



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 4, 2015

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Response To 2014-2015 Santa Barbara County Grand Jury Report On Zoning Information Reports

RECOMMENDATION: That Council:

- A. Receive the Santa Barbara County Grand Jury Report on Zoning Information Reports; and
- B. Authorize the Mayor to send a letter forwarding the City's response to the Grand Jury Report.

DISCUSSION:

On May 11, 2015, City Council received a letter and report from the 2014-15 County of Santa Barbara Grand Jury entitled, "City of Santa Barbara Zoning Information Reports – Inconsistent and Unreliable" (Attachment 1). Per the California Penal Code, Council is required to respond to the findings and recommendations of the Grand Jury Report within 90 days of receipt which is August 9, 2015.

On July 21, 2015, the City Council reviewed the draft City response to the Grand Jury Report. Council requested that certain revisions be made and additional information be added to the draft City response, and continued the discussion to August 4, 2015. The revised response letter is provided as Attachment 2.

During the Council deliberation on July 21, the benefits and importance of the Zoning Information Report (ZIR) were raised, and Council reaffirmed its intent that ZIRs remain mandatory. Council also directed staff to review the scope of the ZIR with the intention of reducing the scope, as appropriate. As part of the ZIR procedures manual being developed by staff, the scope of the ZIR will be analyzed and reduced where appropriate.

ATTACHMENTS: 1. 2014-2015 Santa Barbara County Grand Jury Report
Entitled: "City of Santa Barbara Zoning Information Reports –
Inconsistent and Unreliable"
2. Draft City response letter to the 2014-2015 Grand Jury
regarding the City's ZIR program

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**GRAND JURY
SANTA BARBARA COUNTY**

City of Santa Barbara
City Council
735 Anacapa Street
Santa Barbara, CA 93101

RECEIVED

MAY 11 2015

**CITY ADMINISTRATOR'S OFFICE
SANTA BARBARA**

Dear Council Members:

On behalf of the 2014-15 Santa Barbara County Grand Jury, I am enclosing a copy of our report, titled, ***City of Santa Barbara Zoning Information Reports – Inconsistent and Unreliable*** for your review and response.

The Grand Jury, County Counsel and the Presiding Judge, Arthur Garcia, have approved this report. The pertinent sections of the California Penal Code require the following:

- You are receiving this report two working days prior to its release to the public; you shall not disclose this report prior to its public release (California Penal Code Section 933.05(f)).
- You must respond to each relevant Finding and Recommendation in this report.
- You must submit your original response to Presiding Judge Arthur Garcia.
- You must also submit a printed copy to the current impaneled Grand Jury.
- If you are an elected county officer or agency head, the response time is not later than 60 days from the date of receipt of our report.
- If you are the governing body of a public agency subject to the reviewing authority of the Grand Jury, the response time is not later than 90 days of receipt of our report.

Your response will be posted on the Grand Jury website and may be included in our official published response report. Please send your response to:

The Honorable Arthur Garcia
Santa Maria Juvenile Court
4263 California Blvd
Santa Maria, CA 93455

and

Santa Barbara County Grand Jury
1100 Anacapa Street
Santa Barbara, CA 93101

Respectfully yours,

A handwritten signature in cursive script that reads "Smiller".

Sandi Miller
Foreman
2014-15 Santa Barbara County Grand Jury

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SUMMARY

The 2014-15 Santa Barbara County Grand Jury (Jury) received a number of requests to investigate the accuracy and reliability of the Zoning Information Report (ZIR) and the impacts it has on both sellers and buyers of residences in the City of Santa Barbara (City). Of the 482 California municipalities, approximately 20 require this type of report. Carpinteria is the only other city in Santa Barbara County that requires this type of report.

According to the City, ZIRs provide important information to both the sellers and buyers of residential property by identifying:

- zoning and permitted uses of the property
- past City permits and approvals
- any potential violations of City ordinances
- existing improvements on the site as documented in City files and archive plans

The key phrase here is “as documented in City files and archive plans.” If the City has no record of a permit or approval of existing improvements, the burden of proof falls on the current property owner.

The Community Development Department (CDD), which issues ZIRs, identifies only the following as major violations:

1. illegal dwelling units
2. illegal conversion to habitable space
3. loss of parking space
4. improvements within 50 feet of the coastal bluff
5. violations that pose an immediate fire or life safety risk

When major violations are identified, the report is given an enforcement case number and the seller is given a number to call in the Building and Safety Division. An assigned enforcement officer will work with the seller to remedy the violation(s).

No matter when they occurred, minor violations (Appendix A), can have serious financial consequences for the seller, even if the seller did not commit or know of the alleged violation. While minor violations are not referred to enforcement, the subsequent buyer is required to correct these, before or simultaneously, when applying for a building permit for *any* future improvements.

The seller is required, no later than five (5) days of entering into an “agreement of sale,” to apply for a ZIR. As a result, the ZIR often comes near the end of escrow. Unexpected violations can

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throw the entire transaction into jeopardy, and may give the buyer a basis for renegotiating the price.

