

CITY OF SANTA ROSA

ADMINISTRATIVE ENFORCEMENT ORDER

ASSESSOR'S PARCEL NUMBER 180-460-027

1645 HUMBOLDT STREET, SANTA ROSA, CALIFORNIA

FILE #CE22-1178 - HEARING DATE FEBRUARY 14, 2024

RESPONSIBLE PARTY

GERARD DUENAS

SUMMARY OF PROCEEDINGS

Santa Rosa City Code section 1-30.020 declares that a violation of the Santa Rosa City Code or any ordinance enacted by the Santa Rosa City Council is subject to an administrative fine or penalty. Pursuant to Santa Rosa City Code section 1-30.040, whenever a Code Enforcement Officer determines that a violation of an ordinance has occurred, the Code Enforcement Officer may issue an Administrative Notice and Order to the responsible parties.

The purpose of this hearing was to provide a review of the Administrative Notice and Order dated January 11, 2024, in which the responsible party had been given up to and including February 4, 2024, to correct/abate all violations in existence as of January 11, 2024. This hearing was conducted by Administrative Hearing Officer Charles J. Tarr, duly appointed pursuant to Santa Rosa City Code section 1-30.080, and was convened on February 14, 2024.

Code Enforcement Officer Carrie Wilson was in attendance and provided testimony and documentary evidence on behalf of the City of Santa Rosa in support of the Administrative Notice and Order. The responsible party Gerard Duenas appeared personally. Prior to testifying, the witnesses were placed under oath.

ENFORCEMENT HISTORY

There is an extensive enforcement history beginning November 18, 2022. Evidence provided by the City in the staff report chronology contained the following case notes and comments which are set forth verbatim below from the document:

11-18-2022: Complaint received via email to code@srcity.org stating accumulation of trash and debris visible from the public way on property for months.

11-22-2022: CE22-1178 Code Enforcement case was assigned to Carrie Wilson for investigation.

12-2-2022: I conducted a field inspection at subject property 1645 Humboldt Street. I observed and photographed dilapidated buildings, accumulation of trash and debris and construction materials in plain view from the public way.

12-15-2022: A Consent to Inspect and a Notice of Violation was mailed by regular mail to the property owner's mailing address Apple Robotics, P.O. Box 5, Santa Rosa, CA and to the subject property with 14 days to comply.

12-20-2022 I received an additional complaint of unpermitted building improvements, storage of building materials and other waste.

01-13-2023 I posted a Stop Work Order on the subject property.

01-27-2023 The property owner Gerard Duenas visited the Planning and Economic Development Department. Mr. Duenas discussed obtaining a roof permit with Permit Technician Lynne Charlton. CEO Lizzette Marquez responded to the counter staff request on my behalf. L. Marquez and L. Charlton reached me via TEAMS. We determined L. Marquez would perform an interior inspection that same date and photograph the interior and exterior to provide guidance for the permit application. We determined that covering the leaking roof with a tarp to prevent further water intrusion would be allowed without permit. No further work 002 was to be performed. CEO Marquez noted the following observations during the inspection:

Interior inspection with the property owner. The garage doors were replaced by a glass front exterior door. Front siding and window replacement, not like for like. Beam replacements. There is visible mold throughout, and smell of mold, acknowledged by the property owner. Property needs a re-roof and complete remodel. There are openings in the ceiling and walls throughout. There appears to be no plumbing facilities in this dwelling. The owner said the previous property owner separated this dwelling and the adjacent house and the plumbing system stayed with the other dwelling. Owner as advised to submit plans and obtain the services of a certified company licensed to complete mold abatement.

I reviewed CEO Marquez photographs and field inspection observations. I emailed property owner Gerard Duenas to ask clarifying questions about the plans for the property and construction and contact information. Furthermore, I explained that a Notice of Violation letter would be mailed the next business day January 28, 2023.

01-30-2023 Property owner Gerard Duenas visited the public counter at Planning and Economic Development for the city of Santa Rosa. Mr. Duenas was informed that a Job number (permit number) was required from Bay Area Air Quality Management District and per the Notice of Violation, a mold report was required in accordance with city policy. A copy of the Mold report policy and a copy of the NOV was provided to Mr. Duenas.

