

City of Santa Barbara
Response to the Santa Barbara County
Grand Jury 2014-2015 Report on
Zoning Information Reports

Finding 1: *While the City of Santa Barbara Zoning Information Report, instituted in 1974, has served an important purpose, the State now requires many of these safeguards through the Real Estate Transfer Disclosure Statement.*

Response to Finding 1: The City disagrees wholly with this Finding.

As stated in Santa Barbara Municipal Code (SBMC) §28.87.220, the primary purpose of a Zoning Information Report (ZIR) is to “provide information to the potential buyer of residential property concerning the zoning and permitted use of the property.” While the zoning designation of a property is easily obtained, the “permitted use of the property” is often subject to interpretation and requires a working knowledge of City ordinances, rules and records. In addition, the SBMC requires that a ZIR provide the following information:

- Street address and parcel number
- Zoning classification and permitted uses
- Occupancy and uses permitted as indicated and established by City records
- Any discretionary or administrative acts of record
- Any special restrictions in use or development which apply to the property
- Any known nonconformities or violations of any ordinances or laws
- The results of a physical inspection for compliance with the Zoning Ordinance and for compliance with Chapter 14.46 of the SBMC
- A statement of whether the real property has had a Sewer Lateral Inspection Report prepared within five years prior to the ZIR

Most of the above items are not included in the Real Estate Transfer Disclosure Statement. Although the State mandated disclosure statements encourage potential buyers to conduct their own investigations of the property, no City record check is required of either the seller or buyer as part of those disclosures. Furthermore, the Real Estate Transfer Disclosure Statement only requires a property owner to state if 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. Many members of the public are unaware of the extent of improvements that require a permit and are not familiar with how to research the permit history, permitted uses, legality of structures or if the property contains legal nonconforming improvements. A ZIR is necessary to properly inform buyers of the property’s status in terms of City records. Without a ZIR, a buyer does not have the City’s perspective regarding the permitted uses of the property, zoning, nonconformities, or unpermitted construction. Staff’s analysis of the facts based on a physical inspection of the property and historical record in the street and planning files is important.

In addition to providing important information to the seller and buyer, ZIRs provide an important community benefit. ZIRs help maintain and protect neighborhoods and the City's housing stock by ensuring new construction meets codified health, safety and general welfare requirements. City staff has heard from the public that they appreciate ZIRs because they know the City will inspect the property when a property is sold. Many neighbors are reluctant to report a potential violation on their neighbor's property for fear of retaliation.

ZIRs also protect the community by providing a strong incentive for property owners to seek necessary City approvals and permits before making improvements. Most 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 for ZIRs could result in fewer property owners obtaining the proper City approvals or permits which may lead to an increase in illegal dwelling units, substandard construction, and need for future enforcement. For these reasons the City's adopted Housing Element supports the continuation of the ZIR program.

Recommendation 1: *That the City of Santa Barbara declare Zoning Information Reports voluntary, and used for informational purposes only.*

Response to Recommendation 1: The Recommendation will not be implemented because it is not warranted or is not reasonable.

This policy decision has been discussed at several recent public hearings before the City's Planning Commission (Sept. and Oct. 2013, Nov. 2014) and City Council (Aug. 2013 and Feb. 2015). At the conclusion of the most recent City Council hearing in February 2015, the City Council supported maintaining the mandatory requirement for ZIRs and directed staff to implement the recommendations of the ZIR Working Group and Planning Commission for improvements to the ZIR preparation process.

Eliminating the requirement for a ZIR or only using the ZIR for informational purposes will not negate the fact that a violation exists on a property; it will only potentially delay action to abate the violation. The City Council understood this in February when it supported the mandatory ZIR requirement and directed staff to implement the ZIR process improvements recommended by the ZIR Working Group and Planning Commission.

It is important to note that a ZIR disclosure does not create the violation(s). Construction without required City approval or permit is a violation whether or not it is identified in a ZIR, and will continue to be required to be abated at the time the next building permit is sought or when a complaint is received. If this recommendation were implemented, in many cases, potential violations would not come to light for months or

even years after the sale has closed. By that time it could be extremely challenging for the "new" property owner to hold the previous property owner responsible and obtain an appropriate remedy for the violation(s). Although the implementation of this recommendation might simplify the real estate transaction, it could lead to more property owners being upset and wishing they knew about the violations when they bought the property. 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. City staff has received few complaints regarding the ZIR process from prospective buyers of a property, or neighbors. It is important to consider the many perspectives on the value of ZIRs and the purpose they serve to protect the community at large.

