



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 13, 2013

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Zoning Information Report Process

RECOMMENDATION:

That Council consider the request from Mayor Schneider and Councilmember Francisco regarding the requirement for Zoning Information Reports (ZIRs) at the time of sale of residential property, and provide direction on possible amendments to the Zoning Ordinance to change the requirements and/or processing of ZIRs.

DISCUSSION:

Mayor Schneider and Councilmember Francisco requested that Council review the current Zoning Information Report (ZIR) process and determine whether any amendments to the Municipal Code should be initiated, including whether ZIRs should be optional rather than mandatory (Attachment 1).

City Staff have met with the Santa Barbara Association of Realtors (SBAOR) on several occasions to discuss issues that have arisen out of the ZIR process and potential options to address those issues. A primary area of concern to both SBAOR and staff relates to discrepancies between prior ZIRs and what staff presently finds as possible violations (usually improvements made without a building permit &/or zoning infractions). Other concerns include the timeframe in which the ZIR is requested and issued, and the City fee for the ZIR (Attachment 2). Attachments 3 and 4 provide staff's thoughts on these issues including the importance of the ZIR, an explanation of the process used to address and resolve violations, and potential changes in the process.

The potential options staff has developed include a Zoning Ordinance amendment to allow the Staff Hearing Officer (SHO) the authority to grant administrative approval of minor improvements that require a modification, similar to the administrative approval the Municipal Code currently allows for design review, and/or establishing an administrative appeal process on the findings of the ZIR. Staff prefers the SHO administrative approval process. Both of these options require amendments to the Municipal Code with a hearing for the Planning Commission recommendation and adoption by Council with at least 5 affirmative votes.

In discussions with the SBAOR representatives, they expressed general support for the options outlined by staff, but they also expressed concern that it still does not fully meet their objectives to dramatically change or completely eliminate the ZIR process, and so they are hesitant to support it.

Staff does not support the elimination of the requirement for a ZIR or a proposal to make the ZIR optional. It is important to understand that violations on a property are identified in a variety of ways and times, not just through the ZIR process but also through resident inquiries and when projects are proposed. Eliminating the requirement for a ZIR will not make the issue go away; it will push it further down the road. Improvements made to a property without proper approvals/permits are illegal whether they are called out in a ZIR or not. Identifying zoning and building violations at the time of sale of a residential property gives the seller and buyer the same information from the City on the status of the property and the opportunity to decide how to resolve the violations. Staff has received few complaints regarding the ZIR process from prospective buyers of a property or neighbors, and we believe it is important to consider many perspectives on the value of ZIRs which have been an integral part of the City's code enforcement process and a City residential sale disclosure mandate since 1976.

Additionally, staff believes that ZIRs are a strong incentive for property owners to seek necessary City approvals and permits rather than trying to construct improvements without a City building permit. Property owners are aware that ZIRs are required at the time of sale of the property and that improvements made on the property without the proper permits will be identified at that time. The elimination of the requirement of ZIRs could directly result in fewer property owners obtaining the proper approvals/permits which would lead to an increase in illegal dwelling units, substandard construction, and need for enforcement. For these reasons the City's Housing Element supports the continuation of the ZIR program. The City Attorney's office also believes that the City's ZIR requirement is a fundamental and critical aspect of the City's code enforcement efforts.

Staff is very sensitive to the issue that some previous ZIRs may not have called out an improvement as a violation. When violations are identified, staff works with owners/agents to resolve them. Staff uses its good judgment to resolve issues and sign off on improvements when there is at least some credible evidence to allow the improvements to remain. However, if information in the record clearly indicates a violation of zoning or building codes has occurred, staff cannot overlook those as-built unpermitted improvements. In some of these situations, the proposed SHO administrative approval would streamline the "as-built" permit process. For those instances when an improvement would not qualify for the SHO administrative approval process (i.e. it is not a minor improvement), staff will work to continue to streamline the permit process as much as possible.

Staff has added approximately 0.5 FTE to help with the ZIR case load to help address the issue of timeliness on the scheduling of ZIR inspection appointments. In addition, with the adoption of 2014 FY budget, Council authorized \$45,000 for hourly staff

support in the Zoning Section. The new position will be primarily assigned to enforcement, but will also assist with the preparation of ZIRs during periods of high volume.

