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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA BARBARA

10 SANTA BARBARA ASSOCIATION OF
REALTORS and ROBERT D. HART,

11 Petitioners/Plaintiffs,

12 v.

13 CITY OF SANTA BARBARA and
14 MEMBERS OF THE SANTA BARBARA
15 CITY COUNCIL, in their official
16 capacities,

17 Respondents/Defendants.

No. 17CV04720

**SECOND AMENDED VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(Code Civ. Proc. §§1085, 1060, and 526(a))**

1 **INTRODUCTION**

2 The Santa Barbara Association of Realtors and Robert D. Hart, bring this public interest
3 lawsuit against the City of Santa Barbara and members of the Santa Barbara City Council, in their
4 official capacities, challenging the constitutionality of Santa Barbara Municipal Code Section
5 28.87.220 (“ZIR Ordinance”).¹ The Fourth Amendment generally prohibits warrantless searches
6 by government agents, the doctrine of unconstitutional conditions prohibits the government from
7 requiring an individual to give up a constitutional right as a condition of receiving a public benefit,
8 and the doctrine of void of vagueness requires that laws provide sufficient notice of the obligations
9 and rights of individuals. The ZIR Ordinance at issue in this complaint violates all three. The
10 Fourth Amendment prohibits warrantless searches; the ZIR Ordinance purports to authorize
11 warrantless searches. The doctrine of unconstitutional conditions prohibits requiring that an
12 individual give up a constitutional right as a condition for receipt of a public benefit; the ZIR
13 Ordinance requires it. The void for vagueness doctrine demands individuals receive sufficient
14 notice of their obligations and rights under the law; the requirements of the ZIR Ordinance are,
15 according to the City of Santa Barbara, subject to the will of the City, modified on a whim.

16 **PARTIES**

17 1. Petitioner and Plaintiff Santa Barbara Association of Realtors (“Realtors”)
18 represent approximately 1,200 real estate professionals in the Santa Barbara area.

19 2. Petitioner and Plaintiff Robert D. Hart (Hart) is the Association Executive of the
20 Santa Barbara Association of Realtors. He lives, owns property, and pays taxes in the City of Santa
21 Barbara. Hart filed a Zoning Information Report (“ZIR”) on or about March 27, 2017, at which
22 time his family residence was to be sold and was in escrow. The City conducted a warrantless
23 search, pursuant to the ZIR Ordinance, of Hart’s home on April 4, 2017. That warrantless search
24 covered the single-family dwelling, the entry courtyard with a pergola, the garage, and the exterior
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26
27 ¹ All references to sections are to the Santa Barbara Municipal code.
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1 of the property. Hart is now in the process of selling another single-family home owned by himself
2 and his wife, and seeks to prevent a repeated violation of his Constitutional rights.

3 3. Respondent and Defendant City of Santa Barbara is a charter city located in the
4 County of Santa Barbara, California. The City is the local governing authority in Santa Barbara
5 and is responsible for the enforcement of local, state, and federal law, and must comply with both
6 the California and federal constitutions. The City, through its Community Development
7 Department, is responsible for planning, building and safety, housing and human services, and
8 related administrative functions. Technicians in the Development Department's Planning Division
9 issue and execute the (ZIR) reports that are the subject of this lawsuit.

10 4. Respondents and Defendants Santa Barbara City Council members are sued in their
11 official capacities as the legislative body of the City responsible for promulgating the ZIR
12 Ordinance.

13 JURISDICTION

14 5. The as-applied and facial claims in this case arise under the Fourth Amendment to
15 the United States Constitution, which generally prohibits warrantless searches of private property,
16 as incorporated against the states by the Fourteenth Amendment, the doctrine of unconstitutional
17 conditions, which prohibits the government from requiring an individual to give up a constitutional
18 right as a condition of receiving a public benefit, and the void for vagueness doctrine, under which
19 laws must provide individuals of ordinary intelligence notice of their legal rights and obligations.

20 6. This Court has jurisdiction over petitions for ordinary writ of mandate under Code
21 of Civil Procedure section 1085, and complaints for injunctive and declaratory relief under Code
22 of Civil Procedure sections 526, 526(a), and 1060.

23 7. Plaintiffs assert taxpayer standing under Code of Civil Procedure section 526a. *See*
24 *Weatherford v. City of San Rafael*, 2 Cal. 5th 1241, 1252 (2017) (an allegation that the plaintiff
25 "has paid, or is liable to pay, to the defendant locality a tax assessed on the plaintiff by the
26 defendant locality" is sufficient under section 526(a)). Hart and many members of Realtors have
27 paid, and will continue to pay, taxes to the City of Santa Barbara.

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8. Realtors have at least one member who complied with the unconstitutional requirements of the ZIR Ordinance when selling a residence, and at least one member who will put a single-family residence up for sale in June 2018.

VENUE

9. Venue is proper in Santa Barbara County Superior Court under Code of Civil Procedure sections 392 and 394(1), because this action concerns unconstitutional warrantless searches of residential properties located in Santa Barbara County and Respondents/Defendants are located in Santa Barbara County.

10. All residential property sales at issue in are petition is subject to the unconstitutional requirements of the ZIR Ordinance.

FACTUAL ALLEGATIONS

Warrantless Physical Searches of Private Property Required by the ZIR Ordinance

11. The ZIR Ordinance falls within Title 28 of the Santa Barbara Municipal Code, which is entitled a “Zoning Code.” A true and correct copy of the “Zoning Code” is attached here to as Exhibit A, and incorporated herein by reference.

12. However, the ZIR Ordinance’s subject matter does not concern actual zoning designations, permits, variances, or any other matter falling within what is commonly understood to comprise “zoning.”

13. Instead, the ZIR Ordinance establishes the requirement that individuals selling residential property apply for, receive, and provide a ZIR to purchasers.

14. The ZIR must include “the results of a physical inspection.” § 28.87.220(D)(7).

15. “Inspection,” in relevant part, is defined as: “A careful examination of something” Bryan A. Garner, *Black’s Law Dictionary* 388 (West 2006).

