



Certified Mail:
7006-3450-0002-0158-9392

Second Amended Notice of Violation

(Via Standard and Certified U.S. Postal Mail)

September 21, 2022

Responsible Person:

Kriston S. Withrow and Monika Brett-
Withrow
20063 Spaich Ct.
Saratoga, CA. 95070

Subject Property:

21670 Schillingsburg Ave.
San José, CA. 95120

APN: 708-40-001

Re: Violation Number: VIO-9147 and
VIO21-0207

Inspection Date: September 13, 2018

Dear Kriston S. Withrow and Monika Brett-Withrow (“Property Owners”):

During an inspection of the Subject Property and from subsequent evidence obtained by the County, County of Santa Clara Department of Planning and Development (Planning Department) staff observed violations of the County Ordinance Code, County Zoning Ordinance, and/or State law. The violations are public nuisances.

The County of Santa Clara Code Enforcement Department confirmed during a meeting on August 16, 2022, that the following Violations listed in the June 1, 2022, Amended Notice of Violation have been abated or withdrawn:

- The County withdraws the Violation of Zoning Ordinance Code § 2.20.020, Prohibited and/or Unpermitted Uses in a Rural Base District: Short-Term Rental Use.
- Property Owners have agreed not to permit outdoor amplified sound at winery events, commercial reception events, facility-rental events, or other public gatherings and events. Accordingly, the County finds that Property Owners have abated the Violation of Zoning Ordinance § 4.10.395.B – Amplified sound associated to winery events, commercial reception events, facility-rental events, or other public gatherings and events. This conclusion does not preclude the County from finding violations of § 4.10.395.B if warranted based on Property Owners’ subsequent conduct. (*Note: Section 4.10.395.B does not apply to outdoor amplified sound associated with residential uses. However, the entire Subject Property—including residential uses—is subject to the County’s Noise Ordinance, set forth in County Ordinance Code sections B11-150 through B11-158.*)

Accordingly, the County issues this Second Amended Notice of Violation.

As the owner of the Subject Property, you are responsible for the violations listed below (Violations). You must correct the Violations as described in Section II. If you do not do so, the consequences are described in Section IV and may include fines of up to \$3,500 per day for each of the remaining Violations until corrected. **You must also immediately cease all uses that violate the County of Santa Clara Ordinance Code and Zoning Ordinance—including, but not limited to, hosting events and gatherings without meeting the requirements of the Zoning Ordinance as listed in Section 1.**

If you have any questions or reasons why you cannot complete the required corrections within the time allowed in Section II, below, please contact me at the number or email listed below.

I. VIOLATIONS:

Code Section	Description of Violation
Building Violations	
Ord. Code § C3-3(k)	<p>Expired Building Permit: Permit 2007-38834 for 2400 sf unconditioned shed (structure A) with half bath and fan has expired without final inspection approval, and no application has been made to obtain permits to legalize the work done under this expired permit.</p> <p><i>See 2019 California Residential Code § R105.</i></p>
Ord. Code § C1-67, C1-70	<p>Unpermitted Construction and Alterations: Alterations to shed (structure A), including dwelling space, kitchen, loft area, bar, electrical, plumbing, mechanical, and sanitation, without permits.</p> <p><i>See 2019 California Residential Code § R105.</i></p>
Ord. Code § C3-3(k)	<p>Expired Building Permits: Permits DEV20-1584, DEV19-0267, 2007-38835, and 2007-38835-01 for 1855 sf detached air-conditioned garage with half bath & water heater (structure B – Garage) have expired without final inspection approval, and no application has been made to obtain permits to legalize the work done under these expired permits.</p> <p><i>See 2019 California Residential Code § R105.</i></p>
Ord. Code §§ C1-67, C1-70	<p>Unpermitted Construction: Construction of accessory structure (structure C - Pergola) without permits.</p> <p><i>See 2019 California Residential Code § R105.</i></p>

<p>Ord. Code §§ C1-67, C1-70</p>	<p>Unpermitted Construction: Construction of accessory structure (structure D - Trellis) and added solar without permits.</p> <p><i>See 2019 California Residential Code § R105.</i></p>
<p>Ord. Code §§ C1-67, C1-70</p>	<p>Unpermitted Construction: Construction of accessory structure (structure E - Trellis) without permits.</p> <p><i>See 2019 California Residential Code § R105.</i></p>
<p>DEH Violations</p>	
<p>Ord. Code § B11-65(c), B11-77, B11-84</p>	<p>Unpermitted Sanitation: Structure A – Unpermitted alterations and additions of waste producing plumbing fixtures have exceeded the scope of the approved plans and permit as reviewed by the Department of Environmental Health. Specifically, alterations including addition of a shower and bar have been made to the shed (Structure A) without submitting plans of the Onsite Wastewater Treatment System (OWTS) and either (1) obtaining approval from the Department of Environmental Health for such alterations to be served by an existing OWTS or (2) obtaining an OWTS installation permit.</p> <p>Construction resulting in a major intensification of the use of the property (such as increase in wastewater flow for a commercial building), will require that the OWTS meet the minimum prevailing wastewater treatment and dispersal requirements.</p> <p>Multiple buildings on the same parcel may be served by a common OWTS provided the OWTS is determined to have sufficient treatment and dispersal capacity for the expected wastewater flow from all buildings or facilities connected to the OWTS.</p>
<p>Zoning Violations</p>	
<p>Zoning Ord. § 4.10.395.A</p>	<p>Gatherings and Events Illegally Held Without Meeting Applicable Requirements: Subject Property is hosting gatherings and events without having met the requirements of § 4.10.395.A, including the requirements that the Subject Property shall “have wastewater disposal systems capable of accommodating the maximum number of attendees anticipated, in conformance with Sections B11-60 through B11-88 ... of the County Ordinance Code,”</p>