BACKGROUND

The historical intent of the Zoning Information Report, when it was adopted in 1974, was to stop the proliferation of illegal and unpermitted rental units in garages and rooms being split in the larger Victorian homes in the downtown area. At that time, the City had a lack of housing units and the easiest way to add more in the minds of many (sellers, buyers and developers) was to increase the room count within the footprint of existing homes, garages, and outbuildings. The result was overcrowding, lack of adequate parking, and rundown houses which depressed the value of adjacent properties. Therefore, the two initial targets for inspectors were garage conversions and interior room splits. In the beginning, ZIRs were optional. Later they became mandatory.

Within a few years, the expansion of illegal dwelling units had been put in check, and neighbors became the most efficient instrument for reporting illegal conversions. Currently, vigilant neighbors perform a good service for the community when they report illegal units and parking problems within their neighborhood.

At their inception, ZIRs covered only illegal units and parking. They did not include minor violations. This practice resulted in some property owners believing that since a prior ZIR showed no violations and they had made no modifications, the current report would continue to show no violations. Today's ZIRs have morphed into a combination of the City zoning laws, permits and building codes. Today's inspections identify and document major and minor violations as preserving the "health and safety" of the community. However, CDD staff could not produce a definition of what constituted "health and safety."

With the improved technology that became available when the CDD moved to its current Garden Street location in the late 1980s, the amount of permitting information increased due to better resources and centralization of files and archives. Records of permits for improvements, such as decks, fountains and sunrooms were more easily available. However, City personnel admitted that over several years, files pertaining to property records have been misplaced, destroyed, taken and not returned, or simply lost (especially County-issued building permits lost during the 1970s, issued prior to the creation of the CDD).

If permits are not in the file, CDD staff presumes the improvements were not permitted. Many witnesses told the Jury that the City's files are disorganized and papers are misfiled. Staff states this can happen but alleges only rarely. One broker told us he had found documentation from another property in the file of his client. This is particularly disturbing as those misplaced documents are then missing from the proper files and if they cannot be located, the innocent homeowner would be cited with violations.

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A number of interviewees told the Jury the CDD takes an adversarial position to these alleged violations, which the homeowners resent, especially if the violation occurred decades and many owners ago. According to CDD staff, over the last four years (2010-2013) on average, 82 percent of ZIRs had some sort of violation. This seemed like an unrealistically high number to the Jury. However, when the Jury asked for all ZIRs for the month of July 2014, of the 52 reports received, 46 had violations, or 88 percent. It is hard to believe that over three-quarters of homes sold in the City of Santa Barbara have zoning and/or building violations that require correction and fees.

Many homeowners and real estate agents provided evidence that although one ZIR is deemed clear, the next ZIR on the same property may cite violations, especially when a different Planning Technician II (PT II) inspects the property. The CDD is unapologetic about this. Reporting to the Planning Commission regarding who should be responsible for these discrepancies, the CDD replied, “How do you define accountability in the here and now, when the staff is no longer there?” In other words: *If the inspector is no longer with the City, mistakes made by the City are now the responsibility of the current homeowner.* “If we have no information on the property, are we accountable?” In other words: *If we can't find the proper paperwork, there was no paperwork, and the current owner must make this whole.* The CDD also emphasized that if something is overlooked, it does not mean it is approved.¹

The Real Estate Transfer Disclosure Statement (TDS-11) has been required for all residential home sales in the State since 1987 (*California Civil Code Section 1102*). Every known problem or defect is required to be disclosed by the seller on this form. Because of this, information on a ZIR has become redundant in many cases as far as health and safety issues are concerned.

Many buyers request home inspections, conducted by licensed professionals who are far more qualified than a PT II. The PT II job description states “equivalent combination of training, education and experience that would provide the required knowledge and abilities.” (See Appendix B.) The CDD staff noted there are no training manuals or consistency training for PT IIs in preparing ZIRs. The Jury was told training material is now being prepared.

METHODOLOGY

The Jury interviewed Community Development Department staff, real estate agents and brokers, homeowners, a private sector consultant, and other real estate industry-related professionals. The Jury spoke with and interviewed representatives from other municipalities. It reviewed ZIRs, minutes of an ad hoc Working Group researching ZIRs, and various drafts for proposed changes. The Jury also attended the Planning Commission meeting devoted to the recommendations of the Working Group as well as the subsequent City Council Meeting.²

¹ City of Santa Barbara Planning Commission Meeting November 13, 2014

² Santa Barbara City Council Meeting February 10, 2015

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OBSERVATIONS

Following a City Council meeting in December 2013 when the Santa Barbara Board of Realtors argued that ZIRs were being abused by the CDD, an ad hoc Working Group made up of three planning commissioners, two planning staff, three real estate brokers and two real estate staff, was formed to research the problem. The Working Group decided to focus on three main topics:

- Administrative Zoning Approvals
- Administrative Appeals
- Format Changes to the ZIR Form

