an established administrative fee waiver process to waive permit fees up to \$5,000 each for property owners that reported damage through FEMA. Several other cities (Paso Robles and San Luis Obispo) had areas of flood damage to residential property but did not approve waivers or reductions to building permit fees.

#### Findings Regarding Building Permit Fee Waiver in Arroyo Grande

Waiver or reimbursement of building permit fees for those homes damaged by the 2023 storms and associated flooding must be supported by a public purpose. Staff identifies two public purposes supported by this fee waiver: (1) maintain housing availability and stock in times of emergency, and (2) restore blighted neighborhoods by reducing barriers to reconstruction or repair of storm-damaged homes. California currently suffers from housing shortages and flooding of homes reduces available housing stock. Authorizing reductions in fee waivers helps facilitate individuals to return to homes from which they were displaced during flooding events, thereby returning rentals to the market. Additionally, costs of home repair may be so significant that the monetary barrier can act as a disincentive from conducting such repair. Natural disasters like flooding represent an unexpected and unplanned expense that can significantly constrain homeowners' ability to pay for these repairs. Thus, waiver or reimbursement of building permit fees serves substantial public purposes, and the benefits of the program to private individuals are incidental to the public benefit.

The City must also support its decision to waive or reimburse fees for homeowners who cannot occupy their homes due to the 2023 storms rather than those who have not been as drastically impacted. Similar to the public purpose findings above, those who were required to leave their homes due to flooding have sudden unexpected costs and may

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experience housing insecurity which justifies treating them differently than those not impacted by the 2023 storms.

#### Constraints and Requirements of Fee Waiver Reduction or Reimbursement

Staff recommends a variety of constraints on the ability to seek a fee waiver reduction or reimbursement for building permit fees that could be incorporated into a formal resolution the City Council could approve on consent at a subsequent meeting. These include:

- A. Limiting the fee waiver to 50% of the total amount of the associated demolition, building permit, and inspection fees for the impacted properties.
- B. The home must have been “red-tagged” or “yellow-tagged” during the 2023 storms and City’s declared local emergencies related to those weather events.
- C. The time to seek a reimbursement or fee waiver reduction should be limited to 90 days or less (from the adoption a resolution), unless the applicant provides evidence beyond their reasonable control to apply within the time limit. Notice will be provided to eligible households.
- D. The applicant must provide proof of ownership of the home and proof that the home is their primary residence. Proof of homeownership shall require a stamped grant deed filed with the county recorder. Acceptable proof of primary residency will include: an active voter registration, a valid driver’s license, or other government-issued documentation with both the property owner’s name and the property address damaged or destroyed by the 2023 storms.
- E. All those listed on the deed must sign an acknowledgement that the City of Arroyo Grande makes no representations regarding how the property owner’s acceptance of the fee waiver may impact insurance payments or potential recovery through federal disaster relief programs. Additionally, property owners receiving a fee waiver or reimbursement must waive all potential claims by themselves or any third party against the City of Arroyo Grande based on insurance payments or federal disaster relief program payments to the same address.
- F. The applicant must provide evidence to the satisfaction of the Community Development Director that other sources of recovery dollars (FEMA, Homeowners insurance), when taken together, are insufficient to cover the cost of repair, reconstruction, and permitting, or alternatively, that such other sources refuse to cover the cost of repair, reconstruction, and permitting.
- G. The fee waiver shall not be transferrable to any other property owner. If a waiver is obtained, a Certificate of Occupancy will only be issued to the property owner who files the proof of primary residency at the time of the 2023 January/March flood events. All fees that were waived must be paid to the City before a Certificate of Occupancy is issued to an owner other than the one listed on the fee waiver.
- H. Authorize the City Manager to impose any additional conditions or modify the listed conditions as necessary or proper to effecting and administering the fee waiver.

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#### **ALTERNATIVES:**

1. Adopt the findings contained in the staff report for a 50% waiver for demolition, building permit, and inspection fees for homes “red-tagged” or “yellow-tagged” due to 2023 flooding during the City’s local declared emergencies, including staff’s recommendation on the underlying public purpose and CEQA, and authorize the City Manager to take all incidental actions necessary to achieve the objectives discussed herein; or
2. Provide other direction to staff.

#### **ADVANTAGES:**

Waiver of the fees associated with this action could assist a group of similarly situated homeowners with reconstruction costs resulting from extreme weather events; thereby allowing this neighborhood to continue to improve in its orderly development; however, the City will fail to recoup its whole set of adopted, applicable fees as described below.

#### **DISADVANTAGES:**

Waiving the fees associated with this action will result in the City providing building services without full cost recovery. Additionally, there are precedent-setting issues related to future emergencies that will have widespread private property damage such as slope failures and earthquakes, as well as more minor private property damages such as structural damage due to high wind events. Depending on future emergencies, these could significantly impact the City’s General Fund budget. However, the targeted and focused list of findings and constraints on page 5 and 6 of this staff report are intended to limit any type of fee waiver to a specific time frame that includes an ending date and criteria that correlate to a scope and event.

Not allowing a fee waiver or reduction would require property owners to fully fund building permits associated with reconstruction of residences damaged by the 2023 storm events.

#### **ENVIRONMENTAL REVIEW:**

This discussion item is not a project subject to the California Environmental Quality Act (“CEQA”) because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. The reconstruction of a flood damaged single-family residence is a ministerial project and therefore is also not subject to CEQA. Alternatively, the discussion item is exempt from CEQA on the basis that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (State CEQA Guidelines, § 15061, subd. (b)(3).)

#### **PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted at City Hall and on the City’s website in accordance with Government Code Section 54954.2.

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**ATTACHMENTS:**

1. Fee waiver request from Jen Kaplan (e-mail)
2. Staff Response to Request (e-mail)
3. City of Morro Bay Resolution 54-23
4. City of Arroyo Grande Resolution 5259
5. Aerial photo of the subject property