

**RESOLUTION NO. 14243**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING POLICIES, PRACTICES AND PROCEDURES FOR ADMINISTERING AND ENFORCING THE RESIDENTIAL BUILDING RECORD PROGRAM ("RBR PROGRAM") SET FORTH IN SAN RAFAEL MUNICIPAL CODE TITLE 12 (BUILDING REGULATIONS), CHAPTER 12.36 (REPORT OF RESIDENTIAL BUILDING RECORD)**

**WHEREAS**, in 1973, the San Rafael City Council adopted Ordinance 1128 adding Chapter 12.36 (Report of Residential Building Record) to Title 12 (Building Regulations) of the San Rafael Municipal Code (SRMC) establishing a program (referred to as the "RBR Program") requiring that, upon the resale of any residential property within the City, the seller shall obtain from the City a report of the City permit records and City inspection of the property. The report provides an added level of disclosure to the purchaser of the property; and

**WHEREAS**, throughout the subsequent years following adoption of Ordinance 1128, the City has administered the RBR Program employing various levels of inspection and reporting. Further, throughout the years, the laws regulating and the practices employed in residential property sales have changed significantly to protect the consumer (purchaser of property). Today, nearly all residential property resale transactions in Marin County include a privately-commissioned Contractor's Inspection Report, which address basic health and life-safety; and

**WHEREAS**, in March 2016, the California State Auditor's Office completed and published a performance audit report on the City's RBR Program, which report also assessed similar residential resale programs in the City of Pasadena and the City of Novato. The performance audit report recommended that the City of San Rafael amend the RBR Program to incorporate additional processes and procedures to improve and formalize program administration, inspection and reporting; and

**WHEREAS**, on November 7, 2016, the City Council reviewed a report of the Community Development Department presenting five program options and a staff recommendation to retain the RBR Program with significant improvements. As part of this review, the City Council considered the oral and written public testimony, ultimately accepting the agenda report. The City Council directed staff to proceed with preparing: a) amendments to SRMC Chapter 12.36 to reflect the staff recommendation to retain the RBR Program with improvements; b) a resolution outlining the recommended policy, practices and procedures for improving the program; and c) an amendments to the RBR Program fees; and

**WHEREAS**, on December 5, 2016, the City Council introduced for adoption Ordinance No. 1945 amending San Rafael Municipal Code Title 12 by adopting new Chapter 12.36 (Report of Residential Building Record). It is anticipated that the City Council will adopt Ordinance No. 1945 on December 19, 2016. The provisions of this ordinance require that the RBR Program be administered and enforced by the Community Development Department consistent with City policies, practices and procedures adopted by resolution of the City Council; and

**WHEREAS**, on December 5, 2016, the City Council held a duly noticed public hearing to consider the proposed RBR Program Policies, Practices and Procedures, and considered all oral and written public testimony and the written report of the Community Development Department; and

**WHEREAS**, in considering the municipal code amendments set forth in Ordinance No. 1945, the City Council acknowledged and concurred with the Community Development

Department's recommendation to monitor the administration and enforcement of the RBR Program consistent with the RBR Program Policies, Practices and Procedures presented herein for a period of six months following adoption of the ordinance;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby adopts the following RBR Program Policies, Practices and Procedures for administering and enforcing the RBR Program:

**A. SCOPE AND PURPOSE**

The scope and purpose of the RBR Program Policies, Practices and Procedures is to provide and ensure consistent administration, inspections and enforcement of the RBR Program, and to address basic health and life safety by: eliminating redundancy with privately-commissioned inspection reports; providing the City's property permit record; identifying unpermitted alteration and/or construction, or City code violations; and providing remedies.

