

ORDINANCE NO. 1945

AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING SAN RAFAEL MUNICIPAL CODE TITLE 12 (BUILDING REGULATIONS) TO REPEAL CHAPTER 12.36 THEREOF IN ITS ENTIRETY AND REPLACE IT WITH NEW 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, the City has administered the RBR Program employing various levels of inspection and reporting; 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 April 4, 2016, the performance audit report was presented to the City Council. In respond to a review of the performance audit report findings and public comment, the City Council directed staff to study options to the RBR Program including the continuation, modification, or elimination of the program; and

WHEREAS, the Community Development Department prepared five RBR Program options, which were presented to the City Council and public at two City Council Study Sessions held on August 1, 2016 and September 6, 2016; an

WHEREAS, based on comments received in the City Council Study Sessions, staff recommended that there is value to the community in retaining an RBR Program but recognized that there is need for change and improvement. Changes and improvements include the need to formalize policies and practices so as to reduce the potential for future inconsistencies in the RBR Program implementation and administration; and

WHEREAS, on November 7, 2016, the City Council reviewed a report of the Community Development Department presenting the 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, the proposed amendments to Title 12 will repeal current Chapter 12.36 in its entirety and replace it with a new Chapter 12.36; and

WHEREAS, the proposed amendments to SRMC Chapter 12.36 do not propose any changes to City policies or regulations that would result in a direct or indirect physical,

environmental impact; therefore it has been determined that this amending ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and

WHEREAS, on December 5, 2016, the City Council held a duly noticed public hearing to consider this ordinance, and considered all oral and written public testimony and the written report of the Community Development Department; and

WHEREAS, the City Council hereby makes the following finding that support the amendments to SRMC Chapter 12.36 adopted herein:

1. The public interest is served by the proposed municipal code amendments as they would allow the continuation of the RBR Program with substantial improvements that are critical in maintaining an aging housing stock and providing an additional level of disclosure and protection to the residential property purchaser. In addition, there is general value to the RBR Program which is in the public interest in that the program: a) has been administered for over 40 years and is a program that is common to all local jurisdictions in Marin (except the County of Marin); b) offers a unique service to the purchaser that is not provided by the real estate professionals or the privately-commissioned home inspectors; c) provides City access to the community's housing stock, which assists in identifying unpermitted work and pursuing code compliance; and d) is supported by the California State Auditor's Office performance audit report as a means of providing "consumer protection to home purchasers and to enhance the enforcement of zoning and health and safety regulations before the property ownership is transferred."
2. The municipal code amendments would be consistent with the San Rafael General Plan 2020, specifically Housing Element Policy H-8 (Housing Conditions and Maintenance) and Neighborhood Element NH-4 (Improve Property Maintenance) in that the RBR Program, as amended, would: a) would assist in protecting the housing stock by enforcing the housing and building codes; b) require property owners to maintain their properties in good condition to eliminate unsafe and unhealthy conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION 1. AMENDMENTS.

San Rafael Municipal Code Chapter 12.36 (Report of Residential Building Record) is hereby repealed in its entirety, and replaced with a new Chapter 12.36, to read in its entirety as follows:

Chapter 12.36 - REPORT OF RESIDENTIAL BUILDING RECORD

Sections:

12.36.010 – Purpose.

The city finds that it is necessary to maintain and upgrade the condition of the aging housing stock within the city to ensure the basic health and life safety of its residents. A report of residential building record, prepared and issued upon the resale of residential property provides a reasonable and effective method of disclosing building conditions, unpermitted improvements, and mandatory items of correction to meet the city codes governing basic health and life safety.

In addition, the city finds that a report of residential building record provides a valuable disclosure of building conditions to the purchaser, and an opportunity for the city to enforce building and zoning codes.

12.36.020 - Definitions.

(a) "Building official" means the chief building official, an authorized deputy, designated building inspector or other designated employee of the community development department building division charged with enforcement and administration of this chapter.

(b) "Owner" means any person, co-partnership, association, corporation or fiduciary, or their authorized agent(s) having legal or equitable title or any interest in any real property.

(c) "Purchaser" means any person, partnership, association, corporation or fiduciary, or their authorized agent(s) acquiring legal or equitable title or any interest in any real property.

(d) "Report" means the report of residential building record.

(e) "Residential building" means any improved property designed or permitted to be used for dwelling purposes (e.g., single-family dwelling, two-family [duplex] dwelling or multiple-family dwelling [apartment], or townhome), situated in the city and shall include all the buildings or structures located on the improved real property.

12.36.030 - Report required.

Prior to the sale or exchange of any residential building, the owner thereof shall obtain from the city a report of residential building record, which documents the findings of a city permit records search and city inspection.

12.36.040 - Application for report.

An owner required by this chapter to obtain a report shall file an application to the community development department, building division, on forms provided by the department containing such information that may be deemed necessary.

12.36.050 - Fees.

A report shall be subject to an application fee made payable upon application to the city by the owner. The filing fee for the report shall be as set forth in the city's master fee schedule.

12.36.060 - Contents of report.

