



# Memorandum

**TO:** HONORABLE MAYOR  
CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Proposed Ordinance Related to  
Adoption of 2007 California Fire Code

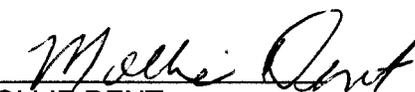
**DATE:** October 31, 2007

Attached is a copy of the Proposed Ordinance related to the adoption of the 2007 California Fire Code, which is set for the City Council November 6, 2007 Agenda, Item 4.5(a). As recommended in the staff memorandum dated October 15, 2006, the Proposed Ordinance adopts the 2007 California Fire Code with certain local amendments based on findings of local climatic, geologic, and topographic conditions. The Proposed Ordinance also incorporates other amendments to Chapter 17.12 of the Municipal Code (the San Jose Fire Code) to maintain existing levels of fire safety and regulatory authority.

As requested by the Fire Department, the Proposed Ordinance includes requirements relating to breathing air replenishment and public radio coverage in high rise structures for the purpose of firefighter safety, which were approved by Council in early 2005 (see Proposed Ordinance Section 17.12.630, pgs. 18-23). Inclusion of these local amendments to the State Code require express findings that the amendments are necessary due to local climatic, geological, or topographical conditions and the amendments are completely discretionary with the City Council.

On October 17, 2007, the Rules and Open Government Committee requested our Office to advise the Council on whether the construction of a breathing air replenishment system in compliance with our ordinance would result in infringement of the patent claimed by Rescue Air, Inc., if the system were not licensed or built by Rescue Air, Inc. Neither the existing Code nor Proposed Ordinance requires the use of the system that has been patented by Rescue Air, Inc. Based on information provided by the Fire Department, we believe that it is possible to construct alternate systems that would meet the ordinance requirements. Moreover, as with any Fire Code requirement, builders always have the option of proposing an alternative means or method of accomplishing the goal of the regulation. We do not have any information about the commercial availability of alternatives to the Rescue Air, Inc. system.

RICHARD DOYLE  
City Attorney

By:   
MOLLIE DENT  
Sr. Deputy City Attorney

Attachment

cc: Debra Figone, City Manager, w/ att.  
Darryl von Raesfeld, Fire Chief, w/att.  
Agenda Distribution List, w/o att., copy available on request