



CITY OF NOVATO
CALIFORNIA

922 Machin Avenue
Novato, CA 94945
415/899-8900
FAX 415/899-8213
novato.org

Mayor
Susan Wernick
Mayor Pro Tem
Mark Milberg
Councilmembers
Pat Eklund
Rachel Farac
Tim O'Connor

City Manager
Adam McGill

August 23, 2023

The Honorable Judge James Chou
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

Re: Response to Grand Jury Report: "Build More ADUs – An Rx to Increase Marin's Housing Supply"

Dear Judge Simmons,

At its regular meeting of August 22 2023, the Novato City Council reviewed the above report which requests they City of Novato respond to Recommendations R1, R2, R3, R4, R5, and R6 of the report. The City's response to all is attached.

If the members of the Grand Jury require additional information, please contact City Manager Adam McGill at amcgill@novato.org.

We appreciate the work of the Grand Jury and thank you for your service to our residents and Marin County.

Sincerely,

Susan Wernick
Mayor
City of Novato

Cc: Pat Shepard, Foreperson
Marin County Civil Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

RESPONSE FORM: 2022-2023 MARIN CIVIL GRAND JURY REPORT

Report Title: Build More ADUs – An Rx to Increase Marin's Housing Supply

Respondent/Agency Name: City of Novato

Your Name: Hon. Susan Wernick

Title: Mayor

FINDINGS

- I (We) agree with findings numbered: **F1, F4, F5, F6, and F10**
- I (We) disagree partially with findings numbered: **F7 and F8**
- I (We) disagree wholly with findings numbered: **F2, F3, and F9**

RECOMMENDATIONS

- Recommendation ## has been implemented.
(Attach a **summary** describing the implemented actions.)
- Recommendation numbered **R6** has not yet been implemented, but will be implemented in the future. (Attach a **timeframe** for the implementation.)
- Recommendations numbered ## require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered **R1, R2, R3, R4, and R5** will not be implemented because they are not warranted or are not reasonable.

Susan Wernick

Date: August 22, 2023

Signed: _____
Susan Wernick, Mayor
City of Novato

Number of pages attached: 7

Response Form Continuation – Statements & Explanations

Marin Civil Grand Jury Report

Build More ADUs - An Rx to Increase Marin's Housing Supply, June 15, 2023 ("Report")

FINDINGS

F1. More housing in Marin is needed and ADUs are one solution.

Response: Agree.

F2. Many homeowners lack information and knowledge about ADU development, and Marin's jurisdictions are not always helpful to homeowners seeking information about ADU development.

~~Response: Disagree.~~

Homeowners have access to a wide range of resources related to ADUs and should have no reason to be unfamiliar with the basic elements of developing an ADU. Indeed, a simple Internet keyword search using "ADU California" or "Accessory Dwelling Unit California" in Google returns volumes of information and resources regarding ADUs. In the City's experience speaking with hundreds of homeowners over the past decade about development of an ADU most perform their own research, form a basic understanding of developing an ADU generally, and then contact staff with specific questions regarding local regulations and/or to discuss circumstances unique to their desired ADU or property. It is rare for a homeowner contemplating an investment of hundreds of thousands of dollars in an ADU to not be reasonably self-informed prior to contacting staff.

The City recognizes the importance of developing new ADUs to provide a variety of housing choices for residents and the potential contribution of these units towards meeting the City's Regional Housing Needs Allocation (RHNA) goals. Accordingly, the City has invested significant staff and legal counsel time in drafting its ADU ordinance with a focus on distilling the convoluted and poorly organized language of State ADU law into a form that can be readily navigated by property owners and design professionals. This effort is supplemented by an experienced staff that understand State ADU law, the City's implementing ADU ordinance, and applicable provisions of the California Building Code. Staff is available by phone, email, walk-in hours, and appointment to provide general information regarding developing an ADU in Novato or to provide more specific guidance on a particular ADU proposal or question. ~~Novato staff is always helpful to homeowners seeking information about developing an ADU.~~

F3. It is often difficult, if not impossible, for a Marin homeowner to determine the planning, building, connection, capacity and impact fees associated with developing an ADU in a particular jurisdiction.

Response: Disagree.