**B. PROCESS**

The following processing steps shall be implemented by the Community Development Department, Building Division:

1. A standard resale report template shall be maintained and updated when necessary and shall address/include the following:
  - a. To eliminate redundancy or inconsistency with the privately-commissioned Contractor's Inspection Report that is typically prepared during the sales transaction, the resale report template will not include property inspection and compliance with basic health and life safety conditions that are covered or addressed in the privately-commissioned inspection report. Rather, the resale report will focus on determining that the property is in conformance with the City's permit record.
  - b. To streamline the process and minimize inconsistent messaging, the name, position and contact information for a designated Building Division employee shall be provided on the report template. This one designated employee shall serve as the City "clearinghouse" and point of contact to the owner (seller) or their representative (e.g., their real estate agent, contractor or design professional) for all questions, inquiries or disputes regarding the resale report.
2. An application form for a resale report shall be made available at the Community Development Department and on the City website. An application shall be accompanied by the RBR application fee. An application can be filed by the owner (seller) or their representative such as their real estate agent. It is encouraged that the owner (seller) or their representative make an application for resale report early in the sales process or prior to the property listing.
3. Upon receipt of an application, the Community Development Department staff shall complete a research of the property permit records (Building and Planning Division permits) and code enforcement cases on file with the City. The results of the records search, along with other property information (e.g., property zoning, Assessor's Parcel Number) shall be entered into the City's RBR report form/template for use by the inspector.

4. Within seven (7) business days following the receipt date of the application, the Community Development Department staff shall contact the owner (seller) or their representative to schedule a date and time for City inspection.
5. During the property inspection, the City inspector shall:
  - a. Take photographs of the property improvements for the City records. To protect the privacy of the property owner, the photographs shall be stored on a City server that is not accessible to the public.
  - b. Focus the inspection on those items listed in RBR template form Sections A (Residential Dwelling Units [observed] at the Time of Inspection), B (Violations Requiring Routine Permits, Inspection and Approval) and C (Violations Requiring Plans, Permits, Inspection and Approval). See "C" below and attached EXHIBIT A for the "Resale Inspection Checklist."
  - c. Verbally report to/inform the owner (seller) or their representative of violations or unpermitted improvements observed during the inspection that do not appear to match with the property permit records.
6. Following the property inspection, the City inspector shall complete the resale report by entering the findings of the inspection. For quality control, an internal staff review of the report shall be completed to ensure that all information and findings are complete and correct.
7. It is the City's goal to complete the resale report and make it available to the owner (seller) and/or their representative within three (3) working days of the City inspection.
8. If the owner (seller) or their representative should dispute the findings of the resale report, they can file an appeal with the Community Development Director. All appeals shall be filed in writing to the Community Development Department within five (5) business days of the date of issuance of the resale report, and shall be accompanied by an appeal fee. The Community Development Department shall review and render a written determination on the appeal within 10 business days of the filing date of the appeal. The written determination shall be in letter or memorandum form, which shall be posted in the resale report file. In the event the appeal action results a changes to the findings or information in the resale report, a revised resale report shall be issued.
9. An executed copy of the receipt acknowledging that the buyer has received and reviewed the resale report shall be returned to the Community Development Department, Building Division. The Building Division shall monitor the return of the executed receipts until this document is submitted to the City.

C. INSPECTION POLICIES AND PRACTICES

The following policies and practices shall be implemented by the Community Development Department, Building Division to ensure consistent City inspection practices, minimize redundancy with privately-commissioned inspection reports and to provide some relief to the owner in connection with unpermitted improvements:

1. For all resale inspections, the City inspector shall utilize the "Inspection Checklist" presented in attached EXHIBIT A. The Inspection Checklist identifies what the City inspector will/will not be reviewing during the City inspection.

2. Recognizing that the housing stock in San Rafael is aging and that past City inspection policies and practices have been inconsistent, the City has broadened/expanded the list of unpermitted improvements that are considered “grandfathered” and for which no retroactive permits will be required. This list includes:
  - a. Kitchen and bathroom remodels over 25 year old
  - b. Decks under 30” in height constructed prior to 2005;
  - c. Replacement of kitchen countertops (over original cabinets);
  - d. Bathroom vanities and shower enclosures with no other upgrades; and
  - e. Expired permits for water heaters and furnaces provided that the RBR inspector determines that they were installed correctly and to-code.