None of the above topics addresses the crux of the problem: the CDD's reliance on incomplete files to investigate the permitting process, which creates serious discrepancies from one ZIR to the next. Staff told the Jury some discrepancies occurred because there was lack of follow-up of violations in the 1970s and 1980s, but today they are more vigorous about this. The CDD says that today's ZIRs show 5-10 percent discrepancies. A significant number of ZIR discrepancies (from the 1990s to 2005) occurred during the tenure of one City employee who subsequently left. Despite this fact, the City's clear position comes across as *if a permit is not in the file, then it never existed; or the seller must prove it does.*

The Jury heard from a number of homeowners, real estate brokers, agents, consultants and other professionals who experienced the following egregious Zoning Information Report discrepancies:

- A house built circa 1900 had a detached bedroom and bath on the property line. The City ordered it demolished. The homeowners were able to obtain aerial photos showing the original construction including the disputed rooms.
- One homeowner received a clean ZIR when she bought the property, but when she wanted to sell it, the new ZIR cited a number of violations that occurred before she bought her house; one being a fence that for many years sat two inches over the property line. When asked why she had to move the fence, a CDD manager told the Jury it was a "health and safety issue." When asked for clarification, the manager told the Jury they did not know what the fence was made of, so how could they tell it was safe? This cost the homeowner \$53,000 to resolve the problem.
- Another seller told the Jury the ZIR on his property indicated a deck had been built without permits, even though the "deck" was pavers on bare ground. The City added an amendment that said it would not enforce the violation, but they also would not remove it from the ZIR. The seller paid an attorney \$717 to get the matter cleared up.
- Another buyer purchased a house in 2014, and the ZIR was clear. When it recently went back on the market, the ZIR indicated a deck that had been there for 20 years was illegal, and the owner must obtain a permit to either remove it or rebuild the deck. It would not be permitted in its present state. Estimates for this came to \$75,000. As a result, the final price to the buyer was reduced by \$50,000. When dealing with the new buyer, the City changed its mind and allowed the deck to remain unaltered. The seller had no recourse as the property transfer had been completed.

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- A seller was informed by CDD staff, "...there is evidence that you have moved a door and window." The seller hired two contractors to confirm this had not happened. Staff did not offer any evidence that it had. The upshot was CDD essentially said "never mind." Still, the seller had to pay the contractors for revised plans and the City for revised permits.
- The City wanted a seller to remove a carport that had been in existence for 50 years and had been reported as legal on three prior ZIRs. It cost him \$20,000 to verify the carport had existed from the time the house was built.
- In a similar instance the homeowner was cited for a deck shown incorrectly on the plans. However, the changes the inspector observed were due to changes at the time of construction. It cost more than \$4,000 to get the violation removed, but this was less than the cost for the City's demand for demolition.
- A son, trying to sell his deceased mother's home, received a ZIR stating the garage had been moved from its original site because of the window and door placement, resulting in a violation. He was able to locate a 30-year-old photo of himself at the age of 6 taken in front of the garage, showing the original placement had not changed. When originally developed, this tract had the option of locating the garage in different configurations on a site. If the inspector had done proper research, this would have been known.

If the PT II determines there is a violation, documents supporting the violation should be provided. Currently, it is up to the seller to provide documentation that proves otherwise. The Jury learned the position of CDD is that "We believe we can't support grandfathering in all improvements because we don't know for sure if they cause fire or life safety risks."³

There is no formal appeal process, nor does CDD recommend one. Rarely are the ZIRs disputed since they often come so close to the end of the escrow period. The most serious problem with the dispute process is that it must go back to the original PT II who made the report, leaving objectivity in question. Homeowners are charged \$465 for the ZIR and an additional \$135/hour with a three-hour minimum, if disputed. A formal appeal process with an independent party has not been established which would guarantee homeowners due process.

Clearly, there are no checks and balances with this current process.

Common sense must prevail regarding violations that go back decades or owners ago. If CDD feels it imperative to correct the alleged violation, it should have a documented system for remedying the situation. In other words, the Jury concludes, "if you did not do the crime, you should not pay the fine." If the City has no compelling reason for correction of these violations, other than income generation, how does the community benefit? The CDD appears to be unfocused and caught up in unnecessary minutia.

³ Ibid

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The City of Carpinteria is an interesting contrast. It also requires an Inspection on Sale Report which costs \$245. Again, these began in the '80s because of illegal dwellings. Inspectors review the file prior to visiting the property and take relevant papers with them and then discuss with the seller what needs to be done to remedy a situation. Staff spends 30-45 minutes researching the office files. The inspector will spend approximately 30 minutes on the property, and at the end of an inspection, hand the homeowner a copy of the report. Total time for staff and inspector is 1.75 hours, and up to two hours for a complicated file. In contrast, the CDD of Santa Barbara states every attempt is made to complete the ZIR within 15 working days after an application is received. Additionally, the Jury was told Santa Barbara inspectors view the property first and then research the files. In the Jury's opinion, this is inefficient.

A Carpinteria inspector estimated major violations are about one percent. The discrepancy process is simple. When on site, the inspector tells the seller what needs to be done to remedy any violation. Remedies can be discussed with the inspector until both sides are satisfied. Where there are clerical errors, the City will clean them up.