- ATTACHMENTS:**
1. Memorandum from Mayor Schneider and Councilmember Francisco dated July 17, 2013
 2. Letter from SBAOR dated May 24, 2012
 3. City Staff Letter to SBAOR dated November 29, 2012
 4. Staff Outline of ZIR Process and Considerations to Resolve Issues

PREPARED BY: Susan Reardon, Senior Planner

SUBMITTED BY: Paul Casey, Assistant City Administrator/Community Development Director

APPROVED BY: City Administrator's Office





City of Santa Barbara
Mayor and Council Office

Memorandum

DATE: July 17, 2013

TO: Jim Armstrong, City Administrator

FROM: Helene Schneider, Mayor 
Dale Francisco, Councilmember 

SUBJECT: Request to agendize an item regarding Zoning Information Reports (ZIRs).

Pursuant to Council Resolution No. 09-097 regarding the Conduct of City Council Meetings, we request that an item be placed on the Santa Barbara City Council Agenda regarding the requirement for Zoning Information Reports (ZIRs) at the time of sale of residential property.

This item meets the following criteria as explained below.

- A. A substantive outline or summary of the information that will be presented to the City Council;

There has been significant discussion between city staff and the Santa Barbara Association of Realtors (SBAOR) about amending the ZIR process. SBAOR believes that ZIRs have outlived their usefulness, that they should be optional rather than mandatory, and that legally required reports and tests are now so extensive that ZIRs are superfluous. City staff has discussed some benefits of the ZIR process and potential amendments that could expedite the process in certain situations. The Council should have a policy discussion on how or whether to change the ZIR process and/or make them optional.

- B. A concise statement of the specific action the City Council will be asked to take on the item;

That the Council give staff direction on the ZIR process and determine whether any amendments to the municipal code should be adopted, including the option of whether ZIRs should be optional rather than mandatory.

- C. A statement of the reasons why the requesting party believes it is appropriate and within the jurisdiction of the City Council to consider this subject matter and to take the requested action.

It is appropriate for the City Council to consider this matter because ZIRs are currently required under the Zoning Ordinance (28.87.220) in order to complete the sale of residential property within the City.

cc: Mayor and Councilmembers
Steve Wiley, City Attorney

May 24, 2012

Gwen Peirce, City Clerk Services Manager
Post Office Box 1990
Santa Barbara, CA 93102-1990

Re: Zoning Information Reports (ZIRs) and Request to Place Issue Before Council

Ms. Peirce:

Since 2009, the Santa Barbara Association of REALTORS® (SBAOR) has been working on a number of issues pertaining to Zoning Information Reports (ZIR's) with city staff. Some issues have been resolved, but one major issue is still outstanding and seems to need direction from the City Council to resolve.

The major outstanding issue revolves around property owners who purchased a home with a clean ZIR (no violations cited) from the city, yet when that same property owner (having made no modifications to the property) subsequently attempts to sell the home; the new ZIR cites and requires remediation of newly discovered violation(s). The violations cited in the new report were missed in the original inspection and not reported to the purchaser in the ZIR provided by the city. The property owner relied on the report they were given by the city when they purchased the property, yet they are now being forced by that same city to spend tens or even hundreds of thousands of dollars to correct problems they were not advised of in the original report. We believe, and we hope you will agree, that this is patently unfair and unnecessary in all but the most extreme cases of properties with significant health and safety violations. This is, and has been a serious problem. There were hundreds, perhaps thousands of ZIRs done in the past, and many of them missed numerous violations at the time they were performed. Those reports were relied on by the people who purchased those homes, regardless of the small print in which the city denies any responsibility or liability for the accuracy of the report. Those people are now being penalized (in some cases financially ruined) for relying on the information provided to them by the City itself. We implore the City Council to stop this inequitable practice.

Another somewhat glaring issue with the ZIR as currently administered is the cost. As you are aware the city must be revenue neutral on such programs yet the cost is far in excess of that charged by other cities nearby (See Exhibit 1). This has become a major point of contention for our members and their clients will certainly require further scrutiny and discussion as we move forward in our analysis of the ZIR program.