16. “Search,” in relevant part, is defined as: “An examination of...property, or [another] areas that the person would reasonably consider to be private” *Id.* 672

17. The “physical inspections” required by the ZIR Ordinance are physical searches within the meaning of the Fourth Amendment.

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1 18. The ZIR Ordinance requires that sellers of residential property allow a City
2 employee to search the premises without a warrant for any known or discovered nonconformities
3 or violation of any ordinances or law. *See* § 28.87.330(D)(6).

4 19. In order to obtain a ZIR, a homeowner must first submit a ZIR application and pay
5 a fee to the City no later than five days after entering into a sale agreement. § 28.87.220 C.1. The
6 fee is currently set at \$475 for individual homes. A true and correct copy of a ZIR Application is
7 attached hereto as Exhibit B, and incorporated herein by reference.

8 20. The ZIR is “mandatory and cannot be waived.” *See* Exhibit B.

9 21. “The site inspection includes the interior of all residential units and accessory
10 structures (garages, sheds, studios, etc.), and the entire grounds of the property. Access must be
11 available to all building/structures at the time of the scheduled ZIR inspection. If all interior areas
12 are not accessible, the ZIR inspector may need to return to the site when access is available and a
13 re-inspection fee will be charged.” *Id.*

14 22. The seller must apply for a ZIR and pay the corresponding fee within five days of
15 entering into a sale agreement. § 28.87.220(C)(1).

16 23. After a ZIR is applied for, the fee rendered, and the warrantless search conducted,
17 the results must be given by the selling homeowner to the purchaser no less than three days prior
18 to the consummation of the Transfer of Title. Exhibit C, Zoning Information Report (ZIR)
19 Application, incorporated herein by reference.

20 **Sale of Private Property without Providing ZIR May Result in Criminal and Civil Penalties**

21 24. It is unlawful to transfer title to residential property without providing the transferee
22 with a ZIR. § 28.87.220(H).

23 25. Anyone who violates a provision of the City’s Ordinance, including the ZIR
24 Ordinance, is deemed guilty of a misdemeanor and upon conviction punishable by a fine of up to
25 \$500, imprisonment in the Santa Barbara County Jail for up to six months, or both.

26 26. Each day a seller remains in violation of the ZIR Ordinance constitutes a separate
27 offense. § 28.98.002.

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1 27. The sale of residential property in Santa Barbara, without being made subject to
2 criminal and civil penalties, is conditioned on obtaining a ZIR, which depends on agreeing to a
3 warrantless search of private property.

4 **Robert Hart Was Subjected to a Warrantless Search Under the ZIR Ordinance**

5 28. Since 2008, Hart and his wife added onto and remodeled their home at 494 N. La
6 Cumbre Road, Santa Barbara, pursuant to a City Building Permit.

7 29. In addition to numerous periodic legal inspections by a City Building Inspector
8 over the years pursuant to that permit, a Final Inspection confirmed that the home met all health
9 and safety requirements and complied with the requirements of the permit.

10 30. On March 15, 2017, Hart and his wife put their home on the market for sale.

11 31. The Harts received only one offer on their home, which they accepted.

12 32. Hart did not want to apply for a ZIR and agreed to a warrantless search as a
13 condition of selling his home, because he did not want to be subject to criminal and civil penalties.

14 33. Without other options, Hart allowed the ZIR process to proceed, including a
15 warrantless search of his private property.

16 34. The specific buildings and structures on the Hart property are described in the ZIR
17 as a “[t]wo story, single family dwelling with an entry courtyard with a pergola, two covered
18 patios, and master suite with a balcony above a two-car garage.”

19 35. As noted in the ZIR prepared for Hart’s property, the inside and outside of Hart’s
20 home was physically searched: “Please note that the items described below include all buildings
21 and structures on the site at the time of the inspection”

22 **Robert Hart’s Continuing Constitutional Injury**

23 36. Hart now seeks to sell another single-family home in the City of Santa Barbara.

24 37. Hart and his wife extensively remodeled the home over a four-year period, pursuant
25 to a City Building Permit.

26 38. Hart seeks to avoid another violation and waiver of his Fourth Amendment rights
27 to be free from warrantless searches of his private property as a condition of selling this second
28 residential property without being subject to criminal and civil penalties.

1 **All Santa Barbara Property Owners Are Subject to the ZIR Ordinance**

2 39. All residents of Santa Barbara wishing to sell residential property are subject to the
3 warrantless search requirements of the ZIR Ordinance.

4 **Realtors Are Forced to Pay Taxes to Enforce an Unconstitutional Program**

5 40. Realtors have paid, and will continue to pay, taxes used to facilitate and enforce the
6 unconstitutional warrantless searches required by the ZIR Ordinance.

7 **Uncodified Eleventh Hour Modification of ZIR Procedures**

8 41. The ZIR Ordinance was originally enacted in 1976.

9 42. In the 41 years since its original enactment, the ZIR Ordinance was read and
10 enforced by the City to require actual physical “inspections” of private residential properties.

11 43. On information and belief, Plaintiffs allege that, from 1976 to April 21, 2017, this
12 requirement was never amended or modified.

13 44. On April 21, 2017, Counsel for Plaintiffs mailed a letter to the City Attorney
14 describing the constitutionally suspect nature of the requirements of the ZIR Ordinance, and urging
15 the City to rescind the ZIR Ordinance.

16 45. Instead, the City initiated an uncodified change to the ZIR application process.

17 46. The uncodified change purportedly allows a property owner, who does not want to
18 allow the City to conduct a warrantless search of his or her property, to check a box on the ZIR
19 form indicating that he or she does not consent.

20 47. Plaintiffs are informed and believe, and upon such information and belief allege,
21 that the new ZIR, amended in June 2017, states as follows: “NOTICE: BE ADVISED THAT THE
22 PROPERTY OWNER OR AUTHORIZED AGENT REFUSED / CONSENTED TO AN
23 INSPECTION OF THE INTERIOR AND EXTERIOR OF ALL STRUCTURES ON SITE.”
24 Another section of the Report states as follows: “On _____, a physical inspection of the site was
25 conducted that DID / DID NOT include the interior and exterior of all structures.