City staff regularly provides guidance on fees applicable to ADUs, including producing fee estimates on request. Such assistance is necessary since development impact fees and building permit charges require calculations that are unfamiliar to the majority of property owners. While it would be challenging for a homeowner to calculate their own development impact fees, it is not impossible nor difficult for a homeowner in Novato to request and receive a fee estimate as City staff is available and capable of addressing such an inquiry. A property owner need only provide minimal information regarding the ADU they are contemplating, such as desired floor area, the

floor area of the primary residence, and the estimated construction cost. With this information, staff can provide a property owner with a reasonable fee estimate. The City has gone to great lengths to integrate our permitting process with the special districts which provide services to our residents (fire, water, and sewer). However, the City does not attempt to quote fees on behalf of other public agencies, so customers need to contact those agencies separately for fee calculations. In our experience, homeowners are more than capable of accomplishing this task.

F4. Many Bay Area cities and counties, for example Napa and Sonoma, have implemented comprehensive websites and related support to help homeowners create ADUs.

Response: Agree.

The City is aware that many cities and counties have websites dedicated to the development of ADUs. The City currently does not have its own website or webpage focused on ADUs. However, the City participates in ADU Marin. ADU Marin offers a variety of ADU related resources on par with many other cities and counties. The City intends to create its own ADU website pursuant to Program 1.B of Novato's Housing Element (January 2023). Program 1.B directs the expansion of efforts to encourage and streamline the construction of ADUs, including providing more expansive information and resources.

F5. ADUs may be rented affordably and provide additional benefits for older adults and their caregivers.

Response: Agree.

F6. Most Marin jurisdictions could provide better resources offering or identifying financing incentives for ADU development.

Response: Agree. Please see response to F4.

F7. Impact, connection, and capacity fees vary considerably throughout the County and such fees can be a disincentive to homeowners considering ADU development.

Response: Partially Disagree.

The City agrees that fees can vary widely across the county. This is due, in large part, to the number of special districts whose sole focus is providing services to rate payers. These agencies do not have the same obligations under State law to incentivize housing development as do the towns, cities or County.

The City charges development impact fees for only those ADUs exceeding 749-square feet in floor area. The development impact fee charged to an ADU exceeding this floor area is applied proportionately as a percentage of the square footage of the primary dwelling unit. This approach is compliant with State ADU law (California Government Code Section 65852.2(f)(3)(A)). The following is an example of the City's development impact fee applied to an ADU over 749 square-feet in floor area:

A homeowner adds an 850 square-foot ADU to their existing 2,000 square-foot primary residence. Accordingly, the ADU represents 42.5% of the floor area of the primary residence and is therefore subject to paying 42.5% of the development

impact fee otherwise applicable to a multi-family dwelling. This would equate to a fee of \$8,746.49 based on a multi-family dwelling fee of \$20,579.98.

Novato's development impact fee for ADUs is a flat fee (regardless of ADU floor area) based on 50% of the fee amount applicable to a multi-family dwelling unit. Given this circumstance, the Community Development Department caps the impact fee for an ADU at 50% of the multi-family dwelling fee regardless of whether an ADU exceeds 50% of the floor area of a primary dwelling. The City notes the ADU fee example published in its 6th Cycle Housing Element did not fully explain how development impact fees are applied to ADUs, but rather stated the maximum possible fee amount.

The City does not consider its development impact fee to be a disincentive to developing an ADU on the basis that homeowners have the option of building an ADU of 749 square-feet or less in floor area that, by State ADU law, is not subject to payment of development impact fees. This circumstance is reflective of the California Legislature's purposeful decision to incentivize the development of smaller ADUs on the basis that such units command more affordable rents compared to larger ADUs. Otherwise, State law would have flatly prohibited the application of impact fees. The City agrees with the Legislature's perspective.

F8. Not every jurisdiction in Marin has updated its planning and building policies to conform with current California ADU laws.

Response: Partially Disagree.

The City has not audited the currency of ordinances of other agencies around the County. However, The City of Novato's ADU ordinance is current through State ADU laws effective in 2022. The City is currently in the process of amending its ADU ordinance to meet amended State ADU law effective 2023. Notwithstanding pending amendments, State ADU law always controls and is relied upon by the City as necessary. City staff regularly advise homeowners of newly adopted ADU law, disclose where an update(s) is necessary to the City's ordinance, and then provide guidance on the application of State law until local ordinance updates are completed. No applicant or prospective applicant for an ADU has been disadvantaged by a circumstance where the City's ordinance has not yet been updated to reflect or incorporate newly adopted law. In other words, because an agency's ADU ordinance requires an update, it does not mean the agency is violating State law.