By way of background, ZIR's were originally created by the City of Santa Barbara with full support from SBAOR in the late 1970's as a way to disclose information about a property to potential buyers. ZIR's were instrumental at that time because of the lack of required formal disclosures during a real estate transaction. They were originally informational only and no enforcement went along with them. They subsequently became a way to identify (and remove) illegal dwelling units at a time when those were a significant problem in the city, and correctional enforcement started to occur. Originally, however, they were for informational purposes only.

Today there are over forty (40) disclosures (some of them required by law) that are commonly used during a real estate transaction (see Exhibit 2). Some examples of required disclosures that are used during a transaction in today's market are:

- Agency Disclosure and Agency Confirmation
- The Transfer Disclosure Statement
- Smoke detectors
- Heater bracing
- Carbon Monoxide Detector Disclosure & Compliance
- The visual inspection
- Natural Hazard Disclosure Statement
- Mello-Roos Taxes and 1915 Bond Act Assessments
- Informational booklets and form FLD
 - The Homeowners Guide to Earthquake Safety Booklet
 - The Commercial Property Owner's Guide to Earthquake Safety
 - Residential Earthquake Hazards Report
 - The Lead-Based Paint Pamphlet and Form FLD
 - The Residential Environmental Hazards Booklet
 - The Home Energy Rating system (HERS) Booklet
- Registered sex offenders
- Toxic mold

Disclosures in residential real estate transactions have become the norm rather than the exception. Not only has the law and practice focused on incorporating detailed disclosures into the real estate transaction, the utilization of professional inspectors has become the norm as well. Home inspections by certified inspectors, structural pest control inspections, roof inspections, sewer lateral inspections, mold inspections, and a host of others are frequently utilized in an industry that has swung to the side of over disclosure and over inspection to avoid problems and lawsuits later. In light of these inspections, the ZIR may very well have become an unnecessary evil.


SBAOR and most homeowners believe the city has a duty to stand behind the reports that have been generated and delivered to the citizens/homeowners by the City. We believe this is the right thing for the city to do despite the "small print" denying any responsibility for the reports. We believe the City, at a bare minimum, needs to "grandfather" these previously overlooked conditions for those properties so long as the "improvements" or conditions are not in danger of falling down, or causing a fire or other major hazards. In other words, as long as they are not a serious health and safety threat. The conditions should be treated as any other legal variance or pre-existing use, and be allowed for the present and future owners.

Better yet, perhaps the city should consider eliminating ZIRs all together. If not eliminating them then go back to providing them as informational reports and drop the enforcement component all together. Make the property owner aware of the problem(s) if there are any, and explain that any new permits may require mediation of some or all noted violations.

If no other action is taken, SBAOR would ask the City Council to direct staff to create a "grandfathering" and/or "allowed exception" clause and policy pertaining to ZIR's. We would also ask that the city allow these types of issues to be fast tracked through the permitting process at no additional cost to the property owner. This is an important issue that affects all homeowners with the City of Santa Barbara.

We look forward to discussing this important issue with the City Council, and to working towards an equitable solution to this on-going problem. Thank you for your time and consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "J Caldwell". The signature is written in a cursive style and is contained within a rectangular box.

Jim Caldwell
President

Cc: Mayor Helene Schneider
City Councilmember Dale Francisco
City Councilmember Frank Hotchkiss
City Councilmember Grant House
City Councilmember Randy Rowse
City Councilmember Cathy Murillo
City Councilmember Bendy White
City Administrator Jim Armstrong
City Attorney Steve Wiley
Community Development Director Paul Casey

Enclosed: Exhibit 1 - Prices of ZIR's in other CA cities
Exhibit 2 - Disclosure forms
Exhibit 3 - ZIR Stories from agents and their clients
Exhibit 4 - Santa Barbara News-Press Letters: Opinion: The \$18,000 Shower



