



Information Item

Date: February 2, 2012

To: Mayor and City Council
From: Marsha Jones Moutrie, City Attorney
Subject: Proposition S

Introduction

This office has been asked to provide information about the impact of Proposition S upon the legal rights of a beach hotel owner to rebuild in the wake of a natural disaster that damaged or destroyed the hotel.

Background

The voters adopted Proposition S in 1990. The measure describes the City's oceanfront setting as its greatest physical asset and declares the measure's purpose to be "limiting growth ... and preserving the unique and diverse character of the Santa Monica oceanfront". The measure achieves this purpose by modifying the Zoning Code to create a Beach Overlay District which generally encompasses the area seaward of the center lines of Ocean Avenue and Neilsen Way, generally excluding the Pier. Within that district, Proposition S specifies the permitted uses as open space, public beaches, parks, incidental park structures, gardens, playgrounds, recreational buildings, and recreational areas. And, the measure lists as expressly prohibited uses: hotels, motels, and restaurants more than 2000 square feet in size or more than one story in height.

Discussion

Proposition S prohibits building new hotels and new sizeable restaurants in the Beach Overlay District. By doing so, it effectively reclassifies existing hotels within the Beach Overlay District into the category of legal nonconforming. See [Municipal Code Section](#)

[9.04.18.030](#) (defining and regulating legal nonconforming uses). However, Proposition S does not expressly prohibit the reconstruction of a pre-existing hotel damaged or destroyed by a natural disaster. Nor do we interpret it to do so. The measure's stated purpose was to preserve the oceanfront status quo, by prohibiting certain types of new projects within the zone; the stated purpose was not to eliminate existing hotels.

Because Proposition S does not address the reconstruction of existing hotels, we look to generally applicable Municipal Code provisions to determine beach hotel owners' reconstruction rights. Those provisions allow restoration of nonconforming structures, but generally prohibit rebuilding them. In particular, Section 9.04.18.020(e) provides that "[a] nonconforming building which is damaged or destroyed to any extent of less than one-half of its replacement cost immediately prior to such damage may be restored". (Such restoration must commence within one year of the damage and be "diligently completed".) However, "[a] nonconforming building which is damaged or destroyed to an extent of one-half or more of its replacement cost immediately prior to such damage may not be restored to its nonconforming condition but must be made to conform to the provisions of [the Zoning Ordinance]" (unless it is has a specified historic designation).

Thus, under current law, whether or not a hotel owner could reconstruct a hotel in the Beach Overlay District that was damaged by a natural disaster would depend on the extent of the damage. So long as the extent of the damage was less than one-half of the replacement cost, the owner could reconstruct; otherwise not (unless the building had specified historic status.)

We assume that Council could modify Section 9.04.18.020 to change the rights of beach hotel owners (or other owners of nonconforming uses) to rebuild. Certainly, Council could do so in the wake of a major disaster (just as it amended many provisions of the code following the Northridge Earthquake). This assumption is based on our conclusion that the voters did not intend to deprive Council of its authority to modify

Section 9.04.18.020 (or Section 9.04.18.030) when they adopted Proposition S. This conclusion rests, in part, on the facts that Proposition S did not alter either the development standards governing authorized use or the provision governing restoration and replacement in the wake of a natural disaster. However, because Section 9.04.18.020 applies to buildings throughout the City and because hotels are in several zoning districts, Council would probably want staff to provide a thorough analysis of the policy and practical implications of any proposed modification.

Finally, we note that by providing this information, we do not intend to suggest that Proposition S would permit the Council to amend local law to authorize a hotel owner in the Beach Overlay District to rebuild in circumstances other than following a disaster.

Prepared By: Marsha Jones Moutrie, City Attorney