



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

April 12, 2006

AGENDA DATE: May 2, 2006

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: PROPOSED ORDINANCE AMENDMENTS TO SWIMMING POOL, SPA AND HOT TUB BARRIER REGULATIONS

Members of the Board:

On April 4, 2006, staff brought to your Board's attention the facts that there are two sets of barrier regulations in the County Code, found in Chapters 7.64 and 12.10, and that there are inconsistencies between these sections.

Staff provided a series of options to correct these inconsistencies and retain retroactivity provisions. Your Board directed staff to prepare ordinance amendments reflecting your conceptual direction for consideration at this time. You also directed staff to explore and explain how we will disseminate the provisions of these ordinance revisions to the public.

Proposed Ordinance Amendments

As directed by your Board, the proposed ordinance amendments (Attachment 1) will:

- o Delete Chapter 7.64 "Swimming Pool Enclosures";
- o Amend Section 12.10.070(g)—Uniform Building Code Appendix Chapter 4, Division I "Barriers for Swimming Pools, Spas and Hot Tubs"—to add retroactive provisions; and
- o Require retroactive applicability of the regulations to cases of substantial noncompliance with the regulations. Swimming pool, spa and hot tub barriers, built in accordance with the 1991 or 1997 UBC provisions and maintained in compliant condition, would be excused from the retroactive provisions.

Public Outreach

Staff is proposing a wide outreach to inform the public of these ordinance changes, to include:

- o Mailed information to the approximately 3,100 owners of swimming pools in the County;
- o Mailed information to the local swimming pool construction industry, spa and hot tub sales and installation dealers, pool cover and enclosure industry and pool/spa/hot tub service and repair industry;

- o Mailed information to property manager professionals;
- o Informational materials available at the three Permit Centers and on the Planning Department's website; and
- o Continued coordination with the Board of Realtors.

Environmental Review

The proposed ordinance amendments have been reviewed and determined to be categorically exempt from the California Environmental Quality Act (CEQA). A Notice of Exemption has been prepared (see Attachment 5).

Conclusion and Recommendation

The proposed ordinance amendments correct the current inconsistencies between Chapters 7.64 and 12.10 by adopting one set of barrier regulations and providing prudent retroactivity provisions to help prevent child drowning.

It is therefore RECOMMENDED that your Board take the following actions:

1. Conduct the public hearing;
2. Adopt the attached ordinance deleting Chapter 7.64 and amending Chapter 12.10;
3. Certify the CEQA Notice of Exemption; and
4. Direct Planning staff to provide notification of the ordinance changes, as outlined in this letter.

Sincerely,



Tom Burns
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

1. Proposed Ordinance (clean copy)
2. Proposed Ordinance (strikethrough copy)
3. Text of Chapter 7.64 (to be deleted)
4. Text of Uniform Building Code Appendix Chapter 4, Division I "Barriers for Swimming Pools, Spas and Hot Tubs"
5. CEQA Notice of Exemption

cc: Board of Realtors

TB.GH\Board Letters\Pending

ORDNANCE NO. _____

**AN ORDINANCE DELETING CHAPTER 7.64 AND AMENDING
SUBSECTION (g) OF SECTION 12.10.070 OF THE SANTA CRUZ
COUNTY CODE RELATING TO SWIMMING POOL, HOT TUB
AND SPA BARRIER REGULATIONS**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Chapter 7.64 (Swimming Pool Enclosures) of the Santa Cruz County Code is hereby deleted in its entirety.

SECTION II

Subsection (g) of Section 12.10.070 of the Santa Cruz County Code is hereby amended to read as follows:

(g) The Appendix of the 1997 Uniform Building Code as amended by Part 2 of Title 24 of the California Code of Regulations is hereby adopted in its entirety, subject to the changes, additions, and deletions shown in this section.

(1) Appendix Chapter 3, Division III, Section 332, "One and Two Family Dwelling Code Adopted" is hereby deleted.

(2) Appendix Chapter 4, Division I, "Barriers for Swimming Pools, Spas and Hot Tubs", Section 421 "Requirements" is hereby amended to add the following subsections to read as follows:

Subsection 421.4. Any property owner of a residential pool, spa or hot tub built or erected prior to August 14, 1992 shall comply with the current UBC barrier regulations found in this Division and obtain a permit for needed improvements upon the effective date of this provision. The barrier shall be maintained in compliant condition.

Any real estate agent, broker, salesperson, or owner acting as a seller involved in the sale of property containing a residential swimming pool, spa or hot tub shall provide the buyer with written certification of compliance with the requirements of this Appendix Division.

Subsection 421.5 Any property owner of a residential pool, spa or hot tub built or erected with a valid, finalized building permit (if required) on or after August 14, 1992 shall maintain the barrier in compliance with the UBC requirements in effect when constructed or erected unless:

- i. the existing **pool** barrier is in disrepair to the extent it no longer provides an effective barrier;
- ii. the existing pool barrier does not provide a barrier between the residence and pool; or
- iii. the existing spa or hot tub has either no barrier or no locking cover.

If one or more of these conditions exist, the property owner shall comply with the current UBC barrier regulations found in this Division and obtain a permit for needed improvements upon the effective date of this provision.

Any real estate agent, broker, salesperson, or owner acting as a seller involved in the sale of residential property containing a swimming pool, spa or hot tub shall provide the buyer with written certification of compliance with the provisions of this Appendix Division.

