



SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No: 4.b

Meeting Date: November 16, 2020

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: **COMMUNITY DEVELOPMENT**

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Prepared by: **Paul A. Jensen, Director**
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City Manager Approval: *AS*

TOPIC: RESIDENTIAL BUILDING RESALE REPORT (RBR) PROGRAM

SUBJECT: RESOLUTION ADOPTING TEMPORARY MEASURES FOR ADMINISTERING 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) DURING THE HIGH DEMAND REAL ESTATE MARKET AND COVID-19 PANDEMIC

RECOMMENDATION:

Adopt resolution of temporary measures for administering the RBR Program.

BACKGROUND:

History

In 1973, the City Council adopted Ordinance 1128, which established the City’s Residential Building Resale (RBR) Program. The provisions and requirements of the RBR Program are codified in San Rafael Municipal Code (SRMC) Chapter 12.36 (Report of Residential Building Record). SRMC Section 12.36.010 requires that prior to the sale or exchange of any residential building, the property owner is required to obtain a “report of residential building record” (resale report). The program includes a City inspection for which the findings are incorporated in the resale report. While the RBR Program is not a common service and practice in most California cities, this program is in place in all local jurisdictions in Marin County, except for the County of Marin.

In December 2016, following a performance audit of the RBR Program by the California State Auditor’s Office, the City Council adopted a substantially revised and updated Program. The City Council adopted [Ordinance 1945](#) setting forth new municipal code provisions for the RBR Program. In tandem with this action, the Council adopted: a) [Resolution 14243](#) which sets forth adopted policies, practices, and procedures for administering and enforcing the RBR Program; and b) Resolution 14244, which updated the RBR Program fee schedule.

The updated RBR Program has been operating well, which is largely attributed to the following factors:

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Disposition: _____

- To minimize inconsistencies in City inspections and to promote continuity, a City Building Inspector has been assigned to conduct the RBR inspections rather than the inspections being conducted by temporary/seasonal employees and contract inspectors.
- The "[Resale Inspection Checklist](#)" that was developed has been effective in: a) ensuring consistent City inspection practices; and b) providing the customer (owner and buyer) with an understanding of what the City inspector will or will not be looking for during the inspection.
- The property sellers and their real estate agents have been diligent in filing requests for an RBR early in the property listing process, which has provided better time management for City processing, site inspection and report preparation.
- The property sellers and their real estate agents have been proactive in applying for and securing City permits to correct unpermitted work prior to property listings and the issuance of an RBR report. It is apparent that property owners (sellers) are being more proactive at the frontend of the property sale process. Real estate agents are urging sellers to resolve unpermitted improvements and violations, and sellers are requesting City permits (mostly "retroactive" building permits) before filing a request for a resale report. By doing so, sellers are seeking to avoid or minimize fines/penalties or potential delays in the property sale.
- When a "clean" resale report is issued (no violations or corrections) or when the property owner completes all corrections or remedial actions to resolve violations, the Building Division staff issues a "Notice of Compliance."
- A refund of the RBR fee is offered to the applicant that has been issued a "clean" resale report with no cited violations or corrections.

Staff has received few complaints about the reports and unpermitted work. Since the updated program was launched in early 2017, there have been less than ½ dozen appeals on the report findings. The complaints that are received are about processing time and the inspection schedule.

The following table provides RBR activity statistics for the past four years of administering the updated Program:

Reporting Year	Total RBRs Issued	Total Monthly Average	Total Refunds Issued
2017	634	50	15
2018	635	49	23
2019	592	45	19
2020 (Year-to-date)	565	74	38

High Demand Real Estate Market & COVID 19 Pandemic

As recently reported in Bay Area news, San Francisco and the South Bay are experiencing an exodus of City residents that are moving outward to the suburbs. A combination of factors is causing this exodus including: 1) employers requiring employees to work from home in response to the COVID-19 Shelter-in-Place order; 2) skyrocketing rents in San Francisco; and 3) low interest rates for real estate loans (mortgage interest rates are below 3%). Our local realtors have reported record numbers of new clients seeking housing in Marin. Further, the available real estate inventory is low, so property that is placed on the market sells quickly, resulting in shorter transaction periods.