26 48. That option is *not* included in the ZIR Ordinance, or any other City ordinance.

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1 49. The new definition of “physical inspection” allows City employees to stand on a
2 sidewalk, or other public space, to observe the exterior of a property, “physically” by using their
3 senses.

4 50. Hence, if an individual refuses consent to a warrantless physical inspection as a
5 means of securing a ZIR, the City maintains the property can still be “physically” inspected.

6 51. This couching of observation from the sidewalk, or other public space, with
7 “physical inspection” is at odds with the purpose of the ZIR Ordinance in discovering any known
8 or discovered nonconformities or violation of any ordinances or law on a searched property.

9 52. This interpretation is also directly at odds with past warrantless searches actually
10 conducted under the ZIR ordinance.

11 53. This definition of “physical inspection” is also *not* included in the ZIR Ordinance,
12 or any other City Ordinance.

13 54. Both the City’s interpretation of “physical” inspection and modification of the ZIR
14 form are not included in the ZIR Ordinance, or any other City ordinance.

15 55. While the ZIR Ordinance may be clear that selling residential property without a
16 ZIR is purportedly illegal, it is patently unclear as to the definition of “physical inspection.”

17 56. As such, a person of ordinary intelligence is not on notice of what he or she is
18 required to do under the ZIR Ordinance as applicable to warrantless searches, including their
19 attendant legal rights, by consulting the ZIR Ordinance, or any other City Ordinance.

20 **FIRST CAUSE OF ACTION FOR ORDINARY WRIT OF MANDATE—THE ZIR**
21 **ORDINANCE VIOLATES THE FOURTH AMENDMENT AS APPLIED TO**
22 **PETITIONERS AND ON ITS FACE**
 (Code Civ. Proc., § 1085)

23 57. Petitioners incorporate by reference and re-allege each and every allegation set
24 forth above.

25 58. California Code of Civil Procedure section 1085 permits this Court to issue a writ
26 of mandate to any official to compel the performance of an act which the law specifically enjoins
27 as a duty resulting from his or her office.

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1 59. Respondents City and City Council Members have a clear, present, and ministerial
2 duty to comply with the United States Constitution.

3 60. The Fourth Amendment to the United States Constitution reads: “The right of the
4 people to be secure in their persons, *houses*, papers, and effects, against unreasonable searches and
5 seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by
6 oath or affirmation, and particularly describing the place to be searched, and the persons or things
7 to be seized.” U.S. Const. amend. IV (emphasis added).

8 61. The Fourth Amendment is incorporated against the states via the Fourteenth
9 Amendment.

10 62. While there are several narrowly defined exceptions to the Fourth Amendment’s
11 warrant requirement, such as the administrative search exception, none are present here.

12 63. Administrative searches are applicable to concerns related to public health and
13 safety, commonly applicable to heavily regulated industries and or sub-populations with a lowered
14 expectation of privacy.

15 64. Hart’s private residential property, and the residential properties of other
16 homeowners in Santa Barbara, constitute neither a heavily regulated industry nor a sub-population
17 with a lowered expectation of privacy.

18 65. The ZIR Ordinance authorizes warrantless searches of private property that violate
19 the Fourth Amendment’s warrant requirement, and qualify for no exception to this requirement.

20 66. The ZIR Ordinance was unconstitutional as-applied to Hart’s previously sold
21 residential property, because a City agent entered his private property without a warrant.

22 67. The ZIR Ordinance is unconstitutional as-applied to Hart’s current residential
23 property that he wishes to sell, because if enforced, the City will enter his private property without
24 a warrant.

25 68. The ZIR Ordinance is unconstitutional as-applied to Realtors, because it requires
26 they pay taxes to facilitate and enforce an unconstitutional program.

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1 69. The ZIR Ordinance is unconstitutional on its face, because any authorization of
2 warrantless searches of private property not falling into one of the narrowly defined exceptions to
3 the Fourth Amendment’s warrant requirement are unconstitutional.

4 70. Petitioners have a clear, present, legal right to enforce Respondents’ performance
5 of their duties under the Fourth Amendment to the United States Constitution.

6 71. Petitioners request a writ of mandate compelling Respondents to perform their
7 duties resulting from their respective offices by ceasing further enforcement of this
8 unconstitutional ZIR Ordinance

9 72. There is no plain, speedy, and adequate remedy at law to protect the rights and
10 interests of Petitioners.

11 **SECOND CAUSE OF ACTION FOR ORDINARY WRIT OF MANDATE—THE ZIR**
12 **ORDINANCE VIOLATES THE DOCTRINE OF UNCONSTITUTIONAL CONDITIONS**
13 **AS-APPLIED TO PETITIONERS AND ON ITS FACE**
 (Code Civ. Proc. § 1085)

14 73. Petitioners incorporate by reference and re-allege each and every allegation set
15 forth above.

16 74. California Code of Civil Procedure section 1085 permits this Court to issue a writ
17 of mandate to any official to compel the performance of an act which the law specifically enjoins,
18 as a duty resulting from his or her office.

19 75. Respondents City and City Council Members have a clear, present, and ministerial
20 duty to comply with the United States Constitution.

21 76. The doctrine of unconstitutional conditions prohibits requiring that an individual
22 give up a constitutional right as a condition for receipt of a public benefit.

23 77. “[Government] may not deny a benefit to a person on a basis that infringes his
24 constitutionally protected interests” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

25 78. “Broadly stated, the [doctrine of unconstitutional conditions] is that the right to
26 continue the exercise of a privilege granted by the state cannot be made to depend upon the
27 grantee’s submission to a condition prescribed by the state which is hostile to the provisions of the
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1 federal Constitution.” *United States v. Chicago, M., St. P & P Railway Co.*, 282 U.S. 311, 328-29
2 (1931).

3 79. Under the Fourth and Fourteenth Amendments to the United States Constitution,
4 Plaintiffs have a federal right to be free from unreasonable searches.

5 80. The ZIR Ordinance violated the doctrine of unconstitutional conditions as-applied
6 to Hart’s previously sold residential property, because it conditioned his ability to sell his private
7 property without being subjected to criminal and civil penalties on a waiver of his Fourth
8 Amendment rights.

