



August 22, 2023

The Honorable James T. Chou,  
Presiding Judge,  
Marin County Superior Court  
3501 Civic Center Drive  
San Rafael, CA 94903

Rod Kerr,  
2023-24 Foreperson,  
Marin County Civil Grand Jury  
3501 Civic Center Drive, Suite 275  
San Rafael, CA 94903

Re: City of San Rafael response to "Build More ADUs – An Rx to Increase Marin's Housing Supply" Marin County Civil Grand Jury report dated June 15, 2023

Dear Judge Chou and Foreperson Kerr:

At the regular City Council meeting on August 21, 2023, the San Rafael City Council reviewed the report "Build More ADUs – An Rx to Increase Marin's Housing Supply" and in accordance with Penal Code 933 (c) responded to Findings F1 through F10 and Recommendations R1 through R6 as requested.

Should the members of the Grand Jury require additional information, please contact Cristine Alilovich, City Manager, at (415) 485-3384.

Sincerely,

Kate Colin  
Mayor



## RESPONSE TO GRAND JURY REPORT FINDINGS AND RECOMMENDATIONS

REPORT TITLE: "Build More ADUs – An Rx to Increase Marin's Housing Supply"  
REPORT DATE: June 15, 2023  
RESPONSE BY: San Rafael City Council

### GRAND JURY FINDINGS

- We agree with the finding(s) numbered: **F1, F4, F5, F6**
- We disagree wholly or partially with the finding(s) numbered: **F2, F3, F7, F8, F9**
- Finding numbered **F10** does not require a response by the City of San Rafael.

### GRAND JURY RECOMMENDATIONS

- Recommendation numbered **R1** does not require a response by the City of San Rafael.
- Recommendation numbered **R3** has been implemented.
- Recommendations numbered **R2, R4, R5** will not be implemented because they are not warranted or reasonable.
- Recommendation numbered **R6** has not been implemented yet, but will be in the future.

Date: 9.05.23

Signed: Kate Colin  
Mayor Kate Colin



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## **RESPONSE TO GRAND JURY 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: Partially Disagree

The City strives to assist homeowners seeking information about ADU development. The City has a [webpage dedicated to ADUs](#), written in nontechnical language, which links to the relevant municipal code as well as recently updated state ADU laws that modify the City's standards. This web page also includes responses to frequently asked questions and provides a link to the California Department of Housing and Community Development's ADU Handbook. Additionally, City staff are available to homeowners in person at City Hall for walk-in consultations five days per week and online through the City's "virtual counter."

### **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: Partially Disagree

It is not impossible to determine the fees associated with developing an ADU in San Rafael, however we do acknowledge that it can be difficult to obtain information about all types of fees because they are charged by multiple Marin agencies (e.g., by the City, water district and sanitary district) and the fees vary across jurisdictions. To assist the public, the City maintains a master fee schedule on the City's website for fees associated with permits, utility connection and development impact fees. In addition, City staff are available virtually and in-person to assist applicants in determining fees based on the valuation and square footage of the project. For example, for an ADU less than 750 square feet that is valued at \$125,000, San Rafael planning and building fees are estimated to total \$4,330. This includes the following fees: building permit, plan check, Strong Motion Instrumentation Program (SMIP), California Green Building Fund, electrical permit, mechanical permit, plumbing permit, and ADU review. These fees are consistent with and comply with State law because the fees are no greater than necessary to offset the costs to the City in administering its ADU program, including reviewing ADU applications. For an ADU that is 750 square feet or greater and valued at \$125,000, the planning, building, and impact fees are estimated to total \$6,215. These fees are consistent with and comply with State law because the (1) they include valid and properly adopted impact fees pursuant to the Mitigation Fee Act, and (2) the fees are no greater than necessary to offset the costs to the City in administering its ADU program, including reviewing ADU applications.



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**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

This finding pertains to matters under the control of governing bodies of other Marin County jurisdictions. The City of San Rafael's response is limited to matters under the control of the City Council of the City of San Rafael.

**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

San Rafael's [2023-2031 Housing Element](#) includes a program related to ADUs, which aims to expand resources and reduce barriers for the construction of ADUs and Junior ADUs (JADUs) in San Rafael neighborhoods. As part of this program, the City committed to developing policies that incentivize affordable ADUs.

**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 of San Rafael does not charge impact fees for ADUs that are less than 750 square feet per State law. The San Rafael Fire Department does not charge impact, connection, or capacity fees for any projects, including ADUs. The City acknowledges that fees may be somewhat of a disincentive; the City only charges fees for ADUs that are no greater than necessary than to defray the cost of the ADU program, which is consistent with State law. If the City were to waive fees, it would have to backfill those fees, which would have negative financial implications to the City's budget.