No retroactive permit will be required for the following, as a thorough City inspection cannot be performed without deconstruction, or the scope of work is unclear:

- f. Roof replacements and new exterior siding replacement; and
- g. Expired building permits where there was no final inspection and no plans to confirm work.

The above unpermitted improvements will be documented and noted in the resale report.

3. To promote consistency in inspection practices, the City shall strive to use a regular or fixed-term employee to conduct the property inspections.

#### D. REMEDIES FOR VIOLATIONS & UNPERMITTED IMPROVEMENTS

To ensure that the report recipient is aware of and understands the available remedies for resolving violations and unpermitted improvements, the Community Development Department, Building Division shall implement the following:

1. The resale report template shall include an informational statement or handout describing the follow-up steps, requirements (what to expect such as a formal City Notice & Order to abate or correct the violation), remedies and timelines for addressing violations and unpermitted improvements. This informational statement/handout shall also offer that if the owner (seller or buyer) intends on remodeling or pursuing home improvements that would replace the unpermitted improvements, the owner can inform the City in-writing of their intent to do so, which may negate the requirement for corrections or retroactive permits.
2. A standard notice detailing the violation(s) and recommended remedies shall be mailed to the owner within 10 calendar days following availability and delivery of the resale report to the owner.
3. For unpermitted improvements that have been identified, not less than 180 days will be provided to the owner (seller or buyer) to correct, permit or abate before code enforcement actions are initiated by the City.
4. For unpermitted improvements that have been identified and determined to have existed prior to the current owner’s [seller’s] purchase of the property but had not been disclosed/identified in previous City-issued resale report), not less than 365 days will be provided to the owner (seller or buyer) to correct, permit or abate before any code enforcement actions are initiated by the City.

5. An amnesty program shall be established and implemented on a bi-annual basis commencing in 2017. The amnesty program shall provide the opportunity for an owner to file for and obtain retroactive permits for unpermitted improvements. During the amnesty period, penalties will be waived; however, the property owner will be required to pay for all regular building permit-related fees. An announcement of the bi-annual amnesty program shall be noticed in the Marin Independent Journal and posted on the City website and/or other City media sources. The Marin Association of Realtors, the Marin Builder's Association and local neighborhood/homeowner associations shall be provided notice of the amnesty program.

E. NOTICE OF COMPLIANCE

In cases where no violations are noted in the resale report, or when the owner completes all corrections or remedial actions to resolve violations or unpermitted improvements, the Community Development Department Building Division shall issue a "Notice of Compliance." The Notice of Compliance shall be issued to the owner and a copy shall be stored in the City's property address/permit file. The intent of this notice is to establish that the subject property and all structures or improvements on said property, have been legally constructed, inspected and approved by the City and is in conformance with the official permit records at the time of issuance. If illegal improvements which may have been overlooked or concealed are later identified which predated the issuance of the certificate, the City may provide written notice to the current owner detailing the matter, and post a copy of that notice in the property record for the benefit of any future owners of the property; however the City will not pursue any enforcement action to compel the property owner to legalize or abate the illegal improvement.

F. FEES

As adopted by separate City Council resolution, the City of San Rafael Master Fee Schedule includes an RBR application fee and an appeal fee for the owner or purchaser that wishes to appeal the results and/or findings of the issued resale report. The following fee policies shall apply:

1. The Community Development Department shall offer a refund of the application fee where a "clean" resale report has been issued citing no violations or required corrections.
2. The Community Development Department shall waive permit fees and penalties for a violation(s) that existed prior to the current owner's (seller's) purchase of the property, where the violation had not been disclosed or identified in previous resale report. To obtain a waiver of fees and penalties, the owner is required make such a request before a building permit application is filed with the Building Division. The request must be accompanied by proof that the violation existed prior to their purchase of the property.