(3) Appendix Chapter 11, "Accessibility," is hereby deleted in its entirety.

(4) Appendix Chapter 13, "Energy Conservation in New Building Construction," is hereby deleted.

(5) Appendix Chapter 31, Division 1, "Flood Resistant Construction" is hereby deleted. (See Chapter 16.10, Santa Cruz County Code.)

(6) Appendix Chapter 29, "Minimum Plumbing Fixtures" is hereby deleted.

(7) Appendix Chapter 33, "Excavation and Grading" is hereby deleted in its entirety. (See Chapter 16.20, Santa Cruz County Code.)

(8) Appendix Chapter 34, "Existing Structures" is hereby deleted in its entirety.

SECTION III

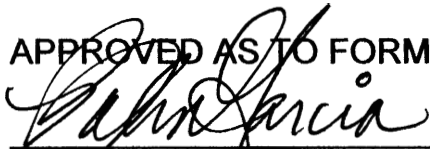
This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this _____ of _____ 2006, by the Board of Supervisors of the County of Santa CNZ by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:


Assistant County Counsel

DISTRIBUTION: County Counsel, CAO, Planning Department, Environmental Health

ORDINANCE NO. _____

**AN ORDINANCE DELETING CHAPTER 7.64 AND AMENDING
SUBSECTION (g) OF SECTION 12.10.070 OF THE SANTA CRUZ
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AND SPA BARRIER REGULATIONS**

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(1) Appendix Chapter 3, Division III, Section 332, "One and Two Family Dwelling Code Adopted" is hereby deleted.

(2) Appendix Chapter 4, Division I, "Barriers for Swimming Pools, Spas and Hot Tubs". Section 421 "Requirements" is hereby amended to add the following subsections to read as follows:

Subsection 421.4. Any property owner of a residential pool, spa or hot tub built or erected prior to August 14, 1992 shall comply with the current UBC barrier regulations found in this Division and obtain a permit for needed improvements upon the effective date of this provision. The barrier shall be maintained in compliant condition.

Any real estate agent, broker, salesperson, or owner acting as a seller involved in the sale of residential property containing a swimming pool, spa or hot tub shall provide the buyer with written certification of compliance with the requirements of this Appendix Division.

Subsection 421.5 Any property owner of a residential pool, spa or hot tub built or erected with a valid, finalized building

permit (if required) on or after August 14, 1992 shall maintain the barrier in compliance with the UBC requirements in effect when constructed or erected unless:

- i. the existing pool barrier is in disrepair to the extent it no longer provides an effective barrier;
- ii. the existing pool barrier does not provide a barrier between the residence and pool; or
- iii. the existing spa or hot tub has either no barrier or no locking cover.

If one or more of these conditions exist, the property owner shall comply with the current UBC barrier regulations found in this Division and obtain a permit for needed improvements upon the effective date of this provision.

Any real estate agent, broker, salesperson, or owner acting as a seller involved in the sale of residential property containing a swimming pool, spa or hot tub shall provide the buyer with written certification of compliance with the provisions of this Appendix Division.

(~~23~~) Appendix Chapter 11, "Accessibility," is hereby deleted in its entirety.

(~~34~~) Appendix Chapter 13, "Energy Conservation in New Building Construction," is hereby deleted.

(~~45~~) Appendix Chapter 31, Division 1, "Flood Resistant Construction" is hereby deleted. (See Chapter **16.10**, Santa Cruz County Code.)

(~~56~~) Appendix Chapter 29, "Minimum Plumbing Fixtures" is hereby deleted.

(~~67~~) Appendix Chapter 33, "Excavation and Grading" is hereby deleted in its entirety. (See Chapter **16.20**, Santa Cruz County Code.)

(~~78~~) Appendix Chapter 34, "Existing Structures" is hereby deleted in its entirety.

SECTION III

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this _____ of _____ 2006, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:



Assistant County Counsel

DISTRIBUTION: County Counsel, CAO, Planning Department

TITLE 7: WEALTH AND SAFETY

0279

Chapter 7.64 SWIMMING POOL ENCLOSURES

(Entire Chapter Proposed to be Deleted)

7.64.010 Findings.

The **board** of supervisors expressly finds that there are a large number of swimming **pools** in the unincorporated area of the county of Santa Cruz which constitute a serious and dangerous hazard to **small** children, **unless adequately** fenced or otherwise protected. (Prior code § 8.80.010: Ord. 1523, 6/9/70)

7.64.020 Private swimming pool defined.

A. "Private swimming pool" means a **swimming** pool, **wading** pool or **fish** pond created by artificial means which has any depth in **excess of** eighteen inches, whether above or **below** grade, and whether intended to **be** temporary or permanent in nature, and which pool or **pond is** maintained in connection with a single-family **dwelling** in a residential or **unclassified** district:

1. Which **has** a **building site** area requirement of fifteen **thousand** square feet or **less**;
or
2. Where the pool **is** located within one thousand **feet** of any other dwelling in a residential **district**.