9 81. The ZIR Ordinance violates the doctrine of unconstitutional conditions as-applied
10 to Hart’s current for sale residential property, because it conditions his ability to sell his private
11 property without being subjected to criminal and civil penalties on a waiver of his Fourth
12 Amendment rights.

13 82. The ZIR Ordinance is unconstitutional as-applied to Realtors, because it requires
14 they pay taxes to facilitate and enforce an unconstitutional program.

15 83. The ZIR Ordinance violates the doctrine of unconstitutional conditions on its face,
16 because any conditioning of the ability to sell private property without being subjected to criminal
17 and civil penalties on a waiver of his Fourth Amendment rights is unconstitutional.

18 84. Petitioners have a clear, present, legal right to enforce Respondents’ performance
19 of their duties under the Fourth Amendment to the United States Constitution.

20 85. Petitioners request a writ of mandate compelling Respondents to perform their
21 duties resulting from their respective offices by ceasing further enforcement of this
22 unconstitutional ZIR Ordinance.

23 86. There is no plain, speedy, and adequate remedy at law to protect the rights and
24 interests of Petitioners.

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1 **THIRD CAUSE OF ACTION FOR ORDINARY WRIT OF MANDATE—THE ZIR**
2 **ORDINANCE IS VOID FOR VAGUENESS AS-APPLIED TO PETITIONERS**
3 **AND ON ITS FACE**
4 **(Code Civ. Proc. § 1085)**

5 87. Petitioners incorporate by reference and re-allege each and every allegation set
6 forth above.

7 88. California Code of Civil Procedure section 1085 permits this Court to issue a writ
8 of mandate to any official to compel the performance of an act which the law specifically enjoins,
9 as a duty resulting from his or her office.

10 89. Respondents City and City Council Members have a clear, present, and ministerial
11 duty to comply with the United States Constitution.

12 90. The Fifth Amendment to the United States Constitution provides, in relevant part:
13 “No person . . . be deprived of life, *liberty*, or property, without *due process* of law” U.S.
14 Const. amend V (emphasis added).

15 91. Under the Fourth and Fourteenth Amendments to the United States Constitution,
16 Plaintiffs have a federal right to be free from unreasonable searches.

17 92. It is a basic principle of due process that an enactment is void for vagueness if its
18 prohibitions are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

19 93. “Vague laws may trap the innocent by not providing fair warning.” *Id.*

20 94. “[W]e assume that man is free to steer between lawful and unlawful conduct, we
21 insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is
22 prohibited, so that he may act accordingly.” *Sewell v. Georgia*, 435 U.S. 982, 986 (1978).

23 95. While the ZIR Ordinance may be clear that selling residential property without a
24 ZIR is purportedly illegal, it is patently unclear as to the definition of “physical inspection.”

25 96. The City’s eleventh hour purported modification of the ZIR Ordinance requirement
26 to allow “physical inspections” from a public sidewalk is not reflected in the ZIR Ordinance itself,
27 or any other City Ordinance.

28 97. A person of ordinary intelligence is not on notice as to what he or she was required
29 to do under the ZIR Ordinance as applicable to warrantless searches.

1 98. A person of ordinary intelligence is not on notice as to what their legal rights are
2 under the ZIR Ordinance to purportedly refuse consent to warrantless searches.

3 99. The City cannot constitutionally adopt legal interpretations at odds with federal
4 constitutional rights as a means of avoiding litigation.

5 100. The ZIR Ordinance was void for vagueness as applied to Hart's previous residential
6 property, because the ZIR Ordinance did not provide adequate notice as to his legal obligations
7 and legal rights.

8 101. The ZIR Ordinance is void for vagueness as applied to Hart's current for sale
9 residential property, because the ZIR Ordinance does not provide adequate notice as to his legal
10 obligations and legal rights.

11 102. The ZIR Ordinance is unconstitutional as-applied to Realtors, because it requires
12 they pay taxes to facilitate and enforce an unconstitutional program.

13 103. The ZIR Ordinance is void for vagueness on its face, because the ZIR Ordinance
14 does not provide adequate notice as to the legal obligations and legal rights of anyone to which it
15 is applicable.

16 104. Petitioners have a clear, present, legal right to enforce Respondents' performance
17 of their duties under the Fifth Amendment to the United States Constitution.

18 105. Petitioners request a writ of mandate compelling Respondents to perform their
19 duties resulting from their respective offices by ceasing further enforcement of this
20 unconstitutional ZIR Ordinance.

21 106. There is no plain, speedy, and adequate remedy at law to protect the rights and
22 interests of Petitioners.

23 **FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF—THE ZIR**
24 **ORDINANCE VIOLATES THE FOURTH AMENDMENT AND DOCTRINE OF**
25 **UNCONDITIONAL CONDITIONS AS-APPLIED TO HART**
 (Code Civ. Proc. § 1060)

26 107. Plaintiffs incorporate by reference and re-allege each and every allegation set forth
27 in this Petition and Complaint.
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1 108. Defendants, City and City Council Members have a clear, present, and ministerial
2 duty to comply with the United States Constitution.

3 109. The Fourth Amendment to the United States Constitution prohibits warrantless
4 searches of private property without a warrant, or without meeting one of several narrowly defined
5 exceptions to the warrant requirement.

6 110. The Fourth Amendment is incorporated against the states via the Fourteenth
7 Amendment.

8 111. The doctrine of unconstitutional conditions prohibits requiring that an individual
9 give up a constitutional right as a condition for receipt of a public benefit.

10 112. There is a justiciable controversy between Plaintiff Hart and the City.

11 113. On information and belief, Plaintiff alleges that the City contends the provisions of
12 the ZIR Ordinance are permissible under state and federal law.

13 114. On information and belief, Plaintiff also alleges that the City contends the City can
14 change provisions of the ZIR Ordinance without formally amending the law.

15 115. As such, Hart is informed and believes, and upon such information and belief
16 alleges, that the City will continue to violate his right to be free of unconstitutional warrantless
17 searches prohibited by the Fourth Amendment to the U.S. Constitution.