The cost of a City of Santa Barbara ZIR is \$465, which is the highest in the state, however, the total cost can easily exceed \$1,000. If a homeowner disputes the findings and staff does additional research, the costs begin to escalate. If changes must be made, new permits must be acquired, even if the permit is for a demolition. This would be in addition to any requirement for new plans. While Staff says the department is "revenue neutral" these charges are in excess of other jurisdictions. Other municipalities charge much less for this type of report: the City of Los Angeles charges \$70.20, Pasadena \$150, Ventura \$35, and Carpinteria \$245. According to the CDD, ZIRs alone generate over \$240,000 annually.

ANALYSIS

The State mandates the seller provide the buyer with a Real Estate Transfer Disclosure Statement (TDS-11). In addition to this Statement, many potential home buyers have a professional home inspection performed. These licensed professional inspectors are better qualified to inform the buyer and document any deficiencies, such as whether there is ball-and-tube wiring, adequate links to the sewer system and water and power hookups, whether the roof needs repair/replacing, or if a property is unhealthy, illegal or unsafe. These inspections are very detailed and much more comprehensive than the Zoning Information Report.

However, the perception of many is that the intense diligence of the CDD is to ferret out past sins, which generates additional income for the City. More than one witness told the Jury, "...every time the inspector comes out there are more violations." Indeed the City expects the CDD to generate 100 percent of its budget for this program from the money it collects. PT II inspectors appear to have taken their responsibility to a whole new level. The regulations are applied inconsistently with new inspectors and even, on occasions, with the same inspector. As an example, the Jury obtained five ZIRs on a particular property spanning the period from 1997

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to 2014. This property remained unchanged during these years (no new construction, additions or demolition performed) and was reported as follows:

ZIRs On One Property For Years 1997 to 2014				
<u>Year</u>	<u>Bedrooms</u>	<u>Full Bathrooms</u>	<u>Half Bathrooms</u>	<u>Violations**</u>
1997	5	4	2	Zoning & Building
2000	5	4	1	None
2002	4	4	2	Building
2011	3	3	2*	None
2014	4	4	2*	Building
* In 2011 two legal sinks noted; in 2014 same inspector noted those two sinks illegal				
** See Appendix C for violation details by year				

In another example, a property was listed on a ZIR as a triplex and the City collected taxes on it as a triplex. One ZIR indicated that since there were no permits on file prior to the 1950s, the City assumed the triplex was permitted. The next ZIR on the property noted that since there were no permits on file prior to the 1950s, permitting was not presumed and the triplex was therefore illegal.

A violation puts the property under a cloud which is reflected in the price of the home, as seen by the above examples. These decisions can cause hardship, both financially and emotionally, to the City's residents. Many are often under stress to sell because of health or relocation circumstances. A violation is consequential and letters from the City threaten fines. Banks' strict standards often require all violations be addressed immediately, prior to the close of a sale transaction. The results can be that the buyer backs out of escrow, or demands concessions. The concessions will probably be more than the cost to remedy, because the actual cost is unknown. The seller may decide to take the property off the market. To correct the violation, the owner pays fees, pays for plans, etc. It can cost thousands of dollars before approval is confirmed.

What disturbs the Jury most is the buyer of a property with a clean ZIR is not protected in the future. The next time the house is on the market, the current seller has no guarantee violations will not be cited, violations the homeowner did not commit, but will be required to abate.

The wording of the violation(s) in ZIRs is often ambiguous. A Planning Commissioner was troubled by such vague terms as "might encroach," "something appears to be," "there is evidence," and "appears," considering the weight the ZIR now has. This is particularly troubling when the City feels no obligation to confirm this, but insists that the homeowner must provide proof that the property, in its existing state, is not in violation. Interestingly, a City Attorney approves this vague language as "intentionally qualified language." The CDD is proposing that in the case of inconsistencies/discrepancies between ZIRs, it would only refer for enforcement the creation of an illegal dwelling unit and the physical loss of parking. What creates a "habitable space" appears to be discretionary. The CDD stated that areas used for living, eating, or sleeping

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are what makes a room “habitable.” However, for 25 years a storage room in the home that had been converted to an office, and used to conduct business as such during that time, was deemed an unpermitted “habitable space.” Currently, staff is proposing changing “habitable space” to “the creation of new floor area” or “new conditional space.” At the City Council meeting, this was defined as “having heating and air conditioning.” A member of the Council asked, “In your mind, is this precise?”

In another proposal, CDD is suggesting a new Administrative Zoning Approval Process to reduce or waive zoning standards when there are unclear city records, discrepancies in the record (including in the ZIRs), or it is evident that the improvement has been there for a very long time, i.e. 50 years. When there are unclear records and discrepancies in the records, and it is evident an improvement was on the site prior to 1974, those improvements could be eligible for this approval. The word “could” is problematic as it involves a judgment call which could be reversed when the house again comes on the market. The Jury has concerns about this. Violations today are often called out when one inspector disagrees with the findings of the previous inspector. This proposal appears to set up uncertainty for future sellers and buyers. With the CDD’s more vigorous follow-up policy, the Jury is concerned as to how violations, both major and minor, will be treated. Without reliability, ZIRs are a worthless document to both the buyer and the seller.