B. A private swimming pool shall not include agricultural or recreational **ponds** or **lakes**, swimming **places** along natural waterways, or other **similar bodies of** water, whether naturally or artificially created. (Prior code § 8.80.020: Ord. 1523, 6/9/70; Ord. 1760, 8/22/72)

7.64.030 Enclosure--Required.

A. Every person who owns or **is** in possession of **any** premises in the unincorporated area of the county upon which there **is** now situated or **at** any time hereafter may be situated a private swimming pool **as** defined in this chapter, shall construct **and** maintain in good condition, completely surrounding such premises **or** the swimming pool itself, an enclosure of not **less** than four feet in height, consisting of a fence, **wall**, buildings, or combination thereof.

B. The enclosure shall be constructed of fencing or concrete, masonry, wood or other solid material designed to withstand fifteen pounds per square foot of uniform horizontal load, and constructed so **as** to discourage climbing by small children. The **space** between the bottom of the enclosure and the ground shall not exceed two inches.

C. **All** gates or doors to the enclosure shall be equipped with a self-closing and self-latching device designed to keep such gates or doors securely closed at all times, with the latching device either placed at least four feet nine inches above ground level or otherwise made inaccessible from the outside to small children. (Prior code § 8.80.030: Ord. 1523, 6/9/70)

7.64.040 Enclosure--Application for exception.

Any person otherwise **subject** to the provisions of **this** chapter may file an application for **an exception** to the requirement of an enclosure on **the basis** that **an enclosure is unnecessary by reason** of the **remoteness of the swimming pool, natural barriers, or** other circumstances which make an **enclosure unnecessary** to protect small **children** from straying into the pool. The procedures and filing **fee** for such application shall be the **same** as **that** for a variance, and the **zoning administrator** shall hear all such applications. **The zoning administrator may grant such** an exception with or without **conditions** for a limited period or for **an indefinite period of** time depending on the circumstances **making an enclosure unnecessary**. The zoning administrator **may, on his or her own motion, review** any exception **previously granted if there is an unforeseen change of** circumstances. (Prior code § 8.80.040: Ord. 1523, 6/9/70)

7.64.050 Existing pools.

Existing private **swimming** pools shall **comply** with the requirements of **this** chapter **on or** before April **30, 1971**. (Prior code § 8.80.050: Ord. 1523, 6/9/70)

7.64.060 Newly constructed pools.

The enclosures referred to in this chapter shall be deemed to **be a** structure within the meaning of the term **as it is used** in the **building code for the county**, and a permit for any enclosure **is** required to be obtained **from** the building inspector. Final inspection and approval of all private **swimming pools** hereafter constructed shall be withheld until all requirements of **this** chapter **have been complied** with. (Prior code § 8.80.060: Ord. 1523, 6/9/70)

7.64.070 Violation--Penalty.

A violation of **any** of the **provisions** of this chapter shall be a misdemeanor and **punishable as provided** by this code. (Ord. 3620 § 7, 1985: Ord. 3602 § 7, 1985: prior code § 8.80.070: Ord. 1523, 6/9/70)

Appendix Chapter 4 SPECIAL USE AND OCCUPANCY

Division 1— BARRIERS FOR SWIMMING POOLS, SPAS AND HOT TUBS

SECTION 419 — GENERAL

419.1 Scope. The provisions of this section apply to the design and construction of barriers for **swimming** pools located on the premises of **Group R, Division 3 Occupancies**.

419.2 Standards of Quality. In addition to the other requirements of this code, safety covers for pools and spas shall meet the requirements for pool and spa safety covers as listed below. The standard listed below is a recognized standard. (See **Section 3504.**)

1. ASTM F 1346, Standard Performance Specification for Safety Covers and Labeling Requirement for All Covers for Swimming Pools, Spas and Hot Tubs

SECTION 420 — DEFINITIONS

For the purpose of this section, certain terms, words and phrases are defined as follows:

ABOVEGROUND/ON-GROUND POOL. See definition of "swimming pool."

BARRIER is a fence, wall, building wall or combination thereof that completely surrounds the swimming pool and obstructs access to the swimming pool.

GRADE is the underlying surface, such as earth or a walking surface.

HOT TUB. See definition of "spa, nonself-contained" and "spa, self-contained."

IN-GROUND POOL. See definition of "swimming pool."

SEPARATION FENCE is a barrier that separates all doors of a dwelling unit with direct access to a swimming pool from the swimming pool.

SPA, NONSELF-CONTAINED, is a hydromassage pool or tub for recreational or therapeutic use, not located in health-care facilities, designed for immersion of users and usually having a filter, heater and motor-driven blower. It may be installed indoors or outdoors, on the ground or on a supporting structure, or in the ground or in a supporting structure. A nonself-contained spa is intended for recreational bathing and contains water over 24 inches (610 mm) deep.

SPA, SELF-CONTAINED, is a continuous-duty appliance in which all control, water-heating and water-circulating equipment is an integral part of the product, located entirely under the spa skirt. A self-contained spa is intended for recreational bathing and contains water over 24 inches (610 mm) deep.

SWIMMING POOL is any structure intended for swimming or recreational bathing that contains water over 24 inches (610 mm) deep. This includes in-ground, aboveground and on-ground swimming pools, and fixed-in-place wading pools.

SWIMMING POOL, INDOOR, is a swimming pool that is totally contained within a residential structure and surrounded on all four sides by walls of said structure.

SWIMMING POOL, OUTDOOR, is any swimming pool that is not an indoor pool.

