



City of Rialto

Legislation Text

File #: 21-0807, Version: 1

For City Council Meeting [November 9, 2021]

TO: Honorable City Council

APPROVAL: Marcus Fuller, City Manager

FROM: Brad Fliehm, Building & Safety Manager

Request City Council to Review and Consider Approval of the Proposed Rialto Amnesty Program for Unpermitted Construction During the COVID-19 Pandemic.

(ACTION)

BACKGROUND:

On May 26, 2021, Staff presented a staff report to the Economic Development Committee (“EDC”) outlining a “Relief (Incentive) Program for Construction Work During COVID-19”. This report was developed in an effort to provide relief for those who experienced an undue hardship caused by the disruption of City of Rialto Building and Safety services during the COVID-19 shutdown, and also to offer an incentive to bring unpermitted construction on residential property into compliance with zoning and building regulations. A copy of the EDC staff report is included as **Attachment 1**.

The important element of the program concept were the following items:

- Available for specific improvements done to any commercial, industrial, or residential properties/buildings without permits from March 12, 2020, to the program adoption date;
- Improvements must be **directly beneficial** to the business or residential properties wherein the work was done for adaptation to occupancy restrictions during COVID-19, to enhance safe social distancing or otherwise contribute to the overall safety or habitability of structures

At the direction of the EDC, the program concept was to be developed further and presented to City Council for further review and direction.

ANALYSIS/DISCUSSION:

Although most cities have a mechanism to legalize unpermitted construction, only a few municipalities throughout California offer a formal amnesty program to incentivize voluntary efforts to bring unpermitted construction into compliance (please refer to **Attachment 2 - Program Survey**). Most of the existing programs offer protection from enforcement related to the unpermitted construction, and some will waive investigation fees or penalties if the applicant proceeds through the program. Samples of other City program guidelines are provided as **Attachments 3 through 7** and includes the following programs:

- **Alameda** - amnesty program for all undocumented construction work subject to compliance

with Zoning and Building Codes (the proposed Rialto program was generally developed following this model)

- **San Jose** - amnesty program limited to legalizing unpermitted ADUs
- **San Mateo** - amnesty program limited to legalizing unpermitted ADUs
- **Los Angeles** - amnesty program for legalizing unpermitted dwelling units established between December 2010 and 2015 and is subject to requirements imposing affordable housing standards on the permitted units
- **South Gate** - ordinance adopted to legalize garage conversions

None of the surveyed amnesty programs offer a complete waiver of Plan Review or Permit Fees, although some have a set rate for such services. Most of these amnesty programs require compliance with current zoning and building requirements, but a few have implemented a process to “date” the construction and they make an attempt to apply only the zoning and building requirements that were in place at the time of construction.

It should also be noted that many of these amnesty program guidelines restrict the construction type, construction period, or they have a specified application window of opportunity. Many of the staff interviewed in these other cities with amnesty programs expressed an opinion that their amnesty programs have made a positive impact in bringing potentially hazardous construction into compliance.

In addition to the typical amnesty programs identified in the survey, the proposed ***Rialto Amnesty Program for Unpermitted Construction*** would be unique in also recognizing the hardships that were faced due to the COVID-19 shutdown, and the unprecedented need to adapt the built environment for the protection of families and business patrons.

The proposed program would expand on the common concepts of amnesty by also waiving qualified plan review and permit fees for those who experienced construction related hardships directly attributed to the COVID-19 shutdown.

The following outlines the draft guidelines for the program.

PROGRAM GUIDELINES

The anticipated process would be a simplified path to legalizing unpermitted construction ***for work that occurred from March 12, 2020, to November 9, 2021, and was work done to address impacts due to the COVID-19 pandemic***. Staff has prepared a flowchart to demonstrate how the program would function (please refer to ***Attachment 8 - Process Flow Chart***).

Any unpermitted construction would be required to eventually conform to existing Zoning and Building regulations under the program. Most of this process is already in place and currently being utilized to legalize unpermitted construction.

1. **Application** - Voluntary application would be made by those seeking amnesty for unpermitted construction (please refer to ***Attachment 9***). This application would include a series of self-certification affidavits and is not anticipated to require any documentation to support the

assertions made on the application. The application would include a request for general amnesty as well as an additional request for relief due to COVID related hardship if applicable. Once approved for amnesty the applicant would be shielded from penalties related to the unpermitted construction if they fulfill the conditions of approval without delay.

2. Qualification -

- a. General Amnesty (protects applicant from further investigation fees and fines only)-
 - i. Applicant must voluntarily come forward to legalize the unpermitted construction.
 - ii. Applicant must be the current Owner of the property.
 - iii. Any fines that have already been assessed must be paid at the time of application.
- b. COVID Amnesty (reverses any fines and investigation fees already assessed and waives building plan review and permit fees)-
 - i. Applicant must justify that the unpermitted construction was necessary due to the COVID emergency.
 - ii. Applicant must justify why they were not able to obtain the required permits and inspections at the time of construction.
 - iii. Construction must have started between March 12, 2020 and February 16, 2021 (disruption of services period).
 - iv. Applicant may be under current investigation or enforcement action.

3. Approval Process-

- a. Staff would verify Ownership and research history of any investigation cases relating to unpermitted construction.
- b. Administrative approval by staff.

4. Legalization Process-

- a. Initial Inspection-
 - i. Confirms what areas are required to be legalized and identifies detailed scope of work to be described on permits.
 - ii. Determination if the area is safe for continued occupancy during the legalization

process.

iii. Identifies what areas will need to be exposed for inspection (at the discretion of the Inspector).

1. Some finished areas may need to be de-constructed to reveal concealed construction (framing, wiring, plumbing, etc).
2. Other “non-critical” areas may remain concealed without inspection. However, a “Modification” (see **Attachment 10**) would be required to be recorded which would describe the areas that were not fully inspected and would act as a prescriptive notice to any future interested parties.

b. Plan Review/ Permit issuance- Plans are reviewed and permits issued per the normal process. (fees waived if COVID Amnesty is approved).

c. Inspections/ Final approval- All inspections are performed through the normal process, except for those exempted areas which would be a limited inspection and documented through a “Modification”.

ENVIRONMENTAL IMPACT:

The request is not a “Project” as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. According to Section 15378(b), a Project does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

GENERAL PLAN CONSISTENCY

Complies with the following Rialto General Plan Guiding Principle:

Our Government will lead by example, and will operate in an open, transparent, and responsive manner that meets the needs of the citizens and is a good place to do business.

LEGAL REVIEW:

The City Attorney reviewed and recommended approval of the staff report.

FINANCIAL IMPACT:

Operating Budget Impact

The amnesty program by waiving certain permit and plan check fees will result in a new cost to the Building Division that will vary depending upon the number of applications received. As an estimate, Staff recommends an appropriation of \$25,000 from the General Fund Non-Departmental Expenditure Account for this purpose.

Capital Improvement Budget Impact

None.

Business License

Not applicable.

RECOMMENDATION:

Staff recommends that the City Council review and consider approval of the proposed ***Rialto Amnesty Program for Unpermitted Construction During the COVID-19 Pandemic.***