18 116. As such, Hart is informed and believes, and upon such information and belief also
19 alleges, that the City will continue to condition his right to sell his property without being subjected
20 to criminal and civil penalties on a waiver of his Fourth Amendment rights.

21 117. This controversy will continue unless, and until, the City stops enforcing the ZIR
22 Ordinance.

23 118. A declaratory judgment as to whether the ZIR Ordinance violates the Fourth
24 Amendment and doctrine of unconstitutional conditions will clarify the legal relations between
25 Plaintiffs and Defendants with respect to enforcement of the ZIR Ordinance.

26 119. Hart prays for a judicial determination of his rights and duties in connection with
27 the sale of his residential property.

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1 120. In particular, Hart prays that the Court enter a declaratory judgment that the City
2 cannot continue to enforce the warrantless searches described in the ZIR Ordinance.

3 121. A judicial determination of rights and responsibilities arising from this actual
4 controversy is necessary and appropriate at this time, as Hart wishes to dispose of his current
5 residential property in a legal and constitutional manner.

6 **INJUNCTIVE RELIEF ALLEGATIONS**
7 **(Code Civ. Proc. §§ 526, 526a)**

8 122. Petitioners and Plaintiffs have no adequate remedy at law to address the
9 unconstitutional warrantless searches effected by the ZIR Ordinance, and pecuniary compensation
10 will not provide adequate relief.

11 123. Unless enjoined by order of this Court, Respondents and Defendants must enforce
12 the ZIR Ordinance, thereby causing great and irreparable injury to Hart, Realtors, and any citizen
13 desiring to sell their residential property in Santa Barbara.

14 124. Respondents and Defendants will expend public monies and public resources to
15 implement and administer the ZIR Ordinance, which unconstitutionally requires on-going
16 violation of the Fourth Amendment.

17 125. Respondents and Defendants will expend public monies and public resources to
18 implement and administer the ZIR Ordinance, which unconstitutionally conditions the ability to
19 dispose of private property without being subject to criminal and civil penalties on a waiver of
20 Fourth Amendment rights.

21 126. Hart is required to allow a warrantless search pursuant to the ZIR Ordinance in
22 order to sell his currently for sale residential property, as well as waive his Fourth Amendment
23 rights in order to sell said property without being subject to criminal and civil penalties.

24 127. Hart cannot avoid this deprivation of his constitutional rights without judicial relief,
25 and will suffer irreparable injury absent an injunction restraining Defendants from enforcing the
26 unconstitutional ZIR Ordinance.

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128. This same Fourth Amendment violation and unconstitutional condition will be applied to all citizens desiring to sell their private residential property in Santa Barbara while the ZIR is in effect.

129. Maintaining and enforcing the ZIR Ordinance is unconstitutional and contrary to the obligations of Respondents' and Defendants' respective public offices and the trusts and duties arising therefrom.

130. Petitioners and Plaintiffs seek injunctive relief pursuant to California Code of Civil Procedure sections 526 and 526a.

131. Petitioners' and Plaintiffs' injury, the unconstitutional deprivation of their Fourth Amendment rights and right to be free from the imposition of an unconstitutional condition, outweighs any harm an injunction might cause Respondents and Defendants.

WHEREFORE, Hart prays for judgement against the City as set forth below.

PRAYER FOR RELIEF

1. For this Court to issue a writ of mandate compelling Respondents and Defendants to perform their duties under the Fourth and Fourteenth Amendments to the United States Constitution by commanding Respondents, their agents, employees, officer, and representatives to cease ZIR Ordinance enforcement to the extent that the ZIR Ordinance mandates, encourages, or authorizes warrantless searches of residential properties by City personnel as a condition of sale;

2. For a permanent prohibitory injunction enjoining Respondents and Defendants, and each named Respondent and Defendant individually in his or her official capacity, from enforcing or attempting to enforce the ZIR Ordinance to the extent that it mandates, encourages, or authorizes warrantless searches of residential properties by City personnel as a condition of sale;

3. For a declaration that the ZIR Ordinance is unconstitutional, invalid, and unenforceable under the Fourth Amendment to the United States Constitution as incorporated against the states by the Fourteenth Amendment;

4. That this Court sever and find invalid, unenforceable, and unconstitutional the portions of the ZIR Ordinance that require the City, its agencies, department, officers, public

1 employees, and political subdivisions or government instrumentalities to conduct warrantless
2 searches of homes as a condition of sale;

3 5. For costs of this suit, including reasonable attorneys' fees; and

4 6. For such other and further relief as the Court may deem proper.

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7 DATED: June 13, 2018.

8 Respectfully submitted,

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11 BY

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VERIFICATION

I, ROBERT D. HART, declare as follows:

I am a Petitioner and Plaintiff in this action.

I am also the Association Executive of the Santa Barbara Association of REALTORS®.

I have read the foregoing Second Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. The facts contained therein are within my own knowledge and are true of my own knowledge, except for those matters alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed this 13th day of June, 2018, at Santa Barbara, California.



ROBERT D. HART

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DECLARATION OF SERVICE BY MAIL

I, Iza A. Rodriguez, declare as follows:

I am a resident of the State of California, employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On, June 13, 2018, true copies of **SECOND AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** were placed in FedEx envelopes addressed to:

Thomas B. Brown
Burke, Williams & Sorensen, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612-3501

Ariel Calonne
City Attorney
P.O. Box 1990
Santa Barbara, CA 93102-1990

which envelopes, with postage thereon fully prepaid, were then sealed and deposited with a FedEx Courier for overnight delivery in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 13th day of June, 2018, at Sacramento, California.


IZA A. RODRIGUEZ

EXHIBITS INDEX

*Santa Barbara Association of Realtors and Robert D. Hart, v.
City of Santa Barbara and Members of the Santa Barbara City Council*

Case No. 17CV04720

TAB	PAGE	DESCRIPTION
Exhibit A	Pg. 4	Municipal Code Section 28.87.220 - Zoning Information Report
Exhibit B	Pgs. 5, 20	Zoning Information Report
Exhibit C	Pg. 5	Zoning Information Report (ZIR) Application

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EXHIBIT A

(Municipal Code Section 28.87.220 - Zoning Information Report)

28.87.220 Zoning Information Report.

A. STATEMENT OF LEGISLATIVE INTENT.

These regulations are intended to require a Zoning Information Report for purchasers of residential property, setting forth matters of City record pertaining to the authorized use, occupancy, zoning and the results of a physical inspection of the property. Primary purpose of the report is to provide information to the potential buyer of residential property concerning the zoning and permitted use of the property.