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



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Response: Disagree

The City's planning and building policies do conform with current California ADU laws. The City's Housing Element, certified by the State's Department of Community Development in June 2023, states that the City is committed to updating its ordinances to align with changes in state law. The City last updated its ADU ordinance to comply with state law in November 2021. Any and all changes in state ADU laws which became effective after that date are still applied by the City. Therefore, the City's policies are consistent with state ADU laws. The City's ADU webpage provides information that reflects this.

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

Response: Disagree

State ADU laws, which the City complies with, provide that a "local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit." Cal. Gov. Code section 65852.2(d)(2). Therefore, the City already provides what the Grand Jury characterizes as an amnesty program. Additionally, with the exception of impact fees, the City only charges fees for ADUs that are no greater than necessary than to defray the cost of the ADU program, which is consistent with State law. If the City were to waive fees, it would have to backfill those fees, which would have negative financial implications to the City's budget.

**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.**

This finding pertains to matters solely under the control of the Marin County Board of Supervisors. Therefore, this finding does not require a response by the City of San Rafael.

**RESPONSE TO GRAND JURY RECOMMENDATIONS**

The Marin County Civil Grand Jury recommends the following:

**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.**



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**3) Start a continuous monitoring program to update the information sources as they become available.**

This recommendation is directed to and pertains to matters solely under the control of the Marin County Board of Supervisors. Therefore, this recommendation does not require a response by the City of San Rafael.

Should the Marin County Board of Supervisors implement this recommendation, the City would welcome information on funding/financing for City residents who need help with the cost of building an ADU.

**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.**

This recommendation will not be implemented because it is not warranted or is not reasonable.

State ADU laws, which the City complies with, provide that a "local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit." Cal. Gov. Code section 65852.2(d)(2). Therefore, the City already provides what the Grand Jury characterizes as an amnesty program. While the City will not be able to launch a marketing communications plan by December 1, 2023, the City will add information to its website in the next six months about how to legalize an existing unpermitted second unit.

**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.**

The recommendations to merge with Napa/Sonoma ADU and hire a full-time Marin ADU Program Coordinator pertain to matters under the control of the Marin County Board of Supervisors, not the City of San Rafael. The City of San Rafael's response is limited to the part of the recommendation to begin the process of collaborating with Napa/Sonoma ADU.

This recommendation has been implemented.

The City of San Rafael, along with other cities and towns and Marin County, have been communicating with the Napa/Sonoma ADU Center over the last several months through the Marin County Housing Collaborative Group, the Housing Working Group (HWG), about bringing Napa/Sonoma ADU services to Marin County. The HWG is composed of planning directors and staff from the County and cities and towns in Marin.



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**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.**

This recommendation will not be implemented because it is not warranted or is not reasonable.

No feasibility assessment regarding waiving or reducing impact and connection fees for ADUs smaller than 750 square feet is necessary because pursuant to State ADU law, all ADUs under 750 square feet are exempt from impact fees (see Gov. Code 65852.2(f)(3).) Furthermore, State laws prohibit the City from considering an ADU a new residential use for purposes of calculating connection fees or capacity charges, unless the ADU was constructed with a single-family dwelling (see Gov. Code 65852.2(f)(2).) The San Rafael Fire Department does not charge impact or connection fees for any projects, including ADUs.

**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.**

This recommendation will not be implemented because it is not warranted or is not reasonable.

The City already has a streamlined process, whereby the planning and building permit review occur simultaneously, which typically takes approximately one week from when a complete application is received. Additionally, the San Rafael Fire Department, water district, and sanitary district review the permit application. Because this review includes multiple departments and agencies, reducing review to within 30 days is infeasible and could result in improper review by these various agencies contributing to potential life safety risks. The City complies with State law, which requires that a local agency approve or deny an ADU permit within 60 days (see Gov. Code 65852.2(b)(1).).

**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.**

This recommendation has not been implemented yet but will be in the future.

The City's [2023-2031 Housing Element](#) includes a specific program related to ADUs, which aims to expand resources and reduce barriers for the construction of ADUs and Junior ADUs (JADUs) in San Rafael neighborhoods. As part of this program, the City has committed to developing incentives for affordable ADUs, as required by state law, by 2025.



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In regard to pre-approved plans and technical assistance, the City supports all efforts to collaborate regionally to enhance these types of services, however the City is limited in resources to provide this level of support alone and would need the County of Marin's support to fully implement this recommendation.

Property tax relief would require state legislation and implementation would take longer than July 1, 2024.