Finding 2: *The practice of the City of Santa Barbara Community Development Department is that if information cannot be located by the Planning Technician II inspector, it is assumed it never existed and that owners must produce proof of its existence, or face violations.*

Response to Finding 2: The City partially agrees with this Finding.

The ZIR inspector (Grand Jury utilizes the term "Planning Technician II inspector") uses many resources during the preparation of a ZIR. In addition to a site visit, the primary information sources include the street and planning files and the City's archive plans. If information in City files or archive plans does not include certain improvements observed during the site inspection, the ZIR inspector performs additional research. This research involves a number of sources including: Sanborn Maps, consultation and/or additional site inspection with City building inspectors, historic survey documentation, and aerial photographs. Staff also consults with the property owner or real estate agent to discuss the improvement and requests any information which could help establish when the improvement in question first appeared on the site. Staff sometimes asks the property owner to obtain the County Assessor's Residential Building Record which can help establish when the improvement in question first appeared on the property. Records that establish when an improvement was constructed help staff determine what City Codes were in effect at the time, and what standards and permits were necessary. Based on this research, staff uses its best judgment to resolve issues and, in many cases, decides to recognize an improvement as being legal when there is some credible evidence to support such a conclusion. However, if information in the record clearly indicates that an improvement is in violation of the Zoning Ordinance or lacks the necessary building permit, staff must note it as a violation.

If there are no original permits or original archive plans to reference, a note is added to the ZIR that states: *"There are no original building permits or plans on file for the dwelling. Therefore, no verification can be made as to the number and legality of the existing configuration of rooms."* In these cases, any other obvious violations may be

noted in the ZIR, evidenced by the date of construction, location of improvement (in relation to a known improvement), or apparent health or safety violations.

Recommendation 2: *That the City of Santa Barbara Community Development Department institute a policy that if staff cannot prove that the property was altered during the current ownership, the City presumes the alteration previously existed.*

Response to Recommendation 2: This Recommendation will not be implemented because it is not warranted or is not reasonable.

The implementation of this Recommendation would neither be in compliance with the requirements of City's Zoning Ordinance nor further the purposes of a ZIR. In addition to basic information regarding the property such as street address, assessor parcel number, zone classification, and permitted uses of the property, SBMC Section 28.87.220.D requires "any known nonconformities or violations of any ordinances or law" to be included in the ZIR. This section of the Code states that "any" nonconformity or violation should be noted, not just ones that occurred during the current ownership.

Furthermore, given that the City is granted police powers by the state, which includes the responsibility to regulate and protect the general health, safety and welfare of the community, staff cannot ignore its responsibility to identify that which might cause someone harm or affect their or their neighbors' welfare. Additionally, Section 1272 of the Evidence Code provides that because it is the City's regular course of business to preserve the record of the City, the absence of a record is a trustworthy indication that the act or event did not occur, or that the condition did not exist. For these reasons, the City has a responsibility to disclose our records as they exist, and note any discrepancies therein.

This recommendation operates on a mistaken assumption that if the City presumes that the alteration existed when the current owner took ownership that the violation is avoided. However, if an alteration was constructed without permits at a time when permits were required, it doesn't matter who owns the property, the violation exists whether or not the violation was actually caused by the current owner.

Furthermore, implicit in this recommendation is the belief that if the violation was missed by the inspector for the prior ZIR, or was not abated during the ownership of the prior owner, the proper remedy for the current owner who is attempting to sell the property is for the City to "legalize" or ignore the existence of the violation. The City disagrees with this recommendation because it doesn't address the underlying illegality of the violation and the remedy only serves to harm the persons who live or own property adjacent to the residence on which the violation is noticed.

Finding 3: *Homeowners, after having spent many hundreds, often thousands of dollars to establish that an improvement was permitted, and that the City was incorrect, still bear the cost of the investigation.*

Response to Finding 3: The City agrees with this Finding.