The Governor signs new legislation typically at the end of the legislative cycle in October. Most ADU related bills and other housing laws are effective January 1 of the ensuing year. At best, agencies are left with approximately 6-weeks' time, accounting for holidays, to interpret the new law, consult with legal counsel, draft revised ordinance language, conduct required noticing, and hold hearings before their planning commission and elected legislative body. In addition, ordinances require an introduction and second reading with an effective date 30-days from this reading. Accounting for all of these steps and statutory requirements, agencies do not have a reasonable amount of time to update local ordinances by the effective date of new state ADU law. Nevertheless, the City works diligently to update its ADU ordinance as soon as practically possible balancing against many other competing demands for staff time, including other housing related projects and ordinance updates.

F9. Granting amnesty, following safety inspection, to existing non-conforming second units could help Marin meet its housing obligations.

Response: Disagree.

The Report does not correctly apply the term “non-conforming” within the context of discussing an amnesty program. A non-conforming ADU is an ADU that was previously permitted by an agency, but due to subsequent changes in law no longer conforms to current development or building standards. Accordingly, a non-conforming ADU does not require amnesty and is already recognized as a legal dwelling unit.

The Report does not quantify or otherwise estimate the number of unpermitted ADUs that are thought to exist in Marin County. However, the Report suggests the number of unpermitted ADUs is perhaps significant based on the assertion that 40% to 70% of all construction activity in Marin occurs without permits. In the City's experience, unpermitted ADUs are rare based on the City's former residential resale inspection program which uncovered relatively few unpermitted dwelling units. That is not to say that unpermitted work is rare, only that unpermitted dwelling units are rare. This raises the question of whether dedicating resources to an amnesty program is a worthwhile effort when compared to other options which encourage the development of ADUs, such as devoting time to develop permit ready construction plans.

It is unclear what is meant by “safety inspection.” It is quite possible that unpermitted work cannot be made building code compliant without considerable re-design and reconstruction. Both of these come at considerable time and expense to homeowners. Dwelling units must be safe to occupy and a superficial inspection may not uncover potential dangers, such as electrical wiring, that are now covered-up by construction. A safety inspection does not replace a review of building plans and regular inspections which determine design, materials and methods are compliant with State law.

F10. ADU Marin and HelloADU are a good start. However, compared to several other Bay Area cities and counties, for example Napa and Sonoma, they could be substantially enhanced and expanded.

Response: Agree

RESPONSE TO GRAND JURY RECOMMENDATIONS

R1. On or before December 31, 2023, the Marin County Board of Supervisors should direct the Community Development Agency's Development Priority Setting Committee to:

- 1) Identify available funding/financing information for residents who need help with the cost of building an ADU,
- 2) Transmit the collected information to all the jurisdictions represented on the Committee.
- 3) Start a continuous monitoring program to update the information sources as they become available.

Response: This recommendation does not apply to the City. However, it should be noted that any recommendations of the Priority Setting Committee to redirect limited funding,

such as federal Community Development Block Grant dollars, should be made in the larger context of needs within the County.

- R2.** By December 1, 2023, begin investigation to consider an amnesty program to legalize existing unpermitted second units. Add a marketing communications plan so that citizens can be made aware of it.

Response: The City does not intend to investigate offering an amnesty program to legalize unpermitted ADUs based on the following observations:

- Unpermitted ADUs are rare in Novato based on experience with Novato's former residential real estate resale inspection program. Accordingly, it is unlikely there is a significant number of unpermitted ADUs warranting the dedication of limited staff resources to developing, marketing, and administering an amnesty program.
- Unpermitted ADUs are typically converted from an existing garage, another space within a residence, or an accessory structure. State ADU law acknowledges this circumstance by allowing "conversion ADUs" without any substantive requirements or limitations beyond meeting applicable building safety codes. Accordingly, there should be no impediment to legalizing an ADU through the normal course of obtaining a building permit.
- Offering amnesty to homeowners that constructed ADUs without permits is not fair to property owners who obtained permits and encourages others to forego required permits.
- Unpermitted ADUs are likely to be voluntarily legalized at the time a property owner lists their residence for sale and disclosures are made that an ADU is not permitted. Otherwise, it is unlikely a purchaser will pay full value for the property as improved with the ADU.
- The City prefers to invest its resources in implementing Program 1.B of its 6th Cycle Housing Element, focusing on efforts to support the construction of new ADUs. Projected ADU development in Novato represents 5.6% of our total RHNA obligation. Our expenditure of limited time and resources needed to implement the various programs identified in our 6th Cycle housing element will necessarily be proportionate to the greatest community needs.