SECTION 421 — REQUIREMENTS

421.1 Outdoor Swimming Pool. An outdoor swimming pool shall be provided with a barrier that shall be installed, inspected and approved prior to plastering or filling with water. The barrier shall comply with the following:

1. The top of the barrier shall be at least 48 inches (1219 mm) above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches (51 mm) measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance at the bottom of the barrier may be increased to 4 inches (102 mm) when grade is a solid surface such as a concrete deck, or when the barrier is mounted on the top of the aboveground pool structure. When barriers have horizontal members spaced less than 45 inches (1143 mm) apart, the horizontal members shall be placed on the pool side of the barrier. Any decorative design work on the side away from the swimming pool, such as protrusions, indentations or cutouts, which render the barrier easily climbable, is prohibited.

2. Openings in the barrier shall not allow passage of a 1³/₄-inch-diameter (44.5 mm) sphere.

EXCEPTIONS: 1. When vertical spacing between such openings is 45 inches (1143 mm) or more, the opening size may be increased such that the passage of a 4-inch-diameter (102 mm) sphere is not allowed.

2. For fencing composed of vertical and horizontal members, the spacing between vertical members may be increased up to 4 inches (102 mm) when the distance between the tops of horizontal members is 45 inches (1143 mm) or more.

3. Chain link fences used as the barrier shall not be less than 11 gage.

4. Access gates shall comply with the requirements of Items 1 through 3. Pedestrian access gates shall be self-closing and have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches (1372 mm) from the bottom of the gate, (1) the release mechanism shall be located on the pool side of the barrier at least 3 inches (76 mm) below the top of the gate, and (2) the gate and barrier shall have no opening greater than 1/2 inch (12.7 mm) within 18 inches (457 mm) of the release mechanism. Pedestrian gates shall swing away from the pool. Any gates other than pedestrian access gates shall be equipped with lockable hardware or padlocks and shall remain locked at all times when not in use.

5. Where a wall of a Group R, Division 3 Occupancy dwelling unit serves as part of the barrier and contains door openings between the dwelling unit and the outdoor swimming pool that provide direct access to the pool, a separation fence meeting the requirements of Items 1, 2, 3 and 4 of Section 421.1 shall be provided.

EXCEPTION: When approved by the building official, one of the following may be used:

1. Self-closing and self-latching devices installed on all doors with direct access to the pool with the release mechanism located a minimum of 54 inches (1372 mm) above the floor.
2. An alarm installed on all doors with direct access to the pool. The alarm shall sound continuously for a minimum of 30 seconds within seven seconds after the door and its screen, if present, are opened, and be capable of providing a sound pressure level of not less than 85 dBA when measured indoors at 10 feet (3048 mm). The alarm shall automatically reset under all condi-

tions. The alarm system shall be equipped with a manual means, such as a touchpad or switch, to temporarily deactivate the alarm for a single opening. Such deactivation shall last no longer than 15 seconds. The deactivation switch shall be located at least 54 inches (1372 mm) above the threshold of the door.

- 3. Other means of protection may be acceptable so long as the degree of protection afforded is not less than that afforded by any of the devices described above.

6. Where an aboveground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure, and the means of access is a ladder or steps, then (1) the ladder or steps shall be capable of being secured, locked or removed to prevent access or (2) the ladder or steps shall be surrounded by a barrier that meets the requirements of Items 1 through 5. When the ladder

or steps are secured, locked or removed, any opening created shall be protected by a barrier complying with Items 1 through 5.

421.2 Indoor Swimming Pool. For an indoor swimming pool, protection shall comply with the requirements of Section 421.1, Item 5.

421.3 Spas and Hot Tubs. For a nanself-contained and self-contained spa or hot tub, protection shall comply with the requirements of Section 421.1.

EXCEPTION: A self-contained spa or hot tub equipped with a listed safety cover shall be exempt from the requirements of Section 421.1.

CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: N/A
Assessor Parcel Number: N/A
Project Location: Countywide

Project Description: Ordinance Amendments to Chapters 7.64 and 12.10 regarding swimming pool, spa and hot tub barriers

Person or Agency Proposing Project: County of Santa Cruz Planning Department

Contact Phone Number: Glenda Hill (831) 454-3216

- A. The proposed activity is not a project under CEQA Guidelines Section 15378.
 B. The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060(c).
 C. Ministerial Project involving only the use of fixed standards or objective measurements without personal judgment.
 D. Statutory Exemption other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).
 E. Categorical Exemption

Class 5a **Minor** changes to land use limitations

F. Reasons why the project is exempt:

The ordinance changes will correct internal inconsistencies between two County Code Sections and strengthen retroactive barrier provisions thereby further protecting public safety.

These ordinance changes require property owners to install new or upgrade noncompliant barriers in certain situations. It is not foreseen that these barriers will adversely impact the environment.

In addition, none of the conditions described in Section 15300.2 apply to this project.

Glenda Hill
Glenda Hill: Project Planner

Date: 11/2/06

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Saturday, April 29, 2006 8:23 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 51212006

Item Number : 47

Name : Tom Godsoe

Email : tgodsoe@yahoo.com

Address : 8515 Glen Arbor Road
Ben Lomond, CA 95005

Phone : 831-246-1455

Comments :

I would like to introduce into the record my comments regarding ordinance amendments to Chapters 7.64 and 12.10 relating to Swimming Pool, Spa and Hot Tub Barrier regulations.