Upon application of the owner and payment of the fee, the building division shall review pertinent city records and inspect the premises in question. Upon completion of the review and the inspection, the building division shall make available to the owner a written report of residential building record, which shall contain in respect to the residential building and property the following information:

(a) The street address and assessor's parcel number of subject property;

(b) A statement documenting the zoning district classification for the property and a list of the zoning permits and/or approvals that have been granted to the property;

(c) A list of the record of construction permits that are on file with the building division and, if any, the active or expired building permits that have been issued for work not yet completed on those premises;

(d) A list of past code enforcement cases and actions taken by the city;

(e) A statement confirming the type and number of residential buildings and dwelling units observed at the time of the city inspection;

(f) A statement as to whether there are any nonconformities or illegalities in the structures on the property or the uses such as, but not limited to, undocumented dwelling units or unpermitted improvements observed at the time of the city inspection;

(g) A statement listing any violations observed at the time of the city inspection and the required remedy for such violations (e.g., obtaining retroactive permits or abatement);

(h) A statement of advisory notations from the city on improvements observed at the time of the city inspection;

(i) The name of the city building inspector that conducted the city inspection supporting the report findings, along with the name and contact information of the building division employee that is available to assist in addressing questions and issues;

(j) The dates of report issuance and expiration; and

(k) A return receipt and buyer's certification form.

(l) A notification of the appeal process available to the owner who wishes to contest the contents of the report.

12.36.070 – Policies, practices and procedures for administering the report program.

The report program shall be administered and enforced by the community development department consistent with city policies, practices and procedures adopted by resolution of the city council. The adopted policies, practices and procedures shall address and incorporate, among others, the following:

(a) Time frames and procedures for report processing and remedies;

(b) The specifics on the scope of the city inspection for owner and purchaser awareness and to minimize redundancy with the privately-commissioned inspection reports prepared as part of the resale transaction;

(c) A list of unpermitted improvements disclosed during the city inspection that are waived from obtaining a retroactive permit(s);

(d) Policies for fees for the report application, appeals, refunds and waivers; and

(e) Measures to facilitate customer awareness and knowledge of the report program.

12.36.080 – Delivery and receipt of report to purchaser.

When completed, the report shall be made available to the seller (owner) or their authorized agent(s) who shall acknowledge receipt of the same. The owner or their authorized agent(s) shall deliver the report to the purchaser or transferee prior to the consummation of the sale. The purchaser or transferee shall execute an acknowledgment of receipt of the report and deliver a copy of said receipt to the community development department building division.

12.36.090 - Appeals.

The report results and/or findings may be appealed to the community development director by the owner or his or her authorized representative. All appeals must be filed in writing with the community development department within five (5) working days of the date of issuance of the report and accompanied by an appeal fee as set forth and adopted in the city's master fee schedule. The community development director shall review and render a written determination on the appeal within 10 working days of the filing date of the appeal.

12.36.100 -Expiration and extension.

The report of residential building record shall be valid for a period of six (6) months from the date of issuance by the city. Prior to the expiration date of the report, the owner may request and the city may issue one extension of up to three (3) additional months. There shall

be no fee for the issuance of the extension. In the event the property is not sold and is remarketed after the report has expired, a new report shall be requested and issued by the City.

12.36.110 - Exceptions.

The provisions of this chapter shall not apply to:

- (a) The first sale of any residential building if such sale is within a twelve-month period from the recordation of the notice of completion of the residential building;
- (b) A re-conveyance by a trustee pursuant to the provisions of a deed of trust;
- (c) A transfer of property made without valuable consideration (e.g., transfer by reason of death or transfer into or out of a revocable trust);
- (d) A transfer of property made solely between co-owners; and
- (e) The transfer of a mobile home or trailer occupying land pursuant to a month-to-month rental or annual lease agreement, which does not involve the transfer or conveyance of real property.

12.36.120 - Compliance with law.

No statements contained in a report of a residential building record issued by the city shall authorize the use or occupancy of any residential building contrary to the provisions of any law or ordinance. Every report issued under this chapter shall contain a provision stating that the issuance of such report shall not constitute a representation by the city that the property or its present use is or is not in compliance with the law, and that the report does not constitute a full disclosure of all material facts affecting the property or the desirability of its sale.

12.36.130 – Failure to obtain a report.

Except as provided in this chapter, it is unlawful for the owner of a residential building in the city to sell or exchange the same without first having obtained a report pursuant to this chapter and delivering it to the purchaser. Any person violating any of the provisions of this chapter is guilty of an infraction and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00).

DIVISION 2. SEVERABILITY.

If any subsection, sentence clause or phrase of this ordinance amendment is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this added ordinance section.

DIVISION 3. PUBLICATION; EFFECTIVE DATE.

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this ordinance amendment along with the names of those Councilmembers voting for or against the amendment.

GARY O. PHILLIPS, Mayor

ATTEST:

ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No. 1945 was read and introduced at a regular meeting of the City Council of the City of San Rafael on December 5, 2016 and was ordered passed to print by the following vote, to wit:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 19th day of December 2016.

ESTHER C. BEIRNE, City Clerk

Ord 1945 _adopted (RBR)