02/03/2023 I received an additional complaint about work being done without permit at the subject property.

03/15/2023 Property owner Gerard Duenas visited the public counter at Planning and Economic Development Department for the city of Santa Rosa. Permit Technician Eileen Baughman and Assistant Chief Building Official Lou Kirk met with Mr. Duenas and viewed the property on

Google maps. L. Kirk informed me that a Building Inspector needed to inspect the property to ensure the building is safe and not in imminent danger of collapse. Mr. Duenas requested information on how to obtain a Job number (permit number). The link to the application page for Bay Area Air Quality Management District was provided to Mr. Duenas in person and via email.

03/20/2023 I called property owner Gerard Duenas in the morning to set up an inspection of the property with myself and Senior Building Inspector Derek Redmond for the same date of March 20, 2023 at 1:00 p.m. Senior Building Inspector Derek 003 Redmond and I arrived at 1 p.m. to inspect the garage portion because of possible collapse observed from google photos and it did not appear to be in imminent danger of collapse. I photographed the site during the inspection. I asked property owner Gerard Duenas about the trash and debris visible from the public way. Mr. Duenas asserted the trash and debris were new construction supplies. Senior Building Inspector Redmond stated the materials need to be field verified by the inspector and Chief Building Official would need to approve reusing materials. I explained that an application for building permit is required, a J number (permit number) is required through Bay Area Air Quality Management District as well as a mold inspection and report. A revised Notice of Violation was mailed on March 20, 2023, with an extended compliance deadline of April 17, 2023, to accommodate removal of the trash and debris from public view. The compliance deadline for the violations noted in the original Notice of Violation remained due no later than April 9th, 2023.

04-21-2023 A Notice of Non-Compliance was recorded with Sonoma County Recorder's Office.

06-12-2023 I conducted a field inspection at subject property 1645 Humboldt Street. I observed and photographed trash and debris piled up from the front of the property near the fence to the back of the property building. There were large black garbage bags filled and leaning up against the far building, construction materials piled up visible from the sidewalk. I observed white fencing and it appeared to be newly installed.

06-22-2023 I sent an Administrative Citation to the property owner's mailing address as well as to the subject property with compliance date of July 14, 2023.

08-17-2023 I conducted a field inspection at subject property 1645 Humboldt Street. I observed and photographed overgrown vegetation accumulation of trash and debris and construction materials.

09-21-2023 I sent a second Administrative Citation to the property owner's mailing address as well as to the subject property with compliance date of October 13, 2023.

10-06-2023 I called and spoke to the property owner Gerard Duenas. Mr. Duenas stated he hired a handyman to clear the overgrown vegetation and haul away the trash and debris. I encouraged Mr. Duenas to obtain the necessary building permits, mold inspection reports and J number before the winter rains arrive.

10-12-2023 I received a voice mail message from property owner Gerard Duenas stating the workers he hired did not show up because of the rain. He explained he has physical limitations, and he would check in with me the following week.

12-4-2023 I sent a third Administrative Citation to the property owner's mailing address as well as to the subject property address 1645 Humboldt Street with a compliance date of January 5, 2024.

12-14-2023 I conducted a field inspection at subject property 1645 Humboldt Street. I observed and photographed accumulation of trash and debris, overgrown vegetation and construction materials that were visible from the public way.

01-08-2024 I received and replied to an email from Brian Lawson, identified himself as a friend of the property owner Gerard Duenas and the email was carbon copied to Gerard Duenas, and to Senior Code Enforcement Officer Cassidy Anderson.

01-09-2024 I spoke to Brian Lawson over the phone regarding the facts of the case and received information from Mr. Lawson regarding his intent to facilitate submitting applications for Conditional Use Permit and Building Permit for the remodel of the subject property as well as exterior cleanup of the trash and debris visible from the public way. I emailed a summary of the conversation to Brian Lawson, property owner Gerard Duenas and SCEO Cassidy Anderson.

01-11-2024 An Administrative Notice and Order was post at the property 1645 Humboldt Street, mailed by regular mail, certified mail and by email to the property owner Gerard Duenas c/o Apple Robotics, Post Office Box 5, Santa Rosa, CA 95402.