Recommendation 3: *That if the alleged violations prove to be incorrect, the City of Santa Barbara reimburse the homeowner for all costs incurred in the subsequent investigation.*

Response to Recommendation 3: This Recommendation will not be implemented because it is not warranted or reasonable.

City staff utilizes many sources of information to develop complete and fair conclusions in a ZIR. Additionally, if questions arise about the age or legality of an improvement, the ZIR inspector performs additional research and also consults with the property owner or real estate agent to discuss the improvement and requests any information which could help establish when the improvement in question first appeared on the site. Based on this research, staff uses its best judgment to resolve issues and, in many cases, decides to recognize an improvement as being legal when there is some credible evidence to support such a conclusion. However, if information in the record clearly indicates that an improvement is in violation of the Zoning Ordinance or lacks the necessary building permit, staff must note it as a violation.

The majority of the time it is unnecessary for a property owner to hire a consultant to resolve these issues at the onset, if at all. City staff encourages property owners to contact staff directly when there is concern regarding a noted violation. Staff will work with the property owner to gather information that may help establish the legal status of the construction in question. In more challenging cases, owners may find the help of a hired consultant beneficial to their cause, but that is a personal decision and not one mandated by the City.

The City conducts inspections and prepares ZIRs in good faith. It is understood that property owners may have a different perspective regarding the legality of the improvements on their property. Even when everyone is acting in good faith, disputes can arise. Just because an error is determined to have occurred, it is not necessarily appropriate for the City to reimburse costs that it does not require a property owner to undertake.

Finding 4: *A City of Santa Barbara Zoning Information Report with no violations does not guarantee a future report will not show alleged unreported violations by previous owners.*

Response to Finding 4: The City agrees with this Finding, with qualifications.

City staff acknowledges that there may be instances of discrepancies between the findings of a current ZIR and a previous ZIR. Staff estimates that approximately only two to four ZIRs per month (or 4-8 %) have some kind of inconsistency or discrepancy with a previous ZIR.

There are various reasons for alleged discrepancies between ZIRs: 1) the level/quality of staff research performed during the preparation of previous ZIRs was less than acceptable in some cases; 2) the City record is occasionally unclear or lacking altogether; 3) the improvement may have been obscured from view by landscaping or an object had been placed over, or in front of, the improvement to obscure the view of it from the ZIR inspector, which was later removed; or, 4) the improvement was, in fact, added after the last ZIR was completed.

Recommendation 4: *That the City of Santa Barbara provide certainty to the buyer by certifying each Zoning Information Report as accurate.*

Response to Recommendation 4: The Recommendation will not be implemented because it is not warranted or is not reasonable.

A ZIR is a good-faith effort at full disclosure to a potential buyer of authorized uses and occupancy of a property, including zoning violations and improvements constructed without City permits or approvals. At the time each ZIR is prepared, it is completed with a high level of confidence that it reflects the City's current record and understanding regarding improvements on the property. Potential discrepancies with a prior ZIR does not invalidate the current ZIR as being the most accurate account of the property from the City's perspective.

The certification of accuracy has no effect on the conditions that cause the violation. Implicit in this recommendation is the expectation that the City will ignore a violation if it was not identified in a prior ZIR, otherwise the certification of accuracy would be of no use to the property owner. The City does not believe this is an appropriate remedy for failing to identify a violation, since ignoring the violation only harms the owners or residents of the neighboring properties.

Implementation of this Recommendation would require changes to the ZIR preparation process and has the potential of extending the time period required to prepare a ZIR. When staff does make an error in a current ZIR, we take necessary steps to correct it (that process is further discussed in Recommendation 5). The ZIR Working Group did consider including a five-day preview period during which agents could review an electronic draft of the ZIR before the ZIR becomes final, and discuss any differences of opinion or concerns. While this option could provide additional assurance that the final report represents a consensual understanding of the property's status, it would lengthen the overall turnaround time for ZIRs.

Finding 5: *If a violation reported on a City of Santa Barbara Zoning Information Report is found to be incorrect, the report is amended but the alleged violation is not necessarily removed by the Community Development Department.*

Response to Finding 5: The City disagrees wholly with this Finding.