As a result of this spike in activity, the RBR applications are at a record high (as cited above, monthly average has jumped 35%) and one Building Inspector has been dedicated to administering the

inspections and resale reports. Other staff in the Building Division have had to step in and assist during periods of heavy application/inspection activity. Because of reduced staffing resulting from the COVID-19 pandemic, there have been delays in processing, inspecting, and issuing the resale reports. As the sellers, buyers and realtors rely on the information from the RBR in the property sale process, the delays in the issuance of the resale reports has been challenging for our customers.

Temporary RBR Program Measures

Staff has collaborated with Marin Association of Realtors to identify temporary measures that can be implemented during the current, high demand real estate market and the pandemic. We have agreed to the following, which is outlined in the attached resolution:

1. Temporarily cease the City inspection part of the process.
2. Prepare and issue a resale report that provides property information and the permit history on file with the City.
3. Temporarily reduce the RBR fee. The recommended fee reduction is discussed in the Fiscal Impact section of this report.
4. Apply these interim measures for a period of six (6) months, with the potential of it being extended if the real estate market continues to surge and the pandemic continues.

ANALYSIS:

Staff finds that the temporary measures will assist in reducing turnaround time for issuance of a resale report and allow the City's RBR inspector to be deployed to other, needed inspection services. Further, the issuance of an RBR report that provides the property permit history only would be like the resale programs in Marin where no inspection is completed (e.g., Town of Corte Madera). For now, the other advantage is one of safety to the customer and the Building Inspector. With the current high demand real estate market where the available inventory is selling quickly, a great number of sellers are remaining in their homes during the property listing and sale process. As a result, there is a greater number of person-to-person encounters during the RBR inspection process.

There are two downsides to these interim measures. First, without a City inspection, unpermitted work would not be identified and cited for correction. Second, if unpermitted work is not cited, there would be a temporary reduction in projected revenue (discussed below in Fiscal Impact section) that is generated from the issuance of retroactive permits with fines/penalties. These concerns are best addressed by adopting the measures for the limited six-month-period, as recommended by staff. This time frame will allow staff to monitor these issues before considering any extension of the interim measures.

COMMUNITY OUTREACH:

Staff has been in direct contact and worked with the Marin Association of Realtors (MAR) on the draft interim measures and temporary fee reduction. MAR is supportive of the interim program measures.

FISCAL IMPACT:

The administration of the RBR Program is funded by fees. As noted above, on December 5, 2016 the City Council adopted an update of the RBR Program fee schedule. The adopted RBR fees are presented in the table below. The fees are based on a 2016 cost study that was prepared by staff, which represents staff time to complete the service, including a minor amount of overhead. Completing the field inspection and reporting the inspection findings represents about 50% of the service time and

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 4

cost represented in the adopted fees. Therefore, staff is recommending that during this interim period, the RBR fees be temporarily reduced as presented in the table below (right column).

RBR Service	Currently Adopted Report Fees	Temporary Fee Reduction (Recommended)
Resale Report- Single-Family Residential	\$290.00	\$145.00
Resale Report- Duplex	\$290.00/unit	\$145.00/unit
Resale Report- Multiple-Family/Apartments First Unit.	\$270.00	\$135.00
Each additional Multiple-Family Dwelling/Apt. Unit	\$30.00	\$15.00
Resale Report- Condominiums	\$255.00	\$128.00
Appeal	\$100.00	N/A

Please note two factors. First, a “not applicable” entry has been placed in this table for appeals. An appeal is offered to the customer that challenges the field inspection findings that are reported in the RBR. If, during this interim period no field inspections are conducted, there would be no appeals. Second, during this interim period, the fee would not be refundable. The current refund that is offered is for a “clean” resale report that is issued based on the findings of the field inspection, which would not be conducted during this interim period.

Year-to-date, the City has collected \$150,100 in program fees. Regarding the 100% refund that is issued for “clean reports,” year-to-date, the City has issued 38 refunds for a total amount of \$10,500. As noted, revenue is generated by the retroactive permits and penalties for unpermitted work that is disclosed as part of the RBR inspection process. If inspections are ceased for the six-month period, it is estimated that \$80,000-100,000 in projected revenue from retroactive building permit and penalties (investigation fees) would not be realized.

OPTIONS:

The City Council has the following options to consider regarding this matter:

1. Adopt resolution as recommended by staff; or
2. Adopt resolution with additional changes to the interim measures; or
3. Direct staff to return with additional information; or
4. Reject the report.

RECOMMENDED ACTION:

Adopt resolution.