01-17-2024 I received an email from Brian Lawson that was carbon copied to the property owner Gerard Duenas that acknowledged receipt of the Administrative Notice and Order and provided a status report stating they had contacted an architect and they are working on the applications for Planning and Building permits. I sent a reply email directing the property owner and his representative Brian Lawson to immediately abate the rodent attractant, trash and debris clean up from the exterior of the property.

01-22-2024 I received an email from Brian Lawson that was carbon copied to the property owner Gerard Duenas which requested authorization to store construction and landscape materials in the front yard. I replied all to the email and attached photos of the front yard. I reiterated the property has been in a constant state of disrepair and the front yard has been a visual blight for more than a year. I directed Brian Lawson and property owner Gerard Duenas to removal all trash, debris concrete blocks, bags, cable tv, satellite, lattice, and other unidentifiable debris off the premises.

01-30-2024 I received an email from Brian Lawson with photos of the exterior property clean up progress.

01-31-2024 I emailed property owner Gerard Duenas and cc'd Brian Larson an email to confirm that Brian Larson is the designated point of contact for the property owner and requested response no later than Feb. 5, 2024.

02-01-2024 I used electronic file transfer service WeTransfer to send the Administrative Hearing packet to property owner Gerard Duenas and Brian Larson.

02-07-2024 I received a voicemail from Brian Larson at 4:39pm acknowledging receipt of the Administrative Hearing documents and the Amended Building and Code Enforcement Recommendations page as well as wanting to talk when it's convenient.

02-08-2024 I talked with Brian Larson over the phone the morning of 2/8/24. Mr. Larson indicated his name was misspelled which I informed him the spelling would be corrected. We spoke about the necessity of the property owner Gerard Duenas to appear at the Administrative Hearing and Mr. Larson informed me he would not be able to attend. Mr. Larson indicated he would contact the property owner Mr. Duenas to request that he communicate with me and to inform him his appearance at the Administrative Hearing is requested. I informed Mr. Larson that the priority mail I sent to the property owner's mailing address listed in the tax records was returned to me undeliverable by the US Postal Service. I requested updated contact information for Mr. Duenas. Mr. Larson informed me that Mr. Duenas paid the fees for application of Conditional Use Permit CUP24-003 and an architect by the name of James Rasmussen, was hired to update their plans, informed the responsible parties of his poor health, which has contributed to delays. I explained that a complete evaluation of the application by Planning Staff and any referring department will not proceed until an updated set of plans reflective of the current Building code cycle is submitted. I recommended serious consideration be made to hire a different architect if the one presently hired for the job is no longer able to perform. I explained and assured Mr. Larson the city is willing to work with the responsible party. I requested confirmation of Mr. Duenas authorization to speak with and share information regarding this matter with Mr. Larson has been requested by email and Mr. Larson forwarded me a copy of Mr. Duenas email response. Mr. Larson stated he would contact Mr. Duenas to relay the importance of the Administrative Hearing and encourage he attend the hearing next week. After my phone call with Mr. Larson, I called Mr. Duenas and left a voicemail requesting a phone call back. Mr. Larson sent me a copy of the acknowledgement and response email from Mr. Duenas that communication regarding this matter is authorized between the city and Mr. Larson.

02/09/2024 I corrected Brian Larson's last name from misspelling of Lawson as previously submitted to Larson, throughout the Staff Report. I reviewed the submittal documents for CUP24-003. The plans that were submitted were drawn in 2016 and therefore are out of date for current building code cycle. A complete evaluation of the application by Planning Staff and any referring department will not proceed until an updated set of plans reflective of the current Building code cycle is submitted.

02/13/2024 I received a vm from the property owner Gerard Duenas on 2/13/2024 and I spoke to him over the phone. Mr. Duenas indicated he would be at the Administrative Hearing on 2/14/2024 at 1:00 p.m. located at City Hall, Council Chambers, 100 Santa Rosa Ave. Santa Rosa, CA. I asked Mr. Duenas if he and Mr. Larson have any written agreement describing the relationship as it pertains to representing the property. Mr. Duenas stated Mr. Larson is his friend and they do not have an agreement. I recommended an agreement such as a property management contract be secured for their legal protections and recommended Mr. Duenas seek legal counsel from his attorney or Legal Aid Services of Sonoma County. I verified Mr. Duenas's telephone number and mailing address. Mr. Duenas asked me if I had been by the property and wanted me to know the exterior clean up has been completed. I explained that I would be going by the property today and would send over photos and any updates to the Administrative

Hearing packet to him, Mr. Larson and the Administrative Hearing Officer Mr. Tarr. Mr. Duenas asked if he needed legal representation. I explained that legal representation is his right. Mr. Duenas expressed his thanks for assisting him and his desire to bring the property into compliance.