I purchased my home in 1989. My home has always been in compliance with Chapter 7.64 "Swimming Pool Enclosures". That is, my back yard has always had a high fence with a self-closing, self-latching gate to prevent intrusion by children. By deleting this Chapter, you will now require that not only must the back yard be secure, but the pool perimeter be secure. You are also requiring that this be done prior to any home sale.

Replacing the above with The requirements under Amend Section 12.1 O.O'/O(g)-Uniform Building Code Appendix Chapter 4, Division I "Barriers for Swimming Pools, Spas and Hot Tubs" will place an undue financial burden on me. I have meticulously maintained my fencing and swimming pool area, and have recently redone all decks and fencing at great personal cost. I have maintained the fencing and enclosures as prescribed by Chapter 7.64. Not to mention replacing the sliding glass door with a self-closing model, after I recently replaced the old door with a newer model, would also represent an undue financial burden, for no gain. I have no children, and children never visit my house unsupervised.

The requirement to comply with the proposed regulations prior to sale of the house also represents a potential road block when I decide to purchase a larger home, which I hope to do in the next two or three years. Should a family with small children choose to buy the home, the burden should be on the purchaser to provide the proper enclosures, rather than the seller, who has no children.

As I control all access to my home, it seems to me that securing the back yard from intrusion should be more than sufficient to secure the perimeter. That has always been the requirement, and all maintenance and refurbishment has been completed with that goal in mind.

I recommend your proposed legislation grandfather in pools built prior to the more recent

legislation, and only requiring that the backyard itself be secure, rather than requiring that the dwelling be secured from the pool. You could require that this be disclosed at the time of sale, at which point it would be up to the buyer to decide the potential hazard.

As the proposed legislation stands, it puts all the burden of protecting children on the owners of home with pools, regardless of whether their backyards are secured, and no burden whatsoever on the owners of those small children.

There needs to be some sort of exemption for older homes and pools which were built under the regulations that were in effect at the time, so as to not unduly burden a homeowner who chooses to sell a home with a pool. Protecting children is everyone's responsibility. But placing all the burden on one particular segment of the population that has remained in compliance, and has made improvements/maintenance decisions based on current law often at great expense, hardly seems fair.

I respectfully request a grandfather clause for pools built prior to 1995, such that they must meet the code defined in Chapter 7, and provide full disclosure at time of sale.

Sincerely,

Tom Godsoe
Ben Lomond homeowner

From: Frank McCue [realtor@frankmccue.com]
Sent: Tuesday, April 25, 2006 6:23 PM
To: Ellen Pirie; Jan Beautz; Mardi Wormhoudt; Mark Stone; Tony Campos
Subject: Pool Enclosure Upgrade

"Tying pool enclosure upgrades to the sale of real property will create significant hardships for homeowners. I urge you to work cooperatively with REALTORS@and the homeowner community in Santa Cruz by first informing homeowners of any new requirements for pool enclosures and then giving them time to comply."

Thanks,

Frank McCue, Realtor
Real Estate Broker, ABR, CRS, GRI Certified
American Dream Realty, Inc.
104141st Avenue, Santa Cruz, CA 95062
Office: 831 464-0400
Cellular: 831 234-4191
Fax: 831 477-5898
E-mail: Realtor@FrankMcCue.com
Website: www.FrankMcCue.com

From: RealtorNo1@aol.com
Sent: Tuesday, April 25, 2006 4:22 PM
To: Mark Stone
Cc: Jan Beautz; Mardi Wormhoudt; Ellen Pirie; Tony Campos
Subject: proposal to upgrade pool enclosures

I recently reviewed the Planning Department's letter dated 3/27/06 to the Board of Supervisors concerning 'barriers for swimming pools, hot tubs and spas.

While I am all for child safety with regard to pools and spas, I am concerned about how best to implement policy, and then to enforce new regulations.

In our real estate license classes and tests given by the State of California, we were taught that realtors should not give advice to our customers when that advice should best be obtained from lawyers, governmental officials and departments, and professional consultants who can appropriately impart information on matters that do not fall within a realtor's expertise.

More and more, realtors are charged to disclose certain matters (this is appropriate), AND to participate in the **implementation of law/code enforcement**. THIS IS NOT OUR JOB!

I propose that special thought be given to the issue of child safety with regard to pools and spas, and that an adequate amount of time be given by the County to educate the homeowners about this matter.

If enforcement is left up to Realtors, what about the For Sale By Owner? If they are excluded, isn't this inequitable application of the regs? If the terms of a purchase contract between buyer and seller call for NOT complying with new regulations, would the Realtor be penalized? Would the Realtor have to sever any connections with the transaction? Would the Realtor have to 'report' the non-compliance to the County? Would those buyers and sellers have 'different' terms to follow than the For Sale By Owner, and would that place unfair competition and/or advantage to other parties? (just because no Realtor was involved to call for compliance?)

Please give this matter much thought.