G. PUBLIC EDUCATION

The Community Development Department shall make every effort to provide the public with adequate, complete and up-to-date information on the RBR Program. To facilitate this effort, the following shall be implemented:

1. Staff shall prepare, maintain and update as necessary, an informational handout "How to Prepare for an RBR Inspection", which: a) explains the purpose and scope of the resale report and inspection; b) provides a list of what the City inspectors will/will not be looking for during an inspection ("The Checklist" referenced above); c) notes what the owner or purchaser should look for in the privately-commissioned

inspection reports to address basic health and life/safety; and d) lists resources for researching property permit history. The informational handout shall be posted and maintained on the City website and hardcopies shall be made available at the Community Development Department. The informational handout and any periodic updates to the handout shall be distributed to the Marin Association of Realtors.

2. A "How to Prepare for an RBR Inspection" video shall be produced and posted on the City website.
3. Staff shall expand, maintain and update (as necessary) a list of "Frequently Asked Questions" (FAQ) about the RBR Program. The FAQs shall be posted and maintained on the City website.
4. At the beginning of each calendar year, the Community Development Department shall host a "Coffee and Codes" workshop providing an educational refresher on the RBR Program. The Coffee and Codes shall be targeted for the real estate professional, public (seller and buyer), as well as the design and construction trades.

**H. SIX-MONTH PROGRESS REPORT AND REVIEW**

Six months following the adoption of Ordinance No. 1945, the Community Development Department shall prepare a progress report on the RBR Program. The progress report shall be presented to the City Council for review.

**BE IT FURTHER RESOLVED** that any and all amendments to the RBR Program Policies, Practices and Procedures as deemed necessary from time-to-time shall be adopted by resolution of the City Council.

I, ESTHER C. BEIRNE, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was adopted at a regular meeting of the City Council on the 5<sup>th</sup> day of December 2016.

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough & Mayor Phillips

NOES: Councilmembers: None

ABSENT: Councilmembers: None



ESTHER C. BEIRNE, City Clerk

EXHIBIT A: "RESALE" INSPECTION CHECKLIST

CC Reso 14243\_adopted (RBR)



## “Resale” Inspection Checklist

The primary focus of the resale inspection is to ensure that all structures and improvements **meet basic health and life-safety standards** as mandated through enforcement of State building codes.

The City inspection will identify any improvements that may have been constructed without benefit of City permits, so as to ensure that they meet these minimum health and life-safety standards such as:

- proper foundations and structural framing to assure maximum survivability in an earthquake
- safe electrical installations to prevent fire or shock
- proper sanitary installations for public health
- proper gas installations to prevent fire or personal injury
- appropriate fire resistance
- proper exiting – such as in case of fire or disaster
- room sizes and minimum light and ventilation to assure a healthy environment

The City inspection report may include any of the following types of improvements:

- Verification on the land use and number of dwelling units (e.g., inspecting for unpermitted/illegal Dwelling Units)
- Basement and/or Attic Conversions (conversion of storage/crawlspace to habitable space)
- Garage Conversion (the minimum size of a garage cannot be diminished by any improvements per the zoning ordinance – 2 car garage minimum 20 x 20; 1 car garage minimum 10 x 20; 2 car carport 18 x 19; 1 car carport 9 x 19)
- Building Addition(s) (Additional square footage added)
- Exterior Stairway(s) / Deck(s) / Balconies constructed or reconstructed
- Outlets Added / Recessed Lighting / Circuits for Appliances Added (all electrical work requires inspection)
- Plumbing fixtures added – water and sewer connections
- Kitchen Remodeled (New cabinetry constitutes remodeling). Plumbing and electrical connections
- Bathroom Remodeled - Tub, Shower, Vanity (Vanity only is typically not enforced)
- Hot Tubs/ Spas. Electrical connections and grounding. Hot tubs on elevated decks can create a structural hazard.
- Wood Stoves/Fireplace Inserts New gas line? New electrical?
- Water Heater / Boiler Replaced
- Furnace / Heat Pump / AC / Wall Heater Replaced
- Carports / Patio Covers/ Trellis'/ Arbors/ Accessory Structures to ensure sound and safe foundation/framing and that there is no fire exposure to neighboring properties
- Windows / Exterior doors added or replaced to ensure that appropriate windows are safety glazed, adequate ventilation is provided, and fire exiting is provided for the safety of the residents