If a violation cited in a ZIR is later found to be incorrect, the report is amended or a memo is sent to the street file, and any associated enforcement action pertaining to that violation is withdrawn.

Recommendation 5: *If a Zoning Information Report violation is found to be incorrect, that violation be removed entirely from the report.*

Response to Recommendation 5: **A portion of this Recommendation is currently part of the City's ZIR preparation process, and part of the Recommendation will not be implemented because it is not warranted or is not reasonable.**

If a violation is found to be incorrect prior to the final ZIR being posted on the City's website, reference to the violation is removed from the ZIR and a new ZIR (without the violation) is produced. However, if a violation is found to be incorrect soon after the ZIR is posted on the City's website, an amended ZIR is issued with a note included in the violation section explaining why the conclusion was incorrect and indicates that the violation no longer pertains to the property. If several months have passed since the issuance of the ZIR, a memorandum is sent to the public street file that explains the new finding and that the violation no longer pertains to the property.

In order to maintain thorough and accurate public records, staff does not modify a ZIR after the ZIR has been sent to the street file and posted to the City's website. Since the ZIR becomes part of the public record once it's posted, staff cannot know if a ZIR has been downloaded and distributed to other persons not associated with the sale of the property, and it can cause confusion if two different ZIRs are circulating with different dates and conclusions. For that reason, staff appends to previously posted ZIRs, and does not remove them entirely from the record.

Finding 6: *There is no formal appeal process. An "intent to dispute" is not an adequate appeals process.*

Response to Finding 6: The City disagrees wholly with this Finding.

Currently, the ZIR form states that an owner or agent has ten days from the receipt date of a ZIR to appeal its findings, and no fee is charged. In order to appeal the findings of the ZIR, a written letter stating the grounds for the appeal and any supporting documentation regarding the disputed finding(s) of the ZIR must be submitted. The owner or agent first works with the inspector that prepared the ZIR to resolve the

appeal issues. The ZIR inspector is most familiar with the property as they recently inspected it for the ZIR. If an owner or agent is not satisfied with the determination of the ZIR inspector, the appeal is elevated to the Supervisor or City Planner level for further review.

Since there is no set appeal period established in the Municipal Code, a property owner may appeal the findings of the ZIR after the ten-day period specified on the ZIR form. However, because additional staff time is necessary to recall the records and basis for the findings and, in some cases, a follow-up site visit is warranted, staff's time to research an appeal after the ten-day period is subject to the hourly staff fee as established by the City Council.

Recommendation 6a: *That the City of Santa Barbara establish an appeals process that requires an outside mediator.*

City Response to Recommendation 6a: The City will not be implementing this recommendation because it is not warranted or is not reasonable.

Implied in this recommendation is the assumption that a third party mediator would have the authority to resolve the violation. Whether or not a violation exists is a question of fact. It would be inappropriate to grant an outside mediator the authority to waive, excuse, or ignore a violation of the zoning ordinance. If a property owner disagrees with a factual conclusion made in a ZIR, the property owner may ask a court to review the basis on which the City's conclusion rests.

Recommendation 6b: *That the Zoning Information Report include a prominently stated and documented appeal process.*

City Response to Recommendation 6b: This Recommendation has been implemented as it was a recommendation of the ZIR Working Group.

The revised ZIR template contains a new Section titled "Expiration Date, Amendments to this ZIR, and Appeals." This Section explains the process to request an amendment to the ZIR and how a property owner or agent can appeal the ZIR findings. Staff anticipates beginning using the new ZIR template within the next month.

Finding 7: *The City Zoning Information Report Planning Technician II inspectors do not typically research the property records prior to the site visit.*

City Response to Finding 7: The City disagrees wholly with this Finding.

ZIR inspectors are trained to review the street and planning files prior to the site inspection. In some cases, archive plans are also reviewed prior to the inspection. The inspector also prepares a ZIR worksheet that contains basic property information

(zoning, non-conforming aspects of the property, number of parking spaces, etc.), the property description from the last ZIR (if applicable), and previous zoning/building violations as a frame of reference for beginning the inspection. Any discrepancies in the record or missing information are noted to help inform the inspector about certain areas of the property that may warrant additional attention. The ZIR inspector brings the street file and ZIR worksheet with them to the site inspection for reference on site.