Thanks,

Jeanne Vrolyk

47

From: Gary Gangnes [gary@ror.com]
Sent: Tuesday, April 25, 2006 4:33 PM
To: Jan Beautz; Mardi Wormhoudt; Mark Stone; Ellen Pirie; Tony Campos
Cc: Barbara Palmer; Nancy Bonilla; Karen Sommerfeld; Gary Gangnes; Dee Vogel; Pam Roberts; Philip Tedesco; Rose Marie McNair
Subject: Swimming pool enclosures/ hot tub covers

Dear Supervisors:

I strongly recommend that you do not create any ordinance that would require expensive remodeling in order for someone to sell an asset, like a house. Such "point of sale" ordinances provide undue hardship on a great many homeowners, and would be improper use of government authority.

While upgrades to real property are always desirable, and constant advances in the Uniform Building Code have **faired** well to protect the health, safety and welfare of the public for new construction, forcing expensive upgrades in order to simply allow someone to legally sell an asset is going much too far:

As a Realtor with 28 years' experience, I know that the vast majority of house sales in Santa Cruz County are for "used" houses that vary greatly in age, with a very large number of items in each that are not to current code. *Also*, it is surprising how many sellers do not have an abundance of money with which to perform expensive upgrades.

I believe that passing an ordinance requiring expensive "point of sale" upgrades would be creating a mistake.

Respectfully,
Gary Gangnes
Broker
Real Options Realty
831-464-4004

From: Linda Burroughs [linda@lindaburroughs.com]
Sent: Tuesday, April 25, 2006 5:13 PM
To: Jan Beautz; Ellen Pirie; Mardi Wormhoudt; Tony Campos; Mark Stone

Dear Elected Officials,

It has come to my attention that there is a proposal to amend the requirements regarding pool enclosures at the time of sale for homes in Santa Cruz County. I urge you to consider the following prior to voting on this proposal.

Tying pool enclosure upgrades to the sale of real property will create significant hardships for homeowners. I urge you to work cooperatively with REALTORS and the homeowner community in Santa Cruz by first informing homeowners of any new requirements for pool enclosures and then giving them time to comply.

Thank you for your consideration.

Linda Burroughs
Linda Burroughs Real Estate
mailto:linda@lindaburroughs.com <http://lindaburroughs.com>
831-426-3100 ext 2
831-426-6976 fax
831-818-0218 cell

From: Rose Bayles [rose@rosebayles.com]
Sent: Wednesday, April 26, 2006 5:16 PM
To: Jan Beautz; Ellen Pirie; Mardi Wormhoudt; Tony Campos; Mark Stone
Subject: Pool Enclosures

Tying pool enclosure upgrades to the sale of real property will create significant hardships for homeowners. I urge you to work cooperatively with REALTORS@and the homeowner community in Santa Cruz by first informing homeowners of any new requirements for pool enclosures and then giving them time to comply.

Rose Bayles,
Realtor, GRI
180 Dakota Avenue #44, Santa Cruz, CA 95060
Cell (831) 334-6081, Direct (831) 477-2512
Fax (831) 476-8366, Rose@RoseBayles.com

From: Barbara LeVa [barbaraleva@yahoo.com]
Sent: Wednesday, April 26, 2006 7:41 PM
To: Jan Beautz; Ellen Pirie; Mardi Wormhoudt; Tony Campos; Mark Stone
Subject: pool/spa upgrade

Dear Suupervisor,

Regarding the "pool enclosure" issue. Tying pool enclosure upgrades to the sale of real property will create significant hardships for homeowners. I urge you to work cooperatively with REALTORS@and the homeowner community in Santa Cruz by first informing homeowners of any new requirements for pool enclosures and then giving them time to comply.

If you feel that all pools should be upgraded why not inform **All** pool owners to comply now rather than singling out only those who wish to sell their property. Sounds like more of a punishment to owners who wish to sell, afterall, their pool was built before today's standards.

Sincerely,

Barabara LeVa

4/27/2006

Terry Dorsey

From: Rose Marie McNair [realrose@norcalbroker.com]
Sent: Wednesday, April 26, 2006 2:50 PM
To: Jan Beautz; Ellen Pirie; Mardi Wormhoudt; Tony Campos; Mark Stone
Subject: Pool/Hot Tub Barrier Ordinance

Honorable Supervisors,

On May 2, 2006, you will **be reviewing** a proposal to require homeowners to upgrade pool and hot tub enclosures, at the time a property is sold **or when** an application for a permit is made. As a **REALTOR®** in the community, I believe that it is important for the County to educate homeowners regarding any new requirements **for pool/hot tub safety** through extensive public outreach, thus providing a broader coverage to **EVERYONE CONCERNED—NOT JUST A SELECT FEW** who are selling their homes. By requiring homeowners to **comply** at time of sale or when remodeling clearly does **not** reach **ALL** properties with pools and hot tubs. It should be noted that **sales** such as probate sales, estate sales, foreclosures, etc. may be exempt from such requirements thereby further reducing the number of upgrades your ordinance may require. But, if you do a good **job** with education, incentives and public outreach, more properties **will be** in compliance.

Please consider informing **ALL** homeowners of the need for making their pools and **hot** tubs safe, rather than when a property **sells**. Some homes rarely go on the **market**—why exclude those properties?

Please enter this **email** into the record. (**I will** be mailing a letter to you as well.) Thank you **for** the **opportunity to** speak to this issue.