City of Santa Barbara

Community Development Department

ATTACHMENT 3

www.SantaBarbaraCA.gov

November 29, 2012

Santa Barbara Association of Realtors
Attn: Jim Caldwell, President
1415 Chapala Street
Santa Barbara, CA 93101

Director's Office

Tel: 805.564.5502

Fax: 805.564.5506

Building & Safety

Tel: 805.564.5485

Fax: 805.564.5476

Housing &

Redevelopment

Tel: 805.564.5461

Fax: 805.564.5477

Planning

Tel: 805.564.5470

Fax: 805.897.1904

Rental Housing

Mediation Task Force

Tel: 805.564.5420

Fax: 805.564.5477

630 Garden Street

PO Box 1990

Santa Barbara, CA

93102-1990

Mr. Caldwell;

Thank you for your letter dated May 24, 2012 regarding the preparation of Zoning Information Reports (ZIR) and violations found during that process. We have had a number of internal meetings over the past couple of months with Jim Armstrong, Steve Wiley, key planning staff, and myself. This letter serves as our response.

We are committed to resolve these issues as best as possible and propose that we consider an ordinance amendment to streamline parts of the ZIR process and the review and permitting process when violations need to be abated.

Purpose of ZIRs

We agree that the function of the ZIR has evolved over time. Originally, the purpose of the ZIR was to inform a potential buyer of the zoning and permitted use of the property. Street and planning files may have been researched, but archive plans were rarely checked. The majority of zoning violations noted in the ZIR were not followed-up with enforcement actions. Overtime, the ZIR has evolved to also include obvious building code violations such as new square footage, illegal dwelling units, or conversion of non-habitable space to habitable space. It has also become an important record for the abatement of zoning and building code violations found on site. We feel this evolution is warranted as ZIRs are an important mechanism to ensure a quality housing stock in the City and abate potentially unsafe conditions.

As-Built Issues

We recognize there are problems with some previous ZIRs not documenting every violation that may have existed on the property at the time the ZIR was prepared. There are various reasons why there are sometimes discrepancies between previous ZIRs and ZIRs prepared today. One reason is the level and/or quality of the research previously performed during the preparation of the previous ZIRs. Prior to 1996, City staff did not have easy access to the archive plans as they were located off-site. Today, the archive plans are located on-site and are routinely reviewed as part of the record check performed for each ZIR.

During the preparation of a ZIR, Staff researches planning and street files, archive plans, historic research documents, Sanborn Maps, and County Assessor records to try and find evidence in the record as to when a "new" improvement first appeared. Staff looks to see if the improvement might have been covered by a previous City approval, may have been a field change during construction signed off by a Building Inspector, or if it took place at a time when the City did not require a certain permit and the zoning standards were different. Based on this research, staff uses judgment to

SBAOR
Attn: Mr. Caldwell
November 29, 2012
Page 2

resolve issues and signoff on some improvements when there is at least some credible evidence to allow the improvement to remain.

However, if information in the record clearly indicates a violation of zoning or building codes has occurred, staff cannot overlook those "as-built" improvements.

Possible Zoning Ordinance Amendment to Address As-Built Issues

Currently, some "as-built" improvements require a modification of a zoning standard and approval by the Staff Hearing Officer (SHO). Staff expedites and streamlines this process by meeting directly with the applicant, placing the project on the next available Staff Hearing Officer agenda, and not charging the applicant a double fee for the "as-built" improvements. At present the modification process is the only official way for staff to resolve a situation where the improvements are not in compliance with the Zoning Ordinance.

To try to improve this situation, Staff intends on pursuing an amendment to the Zoning Ordinance to allow the Staff Hearing Officer to grant administrative approval of modifications for minor zoning regulations in instances where discrepancies in the record are discovered and it is evident that the improvement has been there for a very long time. It is important to note that not all discrepancies will be solved by this amendment. Additional time and expense could still be required to resolve the more major discrepancies through the modification process and construction permits.

This new ordinance will need to be initiated by Council and other workload assignments will need to be considered to allow staff to work with the Planning Commission, Council, and the public in the review and identification of improvements that may qualify for these administrative modifications. We hope you see the value in pursuing such an amendment and will be able to support our efforts in this area.