B. DEFINITIONS.

1. "Owner" shall mean any person, co-partnership, association, corporation or fiduciary having legal or equitable title or any interest in any real property.
2. "Residential property" shall mean any improved real property, designed or permitted to be used for any residential purpose, situated in the City and shall include the building or structures located on said improved real property.
3. "Agreement of sale" shall mean any agreement or written instrument which provides that title to any property shall thereafter be transferred for consideration from one (1) owner to another owner.

C. REPORT REQUIRED.

1. **Application.** Except where a sale is exempt from the requirements of this section pursuant to Subsection G below, no later than five (5) days after entering into an "agreement of sale" of any residential property, the owner or owner's authorized representative shall make application to the City for a Zoning Information Report to the Community Development Director on a form provided, and pay a fee as established by resolution of the City Council.

Under normal circumstances the report will be available no later than fifteen (15) working days after the application is received by the Community Development Director.

2. **Copy to Buyer.** Said owner or owner's authorized representative shall provide a copy of the report to the buyer or buyer's authorized representative no later than three (3) days prior to consummation of the transfer of title. The buyer or buyer's authorized representative may waive in writing the requirement for delivery three (3) days prior to consummation of the transfer of title but in any event the report shall be provided to the buyer or buyer's authorized representative prior to the consummation of the transfer of title.

3. **Proof of Receipt.** Proof of receipt of a copy of the report shall be obtained by the owner or owner's authorized representative prior to consummation of the transfer of title. Said proof shall consist of a statement signed by the buyer or buyer's authorized representative stating that the report has been received, the date of the report and the date it was received. City shall provide a receipt form with each zoning information report. The original of the signed proof of receipt shall be mailed or delivered to the Community Development Director of the City no later than the consummation of the transfer of title.

D. CONTENTS OF ZONING INFORMATION REPORT.

The Community Development Director shall review the applicable City records and provide the applicant the following information on the Zoning Information Report:

1. Street address and parcel number of the property.
2. The zone classification and permitted uses as set forth in the Zoning Ordinance of the City of Santa Barbara.
3. Occupancy and use permitted as indicated and established by records.
4. Variance, special use permits, conditional use permits, modifications and other administrative acts of record.
5. Any special restrictions in use or development which are recorded in City records and may apply to the property.
6. Any known nonconformities or violations of any ordinances or law.
7. The results of a physical inspection for compliance with the Zoning Ordinance and for compliance with Chapter 14.46 of this Code.
8. A statement of whether the real property has had a Building Sewer Lateral Report prepared for the real property pursuant to the requirements of Santa Barbara Municipal Code Chapter 14.46 within the five (5) year period prior to the preparation of the Zoning Information Report and, if so, that a copy of the Building Sewer Lateral Report is available from the City for the buyer's inspection. All Zoning Information Reports shall also contain an advisory statement (in bold not less than 10 point typeface) prepared by the Public Works Director which advises a purchaser of residential real property regarding the potential problems and concerns caused by an inadequate, failing, or poorly-maintained Building Sewer Lateral. In addition, the standard required advisory statement shall indicate the advisability of a purchaser obtaining a recently-prepared Building Sewer Lateral Inspection Report.

E. VIOLATION OF LAW NOT PERMITTED.

Any report issued pursuant to this section shall not constitute authorization to violate any ordinance or law, regardless of whether the report issued pursuant to this section purports to authorize such violation or not.

F. EXPIRATION OF REPORT.

Each report shall be valid for a period of twelve (12) months after date of issue or until a transfer of title occurs, whichever is sooner.

G. EXEMPTIONS.

The provisions of this section shall not apply to the following sales:

1. The first sale of each separate residential building located in a subdivision where the final subdivision or parcel map has been approved and recorded in accordance with the Subdivision Map Act not more than two (2) years prior to the first sale.
2. The sale of any residential property on which a new home is under construction pursuant to a valid building permit; or
3. The sale of any residential property where the final building permit inspection on a new home was issued within three (3) months of the date on which the owner entered into the agreement for the sale of a home to the buyer.
4. The sale of a condominium unit.

H. EFFECT OF NONCOMPLIANCE.

It shall be unlawful for any owner to consummate the transfer of title to any residential property without providing the transferee with a Zoning Information Report as required in this Section 28.87.220. The failure to comply with the provisions of this Section shall not invalidate the transfer or conveyance of real property to a bona fide purchaser or encumbrancer for value. (Ord. 5537, 2010; Ord. 5396, 2006; Ord. 4932, 1995; Ord. 4106, 1981; Ord. 3986, 1979; Ord. 3843, 1976; Ord. 3826, 1976.)

Chapter 28.98

ENFORCEMENT AND PENALTY

Sections:

28.98.001 Enforcement.

28.98.002 Penalty.

28.98.001 Enforcement.

It shall be the duty of the Chief of Building and Zoning, with respect to new construction, additions, alterations, changes of use or moving of existing buildings, to enforce this title by withholding of permits and Certificates of Occupancy where plan checks and field inspections reveal that completion of the project will result in a zoning violation. A Certificate of Occupancy shall not be issued until all work required by the building permit and all other conditions imposed by any officer, board, commission or other authority have been completed or satisfactorily met by bonding or other appropriate method. After a Certificate of Occupancy has been issued, and with respect to existing construction and all other sources of violations, it shall be the duty of the Division of Land Use Controls to enforce this title. In addition, all departments, officials and public employees of the City of Santa Barbara vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permit or license, except licenses issued for revenue purposes only, for uses, buildings or purposes in conflict with the provisions of this title; and any such permit or license issued in conflict with the provisions of this title shall be null and void.

The provisions of this title shall be interpreted by the City Attorney.

