



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: COMMUNITY DEVELOPMENT

**Prepared by: Alicia Giudice, Director
Don Jeppson, Chief Building Official**

City Manager Approval: _____

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TOPIC: RESIDENTIAL BUILDING RESALE (RBR) REPORT

SUBJECT: RESOLUTION ADOPTING AN EXTENSION OF 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 to extend temporary measures for administering the RBR Program.

BACKGROUND:

The City’s Residential Building Inspection Program (RBR), established in 1973 by Ordinance No. 1128, requires property owners to obtain a “report of residential building record” (resale report) prior to the sale or exchange of any residential building. The program includes a City inspection for which the findings are incorporated in the resale report. This program was updated in December 2016 by [Ordinance No. 1945](#) and City Council [Resolution No. 14243](#) which set forth the adopted policies, practices, and procedures for administering and enforcing the RBR Program; and b) Resolution No. 14244, which updated the RBR Program fee schedule.

In November 2020, the City Council adopted [Resolution No. 14870](#) which temporarily adjusted RBR fees and temporarily ceased the City’s inspection portion of the RBR Program for six months. The resolution allowed for a temporary modification to the RBR program due to the COVID-19 pandemic, an influx of building permit inspection requests and the reduction of staff due to retirements. In May 2021, the City Council adopted Resolution No. 14912 which extended these temporary measures to the end of December 2021. That extension has expired and the City continues to experience a steady volume of building inspection requests. We are close to but not at full inspector staffing, and new COVID-19 cases are once again surging, which has an impact on in-person inspections and also the ability to fill an inspector vacancy. For these reasons, staff is recommending an additional extension of the temporary measures through July 2022.

FOR CITY CLERK ONLY

Council Meeting:

Disposition: Resolution

ANALYSIS:

The following tables provide Building-Related Permit activity for the past two years and RBR statistics for the past four years:

Building-Related Permits	Year 2021	Year 2020 (comparison)
New Building Permit Applications Received (Total Valuation)	3,273 (\$156 million)	3,025 (\$116 million)
Building Permits Issued (Fees Collected)	3,417 (\$4.4 million)	2,940 (\$7.2 million)
Projects and Permits Completed through Final Inspection	984	781
Residential Building Resale Inspection Reports Issued	737	638

Reporting Year	Total RBRs Issued	Total Monthly Average	Total Refunds Issued
2017	634	50	15
2018	635	49	23
2019	592	45	19
2020	638	53	38
2021	737	61	None
2022 (to date)	19	N/A	None

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) a permanent and sustained shift in the workforce to working from home which started during the COVID-19 Shelter-in-Place Order; 2) high rents in San Francisco; and 3) low interest rates for real estate loans. 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.

RBR applications remain at high levels and in 2021 showed an increase of over 15% from the prior year. One Building Inspector has been dedicated to administering the inspections and resale reports. Other staff in the Building Division have had to step in to assist during periods of heavy application/inspection activity. Because of reduced staffing resulting from the COVID-19 pandemic and increased demand for building permits, the Building Division experienced delays in processing, inspecting, and issuing the resale reports before the temporary measures were adopted. As the sellers, buyers and realtors rely on the information from the RBR in the property sale process, these issuance delays of the resale reports cause significant challenges for our customers.

Temporary RBR Program Measures

Staff has continued close collaboration with the Marin Association of Realtors to meet the current high demand for real estate and there is an interest in continuing the temporary measures which include the following:

1. Continue to 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. Continue temporarily reduced RBR fees. The recommended fee reduction is discussed in the Fiscal Impact section of this report.
4. Apply these interim measures through July 31, 2022.

Staff finds that the extension of 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 separate, needed inspection services. Further, the issuance of an RBR report that only provides the property permit history would be modeled after similar resale programs in Marin where no inspection is completed (e.g., Town of Corte Madera).

An additional advantage of the extended temporary measures is the safety provided 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, which the temporary measures would curtail as a safety measure to combat the spread of COVID-19.

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.

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 approximately 50% of the service time and 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	NA

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.

As noted, retroactive permits and penalties for unpermitted work that is disclosed as part of the RBR inspection process leads to revenue collection. If the recommended resolution is adopted and inspections are waived to the end of July, it is estimated that \$80,000-100,000 in projected revenue from retroactive building permit and penalties (investigation fees) may not be realized.

OPTIONS:

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

1. Adopt the resolution as proposed by staff.

2. Adopt the resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt resolution.

ATTACHMENTS:

1. Resolution

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING AN EXTENSION OF 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 within 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, on November 16, 2020, the City Council adopted Resolution No. 14757 which temporarily adjusted RBR fees and temporarily ceased the City’s inspection portion of the RBR Program for six months. The resolution allowed, with an assessment from Community Development Department staff on the status of the real estate market and the COVID-19 pandemic, an extension of temporary measures with approval of the City Council.

WHEREAS, on May 17, 2021, the City Council adopted Resolution No. 14912 which continued temporarily adjusted RBR fees and temporarily ceased the City’s inspection portion of the RBR Program to the end of December 2021.

WHEREAS, San Francisco and the South Bay continue experiencing an exodus of residents moving outward to the suburbs. A combination of factors is causing this exodus including: 1) a permanent and sustained shift in the workforce to working from home which started during the COVID 19 Shelter-in-Place Order; 2) high rents in the San Francisco and South Bay; and 3) the low interest mortgage loan rates. The high

demand real estate market has resulted in a low inventory and shorter property sale transaction periods; and

WHEREAS, during the COVID-19 pandemic building permits and RBRs have increased while there have been 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 continued to collaborate with Marin Association of Realtors on the extension of 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 through July 31, 2022;

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

1. The temporary measures authorized by this Resolution shall be in place and in effect through July 31, 2022.
2. 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.
3. 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.
4. 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.

5. During this temporary period, issued resale reports shall continue to be valid for a period of six (6) months with the ability for a one-time extension of up to an additional 90 days.
6. Following the sunset date or further extension of these temporary regulations, 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 duly and regularly introduced and adopted at a regular meeting of the City Council of San Rafael, held on Tuesday, the 18th day of January 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk