

**RESPONSE TO GRAND JURY REPORT**

**Report Title:** Residential Pre-Sale Inspections – Should Marin County Also Require Them?

**Report Date:** May 30, 2002

**Response by:** Reba Wright-Quastler      **Title:** Community Development Director/ Assistant City Manager

**FINDINGS**

We have no basis to judge the county-wide findings made in the report other than the information provided in the Grand Jury's report. Sausalito does not require inspections but does require a report which is consistent with State law. We have just finished a review of our fees and on July 9 the City Council adopted a resolution increasing the fee for a resale report from \$90 to \$100 in reflection of our actual costs.

**RECOMMENDATIONS**

- Recommendation 2 has been implemented.

Please see attached memo from the City Attorney.

- Recommendation 3 has not yet been implemented, but may be implemented in the future.

Although Sausalito does not require inspections, and does not propose to require them, we would be willing to participate in countywide discussions.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Number of pages attached \_\_\_\_\_

TO: Reba Wright-Quastler  
FROM: Mary Anne Wagner, City Attorney  
DATE: July 17, 2002  
RE: 2001-2002 Marin County Grand Jury Report – “Residential Pre-Sale Inspections – Should Marin County Also Require Them?” dated May 30, 2002

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### **BACKGROUND:**

The 2001-2002 Marin County Grand Jury issued a report dated May 30, 2002 entitled “Residential Pre-Sale Inspections – Should Marin County Also Require Them?” (the “Grand Jury Report”). The Grand Jury Report indicates that all cities/towns in Marin County require some form of “pre-sale inspections” for residential property. However, the County itself only requires such inspections in connection with the sale of houseboats.

The City of Sausalito (the “City”) requires a pre-sale Building Record Report for residential property but does not conduct any physical inspection of the property in question. A fee of \$90 is currently charged in connection with the Building Record Report. This fee will be raised to \$100 when the new fees approved by the City Council pursuant to Resolution No. 4601 go into effect.

One of the recommendations included in the Grand Jury Report is that cities/towns in Marin County have their legal counsel review the jurisdiction’s practice in connection with pre-sale reports and inspections to determine if they are in compliance with the applicable provisions of State law and the localities own regulations.

### **QUESTION PRESENTED:**

You have asked that I review the City of Sausalito’s existing practices and code provisions regarding residential pre-sale inspections/reports. More specifically, you have asked that I respond to the following recommendation by the Marin County Grand Jury:

“Because the actual scope of the inspections/reports in many of Marin’s cities and towns appears to have little relationship to the enabling legislation of the local municipal code and applicable State laws, the cities and towns should have their City or Town Attorneys review existing practices and code provisions and make any appropriate revisions either to the codes or to the practices of the inspectors.”

### **SUMMARY CONCLUSION:**

The City requires a “Building Record Report” prior to the sale or exchange of a residential building in the City. The Building Record Report includes information regarding the regularly authorized use, occupancy and zoning classification of the property that is compiled by City staff from a review of the City’s records. The City charges a reasonable fee in connection with the Building Record Report. The City does not require a physical pre-sale inspection of the property. The City’s practice in this regard is consistent with both State law and the applicable provisions of the City’s Municipal Code. Therefore, no revisions to the Municipal Code are required. In addition, in light of the fact that the City does not conduct physical inspections of the property, no revisions to the “practices of the inspectors” are required.

### **DISCUSSION:**

The following discussion includes a description of the applicable provisions of the California Government Code and the City’s Municipal Code. Is also includes a description of the Building Record Report form itself.

#### **A. Applicable Provisions of the California Government Code:**

California Government Code Section 38780<sup>[1]</sup> provides that:

“A city by ordinance may provide that prior to the sale or exchange of any residential building, the owner or his authorized agent shall obtain from the city a report of the residential building record showing the regularly authorized use, occupancy, and zoning classifications of such property.”

Prior to the consummation of the sale or exchange, the report must be delivered to the buyer or transferee of the residential property. Section 38781. The City is authorized to require the payment of a “reasonable fee” by the owner for the issuance of the report. Section 38782. Section 38783 provides that it is unlawful to sell or exchange a residential building without first having obtained and delivered a report of residential building record to the buyer. However, failure to comply with the provisions of an ordinance adopted pursuant to Section 38780 is not in and of itself grounds to invalidate a sale or exchange of residential property. Section 38785.