Absurd as it sounds, portions of garages used for storage are deemed to have created a “physical loss of parking,” and therefore a major violation. A ZIR will state, “...the workbench and cabinets encroach into the required parking area in the garage. By City Zoning Ordinance, two covered parking spaces are required and must be maintained at all times.” This means a 20 by 20 foot covered unobstructed parking space. If half the garage is used for a workshop or for storage, it must be cleared out. This is where common sense comes into play. The Jury understands the need for off-street parking, but the requirement for a 20 by 20 foot cleared space that is covered is overly restrictive and impossible to achieve in some of the older homes in the City. The City should require adequate off-street parking, but in the Santa Barbara climate, requiring covered parking seems excessive and the regulations need to be revised.

CONCLUSION

After a vigorous investigation, the 2014-15 Santa Barbara County Grand Jury concludes that while Zoning Information Reports had an important role to play in preserving neighborhoods from overcrowding, time has caught up with them and they no longer hold the relevance they once had. When it became possible to access previous history, the ZIR process changed and staff began to play catch-up with often disastrous unintended consequences. With the introduction of the Real Estate Transfer Disclosure Statement and often subsequent home inspections, health and safety issues were more reliably described and identified by professionals in their fields. The parking rules originally designed to preserve neighborhoods against overcrowding have become arbitrary, and to many, absurd.

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The City of Santa Barbara needs to stand by the Zoning Information Reports produced by the Planning Division of the Community Development Department. The *past-mistakes-must-be-corrected* attitude is unprofessional and unfair to the innocent people simply trying to sell their homes. The onus should be on the City to prove that a violation exists, and not on the seller to prove that one does not exist.

Once the City affixes its official seal to the document, it should stand behind its staff and the information it provides.

FINDINGS AND RECOMMENDATIONS

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.

Recommendation 1

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

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.

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.

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.

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.

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.

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Recommendation 4

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

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.

Recommendation 5

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

Finding 6

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

Recommendation 6a

That the City of Santa Barbara establish an appeals process that requires an outside mediator.

Recommendation 6b

That the Zoning Information Report include a prominently stated and documented appeal process.

Finding 7

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

Recommendation 7

The Planning Technician II inspector review all relevant files prior to a site visit.

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.

Recommendation 8

The price for a Zoning Information Report should be consistent with other municipalities.

Finding 9

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

Recommendation 9

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

Finding 10

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

Recommendation 10

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

REQUEST FOR RESPONSE

In accordance with *California Penal Code Section 933.05* each agency and government body affected by or named in this report is requested to respond in writing to the findings and recommendations in a timely manner. The following are the affected agencies for this report, with the mandated response period for each.

City of Santa Barbara City Council – 90 Days

Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10

Recommendations 1, 2, 3, 4, 5, 6a, 6b, 7, 8, 9, and 10

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Appendix A

Minor Violations Listed on ZIR's issued during July 2014

Zoning Violations

- The workbench and cabinets encroach into the required parking area of the garage. By City Zoning Ordinance, two covered parking spaces are required and must be maintained at all times
- Trash cans and a wood pile are being stored [*sic*] in the required interior setbacks
- The trash enclosure encroaches [*sic*] into the front yard setback
- The viewing deck encroaches into the required interior setback
- The detached storage shed and playhouse encroach into the required interior setbacks
- The front fence exceeds the maximum allowable height of three and one half feet within 10 feet of a front lot line and within 10 feet of either side of a driveway for a distance of 20 feet back from the front lot line. The front hedge exceeds the required height of three and one-half feet (3-1/2') when located within a triangular area on either side of a driveway measured as follows: A. When a driveway directly abuts a portion of a street improved with a sidewalk and a parkway, the triangle is measured on two sides by a distance of ten feet (10') from the side of a driveway and ten feet (10') back from the front lot line
- The storage shed encroaches into the required interior setback
- The play structure encroaches into the required interior setback
- The 1996 permit foer [*sic*] the rear viewing desk in the rear yard expired in 1996. The deck requires a new building permit and design review approval
- The air conditioning unit was added on the roof of the garage without the required design review approval
- The detached metal storage shed encroaches into the required interior yard setback
- The attached small storage room was added without the required permit. (Any attached structure required a building permit)
- The detached shed and the trash enclosure are located in the remaining front yard and possibility in the required interior setback
- The wood storage shed encroaches into the required interior setback
- The patio cover and the outdoor fireplace encroach into the required interior setbacks
- Debris, construction materials, and trash cans are being stored in front and interior setbacks
- The storage shed in the rear of Unit A encroaches into the setback
- Miscellaneous items are being stored in setbacks in Unit B
- Miscellaneous construction items are being stored behind garage and encroach into rear setback
- The trellis in the rear of the property was built within the 40' bluff setback, which in [*sic*] a violation of the Conditions of Approval of Planning Commission Resolution 057-90. Advisory Comment: In order to legalize trellis, the condition would have to be amended at Planning Commission with a revised geologist report