Rose Marie McNair

Rose Marie McNair, **Broker/REALTOR®**
McNair Real Properties
1715 **Forty** Second Ave. "**B**"
Capitola, CA 95010
Ofc. 831.476.2102 Cell 831.212.4906 Fax 831. 476-2209
realrose@norcalbroker.com
S.R.E.S.® Seniors Real Estate Specialist



RESIDENTIAL BROKERAGE

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FACSIMILE TRANSMITTAL SHEET

TO: <i>S.C. Board of Supervisors</i>	FROM: Cathy Martin Direct Phone Line: 831-662-6516 cathyjo@coldwellbanker.com
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COMPANY:	DATE: <i>4/26/06</i>
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FAX NUMBER: <i>454-3262</i>	TOTAL NO. OF PAGES INCLUDING COVER: <i>1</i>
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RE: *Pool Proposal*

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS.

To: The Santa Cruz Board of Supervisors

Tying pool enclosure upgrades to the sale of real property will create significant hardships for homeowners. I urge you to work cooperatively with Realtors and the homeowner community in Santa Cruz by first informing homeowners of any new requirements for pool enclosures and then giving them time to comply.

Thank you for your consideration,

Cathy Martin

Cathy Martin
Realtor
Coldwell Banker Residential Brokerage

COLDWELL BANKER
7973 SOQUEL DR., APTOS, CA 95003
PH: 831-688-6461 FAX; 831-688-5839



May 1, 2006

Santa Cruz County Board of Supervisors
701 Ocean Street
Santa Cruz, CA 95060

Re: Proposed Pool Barrier Ordinance Point of Sale Requirement

Ma-di-
Dear Board ~~Supervisors~~:

As an advocate for affordable housing, the protection of private property rights, and REALTORS@, the Santa Cruz Association of REALTORS® (SCAOR), would like to submit our comments regarding the County's proposed pool, hot tub and spa barrier ordinance. Specifically, we would like to comment on the point of sale provisions in the current draft.

In a letter dated March 27, 2006 from your Planning Department, the staff noted that over the years, the issue of properly constructed and maintained swimming pool and hot tub/spa barriers is one that has raised many concerns for the Board. Evidently, in addressing this issue, it became apparent to the staff that many inconsistencies exist among the various sections of the County Code that regulate these barriers. In an effort to address the inconsistencies and the concerns of the Board, staff has made a number of recommendations to the Board, including enforcement of compliance at the point of sale of a property.

The staff recommendation that pool barrier upgrades be made immediately, but not certified until the property is sold, provides no reliable mechanism to ensure the timely upgrade of these barriers, and allows dangerous conditions to remain unaddressed. Mandating that improvements be made without certification until the point of sale, virtually guarantees that lifesaving measures may not be made for 30 years or more, if ever.

SCAOR, and the REALTOR@ industry at large, are strong advocates for any regulation that seeks to ensure the health, safety and welfare of the community. For that precise reason, we oppose any such requirement to be imposed at the point of sale. Simply put, a point of sale requirement is an ineffective solution to solving the problem of unsafe pools and spas.

Point of sale is an ineffective method by which to address health, safety, and welfare concerns.

Given the 3 to 5 percent annual housing turnover rate in Santa Cruz County, it would take 20 to 33 years before all of the pools and spas could be inspected and

#47

dangerous conditions addressed. For over three decades, pools and spas would remain as dangerous as they are today and would continue to be a source of injuries and deaths for children. If the intent is to protect the health and welfare of the community, especially children, 20 to 33 years is too long to wait.

Realistically, the 20 to 33 year estimate is optimistic, as most of the homes bought and sold each year tend to be the same “starter” homes. “Starter” homes are typically marketed at lower prices and therefore have a higher turnover rate. If the inspections are imposed only at point of sale, these same homes would be re-inspected, causing city resources to be wasted and leaving countless other homes without inspection. For the great majority, having purchased a home that suits their needs and desires, homeowners likely will not sell their home for decades. It is therefore conceivable that one of the most dangerous situations could remain un-inspected for a half century or more.

REALTORS@ as code enforcement officers.

Point of sale requirements force REALTORSO to become de facto code enforcement officers for the County. Should a REALTOR@ discover an un-permitted pool during a “listing” presentation, he or she would have to inform the seller that they will have to disclose the existence of the pool to the County. It is likely that homeowners may resort to selling the home themselves. For Sale By Owner (FSBO) transactions are becoming increasingly popular in Santa Cruz County. These transactions are not subject to the same rigorous professional and ethical standards to which REALTORS@ are required to adhere. This could result in a number of unintended consequences, such as increased litigation and other transactional problems. However, the most important consequence is that these un-permitted pools and spas will remain un-inspected. The dangerous condition and attendant liability will be passed along to the unwitting buyer or their agent.

Point of sale requirements raise serious liability considerations.

Point of sale raises the issue of liability for both REALTORS@ and the County. Forcing the upgrade of pool barriers at the point of sale of a home, is an unfair burden to place on the shoulders of REALTORS@, and could subject our members to serious liability. Requiring certifications at the point of sale places the responsibility upon the REALTOR® and the seller to ensure that the required inspection and necessary remedial measures are completed. This is a responsibility even though the REALTOR@ and the seller possess little or no expertise in this area.

When homeowners use a REALTOR® to sell and purchase a home, they trust that the transaction will be completed properly. Thus, if a pool barrier is improperly certified and sometime in the future, a child is injured or dies as a result, the REALTOR@ could be held liable (or subject to indemnification), simply because the certification occurred in the course of the transaction.