EXHIBITS

Prior to the hearing, Code Enforcement tendered the following documents to the hearing officer which were marked and received into evidence:

1. 96 pages of Administrative Hearing documents, including the Revised Administrative Hearing Staff Report dated November 1, 2023, violations letters, site inspection photos and supplemental documents, marked collectively as EXHIBIT 1.
2. Four documents received via email and WeTransfer download on February 7, 2024 denominated as Returned ANO Po Box 5, Amended Building Code Enforcement Recommendation, larsonlanding@gmail.com downloadable table of contents and photos posted admin packet 02-05-2024, marked collectively as EXHIBIT 2.
3. 11 documents received via email and WeTransfer download on February 13, 2024, denominated as CUP application form, copyright materials, disclosure, electronic signature, Humboldt plans, indemnification, mup check checklist, 1645 Humboldt plans, amended Admin Hearin Staff Report. Amended Building and Code Enforcement Recommendation and photo binder 2-13-2024, marked collectively as EXHIBIT 3.

WITNESSES

1. Carrie Wilson Code Enforcement Officer
2. Gerard Duenas Responsible Party

SERVICE OF DOCUMENTS

SRCC Section 1-30.030(B) provides that whenever a notice is required to be given (except for an initial notice of violation) the notice shall be served by any of the following methods:

1. Personal Service;
2. Prepaid first class United States Postal Service; or
3. Posting the notice conspicuously on or in front of the property; or
4. Printed verification by electronic mail (email).

Code Enforcement Officer Wilson was questioned by the hearing officer as to the "Certificate of Service" (page 7 Exhibit 1) "By Property Posting" language which stated, "I caused each such envelope to be posted by hand to the addressee(s) noted above". Unlike proof service by mail which may be stated as causing it to be mailed in the ordinary course of business, a declaration of proof of service by posting must be executed by the person effectuating the service.

The "Certificate of Service" as to service by posting is insufficient as it did not establish who actually posted the document. Further, the Certificate of Service fails to state that it was posted

“conspicuously on or in front of the property” as required by SRCC 1-30-030(B)(3). Notwithstanding these deficiencies, in response to questioning by the hearing officer, Ms. Wilson established through her sworn testimony that on January 11, 2024, she did serve the Administrative Notice and Order on the responsible party by properly posting at the premises.

The proof of service by mail states that the Administrative Notice and order was sent to the “owner” and addressed to Gerard Duenas. C/O Apple Robotics, P.O. Box 5, Santa Rosa, CA 95402. Some doubt was cast on whether this a correct mailing address for Mr. Duenas as it appears that Apple Robotics is the property owner. Of further concern was that the mailing via Priority Mail with signature required was returned unclaimed and returned to sender. See EXHIBIT 2 “Returned ANO”. The proof of service also shows that a copy was served via “regular mail”.

SRCC section 1-30.030(C)(2) states that service by mail shall be “Prepaid first class United State Postal Service” The proof of service does not so state. While secondary service via Priority Mail with signature required can also be used, that alone would not satisfy the statutory provision, especially when sent with “signature required” which can lead to unclaimed mail. Such was the case in the instant matter.

Code Enforcement Officer Wilson was questioned by the hearing officer as to the service by mail. Based on Ms. Wilson’s testimony, other documents in the staff report and the testimony of Mr. Duenas, the hearing officer finds that service by mail was effectuated notwithstanding defects in the proof of service.

As for the proof of service by electronic mail (email) the Certificate of Service is faulty as it fails to clearly establish how the email address “ucantwo@gmail” is related to the responsible party. There are documents circumstantially showing that the email may be that of Mr. Duenas, but it was not clearly established. And the proof of service failed to include printed verification of notice by electronic mail as required by SRCC 1-30.030(C)(4).