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Building Violations

- There is [sic] no permits on record for the barbeque, sink and electrical appliances [sic] for the outdoor cooking area
- A door has been added to the carport without the required permit (within the front interior setbacks)
- Remodel was done to create a fourth bedroom without a building permit
- There is no permit on record for the attached patio cover at the rear of the house
- The stairs on the side of the garage were constructed without the required permit
- The trellis in the rear of the property was built without the required permit
- The trash enclosure was built without permits
- The built-in barbeque was constructed without permits
- There are no permits on file for the construction of the rear detached patio cover
- The playhouse with rabbit hutch underneath was constructed without building permit
- There are no permit on [sic] for the washer/dryer hookups in the garage
- The kitchen has been remodeled and enlarged to include part of the family room as shown on the 1961 floor plan. A center island with a new sink was installed and the washer/dryer hookups were moved from the kitchen area to the garage. A laundry sink was also added to the garage. All work was done without the required permits
- There is no permit on record for the air conditioning unit on the side of the dwelling
- The side patio cover was added without the required permit
- The kitchen was remodeled under a permit issued in 2009 (BLD2008-XXXXX). This permit was issued but never finalized [sic]. It appears that a kitchen island was added (with an additional sink) however this change was not documented in a revised project description
- The attached small storage room was added without the required permit. (Any attached structure required a building permit)
- There is no permit on record for the rear attached patio cover
- The air conditioning unit was added on the roof of the garage without the required permit
- The two vehicle carport was added without the required permit and design review approval. Also, the original plans for the duplex show a carport where the existing garage attached to Unit XXXX is located. The enclosure of the carport required a building permit and design review approval
- The trellis covers and deck were added without the required permits
- The shower was added in the upstairs ½ bathroom without the required permit
- A building permit is required for the side attached patio trellis
- There is no record of a permit for the bar sink in the guest bedroom. Further, Zoning allows only a five foot long counter
- The building permit for the deck (BLD2000-XXXXX) was issued in 2000 but expired in 2002
- The sink and electrical outlet were added to the outdoor counter without the required permit

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- The viewing deck was added without the required building permit
- The patio cover was added without the required permit
- There is no permit on record for the alcove at the rear of the dwelling. This area is not habitable space.
- The wall between two of the bedrooms was removed to create one master bedroom. This work was done without the required permit
- The basement has been converted to habitable space with bedroom and full bathroom without building permits
- A half bath was added to one of the bedrooms without building permits
- There are no permits on file for the washer and dryer in the storage area of the basement
- There are no permits on file for the conversion of the carport in a garage by the addition of a garage door
- The trash enclosure was built without permits
- The half bathroom in the garage was added without the required permit

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APPENDIX B

Planning Technician II Job Qualifications, ca 2005:

Knowledge of:

- Basic principles and concepts of urban planning.
- Basic computer functions.
- Basic report writing, research methods and data compilation.
- Basic principles and techniques of inspection.
- Modern office methods, practices, procedures and computer equipment.
- Databases such as Crystal, Access, Excel.
- Pertinent laws, codes, ordinances, and regulations related to planning activities.
- Principles and concepts of urban planning.
- Penal code arrest and seizure procedure.
- Methods and techniques of conflict resolution.
- Complex principles and techniques of inspection.

Ability to:

- Learn to understand and interpret laws underlying general plans, zoning, and applicable environmental laws and regulations.
- Learn to interpret planning and zoning programs to the general public.
- Learn to enforce proper zoning requirements.
- Learn to work with diverse cultural and socio-economic groups.
- Compile technical and statistical information and prepare basic reports.
- Read and interpret mapping and survey data, site plans, zoning codes, legal descriptions and related information.
- Establish and maintain databases such as Crystal, Access, Excel.
- Understand and carry out oral and written directions.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain cooperative working relationships with those contacted in the course of work.
- Maintain physical condition appropriate to the performance of assigned duties and responsibilities which may include the following:
 - Sitting and standing for extended periods of time
 - Operating equipment
- Maintain effective audio-visual discrimination and perception needed for:
 - Making observations
 - Communicating with others
 - Reading and writing
 - Operating related equipment

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- Interpret and enforce applicable City, State, and Federal codes, ordinances, and regulation related to zoning, planning, and environmental laws.
- Enforce proper zoning requirements.
- Foster and use techniques of conflict resolution while working cooperatively with those contacted in the course of work.
- Effectively and competently present presentations to Planning Commission.

Experience and Training Guidelines

- Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

- A minimum of two years of planning or related experience is typically required.
- Training: Equivalent to the completion of the twelfth grade supplemented by college level course work in planning, geography, business administration or related field.

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Appendix C

Violations Called Out for One Property: 1997 – 2014 with No New Construction, Additions or Demolition Performed

1997 Violations

Zoning Violation: A portion of the carport encroaches into the required interior yard setback.

Building Violations:

1. The hot tub/spa and deck were constructed without the required permits.
2. The carport and attached trellis were constructed without the required permits.
3. Where there is a pool or body of water over 18 inches, gates opening through fence or wall enclosures shall be equipped with a self-closing and self-latching device.

2000 Violations – None noted

2002 Violations

Building Violation: Gates leading to pool area must be self-closing and self-latching.