Recommendation 7: *The Planning Technician II inspector review all relevant files prior to a site visit.*

City Response to Recommendation 7: **This Recommendation has been implemented as it is a current requirement of the ZIR inspector.**

This is a current requirement and will be included in the written staff procedures currently under development.

Finding 8: *The basic cost of a City of Santa Barbara Zoning Information Report is \$465.00, the highest in the State. Other municipalities charge considerably less.*

Response to Finding 8: **The City disagrees partially with this Finding.**

Any comparison of fees should take into consideration the level of service provided and whether or not the jurisdiction seeks to recover the full cost of providing the service. City staff researched many other municipalities to determine what they require upon the sale of residential property. There is a large variation in the report types and the type of information provided. Many municipalities that produce a “zoning report” do not perform site inspections. Some municipalities provide a computer printout of zoning requirements and known nonconformancies or violations based on information contained in their street file. Other municipalities provide information from their files and do a visual inspection of the exterior of the property and list any obvious violations. Other municipalities provide a limited interior/exterior inspection but only focus on certain health and safety or building code violations. Based on staff research, the costs of these varied services and the resultant reports range from \$30.00 to \$1,016.00 per unit. One jurisdiction’s fee was based on the size of the residential unit. For residences less than 5,000 square feet the fee is \$385.00. For residences between 5,000 and 10,000 square feet the fee is \$591.00 and the fee for residences over 10,000 square feet is \$1,016.00. Due to the larger scope of the City’s ZIRs and the fact that City Council has deemed the service to be full-cost recovery, the cost of a ZIR in the City does exceed that of many other jurisdictions.

Recommendation 8: *The price for a Zoning Information Report should be consistent with other municipalities.*

Response to Recommendation 8: This Recommendation will not be implemented because it is not warranted or is not reasonable.

This issue has been discussed before the City Council in several recent public hearings (Aug. 2013 and Feb. 2015). Zoning Information Reports are one of a few services provided by the Planning Division that the City Council has designated as being full cost recovery. The City Council has determined that it is not appropriate for public funds to subsidize private real estate transactions. If the cost of a ZIR were 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 absorbed by another program in the Planning Division. The cost of a ZIR has not increased since Fiscal Year 2011, and was actually reduced in FY2014 for larger multi-unit properties.

Finding 9: *The requirement that a single-family residence maintain a covered, unobstructed, 20 foot by 20 foot parking space is overly restrictive.*

Response to Finding 9: The City disagrees wholly with this Finding.

SBMC §28.90.045, Parking Design Standards, requires all parking facilities be designed and constructed pursuant to the current *City Standards for Parking Design*. The requirement for the minimum 20 foot by 20 foot interior clear space within a garage is contained in the *City Standards for Parking Design*, which was established in 1982. This minimum interior dimension is a standard requirement of many jurisdictions, both within California and nationwide.

Recommendation 9: *That the City rewrite this parking ordinance requirement in a more flexible manner while keeping on-street parking under control.*

Response to Recommendation 9: This Recommendation will not be implemented because it is not warranted or is not reasonable.

SBMC §28.90.045.B, Parking Design Standards - Variation, allows a property owner to apply for a waiver from the requirement for any of the design standards contained in the *City Standards for Parking Design*, including the minimum interior dimension of a garage. This provides flexibility on a case-by-case basis, as warranted. The Public Works Department reviews parking design waiver requests.

Finding 10: *There is no training manual for staff to conduct consistent Zoning Information Report inspections and reports.*

City Response to Finding 10: The City agrees with this Finding.

Staff agrees that there is currently no written training manual for preparing ZIRs. New ZIR inspectors are trained by staff currently preparing ZIRs.

Recommendation 10: *That the City of Santa Barbara write a detailed training manual defining the research policies, inspections, and procedures.*

City Response to Recommendation 10: This Recommendation has been implemented as it was a recommendation of the ZIR Working Group.

The ZIR Working Group recommended that staff prepare written procedures for the preparation of ZIRs, including relevant information sources, site inspection procedures, appeal process, and documentation. The Planning Commission and City Council concurred with this recommendation. City staff is in the process of developing the written procedures. The new written procedures will help with consistency and give clear guidance on preparing ZIRs.