RESPONSIBLE PARTY

The Administrative Notice and Order names Gerard Duenas as the responsible party. The staff report refers to Gerard Duenas and Apple Robotics, interchangeably, as the “Owner” with the mailing address “C/O Apple Robotics P.O. Box 5, Santa Rosa, CA 95402. The County Assessor records show the owner of the property as Apple Robotics. A Grant Deed dated June 16, 2016 (Staff Report page 133) shows a conveyance of the property to Apple Robotics from California Environmental Protection Association, a California Corporation, signed by Gerard Duenas, president. The deed contains an explanatory note in the documentary transfer tax explanation, stating, “Proportional Interest of Parties Remains the Same”.

It has not been established by a preponderance of the evidence that Mr. Duenas is an owner. Perhaps he is an owner or part owner of the grantee, California Environmental Protection Association which may have retained some ownership interest, or Mr. Duenas may be an owner of Apple Robotics. The grant deed does not establish that Mr. Duenas is an owner. The assessor records in the staff report do not show Mr. Duenas as an owner.

The City has named Gerard Duenas as the responsible party. The deeded owner of record was not named as an additional party. SRCC Section 1-30.030(B) defines “responsible party” as (1) an owner of record, (2) a manager of the property, (3) one in charge of the premises, (4) an occupant of the premises, (5) A user. While the evidence does not establish that Mr. Duenas is an “owner” (notwithstanding repeated references to him as the owner) the evidence does establish that he is a properly named responsible party as a manager and/or one in charge of the premises and/or a user.

VIOLATIONS ALLEGED IN THE ADMINISTRATIVE NOTICE AND ORDER

Appendix No. 5 to the Administrative Notice and Order sets forth allegations of the following violations:

Violation #1 Substandard Housing Conditions

Vacant property is in a unreasonable state of partial construction. Structure is not habitable. California Health & Safety Code 17920.3 Substandard Housing Conditions

Violation #2 Substandard Sanitation

Vacant property is dilapidated, unsanitary, and exterior property is unsightly from the public way. Structure is not habitable. SRCC Sec. 18-20.302.1 Sanitation. Exterior property and premises shall be maintained in a clean, safe and sanitary condition.

Violation #3 Building Permits and Inspections Required

Work was performed without a permit. SRCC Sec. 18-16.105.1; 18-20.109.1 Building Permits and Inspections are required. Any owner or owner’s authorized agent who intends to repair, add to, alter, relocate, demolish, or change the occupancy of a building or to repair, install, add, alter, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the code official and obtain the required permit

Violation #4 Vacant Structures and Land

Properly secure the structure for rodent abatement, seal the gaps in structure for rodent abatement, maintain landscaping to code, removal all rubbish from premises. SRCC Sec. 18-20.301.3 Vacant Structures and Land. Vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure, and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Violation #5 Nuisance

Property is in an unreasonable state of partial construction. Remove from the premises all trash, debris, rubbish, and accumulation of stored building materials and other materials from the interior and exterior of the property. Perform landscape maintenance to abate the overgrown vegetation throughout the premises. Secure weekly garbage, recycling and green waste collection

service from Recology. SRCC Sec. 1-30.030(G)(3)(f). Nuisance Standards. General Property Nuisances Defined.

**FINDINGS OF FACT RE SERVICE OF AMINISTRATIVE NOTICE AND ORDER
AND NAMING OF RESPONSIBLE PARTY**

While the evidence does not establish that Mr. Duenas is an “owner” (notwithstanding repeated reference to him as the owner) the evidence does establish that he is a properly named responsible party as a manager and/or one in charge of the premises and/or a user. See SRCC Section 1-30.030(B). Based on oral testimony and the documentary evidence, Mr. Duenas is found to be a proper responsible party as a manager and/or one in charge of the premises and/or a user by a preponderance of the evidence.