2011 Violations

Building Violations Permits also cannot be located for the barbeque, sink and electrical applicances [*sic*] for the outdoor cooking area. (Note, this inspector indicated “none” for Zoning Ordinance or Building Code violations.)

2014 Violations:

Building Violations

1. There are no permits on record for the barbeque, sink and electrical applicances [*sic*] for the outdoor cooking area.
2. A door has been added to the carport without the required permit (within the front and interior setbacks).



City of Santa Barbara

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August 4, 2015

Helene Schneider

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The Honorable Arthur Garcia
Santa Maria Juvenile Court
4263 California Blvd.
Santa Maria, CA 93455

Santa Barbara County Grand Jury
1100 Anacapa Street
Santa Barbara, CA 93101

Honorable Judge Garcia and Grand Jury Foreperson:

This letter is in response to the 2014-2015 Santa Barbara County Grand Jury's Report on the City of Santa Barbara's Zoning Information Reports (ZIRs). This response is provided pursuant to the requirements of State Penal Code Section 933 and 933.05.

The 2014-2015 Grand Jury Report was received by the City on May 11, 2015 and includes ten (10) Findings and eleven (11) Recommendations. The Findings and Recommendations relate to the necessity of ZIRs, ZIR preparation procedures, overall cost of the ZIR process, the reliability of ZIRs, ability to appeal the findings of a ZIR, and the City's residential parking requirements. The City of Santa Barbara appreciates the work that the 2013-2014 and 2014-2015 Grand Juries put into this Report.

The City of Santa Barbara City Council is aware of the issues surrounding the ZIR program. Over the last several years, the City has been working with the Santa Barbara Association of Realtors to improve the ZIR process in terms of timeliness, consistency, reliability, understandability, problem solving mechanisms, and violation identification. Improvements have been made including making ZIRs optional for condominiums, reducing the time between ZIR application submittal and the release of the final ZIR, reducing the cost for ZIRs for larger multi-unit complexes, emailing completed ZIRs to the applicant, and accepting ZIR applications by fax. Those changes have been welcomed by the real estate community.

More recently, after public hearings before the City Council and City Planning Commission in 2013, a ZIR Working Group was formed in January 2014 to address the issues and clarify and streamline the ZIR process. The ZIR Working Group was composed of representatives from the Santa Barbara Association of Realtors, active realtors in the community, members of the City Planning Commission, and City staff. The ZIR Working Group met over a ten month period and developed a number of recommended improvements to the ZIR preparation process. The recommendations of the ZIR Working Group, which were collaboratively developed and agreed upon, include:

- Revisions to the ZIR template



Please consider the environment before printing this letter.

Judge Garcia & Grand Jury Foreman

Re: 2014-2015 Grand Jury Report on the City of Santa Barbara's ZIR Program

August 4, 2015

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- Categorization of violations
- Clarification of the ZIR appeal period
- Deferral of violation abatement deadlines in certain situations
- Proposed establishment of a Minor Zoning Exception process, and
- Creation of new public handouts.

In November 2014, the City Planning Commission reviewed and concurred with the recommendations of the ZIR Working Group. The Planning Commission further recommended that City Council initiate an ordinance amendment to establish a Minor Zoning Exception process to give City staff the authority to grant relief from minor zoning regulations through the ZIR process, and direct staff to implement other changes recommended by the ZIR Working Group. In February 2015, the City Council held a public hearing and initiated an amendment to the Zoning Ordinance to establish the Minor Zoning Exception process and directed City staff to work on the ZIR process improvements recommended by the ZIR Working Group (Attachment).

The following ZIR Working Group recommendations have been implemented to date:

- Categorization of "major" and "minor" violations for the purposes of determining which violations are referred for immediate enforcement
- Delayed enforcement of violations in certain circumstances
- Retention of inspection photographs long-term

Staff is currently in the implementation phase of the following ZIR process improvements and anticipates completion within the next six months:

- Revising the ZIR template
- Establishing a ZIR procedures manual
- Establishing a Minor Zoning Exception process
- Creating a ZIR inspection checklist
- Creating a frequently asked ZIR question handout
- Creating a handout explaining how to abate violations
- Establishing a public outreach/information program

Many of the Findings and Recommendations contained in the Grand Jury Report cover the same issues as those discussed in great detail by the ZIR Working Group. Therefore, many of the City's responses to the Grand Jury's recommendations state that they "will not be implemented because it is not warranted or is not reasonable." With all due respect, this rather abrupt response language (in bold below) is not the City's preferred language, but required by the Penal Code. The City Council recognizes the Findings of the Grand Jury are important; however, in many cases, another recommendation or remedy was agreed upon by the ZIR Working Group, City Planning Commission, and City Council to address the underlying issue and is in process of being implemented.

With this important background information in mind, responses to the Grand Jury's Findings and Recommendations are provided below.

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

The SBMC does not require that a ZIR include a review of the property's compliance with the Building Codes nor confirm the location of property lines.

Most of the above items are not included in the Real Estate Transfer Disclosure Statement. Although 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 local 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, and these are included in ZIRs.

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 residents that they appreciate ZIRs because they know the City will

inspect properties when they are 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 continued to support 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 and also recognized that the ZIR is an important mechanism to enforce relevant City ordinances and preserve the quality of the City's housing stock and neighborhoods.

