

---

DRAFT REGULAR MEETING MINUTES  
APRIL 12, 2018

**1. CALL TO ORDER & ORDERS OF THE DAY**

**ROLL CALL**

**PRESENT:** Chair David Parker, Vice Chair Ron Cabanayan, Commissioners Elizabeth Chien-Hale, Timothy Kenny, Karen Parsons, Robyn Shearin, and Thomas Skinner.

**ABSENT:** None.

**STAFF:** Board Secretary Karla Caceres, Code Enforcement Supervisors Oscar Carrillo, Joseph Hatfield, and Senior Deputy City Attorney Rosa Tsongtaarii.

**CALL TO ORDER**

Chair Parker convened the Appeals Hearing Board at 6:36 p.m. in the City Council Chambers of City Hall, 200 E. Santa Clara Street, San Jose, CA 95113. Agenda item 6b, Recycle Plus was heard first following the Consent Calendar.

**2. OPENING REMARKS AND APPROVAL OF MINUTES**

**APPROVAL OF MINUTES**

Documents Filed: Draft Meeting Minutes from Appeals Hearing Board Regular Meeting on February 8, 2018

Action: Upon motion by Commissioner Skinner, seconded by Commissioner Parsons, the minutes for February 8, 2018 was approved. Commissioner Cabanayan and Chien-Hale abstained. (5-0-2)

**3. REQUEST FOR DEFERRALS**

There was no request for deferrals.

**4. CONSENT CALENDAR**

- a. **[41 WIGWAM COURT \(675-01-007\)– SUMMARY ABATEMENT](#)**  
(Tony Gonzalez, Code Enforcement Inspector/ Phuoc Vinh Phan, Property Owner)

Documents Filed: Summary Abatement Order and Hearing Notice dated February 21, 2018.

b. **75 HAYES AVENUE (690-05-030)– SUMMARY ABATEMENT**

(Tony Gonzalez, Code Enforcement Inspector/ Avtar S. & Jashvinder Kaur Khella, Jaspal Kaur Baines, & Daljit Gill, Property Owner)

Documents Filed: Summary Abatement Order and Hearing Notice dated February 21, 2018.

c. **683 NORTH WHITE ROAD (592-11-063)– SUMMARY ABATEMENT**

(Tony Gonzalez, Code Enforcement Inspector/ Anita Viray, Property Owner)

Documents Filed: Summary Abatement Order and Hearing Notice dated February 21, 2018.

d. **924 GERARD WAY (601-32-036)– SUMMARY ABATEMENT**

(Tony Gonzalez, Code Enforcement Inspector/ Carol Pohl, Property Owner)

Documents Filed: Summary Abatement Order and Hearing Notice dated February 21, 2018.

Action: Upon motion by Commissioner Parsons, second by Commissioner Kenny and carried unanimously to approve the abatement actions taken by the City for the properties located at 41 Wigmam Court, 75 Hayes Avenue, 683 North White Road, 924 Gerard Way as set forth in the staff report. (7-0-0)

**5. DEFERRED AND/OR CONTINUED ITEMS**

There was no deferred and/or continued items.

**6. PUBLIC HEARINGS**

a. **RECYCLE PLUS PROGRAM SPECIAL ASSESSMENT LIENS**

Documents Filed: Director's Report Solid Collection Service Charges dated March 21, 2018.

Action: Shivani Sharma, Accountant II, from the Finance Department provided an updated report of the accounts in a delinquent status as of 5:00 pm, April 12, 2018.

Upon motion by Commissioner Parsons, second by Commissioner Kenny and carried unanimously, to adopt a resolution to confirm the updated report from the Finance Department setting forth the Recycle Plus accounts in a delinquent status at the close of the business day on April 12, 2018 at 5:00 p.m. (7-0-0)

b. **APPEAL OF TOW-CAR BUSINESS ASSISTANT PERMIT**

Documents Filed: Notice of Hearing Denial of Tow Driver Permit dated March 26, 2018.