FINDINGS OF FACT ON ALLEGED VIOLATIONS

FINDINGS OF FACT AS TO VIOLATION #1 Substandard Housing Conditions

Based on oral testimony, photographic and other documentary evidence, the alleged violations were established by a preponderance of the evidence,

FINDINGS OF FACT AS TO VIOLATION #2 Substandard Sanitation

Based on oral testimony, photographic and other documentary evidence, the alleged violations were established by a preponderance of the evidence,

**FINDINGS OF FACT AS TO VIOLATION #3 Building Permits and Inspections
Required**

Based on oral testimony, photographic and other documentary evidence, the alleged violations were established by a preponderance of the evidence,

FINDINGS OF FACT AS TO VIOLATION #4 Vacant Structures and Land

Based on oral testimony, photographic and other documentary evidence, the alleged violations were established by a preponderance of the evidence,

FINDINGS OF FACT AS TO VIOLATION #5 Nuisance

Based on oral testimony, photographic and other documentary evidence, the alleged violations were established by a preponderance of the evidence and were abated as of the date of this hearing. Notice of exterior cleaning was provided to Code Enforcement on 2/13/2024.

CONCLUSIONS OF LAW

1. The named Responsible party, Gerard Duenas, violated each of the provisions of the Santa Rosa City Code referenced in the above findings of facts, established by a preponderance of the evidence.
2. Proper service of the Administrative Notice and Order and the referenced attachments was established by a preponderance of the evidence.
3. Gerard Duenas is a responsible party.
4. Imposition of penalties and administrative costs are mandatory
5. Pursuant to Santa Rosa City Code section 1-30.030 the violations constitute a public nuisance.

AMENDED BUILDING AND CODE ENFORCEMENT RECOMMENDATION

The City submitted a document dated February 7, 2024 with seven provisions, entitled, "Amended Building and Code Enforcement Recommendation", (see EXHIBITS 2, and 3) which provided as follows:

Building and Code Compliance recommends that the Administrative Notice and Order be upheld, and the penalties paid per the penalty calculation sheet; the administrative cost paid per the Administrative Calculation Sheet; the owner be required within 30 days to obtain all necessary planning and building permits to abate the violations.

1. *Within 30 days, obtain all necessary permits, reports and inspections to remodel, repair and restore dwelling to habitable condition according to city code, including those stated in the Notice of Non-Compliance recorded on May 12, 2023, or obtain all applicable reports, permits and inspections related to a demolition permit to demolish the structure.*
2. *Within 30 days, obtain a mold report for the subject property in accordance with city policy and code and as directed in Notice of Non-Compliance recorded on May 12, 2023.*
3. *Within 14 days, properly secure the structure for rodent abatement, seal the gaps in structure for rodent abatement.*
4. *Within 14 days, perform landscape maintenance to abate overgrown vegetation.*
5. *Within 14 days, remove the accumulation of trash, debris, stored materials, and rubbish from premises.*
6. *Within 7 days, secure weekly garbage, recycling, and green waste collection service from Recology.*

As to all permits issued in compliance with item #1 above the Amended Building Code Enforcement Recommendations stated:

7. *All work must be completed and inspected within 180 days of permit issuance unless an extension is required by City staff. We also request that the responsible party pay the*

administrative costs as shown on the penalty calculation sheet and the fees for the hearing officer, which have yet to be determined.

PENALTIES

The hearing officer is tasked with determining the appropriate penalty to be imposed based upon a number of factors. The penalty must not only impose financial punishment but also incentivize the owners/responsible parties to correct all the violations. Factors in setting the penalty include the seriousness of the violations, length of time the violations have existed, degree of cooperation and/or diligence or lack thereof, effect on other properties and culpability, including economic incentive or benefit, and any mitigating factors.

An aggravating factor is the egregious nature of the violations and the impact on the health and welfare of the community, the length of time the violations have existed, and the lack of cooperation and diligence by the responsible party in correcting the violations notwithstanding directives and communications from Code Enforcement. Compliance with zoning laws and other provisions of the law are legal duties attendant to ownership of property.

Santa Rosa City Code section 1-30.20 declares that a violation of the Santa Rosa City Code or any ordinance enacted by the Santa Rosa City Council is subject to an administrative fine or penalty, and that the enforcement procedures are activated by an administrative notice and order, which may be used at the sole discretion of the City of Santa Rosa. The remedies provided are in addition to and cumulative of all other remedies, criminal or civil, which may be pursued by the City of Santa Rosa to address any violation of its ordinances and laws.