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.

The ZIR Working Group discussed this issue at length. The discussion focused on gaining an understanding of all the information sources utilized by City staff during the preparation of a ZIR. The ZIR Working Group recommended a new section be added to the ZIR template that informs the property owner/potential buyer of the information sources utilized in reaching the conclusions contained in the ZIR. This new section has been added to the revised ZIR template which will be implemented in the near future.

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 responsible for the regulation and protection of 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 the assumption that if the City presumes that the alteration existed when the current owner took ownership then the violation is avoided. However, if an alteration was constructed without permits at a time when permits were required, it does not matter who owns the property. The violation exists whether or not it 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. However, this is very concerning to the City because the underlying illegality of the violation and the remedy would remain unaddressed, and to allow its continuation would serve to harm the persons who live at the property 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 has been partially implemented.

City staff encourages property owners to contact staff directly when there is concern regarding a noted violation. Staff works with property owners 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. In instances when alleged violations prove incorrect, a refund of appeal fees paid to the City is now provided. However, due to lack of control of the scope and direction of private investigations, it would be inappropriate for the City to pay for these additional costs.

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.

The ZIR Working Group discussed the issue of discrepancies between ZIRs at length, and identified recommendations to address them (Attachment).

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.

When discrepancies occur, they usually fall into one or more of the following categories:

- The previous ZIR notes the improvement as existing and either does not indicate it is a violation or erroneously states that it is “non-conforming” (such as hedges).
- The previous ZIR notes the improvement as existing and states that it is a violation but was not referred to enforcement, or only partial enforcement occurred.
- The previous ZIR does not mention the improvement as existing and there is no evidence as to when the improvement first appeared, yet the owner states the improvement existed at the time they purchased the property.

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.

Staff has made improvements over the years to increase the reliability of ZIRs. Staff currently performs more in-depth research and regularly consults the archive plans when preparing a ZIR. Staff believes that the increased accuracy of today's ZIRs have led to many of the discrepancies with prior ZIRs.

Recognizing the need for improvements, staff is also in the process of standardizing procedures for preparing ZIRs and identifying violations. The procedures will give staff clear and consistent direction on how to prepare a ZIR, conduct the site inspection, determine what violations are identified in the ZIR, and how and what types of violations are referred for enforcement. Planning staff has also increased its early collaboration with property owners and Building and Safety Division staff when discrepancies arise before the ZIR is finalized. This increased collaboration has proven beneficial.

The City attempts to minimize the impacts of discrepancies between ZIRs. Staff currently expedites and simplifies the discretionary review process as much as possible and waives the Planning fees in cases of discrepancies between ZIRs. Planning staff also involves Building and Safety Division staff earlier in the process to identify information that may be necessary for the building permit.

The ZIR Working Group discussed several changes to the ZIR process to address discrepancies. These changes include establishing a Minor Zoning Exception process, which requires a Zoning Ordinance amendment, and to only refer violations for enforcement that involve the creation of an illegal dwelling unit or the physical loss of parking. Violations that involve the creation of new floor area or conditioned space would only be referred for enforcement if it appears to create an immediate health or safety risk.

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. Although it is understandably frustrating to sellers and realtors, 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.

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. However, this is very concerning to the City because the underlying illegality of the violation and the remedy would remain unaddressed, and to allow its continuation would serve to harm the persons who live at the property or own property adjacent to the residence on which the violation is noticed.

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, steps are taken 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.

The ZIR Working Group discussed establishing a more formal appeal process, but concerns were expressed regarding the amount of additional time and costs associated with that process and agreed that maintaining the existing ten-day appeal period was appropriate.

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.

In many cases it is appropriate and very helpful to turn to a professional mediator to help resolve disputes, with a typical goal of each party to compromise. However, in cases where a building or zoning code has been clearly violated, it would be inappropriate for the City to agree to the compromise of public health, safety and/or welfare. 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. Given this Finding of the Grand Jury and statements by the real estate community in recent public hearings, the ZIR inspectors have been reminded of this requirement.

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. Some 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, violation identification and enforcement referral, appeal process, and documentation. The ZIR Working Group also recommended that the scope and content of the ZIR be reviewed to only include information that is relevant, important, and consistent with the Zoning Ordinance requirements. The Planning Commission and City Council concurred with this recommendation. City staff is in the process of developing the written procedures. The written procedures will help with consistency and give clear guidance to staff on preparing ZIRs.

Judge Garcia & Grand Jury Foreman

Re: 2014-2015 Grand Jury Report on the City of Santa Barbara's ZIR Program

August 4, 2015

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Should the Grand Jury have any questions regarding the City's response or wish to follow up with the City, please contact me, City Administrator Paul Casey or City Attorney Ariel Calonne.

Sincerely,

Helene Schneider,
Mayor

Attachment: February 10, 2015 City Council Agenda Report

Cc: City Councilmembers
Paul Casey, City Administrator
Ariel Calonne, City Attorney
George Buell, Community Development Director
Renee Brooke, City Planner
Susan Reardon, Senior Planner