Any building or structure erected or maintained or any use of property contrary to the provisions of this title shall be, and the same is hereby declared to be, unlawful and a public nuisance and the City Attorney shall immediately commence actions and proceedings for the abatement, removal and enjoinder thereof in the manner provided by law; and shall take such other steps and shall apply to any court as may have jurisdiction to grant such reliefs as will abate or remove such building, structure or use and restrain and enjoin any person, firm or corporations from erecting or maintaining such building or structure or using any property contrary to the provisions of this title.

This title may also be enforced in injunction issued out of the Superior Court upon the suit of the City or the owner or occupant of any real property affected by such violation or prospective violation. This method of enforcement shall be cumulative and in no way affect the penal provisions hereof. (Ord. 3710, 1974; Ord. 3547, 1972.)

28.98.002 Penalty.

Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating any provision of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment. Each day that violation of this title continues shall be considered a separate offense. (Ord. 3710, 1974.)

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EXHIBIT B

(Zoning Information Report)

Zoning Information Reports

Planning Central

General Information

Pursuant to **Santa Barbara Municipal Code (SBMC) §28.87.220** (<http://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=171581>), a Zoning Information Report (ZIR) is required for every transfer of residential property with limited exceptions.

The requirement for a ZIR is **mandatory and cannot be waived** by the property owner, potential buyer, real estate agent, or Title Company. If a property is transferred without a ZIR being obtained, the property owner of record must obtain an "after the fact" ZIR and may be subject to twice the current ZIR application fee.

The purpose of the ZIR is to provide information to the potential buyer regarding the zoning and permitted use of the property based on a physical site inspection and records research.

The ZIR inspector is neither a building inspector nor a licensed surveyor and the ZIR will not include a review of compliance with the Building Code or confirm the exact location of property lines.

A ZIR is valid for 12 months from the date of the issuance of the ZIR or until the next transfer of title occurs, whichever is sooner. You can apply for a one-year time extension prior to the expiration of the current ZIR. An additional physical inspection and application fee is required.

Please see the **ZONING INFORMATION REPORTS (ZIRS) - COMMON QUESTIONS** (<https://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=194728>) handout for frequently asked questions regarding the City of Santa Barbara ZIR program.

ZIR Application and Transmittal to Buyer

Although the SBMC requires a property owner to submit an application for a ZIR within five days of entering into an agreement of sale of a residential property, the City encourages property owners to submit an application as soon as they are preparing to sell or list their property. A property **does not** have to be in escrow for an owner to request a ZIR.

Under normal circumstances the ZIR will be available within 15 working days after the application is received by the City. However, every attempt is made to complete a ZIR within 10 working days after the application is received by the City.

The property owner or authorized agent is required to provide a copy of the ZIR to the potential buyer at least three days prior to the transfer of the property. Proof of receipt of the ZIR must be submitted to the City prior to the transfer of the property.

A ZIR application can be obtained on the City's website at www.SantaBarbaraCA.gov/PlanningHandouts (<http://www.santabarbaraca.gov/PlanningHandouts>) and click on the **Zoning Information Report (ZIR) Application** (<https://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=197606>), or by visiting the City's Planning Counter at 630 Garden Street. The ZIR application can be submitted in person at the City's Planning Counter, by mail (City of Santa Barbara – Planning Division; P.O. Box 1990, Santa Barbara, CA 93102-1990), or by FAX at (805)564-5374. The application fee must be submitted with the ZIR application.

How much is the application fee for a ZIR?

The fees are set by the City Council in a Fee Resolution and updated on July 1st of each year. For the current fees, please consult the **Fee Resolution** (<http://www.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=41830>) or contact Planning and Zoning Counter staff at (805) 564-5578, or in person at 630 Garden Street.

Site Inspection

As part of the ZIR preparation, a physical inspection of the property is performed.

The site inspection is performed by a Zoning Inspector to identify the buildings, structures, and improvements on the property, as well as their associated uses. The findings of the site inspection are compared with the City's official records for a determination of the property's conformance with the SBMC and whether the improvements were constructed with the proper City permits and approvals.

An adult must be present for the site inspection. This can be the seller, buyer, or agent for either party; tenant; or any other person over the age of 18. Failure of a representative to be present for the site inspection will result in the need to schedule a new inspection and assessment of a re-inspection fee.

Most inspections take approximately 15-20 minutes; however, multi-unit properties and large estates can exceed one hour, depending on the number of units and the size of the property.

The site inspection includes the interior of all residential units and accessory structures (garages, sheds, studios, etc.), and the entire grounds of the property. Access must be available to all buildings/structures at the time of the scheduled ZIR inspection. If all interior areas are not accessible, the ZIR inspector may need to return to the site when access is available and a re-inspection fee will be charged.

If your property also contains permitted non-residential uses/structures, those areas will not be inspected.

Please see the **ZIR SITE INSPECTIONS - COMMON QUESTIONS** (<http://civicaweb.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=168049>), handout for frequently asked questions regarding ZIR site inspections.

What happens if a violation(s) is found?

For the purposes of a ZIR, the City classifies violations as either "major" or "minor." If any of the following "major" violations are identified in the ZIR, they will be referred to enforcement staff for immediate follow-up and abatement:

- Illegal dwelling units
- Unpermitted floor area (habitable or non-habitable) or conditioned space
- Elimination of required parking
- Unpermitted improvements within 50 feet of coastal bluff
- Violations that pose an immediate health or safety risk

All other violations are considered "minor." Minor violations are kept on file and may be required to be abated prior to, or simultaneously with, the first building permit that is obtained by the property owner. If "major" violations are also identified on the property then both "major" and "minor" violations must be abated together. If a "minor" violation is not abated prior to the next transfer of the residential property, it is carried forward on the subsequent ZIR.

Please see the **ABATEMENT OF VIOLATIONS IDENTIFIED IN ZIRS - COMMON QUESTIONS** (<http://civicaweb.santabarbaraca.gov/civicax/filebank/blobdload.aspx?BlobID=172321>) handout for frequently asked questions regarding the abatement of violations identified in ZIRs.

What if I have general questions regarding the ZIR process, a specific ZIR, or site specific questions?