Enforcement of Health and Safety Violations

Planning Staff continues to focus enforcement efforts on health and safety violations identified in ZIRs such as illegal dwelling units and new habitable space. Staff estimates that between 10-15 percent of all ZIRs issued have immediate enforcement issues. Not pursuing enforcement on these major violations would not solve the issue of "new" identified violations in a ZIR. It would only push the abatement of the violation to a later date and would require the new property owner to abate the violation with the next building permit issued for the property.

Reliance On Disclosure Process Instead of ZIRs

Your letter states that the ZIR may have become "an unnecessary evil" given all the required disclosures and utilization of professional inspectors during real estate transactions. Staff believes there are important differences between the ZIR and the other disclosures. To our knowledge, no City record check is required as part of these disclosures. The property owner must state whether they are aware of any additions, alterations, or repairs that may have been made without the necessary permits or may not be in compliance with building codes.

SBAOR
Attn: Mr. Caldwell
November 29, 2012
Page 3

For whatever reason, this does not always seem to be occurring as evidenced by what we hear from realtors and owners about the issues staff finds in the ZIR process. It is common to hear that they did not know the particular improvement was built without City approval or permits at the time they bought the property. Planning Staff considers ZIRs to be necessary to properly inform buyers of the status of the improvements on the property and to abate zoning and building code violations.

Requirement for ZIRs

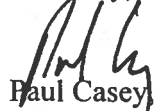
Not identifying zoning and building code violations at the time of sale has the potential to more significantly impact future property owners in the long term. Staff does not support the complete elimination of ZIRs for all residential properties as they provide important information to the prospective buyer and provide the mechanism to remove unsafe conditions on the site. Over time, City staff has seen fewer illegal units in ZIR inspections. The use of ZIRs has evolved to provide a self-correcting mechanism for abating illegal dwelling units. If the requirement for a ZIR was eliminated, overtime staff believes the City would experience an increase in illegal dwelling units and unpermitted and potentially unsafe construction.

Cost of ZIRs

ZIRs are one of the few services provided by the Planning Division that are intended to be full cost recovery. Staff believes that it is not appropriate to have tax payers subsidize private real estate transactions. If the cost was reduced below that which it costs the City to provide the service, the level of service would either have to be reduced accordingly or the funds would have to be taken from another program in the Planning Division. Planning Staff is preparing an in-house fee study for the next budget cycle. Based on preliminary results, we have found that our current ZIR fee for 1-4 units accurately reflects the cost of preparing ZIRs for those numbers of units. However, it appears that our fee for properties which have 5 or more units on site may be too high. A fee reduction will be proposed for those properties in the next budget cycle.

Thank you for your efforts to engage us in the discussion of improving the ZIR process. We look forward to meeting with you to discuss this letter and moving forward to seek Council direction on a possible Zoning Ordinance amendment.

Sincerely,



Paul Casey
Assistant City Administrator/Community Development Director

cc: Mayor and Council
Jim Armstrong, City Administrator
Steve Wiley, City Attorney
Bettie Weiss, City Planner
✓ Susan Reardon, Senior Planner

ZIR Process and Considerations to Resolve Issues

Timelines

- Within 5 days of entering into an “agreement of sale” submit ZIR application.
- “Under normal circumstances” (ZO language) issue report within 15 days of application submittal.
- So far this year, on average we complete ZIR within 20 calendar days of application submittal.
- P3 goal – issue report within 3 days of inspection, currently 100%; over last year over 96%.
- Owner is required to give buyer copy of ZIR at least 3 days prior to consummation of the transfer of title.
- So far this year, on average we complete ZIR 12 days prior to close of escrow.
- ZIR is valid for 12 months from the date of inspection or until transfer of title occurs, whichever is sooner.