	<p>and that the “facilities used for events shall comply with applicable Building and Fire Marshal requirements of the California Building Code and the County Ordinance Code.” No approval has been obtained from the Department of Environmental Health for the intensity of use of the wastewater disposal system associated with the size of events being held at the property, and as reflected above, there are various Building and DEH violations on the Subject Property. Facilities with Building violations (i.e., structure A) cannot be used to host public gatherings and events until such violations are abated and the facility meets the requirements of 4.10.395.A.</p> <p><i>Note: Section 4.10.395.A applies to winery industry and marketing events as well as commercial reception events, facility-rental events and other public gatherings and events. *This does not apply to non-commercial private events of the Property Owner, or to residential uses of short-term renters.</i></p>
<p>Zoning Ord. § 4.10.395.A.2</p>	<p>Unpermitted Commercial Reception Events, Facility-Rental Events, or Other Public Gatherings and Events with Attendance of 51 or More Persons: Holding events at the Subject Property with attendance of 51 or greater without permits. Because the Subject Property size is less than 5 acres, commercial reception events, facility-rental events, and other public gatherings and events with attendance of 51 or greater require a special permit (medium events, see § 4.10.395.A.2.b) or use permit (large events, see § 4.10.395.A.2.c).</p> <p><i>Note: Section 4.10.395.A.2 applies to commercial reception events, facility-rental events or other public gatherings and events. *This does not apply to non-commercial private events of the Property Owner, or to residential uses of short-term renters.</i></p>

II. REQUIRED CORRECTIONS:

1. **Immediately** cease all illegal uses of the Subject Property in violation of the Ordinance Code and Zoning ordinance, including but not limited to: alterations, additions, or improvements to structures, electrical, plumbing, mechanical, and sanitation without permits; commercial reception event and facility-rental use with attendance of 51 or more persons without permits; and hosting public gatherings and events—including commercial reception and facility-rental

events—at facilities with building violations and without an approved OWTS capable of accommodating the maximum number of attendees anticipated.

2. **Immediately** contact the assigned Code Enforcement Officer at (408) 299-5793 or tyson.green@pln.sccgov.org to schedule an appointment to discuss abatement requirements. *You must schedule this appointment in advance, as we cannot accommodate walk-ins.*
3. **Immediately** cease all gatherings and events as defined in Zoning Ordinance 4.10.395.A, including commercial reception events, facility-rental events, and other public gatherings and events, until *all facilities used for events comply with applicable Environmental Health, Building, and Fire Marshal requirements of the California Building Code and the County Ordinance Code*. In addition, because the Subject Property is less than 5 acres, attendance **in excess of 50 people** for commercial reception events, facility rental events, and other public gatherings and events requires a special permit.
4. **By October 26, 2022**, submit plans and apply for permits to legalize or remove unpermitted construction, including additions, alterations, or improvements to the electrical, plumbing, mechanical, and sanitation systems and structures.
5. **By October 26, 2022**, submit plans and apply for permits to legalize any specified facilities at the Subject Property for use for commercial reception events, facility-rental events and other public gathering and events as required by Building, DEH, and Fire.
6. **By December 28, 2022**, complete construction per the building permit to demolish and remove all unpermitted buildings or to legalize as noted. For construction or demolition to be deemed complete, you must obtain the final inspection for your permits from the Building Inspection Division.
7. **By December 28, 2022**, obtain a final clearance inspection from the Code Enforcement Division to show that all required corrective work has been properly completed. Contact me at (408) 299-5793 or at tyson.green@pln.sccgov.org to schedule this inspection.

III. PROCEDURE TO CONTEST VIOLATIONS

If you disagree that some or all the Violations exist, you may contact the Code Enforcement Division **within 30 days of this Notice** by telephone at (408) 299-6723 or by email at codeenforcement@pln.sccgov.org to request a meeting with the Code Enforcement Program Manager, Building Official, Planning Manager, and/or Grading Official, as applicable, to present evidence that the Violations do not exist.

IV. CONSEQUENCES OF FAILURE TO CEASE UNLAWFUL ACTIVITY AND CORRECT VIOLATIONS

If you perform the required corrections by the deadlines above, the County will not impose fines or penalties or record notice of the violations on the Subject Property. But if you do not cease unlawful activity or correct the Violations by *any of* the deadlines above (or extended deadlines, if requested and granted) or challenge the Violations and establish they do not exist, the County will:

1. Charge you any costs the County incurs in correcting the violations, including staff costs and attorneys' fees; and/or
2. Record notice of the violations against the Subject Property with the County Clerk-Recorder's Office; and/or
3. Impose administrative citations and/or administrative fines of up to \$1,000 per violation per day until the violations are corrected; and/or
4. Institute civil or criminal prosecution, with civil penalties of up to \$2,500 per violation per day.

Please complete the required corrections to avoid these fines, fees, and penalties.

We look forward to working with you.

Sincerely,



Tyson Green | Code Enforcement Officer II

Department of Planning and Development, County of Santa Clara

70 W. Hedding St., East Wing, 7th Floor

San José, CA. 95110

(O) 408-299-5793

(C) 408-712-1852

tyson.green@pln.sccgov.org

CC: Code Enforcement File
Planning File
Office of the County Counsel

Rev. 6/23/21



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