Action: Belen Avalos from the SJPD Permit Unit gave testimony in support of the Chief of Police's decision to deny the application. Appellant Refugio Aldama was not present at the hearing.

Upon a motion by Commissioner Kenny, second by Chair Parker and carried unanimously to approve staff recommendations to deny the Tow-Permit Application for Refugio Aldama. (7-0-0)

c. **87 LA QUINTA DRIVE (612-54-059)– ADMINISTRATIVE REMEDY**

Documents Filed: Notice of Hearing dated February 22, 2018.

Action: Code Enforcement Inspector William Gerry gave a summary of the inspection at the subject property. He stated that the posts that were installed under the deck is an alteration to the structure, and required a permit. Code Enforcement indicated that the City does not know if the deck required the posts, or if the deck structure with or without the posts is structurally sound. As of the date of the hearing, the deck structure as modified is not permitted.

Robert Stewart, property owner, gave testimony that the spa was approved by the HOA in 1985, with the city's ok and it was installed in 1986. Mr. Stewart explained that in 1990, in response to a complaint by the HOA, a City inspector came out and inspected the balcony. The City inspector suggested that he built support posts below the deck to address the HOA's concerns. He stated that there has not been any issues until the current case based on a complaint in 2016. Since the posts were installed, the HOA placed dirt in the area of the posts, and the posts have been covered. Mr Stewart stated that when he received notice of the most recent case, he retained engineers to do a study on the posts, and applied for a permit. Mr. Stewart stated he was informed by the building permit staff that the posts need to be inspected to final the permit process. But Mr. Stewart indicated he did not have the ability to dig up the dirt, and therefore to comply with the requirement to final a permit to legalize the posts. Mr. Stewart presented the Board a binder of correspondence over the years, and a copy of the engineering study.

Upon a motion by Commissioner Kenny, second by Commissioner Parsons and carried 6-1 to approve staff recommendations that the Property Owner shall:

• **On or before May 15, 2018:**

The property owner shall pay administrative cost to the City of San Jose in the amount of \$1,509.80.

• **On or before June 30, 2018:**

Submit all plans, structural calculations and Title 24 documents with the payment of all Plan Check Fees to the City of San Jose Building Division

located on the 1st floor of Development Services at City Hall 1st flr. 200 E. Santa Clara St.

Obtain all required permits to do one of the following: (1) legalize the unpermitted alterations (addition of two (2) support posts under a rear balcony), (2) install alternative posts, or (3) remove the two existing posts.

- **On or before October 15, 2018:**

Complete all corrective building work and inspection to final the permit from the City of San Jose Building Division for one of the following: (1) legalize the unpermitted alterations (addition of two support posts under a rear balcony), (2) installation of alternative posts, or (3) removal of the two existing posts.

The Administrative Penalties of \$5,000.00 shall be suspended, and waived if full compliance with the Board's order is achieved by October 15, 2018. If full compliance is not achieved, the Property Owner(s) shall pay Administrative Penalties to the City of San Jose, pursuant to San Jose Municipal Code Section 1.14.090, in the amount of \$5,000.00 on October 16, 2018, and the Property Owner(s) shall pay additional Administrative Penalties in the amount of \$100.00 per day from October 16, 2018 until the date of compliance with the Board's Order, up to a maximum of \$100,000.00. If the Administrative Penalties are not paid and are recorded as a lien on the real property pursuant to San Jose Municipal Code Sections 1.14.160 and 1.14.180, as may be amended, an interest rate of ten percent (10%) per annum shall be charged on the principal amount of the administrative lien, from the date the lien is first recorded until the date that payment is received by the City, consistent with California Code of Civil Procedure Section 685.010, as may be amended.

**7. REQUEST FOR EXCUSED ABSENCE**

There was no request for excused absence.

**8. OTHER BUSINESS**

There was no other business.

**9. PUBLIC COMMENT**

There was no public testimony on the floor.

**10. ADJOURNMENT**

Upon a motion by Commissioner Parsons, seconded by Commissioner Kenny, and carried unanimously (7-0-0), the hearing was adjourned at 8:36 p.m.