The County should be mindful that in the event a child or other person dies, as the result of an inefficient or improper pool enclosure, there is a high probability the County would be sued as well. Although a REALTOR® may also be subject to a lawsuit, so too,

may the County. For example, a resident could claim that the County breached its duty to ensure the health, safety and welfare of its citizens by failing to mandate improvements to pool enclosures on a County-wide basis, and instead, used an inefficient, drawn-out, and ultimately ineffective method that requires the sale of a property before any of the requisite upgrades were made.

Requiring upgrades to pool barriers at the point of sale is not good public policy.

From a public policy standpoint, requiring that a property owner comply with these proposed regulations, prior to the sale of one's home, could be construed as a restraint upon alienation. For many, the cost of selling their existing home is compounded by the costs of moving and purchasing another home. To add the fees associated with the proposed regulations could affect whether or not a resident is able to sell their home. This is particularly true for older residents, who may be seeking to downsize and move to a home that is affordable on a fixed income, or who can no longer live independently. Requiring such residents to make costly repairs or upgrades could severely limit whether they are able to sell their home.

Possible alternatives to point of sale.

Unsafe pools and spas are an important problem that must be addressed immediately. Instead of using the ineffective method of regulation at point of sale, there are a number of alternatives:

- Inspections could occur sequentially, by neighborhood on geographically proximate sites, rather than in the random distribution that would occur by point of sale. Inspection equipment could move from one site to the next contiguous site, rather than being shuttled all over the city. These inspections could be scheduled at a constant rate, in lieu of being tied to the "boom or bust" cycle of real estate. Thus, instead of taking over three decades to inspect and remedy unsafe conditions, a proper timeline may resolve the problem within your term of office.
- Contractors and pool maintenance companies are better suited to monitor and determine if upgrades are needed. Unlike at the point of sale, where the responsibility is borne by the REALTOR®, there are qualified professionals available to complete the building code upgrades during a major remodel. Trained and licensed contractors and pool maintenance personnel have the requisite knowledge and expertise to know when a barrier is unacceptable, and what remedial measures are needed to bring it into compliance. Moreover, these professionals are in a position to upgrade a pool barrier at a more opportune time: when construction or maintenance is actually occurring on the property.

There are a number of programs that could be initiated to address the health, safety and welfare concerns related to improper pool barriers. For example:

- **Voluntary programs:** Develop a program that will educate homeowners about the need to inspect or retrofit their existing barriers, and encourage voluntary compliance. Most individuals will do what is best for themselves and their families. If owners are given information on the benefits of compliance with the program, many will follow it. During the recent energy crisis, public education resulted in a ten (10) percent reduction in electrical consumption.
- **Incentive programs:** Offering an incentive program will encourage greater participation by homeowners. For example, a number of cities and water agencies currently offer incentives to encourage homeowner to replace outdated appliances. Los Angeles Department of Water and Power, and the cities of Santa Monica and Carlsbad, issue \$100 rebates. PG&E offers rebates on appliances that consume less energy.
- **City assisted programs:** Many localities offer assistance to pay for the inspections or retrofiting, taking the burden off the property seller. Assistance may be offered through direct city funding or through a 3rd party organization, such as non-profits. The City of San Mateo has low interest loans available to homeowners who wish to remodel.
- **Countywide standards for inspection at specific intervals:** Creating universal standards for the entire County would ensure that everyone is protected and shares the costs of mandates. Many cities and counties conduct inspections either at annual intervals or another annual time frame. They can enact laws requiring that all retrofiting must be done by a specific date to all properties.

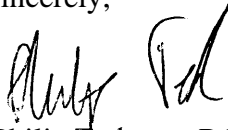
For example, the City of Belinont increased sewage fees and used the funds to improve its aging and dilapidated sewer system. The City of Burlingame inspects its sidewalks on a rotating basis. The County already knows or could easily determine where houses with pools and spas are located. A County inspector could inspect properties with pools that are proximate in the neighborhood until all pools have been inspected by a specific date. For instance, the County could set a 2 percent per month goal for County pool inspection. Properties with pools will be selected for the geographic proximity to make efficient use of the inspector's time. At 2 percent per month, all pools and spas would be inspected in just over 4 years.

Delaying the implementation of an ordinance used to ensure health, safety and welfare is not in the best interests of Santa Cruz County residents. There is the mistaken belief that point of sale is the best time to ensure upgrades because it is an "event" the County can use to find out if property owners are in compliance. The safety of swimming pools, hot tubs and spas should not wait until point of sale to be discovered or corrected.

The County has on file the building permit information for every single permitted pool in the County. Instead of waiting 10, 20, 30 years or more before a property is sold, the County can use its records to identify and notify pool and spa property owners who may need to build or upgrade their barriers. Using this method, the County could retrofit pool barriers in as little as five years. When something as important as the health and safety of the community is at stake, it is good policy and common sense to enact an ordinance that will bring each property into compliance as soon as possible.

In closing, we thank you for the opportunity to express our comments regarding this proposed ordinance. SCAOR looks forward to working further with you on this issue in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip Tedesco". The signature is fluid and cursive, with the first name "Philip" and last name "Tedesco" clearly distinguishable.

Philip Tedesco, RCE, CAE

Chief Executive Officer

Santa Cruz Association of REALTORS®