- R3.** By December 1, 2023, begin the process of merging and/or collaborating with Napa/Sonoma ADU, and hiring a full-time Marin ADU Program Coordinator. The program coordinator should work with all jurisdictions on the development of ADUs and identify impact and connection fees within each jurisdiction.

Response: The City does not intend to implement this recommendation. In March 2023, the Marin County Housing Working Group, comprised of planning directors and other staff of the County of Marin and local jurisdictions, hosted the director of Napa/Sonoma ADU for a presentation regarding the organization's ADU services and its affiliation with jurisdictions in Napa and Sonoma. The presentation was informative and the services provided by Napa/Sonoma ADU are impressive. Notably, Napa/Sonoma ADU is funded by two non-profit organizations – Community Foundation of Sonoma County and Napa Valley Community Foundation. As a result, Napa/Sonoma ADU was

characterized as a pilot program and long-term funding is unknown.

Recommendation R3 is not clear with respect to which Marin agency would be expected to spearhead a merger and/or collaboration with Napa/Sonoma ADU. By reference to Marin ADU, the City presumes the Grand Jury envisions the County of Marin to take a leading role. If so, the City is willing to explore the potential of joining Napa/Sonoma ADU as a member of a larger group. If the intention is that every town and city and the County have its own Coordinator, the City cannot commit to that expense. The City needs to better understand the near and long-term financial and resource commitments associated with joining Napa/Sonoma ADU before committing to such an endeavor.

- R4.** By December 1, 2023, begin a feasibility assessment of waiving or significantly lowering impact and connection fees for units smaller than 750 square feet.

Response: The City does not intend to implement this recommendation. California Government Code Section 65852.2(f)(3)(A) prohibits agencies from applying impact fees to ADUs of less than 750 square feet in floor area. The City complies with this requirement through Novato Municipal Code Section 19.34.030.U. as quoted:

“U. Development Impact Fees. Accessory dwelling units of 749 square feet in floor area or less are not subject to paying development impact fees. Accessory dwelling units of 750 square-feet or larger shall pay development impact fees. When applicable, development impact fees shall be charged proportionally in relation to the square footage of the primary unit.”

- R5.** By December 1, 2023, begin creating plans to accelerate the permit approval process for ADU applications to within 30 days, or less, of submission. Implement such plans no later than July 1, 2024.

Response: The City complies with State ADU law requirements to approve or deny an ADU within 60-days of determining an application is complete. In most instances, the actual time to reach a decision is significantly less than 60-days as most ADU applications require only a building permit. Additionally, local ADU designers typically submit complete applications and conforming plans which is perhaps the most critical factor to move through the permitting process expeditiously.

Local agencies are subject to a wide variety of statutory “shot clocks” that set defined review periods to determine whether an application is complete and/or render a decision. For example, time limits apply to all forms of permit requests for wireless telecommunication facilities and many statutes addressing streamlined housing reviews, such as Senate Bill 35 (Weiner, 2017) and Assembly Bill 2011 (Wicks, 2022). This circumstance is challenging for staff as it is necessary to balance various applications subject to differing shot clocks and the many other responsibilities (e.g., responding to public inquiries, public records requests, general administrative functions, etc.) falling to the City’s Community Development Department.

The City has not identified any evidence that current permit processing time-frames deter ADU applications. Given this circumstance and based on the observations above, the City does not intend to shorten the review period for ADUs below that specified in State ADU law as such a change is not warranted.

R6. By December 1, 2023, begin feasibility assessments of new incentives for ADU development, such as pre-approved plans, technical assistance, property tax relief, development fee waivers, and forgivable loans; implement at least one such incentive no later than July 1, 2024.

Response: Novato Housing Element Program 1.B. specifies a variety of actions the City intends to take in an effort to encourage and support the development of ADUs, including, but not limited to the following:

- Working with small home manufacturers to develop and promote pre-approved, permit-ready building plans to reduce construction costs. Plans will cover a variety of unit sizes, bedroom counts, and architectural styles.

~~Promoting the availability of funding for ADUs, including the CalHFA ADU Grant Program that provides up to \$25,000 to reimburse homeowners for~~
predevelopment costs necessary to build and occupy an ADU.

Implementing Program 1.B. would address at least two of the incentives noted in recommendation R6. This would be in addition to the technical assistance already offered by the City to homeowners interested in developing ADUs. However, the City will not be able to begin implementation of Program 1.B by December 1, 2023. The City will begin evaluation of our success with ADU development in January 2027. If our already identified efforts are unsuccessful, we will revise our efforts aimed at ADU production by July 2027. Accordingly, the City cannot commit to meeting the deadlines specified in recommendation R6.