The responsible party, Gerard Duenas testified as to his efforts to abate the alleged violations and the difficulties he was having due to unspecified health problems. The record reflects several actions by Mr. Duenas to move forward with curing the violations including the enlistment of a friend to assist, and difficulties with hired help. The amendments to the staff report which were submitted on 2/13/2024 reflect some of the actions taken and contained photographs showing the exterior cleanup that had been completed. See EXHIBIT 3.

Mr. Duenas was questioned by the hearing officer as to whether he had read the amended enforcement recommendations and if he understood them. He acknowledged that he did understand what was required. He further acknowledged his responsibility to comply and affirmed his intent to do so and that he would be able to do so. The Administrative Notice and Order dated 1/11/2024 provided up to and including February 4, 2024, to make all corrections.

Regarding the setting of penalties, it is noted that there is some overlap as to which statutes would be violated, particularly, the issues as to exterior condition with debris, trash and the like, and maintaining the property in a clean, safe and sanitary condition. Hence, some of the violations are subsumed within the nuisance standards violations pursuant to SRCC Sections 1-30-030(G)3(f) and imposition of penalties for the same wrongful acts under multiple statutes is to be avoided so as to not run afoul of due process requirements.

The City seeks imposition of penalties for five violations. The correction date set forth in the Administrative Notice and Order dated 1/11/2024 was February 4, 2024. Nine days elapsed including the date of the hearing on 2/14/2024.

For violation 5, as of the hearing date, the exterior cleanup had been substantially, if not fully completed. See the comments in the enforcement chronology entry for 2/13/2024 and the supplementary photographs submitted. No separate penalty is imposed for violation 5.

For violations 1 through 4, penalties are imposed for nine days at the rate of \$250.00 day per violation for a total of \$9,000 up to and including the date of this hearing. Penalties for each of those violations continue to accrue after 2/14/2024 at the rate of \$250.00 per day until abated subject to the stay provisions below.

Gerard Duenas' testimony was that he understands what is required, and has the ability and intention to comply with the Amended Building Code Enforcement Recommendations set forth above and that he would be able to do so in the time frame indicated above. Therefore, accrual of penalties for violations 1 through 4 at the above rate per violation are stayed for 30 days from the date of this order subject to the following terms and conditions:

- (1) The responsible party shall comply items 1-6 of the Amended Building Code Recommendations set forth above within the 30 day stay period. As to any items not completed within 30 days from the date of this order, the stayed penalties are imposed from the date of this order at the rate of \$250 per day per non-compliance item unless a written extension is issued by Code Enforcement. As for each of items 1-6 completed with the 30 day stay period, plus any additional time, if any, granted by the City of Santa Rosa, the stayed penalties are waived.
- (2) The responsible party shall forthwith commence all actions necessary to comply with the Amended Building Code Enforcement Recommendations set forth above and shall present a written progress report to Code Enforcement with 15 days of the date of this order.

As to any work to be done within the scope of the permits referenced in the Amended Building and Code Enforcement Recommendations item 7, all work must be completed within 180 days of permit issuance unless an extension is granted by Code Enforcement. Non-compliance with this provision will incur a penalty of \$200.00 per day as to each permit that has not received final inspection within the 180 period. If the City of Santa Rosa exercises its authority and power under the applicable statutes to enter the property and proceed with abatement, all costs are chargeable to the responsible party.

ADMINISTRATIVE COSTS

Costs incurred by the City of Santa Rosa including but not limited to any administrative overhead, salaries and expenses and Administrative Hearing Officer fees and costs are to be recovered pursuant to Santa Rosa City Code section 1-30.100(D).

In Appendix 7-E to the Staff Report (Exhibit 1 at page 27) the City is requesting recovery of administrative costs of \$5066.00 as of 1/11/2024 plus additional time for Code Enforcement officer hearing time at \$181.00 per hour. The hearing officer allows one hour of Code Enforcement Officer time at the rate of \$181.00 per hour for a total of \$181.00. Total staff administrative costs to be recovered are \$5247.00. Recoverable costs are to include Administrative Hearing Officer fees and costs.

Administrative Hearing Officer fees and costs for hearing preparation, conducting the hearing, review of evidence, research of applicable law and preparation and service of the Administrative Enforcement Order are \$3323.47. Total administrative costs to be recovered are \$8570.47.