If you have general questions regarding the ZIR process or information contained within a ZIR, you may contact the City's Planning Counter at (805) 564-5578.

If you have general questions regarding permitted uses, the types of alterations/additions that could occur on your property, or what zoning regulations pertain to your property, please contact the City's Planning Counter at (805) 564-5578. You can also obtain information regarding the City's planning process by visiting the "**Planning Central**" (<http://www.santabarbaraca.gov/services/planning/default.asp>) web page.

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EXHIBIT C
(Zoning Information Report (ZIR) Application)

CITY OF SANTA BARBARA			Validation: _____
ZONING INFORMATION REPORT (ZIR) APPLICATION			
U.S. MAIL DELIVERIES CITY OF SANTA BARBARA - PLANNING DIVISION P.O. BOX 1990, SANTA BARBARA, CA 93102-1990 (Check or Credit Card Only)**	PLANNING COUNTER 630 GARDEN STREET (Check, Cash or Credit Card)**	FAX Fax: (805) 564-5374 (Credit Card)**	

PURSUANT TO SBMC §28.87.220.C or §30.285.030.A, NO LATER THAN FIVE (5) DAYS AFTER ENTERING INTO AN "AGREEMENT OF SALE" OF ANY RESIDENTIAL PROPERTY, THE OWNER OR OWNER'S AUTHORIZED REPRESENTATIVE SHALL MAKE APPLICATION TO THE CITY FOR A ZONING INFORMATION REPORT.

DATE: _____ NUMBER OF UNITS: _____ APN: _____ CONDO: ☐

ADDRESS OF PROPERTY: _____ UNIT#: _____ S.B., CA _____ (ZIP) _____

In accordance with the City of Santa Barbara Municipal Code Section §28.87.220 or Chapter 30.285, I hereby make application for a Zoning Information Report on the above described property. Zoning Ordinance violations discovered as a result of this report will become a matter of record and shall be promptly corrected. Any claimed nonconforming buildings or uses that are not verified by City records shall be the responsibility of the owner to justify. This report is to be furnished to the buyer or buyer's authorized representative no later than three (3) days prior to consummation of the Transfer of Title. Proof of receipt of a copy of the report shall be obtained by the owner, or the owner's authorized agent (on the receipt form provided with the report), prior to consummation of the Transfer of Title. Such receipt shall be returned to the Planning Division at the above address no later than consummation of Transfer of Title.

I, _____ ☐ DO ☐ DO NOT VOLUNTARILY CONSENT TO CITY STAFF PERFORMING AN

 PROPERTY OWNER OR AUTHORIZED AGENT (PRINT) INSPECTION OF THE SITE, INCLUDING THE INTERIOR AND EXTERIOR OF ALL STRUCTURES

 SIGNATURE TELEPHONE NUMBER _____

COMPLETED REPORTS WILL BE E-MAILED TO _____ UNLESS NOTIFIED OTHERWISE.
 E-MAIL ADDRESS _____

DATE ENTERED INTO AGREEMENT OF SALE: _____ DATE ESCROW CLOSING: _____

THE CITY RECOMMENDS THAT PROPERTY OWNERS APPLY FOR A ZIR ON THEIR PROPERTY AS SOON AS IT IS LISTED FOR SALE.

THE FOLLOWING FEES ARE CURRENT AS OF JULY 1, 2017 THROUGH JUNE 30, 2018:

INSPECTION ➤ One Unit (except condos) = \$475 ➤ >= 16 Units = \$955	➤ 1-3 Additional Units = \$65 each ➤ Condos = \$335	➤ 5-15 Units = \$815
NO INSPECTION ➤ One Unit (except condos) = \$355 ➤ >= 16 Units = \$715	➤ 1-3 Additional Units = \$65 each ➤ Condos = \$250	➤ 5-15 Units = \$610

➤ **Condominiums** Zoning Information Reports are optional for condominiums.

➤ **Escrows Instructions Req'd** If the close of escrow date is 25 days or less from the date the ZIR application is received; valid escrow instructions are required with the application.

➤ **Expedited ZIR** Twice the applicable fee will be charged if the date of application receipt by our office and the close of escrow date is 14 days or less (escrows of 14 days or shorter, substantiated by valid escrow instructions, are exempt from the double fee). Allow at least five working days for completion of Expedited ZIRs.

➤ **Extension of a Valid ZIR** Half of the applicable fee. Allow adequate time for a physical inspection to occur prior to the expiration of the current ZIR.

➤ **Re-inspection Fee = \$190** If voluntary consent is granted for City staff to inspect the interior and exterior of all structures and the owner or agent is not present at the scheduled inspection time, a Re-inspection Fee will be applied, and a new inspection time scheduled.

➤ ****PLEASE NOTE**

- Only **ONE** form of payment may be accepted per transaction. (Example: only 1 check, only 1 credit card account, **OR** only cash.) Multiple or combinations of checks, credit cards or checks cannot be processed.
- The credit card **holder** must be present to complete the credit card transaction.
- Mailed submittals must include a check or credit card payment. Mailed submittals are typically entered into the City's processing system within 24 hours of receipt on regular workdays (this does not include holiday and weekend submittals).

Inspection Date/Time _____ **ZIR APPLICATION NUMBER: ZIR20** _____

M - T - W - TH - F _____ / _____ / _____ at _____ : _____ **TOTAL FEE: \$** _____

(Cashier to detach along dotted line)

CARD TYPE (CHECK ONE): ☐ VISA ☐ MASTERCARD ☐ DISCOVER **TOTAL ZIR FEE: \$** _____

CARD HOLDER INFORMATION

NAME (AS PRINTED ON CARD): _____

BILLING ADDRESS: _____
 (Street) (City) (State) (Zip Code)

PHONE NUMBER: _____

ACCOUNT NUMBER: _____

CARD EXPIRATION DATE: _____ **CARD VERIFICATION CODE:** _____

CARD HOLDER SIGNATURE HERE: _____ **DATE:** _____

Cardholder acknowledges receipt of goods and/or services in the amount of the total shown hereon and agrees to perform the obligations set forth in the Cardholder's agreement with the card issuer.