**B. Applicable Provisions of the City’s Municipal Code:**

On June 15, 1999 the City Council duly passed and adopted Ordinance No. 1138 and thereby amended Chapter 8.28 “Residential Building Records” of the City’s Municipal Code. Chapter 8.28 requires the following:

1. **Section 8.28.010:** “Prior to the sale or exchange of any residential building in the City, the owner or his authorized agent shall obtain from the city a report of the residential building record showing the regularly authorized use, occupancy and zoning classifications of such property.”

This requirement is consistent with the provisions of Government Code Section 38780.

2. **Section 8.28.020:** “A report of residential building record shall be issued by the City upon application by the owner or his authorized agent and upon payment to the City of a fee to be established by resolution of the City Council.”

The issuance of the Residential Building Record to the owner or the owner’s authorized agent is consistent with the requirements of Government Code Section 38780. The City currently charges \$90 to the owner of the property for a Building Record Report. This amount will increase to \$100 when Resolution No. 4601 approved by the City Council on July 9, 2002 goes into effect. This is consistent with Government Code Section 38781 that provides that the City may require the payment of a “reasonable fee” for the issuance of a report. The amount charged by the City is “reasonable” in light of the fact that it reflects the actual costs of the City to prepare the report and is in fact “revenue neutral.”

3. **Section 8.28.030:** “The report of residential building record shall be delivered by the owner or the authorized agent of the owner to the buyer or transferee of the residential building prior to the consummation of the sale or exchange.”

This requirement is consistent with the provisions of Government Code Section 38781.

4. **Section 8.28.040:** “No statements contained in a report of residential building record issued by the City shall authorize the use or occupancy of any residential building contrary to the provisions of any law or ordinance. The issuance of such report shall not constitute a representation by the City that the property or its present use is or is not in compliance with the law.”

This provision ensures that the Residential Building Report is not utilized in an unintended manner.

5. **Section 8.28.050:** “The provisions of this chapter shall not apply to the first sale of a newly constructed residential building.”

This provision is consistent with the requirements of Government Code Section 38784 although the requirements of the City’s code are broader. Government Code Section 38784 provides that this “article” is inapplicable to the first sale of a residential building “... located in a subdivision whose final map has been approved and recorded in accordance with the Subdivision Map Act not more than two years prior to the first sale.” The City does not require a report on the first sale of any “newly

constructed residential building.” Because the language of the City’s Municipal Code is broader and would encompass that set forth in Government Code Section 38784 it is consistent with and in furtherance of the applicable state law.

6. **Section 8.28.060.** “Except as provided in this chapter, it is unlawful for the owner of a residential building in the City to sell or exchange the same without first having obtained and delivered to the buyer a report of residential building record. Any person violating the provisions of this chapter shall be guilty of an infraction and upon conviction thereof, shall be punished by a fine not to exceed the sum of five hundred dollars.”

This is consistent with the requirements of Government Code Section 38783.

C. **The Building Record Report Form:**

In addition to reviewing the applicable provisions of the City’s Municipal Code in connection with residential pre-sale inspections/reports, I have also reviewed the form of the Building Record Report utilized by the City. The information set forth in the Building Record Report is compiled by City staff from a review of the City’s records. The first part of the Building Record Report consists of general information regarding the property which is the subject of the sale or exchange including: the construction date (if known), the number of units, permits issued, whether the property is in a flood zone or special setback area, whether any stop work orders have been issued and whether the property is subject to any ministerial encroachment permits. The second part of the Building Record Report contains zoning information including the following: the applicable zoning district, whether the residence is on the Noteworthy Structures List, the permitted and authorized use, a list of any known non-conformities, a list of non-ministerial encroachment permits, a list of variances and a list of conditional use permits. Finally, there is a space on the Building Record Report to include other pertinent information.

All of the information contained in the Building Record Report pertains to the regularly authorized use, occupancy and zoning classification of the property that is the subject of the sale or transfer. Therefore, the Building Record Report is consistent with both the applicable provisions of State law and the requirements of the City’s Municipal Code set forth above.

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[1] All further statutory references are to the California Government Code.