Process to Prepare ZIR

- Application submitted.
- Street and planning files and archive plans are requested and reviewed.
- Inspection of property.
- Review findings of inspection against street file and archive plans.
- If match, ZIR issued.
- If they do not match, more research:
 - Sanborn Maps
 - Architectural and Historical Survey Records
 - If we have no approved plans, request owner get Residential Bldg Record from County to see if that helps determine when improvement 1st occurred
 - In most cases, especially when discrepancies between prior ZIR and new findings today, ZIR preparer meets with Supervisor to discuss findings and decision made on legality of improvement
 - Issue ZIR

Resolve Issues

- Can we sign-off? Is there any evidence that points to legality?
 - If not, determine if case is referred for immediate enforcement or just noted as violation in ZIR.
- If immediate enforcement,
 - Is modification needed? If so, expedite application. No double fee if improvement “missed” by prior ZIR.
 - Is design review required? Can it qualify for administrative approval? No double fee if improvement “missed” by prior ZIR.
 - Historic resource affected? Consult is Urban Historian.
 - Enforcement staff works with owner or new owner on timeline for abatement. We have delayed abatement to allow new owner time after buying house.
 - We require plans to show how abatement will occur but work with owner on level of detail necessary.

Possible Administrative Appeal process

A letter and documentation illustrating why it is believed the findings of the ZIR are incorrect must be submitted within 10 calendar days of the issuance of the ZIR. An associated fee will be required. The current hourly fee for Planning Staff is \$130/hr and for the City Attorney it is \$220/hr. It is estimated that an appeal could take 2-3 hrs of staff time. The internal timeline for review and issuance of a final decision will have to be determined. Council approval of an ordinance amendment (and/or resolution) would be necessary to establish this appeal process.

Possible Ordinance Amendment

Another option that could be pursued in conjunction with, or instead of, the appeal process would be an ordinance amendment to allow SHO authority to administratively approve minor modifications. We anticipate that the fee for the administrative approval process would be around \$140, similar to design review administrative approval fee. Examples that could be included are: minor hardscape improvements in interior setback; statues (not fountains) in interior setbacks; chimneys in setbacks; and, minor façade changes in front setback.

We anticipate that there will still be improvements that cannot be signed off through the administrative review or appeal process.



Zoning Information Reports

City Council Hearing
August 13, 2013



Differences In Opinion

- ◆ Basic value/necessity of ZIRs
- ◆ How to resolve discrepancies between ZIRs
- ◆ Cost and Timeframe for completion
- ◆ Appropriate Follow-up - Enforcement



Basic Value/Necessity

- ◆ Provides important information to seller & buyer
- ◆ Helps ensure quality housing stock
- ◆ Limit and control unpermitted work
- ◆ Provides mechanism to remove unsafe conditions



Basic Value/Necessity

- ◆ Reduces number of illegal dwelling units
- ◆ Address neighbor concerns
- ◆ Other disclosures currently don't appear to provide same level of information



Discrepancies between ZIRs

- ◆ Approx. 570 ZIRs annually; approx. 15-20% contain discrepancies
 - Many minor; over-height hedge, storage bldg in setback, etc.
 - Some not minor; new sq.ft., conversion of basement or attic, removal of required parking



Discrepancies between ZIRs

- ◆ Possible Reasons:
 - Quality/level of past research
 - Access to archive plans
 - Some violations are actually new when stated not
- ◆ Work with agents/owners address discrepancies



Resolving Issues

- ◆ Additional Research – Can we sign-off?
- ◆ If not, work with property owner to streamline process
- ◆ Potential Changes
 - Allow Staff Hearing Officer administrative authority to grant minor administrative Modifications
 - Formal appeal process



Cost & Timeliness

- ◆ Full cost recovery program
- ◆ In-house fee study
 - 1-4 units fee appropriate
 - 5+ units fee high; Council reduced fee accordingly
- ◆ Added approx. 0.5 FTE to help with case load



Enforcement

- ◆ 90% of ZIRs have some sort of violation
- ◆ Majority are minor
- ◆ Approx. 15% are considered major and referred to enforcement
- ◆ Continue to work with Building & Safety on abatement schedule



Conclusion

- ◆ ZIRs are important community benefit
- ◆ Appropriately timed at sale vs. later in process
- ◆ Continue to improve service with limited resources and work with agents/property owners



Conclusion

- ◆ Agree difficult situation in instances of discrepancies between ZIRs
- ◆ In support of Staff Hearing Officer Administrative Authority to help resolve some issues