ATTACHMENTS:

1. Resolution

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING TEMPORARY MEASURES FOR ADMINISTERING 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) DURING THE HIGH DEMAND REAL ESTATE MARKET AND COVID-19 PANDEMIC

WHEREAS, on December 16, 2016, the City Council adopted Ordinance No. 1945 amending San Rafael Municipal Code Title 12, Chapter 12.36 (Report of Residential Building Record), which set forth the general administration and enforcement of what is known as the RBR Program. The RBR Program requires that upon resale of any residential property with the City, the property seller shall obtain from the City a report (resale report) of the City permit records and City inspection of the property. The resale report provides an added level of disclosure to the purchaser of the property; and

WHEREAS, in tandem with the adoption of Ordinance No. 1945, on December 16, 2016 the City Council adopted: a) Resolution No. 14243 which sets forth the specific policies, practices, and procedures for administering the RBR Program; and b) Resolution No. 14244 which amended the City’s Master Fee Schedule to update fees specific to the RBR Program; and

WHEREAS, Resolution No. 14243 includes, among others the specific process steps for and required information to be included in a resale report. The resale report must include a complete history of the property permit records (Building and Planning Division permits) and code enforcement cases on file with the City. Further, a property inspection must be conducted by a City inspector and the resale report shall include the findings of the inspection and shall cite violations and/or unpermitted construction that must be corrected or remedied. This resolution also includes a commitment that within seven (7) business days following City receipt of the RBR application, City staff is to contact the property owner/seller or their representative to schedule a date and time for City inspection of the property; and

WHEREAS, San Francisco and the South Bay are experiencing an exodus of residents moving outward to the suburbs. A combination of factors is causing this exodus including: 1) the COVID 19 Shelter-in-Place Order has mandated that employees work from home; 2) skyrocketing rents in San Francisco and South Bay; and 3) the low interest mortgage loan rates that are currently available. The high demand real estate market has resulted in a low inventory and shorter property sale transaction periods; and

WHEREAS, the COVID-19 pandemic has led to significant budget cuts and staffing reductions resulting in slower processing times and inspection scheduling for resale reports; and

WHEREAS, the Community Development Department staff has collaborated with Marin Association of Realtors to develop temporary, interim measures for administering the RBR Program during the pandemic and this high demand real estate market. The interim measures include temporarily ceasing the City inspection portion of the RBR Program for six months;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby adopts the following temporary measures for administering the RBR Program:

1. The City inspection, reporting of the inspection results, and the citing of violations and unpermitted improvements outlined in and required by City Council Resolution No. 14243 shall cease during this temporary period. All other RBR Program tasks and actions outlined in Resolution No. 14243 shall continue to be administered by the City.
2. During this temporary period, the contents of the resale reports shall follow the requirements set forth in San Rafael Municipal Code Chapter 12.36 (Report of Residential Building Record), Section 12.36.060 (contents of report) except that the report will not include City site inspection findings.
3. The RBR application and related fees shall temporarily be adjusted as follows:

RBR Service	Temporary Fee Reduction
Resale Report- Single-Family Residential	\$145.00
Resale Report - Duplex	\$145.00/unit
Resale Report- Multiple-Family/Apartments First Unit.	\$135.00
Each additional Multiple-Family Dwelling/Apt. Unit	\$15.00
Resale Report- Condominiums	\$128.00
Appeal	NA

During this temporary period, no refunds will be issued.

4. During this temporary period, issued resale reports shall continue to be valid for a period of six (6) months with the ability for the Building Official to issue a one-time extension of up to an additional 90 days.
5. These temporary measures shall be in place and in effect for a period of six (6) months or until May 16, 2021. Prior to the May 16, 2021 sunset date of these temporary measures, the Community Development Department staff shall assess the status of the real estate market and the COVID-19 pandemic to determine if the temporary measures should be extended for an additional period not to exceed six months. An extension of the temporary measures shall require the approval of the City Council.
6. Following the sunset date of these temporary measures without extension by the City Council, administration, and enforcement of the RBR Program shall resume consistent with the adopted policies, practices and procedures set forth in City Council Resolution No. 14243. Further, at that time, the RBR fees shall return to the full application fee amounts set forth in the City of San Rafael Master Fee Schedule.

I, LINDSAY LARA, 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 16TH day of November 2020.

AYES:

NOES:

ABSENT:

LINDSAY LARA, City Clerk