ORDER

Having considered all relevant evidence, including applicable staff reports and oral testimony the hearing officer orders as follows based on the above findings of fact and conclusions of law:

A. As for violations 1-4 set forth in the Violations and Facts in Appendix 5 to the Administrative Notice and as referenced above penalties are imposed in the amount of \$9,000.00. Penalties for each of those violations continue to accrue after 2/14/2024 at the rate of \$250.00 per day until abated. Any accruing additional penalties are stayed for 30 days subject to the stay provisions set forth above under "Penalties", to wit;

(1) The responsible party shall comply items 1-6 of the Amended Building Code Recommendations set forth above, within the 30 day stay period. As to any items not completed within 30 days from the date of this order, the stayed penalties are imposed from the date of this order at the rate of \$250 per day per non-compliance item unless a written extension is issued by Code Enforcement. As for each of items 1-6 completed with the 30 day stay period, plus any additional time, if any, granted by the City of Santa Rosa, any stayed additional penalties are waived.

(2) The responsible party shall forthwith commence all actions necessary to comply with the Amended Building Code Enforcement Recommendations set forth above and shall present a written progress report to Code Enforcement with 15 days of the date of this order,

B. As for violation #5, set forth in the Violations and Facts in Appendix 5 to the Administrative Notice and as referenced above, no penalty is imposed.

C. The responsible party Gerard Duenas is ordered to pay administrative costs of \$8570.47. Payment shall be made within 30 days of the date of this order.

D. This decision is a final decision upon service and subject to judicial review in accordance with California Code of Civil Procedure section 1094.5 and 1094.6.

E. Pursuant to Santa Rosa City Code section 1-30.100(E), the responsible party is hereby notified that penalties and administrative costs may become the subject of a special assessment against the property where the violations occurred if payment is not received within 30 days of the date of the final order. The penalty for any late payment is set forth below in paragraph F. If the

violation continues, the responsible parties may be subject to additional penalties authorized by law and as set forth in this order.

F. This order shall serve as notice to the responsible party that if the penalties and administrative costs as ordered are not received within 30 days of the date of this Administrative Enforcement Order, the City may seek to enforce it through judicial review: The penalty for late payment of the assessed penalty is 7% per annum, pro-rated daily from the payment due date. The penalty for a subsequent violation within thirty-six months of an initial violation is \$1,000 for each day the violation continues. Pursuant to City Council Resolution 26900, any penalty may be deemed either a special assessment lien against the property where the violation occurred or a personal obligation of the party responsible for the violation.

DATED: March 16, 2024



Charles J. Tarr

Administrative Hearing Officer

1 PROOF OF SERVICE

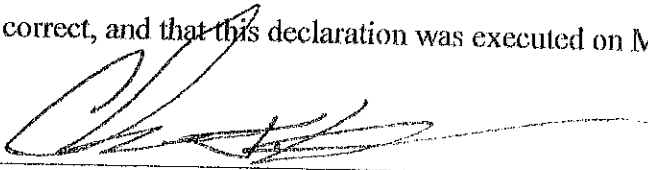
2 I am employed in the County of Sonoma, State of California. I am over the age of eighteen years
3 and not a party to the within action; my business address is P.O. Box 190, Santa Rosa, CA95402.

4 On March 16, 2024, I served the within attached document entitled **CITY OF SANTA**
5 **ROSA ADMINISTRATIVE ENFORCEMENT ORDER** on the interested parties in said
6 matter by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

7
8 Code Enforcement Gerard Duenas
9 Code Enforcement Officer Carrie Wilson C/O Apple Robotics
10 100 Santa Rosa Avenue, Ste 3 P.O. Box 5
11 Santa Rosa, CA 95404 Santa Rosa, CA 95402
12

13 I am readily familiar with the business practice for collection and processing of
14 correspondence for mailing with the United States Postal Service. I deposited such envelope in
15 the mail at Santa Rosa, California by scheduled USPS Carrier for pickup in the ordinary course
16 of business. The envelope was mailed via USPS Priority mail with postage thereon fully prepaid
17 and by USPS First Class mail.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct, and that this declaration was executed on March 16, 2024.

20
21 

22 Charles J. Tarr
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